

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 674/Hyd/2014
Assessment Year: 2009-10

M/s Agarwal Global Steels Pvt. vs. Dy. Commissioner of Income-
Ltd., Secunderabad. tax, Circle – 1(1), Hyderabad.

PAN – AACCA0516C

(Appellant)

(Respondent)

Assessee by : Shri K.C. Devdas
Revenue by : Smt. M. Narmada

Date of hearing : 16/07/2018
Date of pronouncement : 31/07/2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order dated 16/01/2014 of CIT(A) – II, Hyderabad for AY 2009-10.

2. Brief back ground of the case is that the matter in this appeal has been recalled vide M.A. No. 01/Hyd/2018, order dated 16/03/2018, which was filed against the order in ITA No. 674/Hyd/2014, vide order dated 29/09/2017. In the M.A. the Bench has held as under:

"4.7 However, we notice from the submission for MA in Para 10.2 & 10.3 that assessee has sold only 2797.335 MT @ Rs. 25,000/- + Tax. At the same time, Goutham Rolling Mills (P) Ltd. has sold at rate of Rs. 30,675.50 (including tax). Even on adopting the sale value of Goutham Rolling Mills, the difference would be Rs. 4,500/-, the loss to the assessee will be the value of Rs. 1.25 crores. Whereas the AO has disallowed the loss at Rs. 1.80 crores. The revenue has brought on record only this alleged transaction in support of disallowing the loss. Therefore, we find that this aspect was overlooked while adjudicating. Hence, to give proper opportunity to both the sides, we are inclined to recall our order for a limited

purpose to determine the actual loss to the assessee in this transaction with Goutham Rolling Mills. Accordingly, registry is directed to fix the appeal for hearing as discussed above.”

3. In the original order, the Bench has held as under:

“9. Considered the rival submissions and material facts on record. The facts are, the assessee is a trader in steel and it sources steel from M/s SAIL and VSP, through M/s Agarwal Steels, which is proprietary concern. The assessee places orders through M/s Agarwal Steels to SAIL and VSP. The rates are fixed by SAIL and VSP and supplied through the original delivery challan of SAIL and VSP to the assessee. The assessee, in turn, supplies to various agencies which include M/s Gautham Rolling Mills P. Ltd. During the current AY, the assessee has achieved Rs. 171.81 crores of turnover and declared net profit of Rs. 1.14 crores. However, AO noticed huge variations in the quarterly trading results of the company. He noticed that the assessee has sold the steel at less price resulting in negative gross profit. He has found that assessee has sold huge quantity in the last quarter to M/s Gautham Rolling Mills at Rs. 25000/MT whereas the assessee has bought at higher price. For which, assessee has submitted that the market condition of the TMT Bars were not conducive and prices for the same was falling steeply in the 3rd and 4th quarter. Since, the assessee has accepted to supply the huge quantity with competitive rate, it has to complete the agreement irrespective of the negative financial result. This was done keeping in mind the reputation and business ethics.

9.1 Considering the above factual matrix, we have noticed that the assessee has supplied the TMT bars at much lower rate resulting in negative gross profit. In the three quarters, the assessee had achieved 6.3% of GP, whereas in the 4th quarter, it has achieved negative 7.07%, there is a negative swing of 13.37% in this quarter. No doubt, there is continuous fall in the price of TMT steel bars from April to December period. It is normal to secure big orders by the prudent businessman at competitive rates, in the result, if there is price fall, businessman will take the hit but in the net profit and not IN the gross profit. We have noticed that the GP ratio has swung 13.37% in this quarter and also the assessee has not substantiated how the price was fixed to secure the order. There is no basis to fix the rate at Rs. 25000/- per MT when the price prevailing at the time of contract was Rs. 35,443/- per MT.

9.2. The assessee has to substantiate the condition at which it has secured the order and price fixed for the future delivery in the volatile market. The assessee has fixed the rate at Rs. 25000/MT, when the price was Rs. 35,443/- per MT, i.e. about 70% of the prevailing market rate. At the same time, M/s Gautham Rolling Mills has sold at Rs. 30,675/-. When parties enter into such future contracts, they enter with back to back contracts, in which case, Gautham Rolling Mills should have entered into contract with others at the rate near to Rs. 25000/- per MT. But, in the given case, there is no such back to back arrangement but sold to others at a margin of 22.7%. It is very abnormal trading result.

9.3 The assessee has maintained proper books and the transactions were genuine as per the document submitted before us. But the result and the circumstances leading to execution of contract with M/s Gautham Rolling Mills in fact raises eye brows as the same was not substantiated by the assessee to the satisfaction of any authority. Hence, even though, the transactions recorded and document in support of trading activities are genuine and proper but we just cannot rely only on the documentation

but the 3rd quarter result and pricing decision leading to such erosion of profit shows the assessee is in bad light. It is the duty of the assessee to substantiate with the evidence to show that it has taken conscious decision in the interest of the business. In the absence of such evidence, the AO or any authority for that matter will not treat the transactions of the assessee as genuine and trustworthy. As held in the case of Sumati Dayal Vs. CIT 214 ITR 801, the Hon'ble Supreme Court held that human probability and circumstantial evidence has to be kept in mind to testify the genuineness of the transactions. We also rely on the case of Som Nath Maini Vs. CIT (supra) wherein it was held that "the AO is to apply the test of human probabilities for deciding genuineness or otherwise of a particular transaction. Merely leading of evidence that transaction was genuine, cannot be conclusive. Such evidence is required to be assessed by the AO in a reasonable way. Genuineness of the transaction can be rejected even if the assessee leads evidence which is not trust-worthy, even if the department does not lead any evidence on such an issue." In our considered view, the assessee has not substantiated the circumstances with proper evidence which led to fix the price at Rs. 25,000/- per MT. In such a situation, we have no option but to go with the conclusion drawn by the AO. Accordingly, ground raised by the assessee is dismissed."

4. In the 2nd round of appeal proceedings, Id. AR submitted that the assessee has entered into a contract to supply of 3,000 MT of assorted sizes in random lengths of TMT Bars to M/s Gautham Rolling Mills Pvt. Ltd. The material is nothing but bye-product generated from rolling mills, which is left over short pieces after cutting the standard lengths of TMT Bars. He submitted that it is a valid contract entered by the assessee to supply 3000 MTs. @ Rs. 25,000/- per MT. The said contract has penal clause in case of default to supply the material, assessee has to pay Rs. 3,000/- per MT. In order to maintain the goodwill, assessee has supplied the material as per the above agreement and the sale is properly recorded in the books of account, which was also confirmed by M/s Gautham Rolling Mills Pvt. Ltd. That being the case, AO cannot substitute the selling price unless there is contrary evidence brought on record. For this proposition, he relied on the following cases:

1. CIT Vs. Calcutta Discount Co. Ltd., [1973] 19 ITR 8 (SC)
2. Sri Ramalinga Choodambika Mills Ltd., Vs. CIT [1955] 28 ITR 952 (mad.)
3. CIT Vs. A. Raman and Co., [1968] 67 ITR 11 (SC)
4. Flipkart Ltd., 64 ITR 358

4.1 Further, he submitted that M/s Gautham Rolling Mills Pvt. Ltd. sold material ranging from Rs. 24,960/- to Rs. 33,801/- and all these materials were sold to different parties. During this period M/s Gautham Rolling Mills Pvt. Ltd. had sold 5,701.17 MT whereas assessee has supplied only to the extent of 2112 MT during this period. It is not traceable that M/s Gautham Rolling Mills Pvt. Ltd. sold the material supplied by the assessee to various customers. However, the AO arrived at the average price sold by M/s Gautham Rolling Mills Pvt. Ltd. @ 30,675.56. He submitted that even otherwise, if we consider that M/s Gautham Rolling Mills Pvt. Ltd. has sold the steel @ 30,675/- and the assessee has purchased the steel at an average price of Rs. 29,390/- per MT. Assessee might have earned a profit of Rs. 1,285.65 (30,675.56 – 29,390).

5. On the other hand, Id. DR submitted that as per MA, this is a limited direction to determine loss of Rs. 1.8 crores or Rs. 1.25 crores. She supported the order of AO and prayed that the whole loss of Rs. 1.25 crore to be sustained in the hands of assessee.

6. Considered the rival submissions and perused the material on record. As discussed in the MA, we observe that even if we consider the selling price @ 30,675.56 by M/s Gautham Rolling Mills Pvt. Ltd. and the same was purchased from the assessee @ 25,000/- per MT with tax, the difference would be Rs. 4,500/- per MT. We gave opportunity to both the parties to substantiate their claim to determine the actual loss to the assessee. However, we notice that Id. DR has not brought on record any thing in support of the findings of the AO for the disallowance of Rs. 1.8 crore. While, Id. AR made similar submissions as made in the original hearing. AO has brought on record only the transactions made with M/s Gautham Rolling Mills Pvt. Ltd. as the reason for the losses sustained by the assessee, but, we find that it is not the case, there were other market driven issues. For the sake of justice and to settle the issue, if we set aside the

transactions of M/s Gautham Rolling Mills Pvt. Ltd., assessee might have earned the profit to the extent of Rs. 1,285/- per MT. Since there is no contrary evidence produced before us, we are inclined to accept the contention of the assessee that the assessee might have earned the above said profit in this transaction. Therefore, the AO is directed to disallow to the extent of material supplied by the assessee to M/s Gautham Rolling Mills Pvt. Ltd. i.e. 2797 MT @ Rs. 1,285/- per MT. Therefore, the grounds raised by the assessee on this issue are partly allowed.

7. In the result, appeal of the assessee is partly allowed.

Pronounced in the open Court on 31st July, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 31st July, 2018

kv

Copy to:-

- 1) *M/s Agarwal Global Steels Pvt. Ltd., 5-4-33/3, Sterling Apartments, Distillery Road, Secunderabad – 500 003.*
- 2) *DCIT, Circle – 1(1), IV Floor, Aayakar Bhavan, Basheerbagh, Hyderabad.*
- 3) *CIT(A) - II, Hyderabad*
- 4) *CIT - 1, Hyderabad*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*