

804

C. 348  
16.7

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH "G" DELHI)

BEFORE SHRI C.L. SETHI AND SHRI DEEPAK R. SHAH

ITA NO. 1940(Del)2006  
Assessment year: 1997-98

Jt. Commissioner of Income Tax(OSD)  
Circle 1(1), New Delhi.

M/s. Ambica Steels Ltd.,  
V. C-54/1, Wazirpur Ind. Area,  
New Delhi.

(Appellant)

(Respondent)

Appellant by: Shri S. Venkateshwarlu, CIT/DR  
Respondent by: S/Shri Ved Jain & V.Mohan, CA

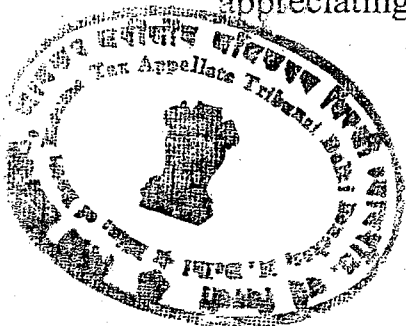
ORDER

PER C.L. SETHI, J.M.

The revenue is in appeal against the order of CIT(A) dated 20.3.2006 passed in the matter of an assessment made u/s 144/148 of the Act by the AO for the assessment year 1997-98.

2. Several grounds of appeal raised by the revenue revolve around the following issues or points raised by the department:-

1. That the CIT(A) erred in law as well as in facts in admitting fresh evidence during the appellate proceedings in violation of Rule 46-A without recording reasons for admission and without appreciating rule 46 A(1)(a) to (d), 46 A(3) and 46 A(4);



4

2. The CIT(A) has erred in law and on facts in deleting the following additions without giving reasons for the same and without appreciating that no proper examination of the identity, genuineness and capacity was conducted or appraised by the CIT(A) as provided under rule 46 A(4) or by the AO when submitting his comments in the remand report-

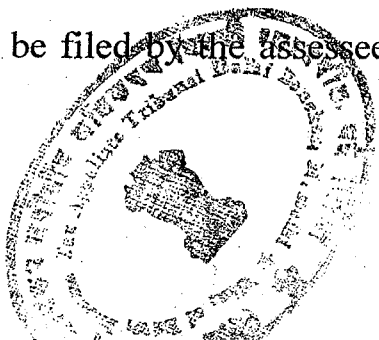
- (AO's)
- (a) The addition of Rs. 2.50 ~~lacs~~ made on account of unexplained share capital;
  - (b) Addition of Rs. 39,50,000/- made on account of unexplained loans; and
  - (c) Addition of Rs. 67,07,016/- made on account of unexplained creditors.

3. That the CIT(A) erred in law as well as on facts in directing the AO to verify the accounting period for the purpose of excise duty of Rs. 11,73,000/-.

4. That the CIT(A) erred in law as well as on facts in deleting Rs. 26,21,904/- disallowed on account of depreciation when no details were submitted at the time of assessment or during appellate stage.

3. We have heard both the parties and have gone through the orders of the authorities below.

4. This was an assessment made u/s 144 of the Act by the AO where certain additions were made in the absence of the requisite details required to be filed by the assessee before the AO in pursuance to various notices



issued by the AO. However, during the course of appellate proceedings, the assessee filed an application under rule 46 A for admission of additional evidence. The documents contained in the paper book filed before the CIT(A) were forwarded to the AO for his comments. The AO submitted a remand report dated 27.3.2005 to the CIT(A), a copy of which was given to the assessee for his rejoinder. Both the remand report and rejoinder were considered by the CIT(A) in deciding various issues.

5. On the question of admission of additional evidence under rule 46 A, the CIT(A) has observed and held as under:-

*“On the question of admission of additional evidence, I find that there is sufficient cause that prevented the appellant firm from filing the same during assessment proceedings,. The appellant claims that the notice under section 148 was not served upon him. He contends that there was a change of address during the relevant period. He also has made various other submissions regarding the invalidity of the notice and the assessment proceedings, which have been countered by the A.O.*

*Keeping in view the divergent views and the confusion that persists regarding the nature of the facts and circumstances of the case, I feel that it would serve the purpose of justice to allow the appellant the opportunity of producing evidence before me so that a fair and equitable hearing is afforded to him. In these circumstances, the additional evidence is allowed to be filed and is being considered while discussing the various grounds of appeal.”*

6. On perusal of the aforesaid CIT(A)'s order, we find that the CIT(A) has taken into account the fact that there was a change of address of the

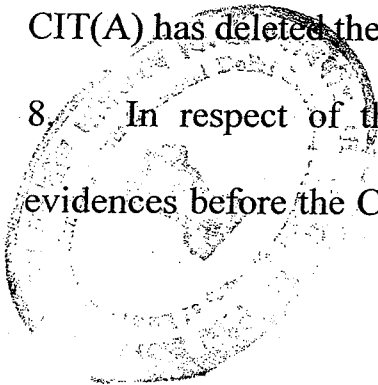


4

assessee during the relevant period. The CIT(A) also stated that the confusion had persisted to the facts and circumstances of the case as to the assessee's failure to comply various notices. The CIT(A) felt that it would serve the interest of justice to allow the assessee the opportunity of producing evidence before him so that a fair and equitable hearing is afforded to the assessee. In these circumstances, the additional evidence filed by the assessee was admitted by the CIT(A) for his consideration. The CIT(A) forwarded all the documents and papers filed by the assessee before him to the AO for his comments. Therefore, the AO should not have any grievance inasmuch as, he was given full opportunity to give his comments on various documents and papers relied upon by the assessee before the CIT(A). We, therefore, uphold the order of CIT(A) in admitting the additional evidence filed before him.

7. With regard to the additions of Rs. 2,50,00,000/- on account of share capital, Rs. 39,50,000/- made on account of unexplained loans and addition of Rs. 67,07,016/- made on account of unexplained creditors, we find it deem and proper to have a look on the basis or reasons, on which the CIT(A) has deleted the additions.

8. In respect of the share capital, the assessee submitted additional evidences before the CIT(A). These additional evidences were forwarded



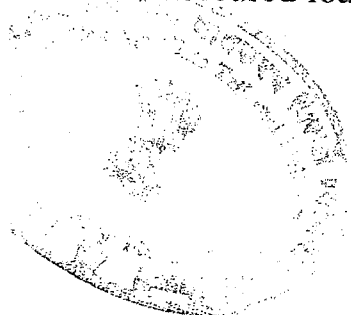
A handwritten signature is written at the bottom center of the page.

to the AO for his comments. The AO submitted a remand report to the CIT(A). The CIT(A) quoted from the remand report of the AO various facts in his order and came to the conclusion that the issue did not warrant any further discussion as the AO has accepted the position of the assessee after due examination. The CIT(A) agreed with the conclusion drawn by the AO that Rs. 89,50,000/- out of Rs. 2,50,00,000/- was the opening share capital, which was not relevant for the year under consideration. For the remaining amount of Rs. 1,60,50,000/-, the details filed were found correct and unambiguous by the CIT(A). The CIT(A), therefore, deleted the addition.

9. The details with regard to the share-holders were furnished by the assessee before the CIT(A) which were forwarded to the AO. The AO had issued notice u/s 133 (6) of the Act to the 14 shareholders. The PAN of the shareholders are mentioned in the details annexed to the remand report submitted by the AO. Thus, the name and identity of the shareholders were fully established. It is a limited company. Therefore, in the light of the AO's remand report, we do not find any infirmity in the order of the CIT(A) on this issue.

10. With regard to the addition of Rs. 39,72,445/- on account of unsecured loans, the AO accepted in the remand report that no addition was

42



warranted. The CIT(A) quoted from the remand report the relevant portion in his order by high-lighting that the AO issued letter u/s 133(6) of the Act to the creditor M/s. Upahar International for furnishing the details of transaction, in response to which M/s. Upahar International furnished the relevant information giving PAN and the bank details. No further enquiry was made by the AO for which the assessee cannot be made responsible. The department has taken a ground that the AO failed to make proper enquiry while submitting the remand report but that cannot be a grievance to be taken by the AO. The CIT(A) has rightly deleted the addition in the light of the information given by the AO in the remand report.

11. With regard to the addition of Rs. 67,07,016/- on account of unexplained creditors, the CIT(A) stated that in the remand report the AO has stated that out of 25 confirmations filed during the appellate proceedings, only 2 confirmations contained PAN and GIR Nos. and the balance confirmations did not have complete details of Income Tax particulars. The CIT(A) thereafter considered each and every facts of the case and decided the issue by observing as under:-

*"I have carefully considered the submissions of the appellant and the assessment order in question. I have also perused the remand report sent by the A.O. and the rejoinder off the appellant to it. The main ground of addition is that the transactions were held to be bogus due to the inability of the appellant to appear and the documentary*

evidence. During the appellate proceedings a query was raised asking the appellant to prove the genuineness of the transaction and the identity of the creditors. In response to this the genuineness of the transaction and the identity of the creditors. In response to this the appellant filed some documentary evidence which has been examined. A perusal of the facts and circumstances show that the A/O. made an addition on account of the increase in s/c over last year. A perusal of details filed show that a large chunk of this amount is on account of RC Overseas exports. This company has filed its copy of trade account, bill of entry to show that goods were purchased from them. Clearly they are trade creditors. A copy of agreement between both parties for the purchase has also been filed. Since they are trade creditors and nothing adverse has been proven against them, the addition made Rs.5619423 on their account does not stand. It is also seen that this entire amount was paid back during the financial year 97-98 by cheque. The appellant has also filed bank statements to this effect. The identity of the company as well as the authenticity of the transaction is proven. The appellant has stated that these details were not filed at the time of assessment as there was inadequate opportunity given to them and the notice u/s. 148 vide which this assessment was reopened was barred by limitation. In another case that of Kalinga Alloys Pvt. Ltd. , which is a new creditors the appellant has transacted a business of Rs.8891000 and at the end of the year have a credit balance of Rs.28,86,092. The former company is assessed to tax at Bhubaneswar, and the assessment order is placed on file.

Faced with these evidences, it is not possible to conclude that these transactions are not genuine and also that the creditor is not genuine.

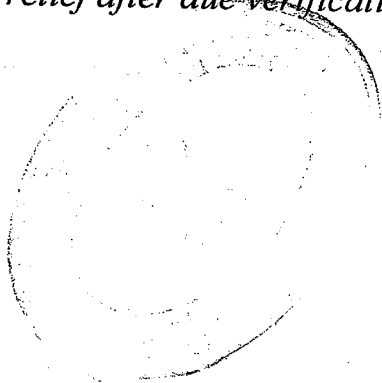
After carefully considering the evidence filed before me I find there is not enough ground to make the addition as the A.O. has not brought before me enough evidence to support the conclusion that these are bogus transactions. Above all the A.O's. action in adding back at random the increase in creditors during the year cannot stand as there is no reasonable explanation given by the which stands before the explanation and details filed by the appellant. Addition made by the A.O. is, therefore, deleted."



12. In the light of the detailed discussions made by the CIT(A) and having regard to the fact that these are trading transactions effected by the assessee which are not found to be bogus, we are inclined to uphold the order of the CIT(A) on this issue.

13. The next ground is against CIT(A)'s direction to verify from the assessment record whether the assessee has followed the accounting policy as provided u/s 145 and to grant relief after due verification. The CIT(A)'s order on this issue runs as under:-

*"I have carefully perused the submissions of the appellant and the A.O.'s conclusions. I find that there is force in the submissions of the appellant. The provisions of section 145A was introduced from 1st April, 1999 and is not applicable for the year under consideration. The A.O. on the other hand, is saying that the assessee has not added the Excise Duty on closing stock of Rs.11,73,000/-, which is evident from note 12 of notes to accounts annexed with return of income. As the assessee has not added Excise Duty on finished goods, it has understand its income for the year. The A.O. then went to make this addition. However, I find that even as per section 145 as it stood in the year under consideration it was obligatory to include tax duties cess etc. paid by the assessee in closing stock. Since no excise duty has been paid by 31<sup>st</sup> March 1997 there is no reason for inclusion of the same. Even if the appellant paid before the filing of the return any excise duty he would get due benefit for the same in view of the Delhi High Court decision in the case of RBB Vestas. The A.O. is hereby directed to verify fro the assessment record whether the appellant has followed the accounting policy as enumerated in section 145 and grant relief after due verification."*






14. On perusal of the aforesaid order of the CIT(A), it is clear that the CIT(A) has not restored the matter to the AO for fresh examination but has directed the AO to verify the facts as per his directions and findings, which, in our considered view, does not amount to be of setting aside the issue to the file of the AO for his fresh decision. The CIT(A) has given a categorical finding on the issue and directed the AO to decide the issue according to his findings and observations. We, therefore, do not find any infirmity in the order of the CIT(A) on this issue.

15. The last ground is with regard to the claim of depreciation. The CIT(A) has decided this issue as under:-

*"I have carefully considered the submissions of the appellant and the assessment order in question. I find that the A.O. has disallowed the entire claim of depreciation ignoring the fact that the return was accompanied by audited account. The A.O. could not have disallowed additions to fixed assets if he was not satisfied with the details or in the absence of details. It is not understood how he could disallow the entire claim of depreciation. The details of additions to fixed assets have been filed and forwarded to the A.O. for his comments in the remand report. The A.O. merely mentions that have been filed. I find little to disallow the claim of depreciation made by the appellant. I find that the claim is allowable and it is hereby allowed."*

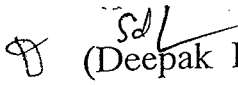
16. We have gone through the order of CIT(A) and find that the CIT(A) has allowed the assessee's claim of depreciation after giving an opportunity to the AO to examine and verify the details of fixed assets on which depreciation was claimed. The AO in the remand report did not make any

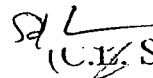


adverse comments and, therefore, the CIT(A) held that the claim of the assessee on depreciation is allowable and he, accordingly, allowed. In these circumstances, where the AO did not make any adverse comments on various details filed by the assessee for claiming depreciation, we do not find any merit in the grounds taken by the department on this issue. The order of the CIT(A) is, thus, upheld.

18. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on... 11...07.2008.

  
(Deepak R. Shah)  
Accountant Member

  
(C.R. Sethi)  
Judicial Member

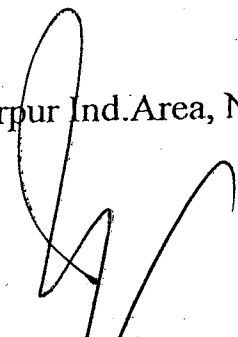
Dated: 11...07.2008  
\*RM

copy forwarded to:

1. JCIT(OSD), Cir.1(1), New Delhi.
- 2.. M/s. Ambica Steels Ltd., C-54/1, Wazirpur Ind.Area, New Delhi. *(By Hand)*
3. CIT
4. CIT(A)
5. DR

true copy

by order

  
सहायक पंजीकार  
Assistant Registrar  
Deputy Registrar  
आयकर अपीलीय अधिकारी  
Income Tax Appellate Tribunal  
दिल्ली पीठ, नई दिल्ली  
Delhi Bench, New Delhi