

आयकर अपीलीय अधिकरण, "एस.एम.सी", न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, CUTTACK

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.24/CTK/2020

(निर्धारण वर्ष / Assessment Year :2010-2011)

Pabitra Banerjee, Prop. M/s Durga Enterprises, At-Gumadera, PO-Belpahar, Dist: Jharsuguda-768218	Vs.	ITO Ward-1, Jharsuguda
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGFPB 3419 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Binod Agarwal, Advocate
राजस्व की ओर से /Revenue by : Shri J.K.Lenka, DR
सुनवाई की तारीख / Date of Hearing : 07/02/2020
घोषणा की तारीख/Date of Pronouncement 18/03/2020

आदेश / O R D E R

This appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals), Sambalpur, dated 17.10.2019 for the assessment year 2010-2011 on the following grounds of appeal :-

1. *For that the learned Commissioner of Income Tax (Appeals) is wholly unjustified to confirm addition of Rs.2,25,254/- being the provident fund amount paid via Tata Refractories Ltd. as per arrangement between the assessee, a contractor under the principal Tata Refractory Ltd.. The learned Commissioner of Income Tax (Appeals) failed to appreciate this simple business practice and ignoring all the evidences produced confirmed the addition which is totally illegal, unjustified and bad in law and should be totally allowed in the facts and circumstances of the case.*
2. *For that confirmation of addition of Rs.30,76,893/- terming it as non-genuine purchase is the result of non-appreciation of facts and law & ignoring evidence produced on wholly wrong premises, which is wholly unjustified, illegal and vitiated and should be fully deleted in the facts and circumstances of the case.*

Ground No.1 :

2. Ld. Counsel of the assessee submitted that the CIT(A) is wholly unjustified and unreasonable to confirm the addition of Rs.2,25,254/- being the provident fund amount paid via Tata Refractories Ltd.(in short 'TRL') as per arrangement between the assessee, a contractor under the principal TRL. Ld. Counsel further submitted that the Id. first appellate authority failed to appreciate this simple business practice and ignoring all the evidences produced before him and he, thus, was not justified in confirming the addition, which is totally illegal, unjustified and bad in law. Ld. Counsel of the assessee vehemently pointed out that the entire addition should be deleted being unsustainable and illegal.

3. Replying to the above, Id. Departmental Representative (DR) strongly supported the assessment as well as the first appellate order and submitted that before the authorities below the assessee explained that he is a director of TRL and the payment of provident fund was made by the TRL in the capacity of employer but in the absence of any evidence, expenditure of account of provident fund, the said cannot be allowed and the AO was right in making the addition. Ld. DR also submitted that even before the CIT(A) the assessee only repeated the submissions made before the AO and could not submit any plausible and acceptable explanation in this regard. Ld. DR submitted that it is a settled principle that the person who is claiming the expenditure has to submit the evidence which has not been done by the assessee, therefore, the

addition made by the AO and confirmed by the CIT(A) may kindly be approved.

4. Alternatively, Id. DR submitted that the department has no serious objection if the issue is restored to the file of AO for verification of the fact that as to whether the TRL has deducted provident fund amount from the amount of bills raised by the assessee in the capacity of the contractor.

5. Placing rejoinder to the above, Id. counsel of the assessee submitted that from the copies of the monthwise statement of provident fund submitted to TRL are placed at pages 6 to 17 of the paper book, which clearly reveals that the assessee, as agreed between the assessee-contractor and TRL, submitted details of total amount of employees provident fund with a request to deduct and deposit the same to the provident fund office and this evidence has not been properly considered and appreciated by the authorities below which resulted into baseless addition. Id. Counsel of the assessee further submitted that if it is found just and proper the assessee is ready to get the amount of provident fund verifying from the AO to show that payment of provident fund was made by TRL in the capacity of principal employer and the issue can be sent to the file of AO for verification of limited fact as stated by the Id. DR as to whether the TRL has deducted provident fund amount.

6. On careful consideration of the above rival submissions, first of all, I note that the assessee has submitted copies of the monthwise statement of provident fund submitted to TRL at pages 6 to 17 of the assessee's paper book wherein total amount of contractor's contribution and the

amount collected from provident fund members has been shown after computation and the receipts shows that this monthly statements of provident fund for F.Y.2009-2010 has been submitted to the finance department of TRL for necessary action and payment of provident fund by the contractee, as agreed by both the parties. In view of the above, I am of the considered opinion that the assessee has submitted plausible evidence in his command to show that the as agreed by the assessee-contractor and TRL-contractee, the amount of provident fund to be deducted was calculated and statement was submitted by the assessee to the financial department of TRL, obviously with an object to comply with the provident fund proceedings. Further there is no evidence either before authorities below or before the Tribunal to show that as per the instruction of the assessee, the TRL deducted the provident fund from the billing amount of the assessee for further depositing the same to the provident fund department/competent authority. Therefore, keeping in view the request of both the sides, I restore the issue to the file of AO for limited verification as to whether the TRL has deducted the provident fund from the bill raised by the assessee for further depositing the same to the provident fund authority/competent authority. Accordingly, ground No.1 of the assessee is allowed for statistical purposes with the direction to the AO as noted above.

Ground No.2:

7. Ld. Counsel of the assessee submitted that the CIT(A) is not correct in confirming the addition of Rs.30,76,893/- holding the same as non-

genuine purchase is the result of non-appreciation of facts and law & ignoring evidence produced on wholly wrong premises. Ld. Counsel also submitted that the assessee submitted copy of certificate dated 29.05.2015 issued by the Deputy Commissioner of Sales Tax, Jharsuguda Circle, Jharsuguda regarding total purchase and sales made by the assessee M/s Durga Enterprises during the financial year 2009-2010, which has also been placed at page No.18. Ld. Counsel submitted that total purchase as per revised return was Rs.1,40,22,080/- and this figure was verified by the Dy. Commissioner of Sales Tax Department, Government of Odisha. Ld. AR further submitted that the same figure has been shown by the assessee in the profit and loss account for the period ended on 31.03.2010, therefore, the same cannot be doubted in any manner. It was also submitted by the Id. AR that the assessee has sundry creditors as well as debtors along with profit and loss account which also cannot be doubted. Further drawing our attention towards para 5.3.3 of the first appellate order, the Id. counsel submitted that the certificate issued by the DCIT, Sales Tax Department dated 29.05.2015 was submitted before the CIT(A) but he did not consider the same for want of application under Rule 46A of I.T.Rules, 1962 without allowing opportunity to the assessee to file such application. Ld.AR vehemently pointed out that the CIT(A) in para 5.3.3 has wrongly mentioned that the certificate simply mentions that the purchases as per the revised returned are of Rs.1,40,22,080/-. No verification or inspection has been made by the sales tax department into the correctness of the said purchases shown of

the assessee in the revised return. Ld. AR strongly submitted that purchases as was shown in the Income Tax Return audited accounts and sales tax have fully tallied did not find any favour in his order and he cited various other reasons in his order to confirm the above addition, therefore, the findings recorded by the CIT(A) are perverse and incorrect. Ld. counsel submitted that during the assessment proceedings, the assessee submitted vide reply dated 08.03.2013 and in support of the same, the assessee also submitted purchase register along with all purchase bills for verification with a submission that the figure submitted with sales tax department may be different which will be verified at the time of audit by the sale tax department and the sales tax department verified the same and found correct at the time of issuing the certificate on 29.05.2015, therefore, the authorities below were not correct in making the addition in this regard. Accordingly, Ld. AR submitted that the addition made by the AO and confirmed by the CIT(A) being unjustified, incorrect and unsustainable, may kindly be deleted.

8. Replying to the above, Ld. DR submitted that during the assessment proceedings, the assessee in his submission dated 20.03.2013 admitted that the original VAT return filed before the Sales Tax Department has some mistake and to patch up the inflation of purchase he filed revised return of VAT is purely after thought, which cannot be taken into cognizance. Therefore, the AO was right in making addition.

9. Placing rejoinder to the above, Id. counsel of the assessee submitted that the assessee vide his reply dated 08.03.2013 submitted that the figure submitted with sales tax department may be different which will be verified at the time of audit by the sales tax department. Therefore, the assessee was quite correct and bonafide in explaining the differential amount by way of submitted a certificate issued by the Sales Tax Department, which cannot be doubted in any manner, therefore, the addition made by the AO on wrong appreciation of facts and ignoring the plausible submission of the assessee, may kindly be deleted.

10. On careful consideration of the rival submissions, I am of the considered view that the AO in last para at page No.3 of the assessment order, made addition by observing that the assessee in his submission dated 20.03.2013 has admitted that the original VAT return filed before the Sales Tax Department has some mistake and to patch up the inflation of purchase he filed revised return of VAT is purely after thought. The CIT(A) confirmed the addition by observing that certificate issued by the Sales Tax Department simply mentions that the purchases as per the revised returned are of Rs.1,40,22,080/- and no verification or inspection has been made by the sales tax department into the correctness of the said purchases shown of the assessee in the revised VAT return of the assessee. Keeping in view the basis taken by the authorities below, I am of the considered opinion that the assessee, during the course of assessment proceedings, submitted reply dated 08.03.2013 along with purchase register and all relevant purchase bills for verification before the

AO. The assessee in his written submission also submitted that the figure submitted with Sales Tax Department may be different but it will be verified at the time of audit by the Sales Tax Department. The Deputy Commissioner of Sales Tax Department after verification of relevant record issued a certificate dated 29.05.2015 confirmed that the total purchase as per revised VAT return of the assessee filed on 19.03.2013 and 20.03.2013 was Rs.1,40,22,080/- which clearly reconciles the difference between the amount debited into the trading account as per the Sales Tax Department on the date of passing assessment order as on 25.03.2013. I cannot ignore and throw away the written submission of the assessee dated 8.3.2013 wherein he submitted the purchase register along with all purchase bills showing purchase of Rs.1,40,22,079/- before the AO for verification. The assessee also explained that the figure submitted with Sales Tax Department may be different which will be verified by the audit by the Sales Tax Department and keeping in view the certificate issued by the Deputy Commissioner on 29.05.2015, I am inclined to hold that when the figures shown by the assessee in the trading account are matching with the certificate issued by the Sales Tax Department, then no addition is called for on the basis of earlier tentative and provision figures shown by the assessee as per the Sales Tax Department in absence of any verification or audit by the Sales Tax Department. The assessee by way of certificate and relevant documents such as profit and loss account, purchase register and relevant purchase bills has discharged onus lay on his shoulder establishing that the total

amount of purchase during F.Y.2009-2010 relevant to A.Y.2010-2011 was Rs.1,40,22,079/-, which is similar to the amount shown by the assessee in the profit and loss account as on 31.03.2010, therefore, no addition is called for in this regard. For verifying total actual amount of sales it is necessary to obtain the details from the Sales Tax Department and no such exercise has been undertaken by the authorities below in this regard to verify the figures shown by the assessee in his profit and loss account, however, the assessee could be able to procure a certificate from the Deputy Commissioner Sales Tax Department, who verified the total sales figures, is matching with the figures shown by the assessee in the profit and loss account and the same was submitted before the Id. CIT(A) and he dismissed the same at the threshold by making very hypertechnical observations that the certificate simply mentions that the purchase as per revised return are of Rs.1,40,22,080/- and no verification or inspection has been made by the Sales Tax Department into the correctness of the said purchase shown by the assessee in the revised return. Obviously when a competent authority has issued certificate stating same facts from certifying same facts and figures then it has to be presumed that the same has been issued in consonance with the record available with that authority after verifying the relevant records and documents until and unless it is proved otherwise by way of sustainable contrary evidence. In the present case, the observations made by the CIT(A) in para 5.3.3 and 5.3.4 are hypertechnical and have no legs to stand on the well accepted judicial principle, therefore, I dismiss the same.

11. On the basis of foregoing discussion, I reached to logical conclusion that when the figures of purchase shown by the assessee in the profit and loss account are matching with the figures certified by the Sales Tax Department and VAT return filed by the assessee, then no addition can be made on the basis of earlier tentative figure shown by the assessee as per Sales Tax Department. Accordingly, ground No.2 of assessee is allowed and the AO is directed to delete the addition.

12. In the result, appeal of the assessee is allowed partly for statistical purposes.

Order pronounced in the open court on 18/03/2020.

Sd/-
(CHANDRA MOHAN GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 18/03/2020

प्र.कु.मि/PKM, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- .
Pabitra Banerjee,
Prop. M/s Durga Enterprises,
At-Gumadera, PO-Belpahar,
Dist: Jharsuguda-768218
2. प्रत्यर्थी / The Respondent-
ITO Ward-1, Jharsuguda
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack