IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH
(Conducted Through Virtual Court)
Before: Shri Mahavir Prasad, Judicial Member
And Ms. Annapurna Gupta, Accountant Member

ITA No. 3410/Ahd/2016
Assessment Year 2010-11

R.S. Steel Manufacturers Plot No. 8, GIDC Kapadwanj PAN: AADFR7075D (Appellant)	Vs	The ACIT, Kheda Circle, Nadiad (Respondent)

Appellant by : Shri S. N. Divatia, Advocate
Respondent by : Shri Purushottam Kumar, Sr. D.R.

Date of hearing : 27-12-2021
Date of pronouncement : 24-01-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-2, Vadodara, (in short referred to as CIT(A)), dated 15-09-2016, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2010-11.

2. Grounds raised by the Assessee reads as under:

1.1 The order passed u/s.250 on 15.09.2016 for A.Y.2010-11 by CIT(A)-2, Vadodara upholding validity of reopening u/s.147 as well as the additions amounting to Rs.27,24,159/- made towards excise duty, CST & VAT by AO is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned additions.

2.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming that the notice of reopening issued u/s.148 and the proceedings u/s.147 were valid and justified in law.

2.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought to have held that the notice u/s.148 and the proceedings u/s.147 initiated by AO both were illegal and unlawful.

3.1 The Ld.CIT(A) has erred in law and or in facts upholding the additions amounting to Rs.27,24,159/- made towards excise duty, CST & VAT.

3.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought to have deleted the additions amounting to Rs.27,24,159/- made towards excise duty, CST & VAT. Both the lower authorities have failed to appreciate the method of accounting followed by the appellant.

4.1 Without prejudice to above and in the alternative the Ld. CIT(A) has failed to appreciate that the addition towards unavailed credits in respect of taxes, Cess were not justified.

It is, therefore, prayed that the additions upheld by the CIT(A) may kindly be deleted.

3. Ground no. 1.1 , 1.2 and 4.1 are general in nature and are therefore not being dealt separately by us.

4. Vide the remaining grounds the assessee has assailed the order of the Ld.CIT(A) both on legal aspects as well on merits of the addition made.Before us the arguments made by the Ld. Counsel for the assessee pertained only to the merits of the case against the addition of Rs. 27,24,159/- made to the income of the assessee towards Excise duty, CST and VAT. In effect therefore the arguments made by the Ld. Counsel for the assessee were confined to ground no. 3.1 and 3.2 only. The legal grounds raised by the assessee in Ground No 2.1 and 2.2 are therefore dismissed in the absence of any arguments made with respect to the same by the Ld.Counsel for the assessee.

5. With respect to challenge raised in ground no 3.1 and 3.2 against the addition made of Rs. 27,24,159/- ,it was pointed out by the Ld.Counsel for the assessee that the same related to Excise duty, CST and VAT found debited in the profit and loss account of the assessee as under:

1. Excise duty- 50,544/-
2. CST - 20,70,811/-
3. VAT (purchase) 6,02,804/-

Total 27,24,159/-

6.The reason for making the impugned addition was that the AO noted that while the sales were shown net of Excise duty and taxes, in the profit and loss account, the assessee had debited these above duties and taxes along with purchases in its trading and profit and loss account and therefore as per the A.O. while the assessee ought to have debited purchases, net of taxes and duties ,as in the case of sales, the taxes and duties so debited to the profit and loss account amounting in all to Rs. 27,24,159/-. tantamounted to excess claim and the same was accordingly disallowed and added to the income of the assessee.

7. We have heard the contentions of both the parties. We have also gone through all the replies and documents which were filed by the assessee to both the authorities. What emerges from the same is that the assessee repeatedly contended to the revenue authorities that both sales and purchases had been accounted for net of taxes in the books of the accounts of the assessee as well as in the trading and profit and loss account and there was no question of the purchases being booked inclusive of taxes and duties. That the amount of VAT, Excise duty and CST which was actually debited to the profit and loss account pertained to those amounts paid on purchases whose credit could not be availed by the assessee and did not pertain at all to the entire purchases made by the assessee.

8. In this regard, we find that the assessee had evidenced his contention by demonstrating the accounting for sales and purchases net of taxes in its books of accounts by placing copies of the following accounts for the year before the lower authorities

a) the purchase account,

b) the Excise duty account,

c) CST account and

d) VAT account

9. He also placed copies of bills of purchases along with the journal vouchers reflecting the fact that the purchase bills were accounted for net of duties and taxes. The same were also placed before us in a paper book at pages 75-128.

10. The submission of the assessee before the AO explaining the nature of the amounts of VAT, Excise duty and Cess debited to the profit and loss account filed on 23/08/2016 reproduced at page 9 of the Ld. CIT(A) is as under:

> *1. In trading account, both sales and purchase have been mentioned without EXCISE, CST and VAT. Copy of sales and purchase account is attached here with.*
> *2. In Trading Account, we have presented the Sales with Excise and VAT due to disclose the Total Turnover, which was required in the VAT assessment as well as reflecting the Firm 's strength by way of Turnover. In the Trading Account, we have separately added Excise and VAT to arrive the Total Turnover of the Firm.*
> *3. Explanation for Excise debited in Trading Account : In books of accounts Central Excise on purchase and sales has been debited and credited in the Central Excise account and outstanding has been mentioned in the Balance Sheet, Such amount outstanding is Rs.431053.88 as on 31/03/2010.*
> *Excise Rs.50544.27 is debited in the Trading Account is the balance amount of Excise, which is not eligible for the credit against the excise payable.*
> *4. Explanation for CST debited in Trading Account : CST Rs.2070811 has been debited in the Trading Account of the Pune Branch of the Firm. CST has been levied for the purchase from the outside of the State. This CST has not been set off against the VAT of the State and hence this is debited in the Trading Account.*
> *5. Explanation for VAT debited / credited in Trading Account: It is the difference amount of the VAT, Additional VAT, Additional Cess, etc receivable and payable. Amount, which is not available as the credit in the VAT has been debited to the Trading Account and VAT*

receivable amount, is mentioned in the Loan and Advances in the Balance Sheet, which is Rs.577764.

6. Copy of the ledger account of the Sales, Purchase, Central Excise, various types of VAT account and CST account is attached here with for your kind reference.

7. It is respectfully submitted that, the addition made as above are not justifiable or maintainable and accordingly, the same may kindly be deleted. The relevant documentary evidences are enclosed for your honor's kind perusal. In case, if any further clarification is required, the appellant may kindly be given further opportunity."

11. It is clear from the above that the assessee had explained the nature of the Excise, CST and VAT debited to the profit and loss account as only that part of the total of such duties and taxes paid ,the set off/credit of which was not available and hence was an expense for the assessee.

12. The Revenue authorities we find have failed to controvert/ point out any infirmity in the aforesaid contention of the assessee duly evidenced with documents as noted above..Even before us the Ld.DR was unable to controvert the contention of the assessee.

14. In view of the uncontroverted factual contention of the assessee evidenced with documents to the effect that sales and purchases were booked net of taxes by it, the finding of the revenue authorities that the assessee had debited duties and taxes paid on purchases while reflecting sales net of taxes thus resulting in claim of excess deduction of the said taxes/duties, stands ousted.

15. The Ld. CIT(A), we find though has appeared to have appreciated the contention of the assessee that the duties and taxes debited to the profit and loss account represented that portion of the duties and taxes which could not be set off against the taxes required paid by the assessee on sales, But at the same time ,we find,he has come up with his own logic and reasoning for dismissing the same and which to our mind makes no sense at all.

16. The Ld.CIT(A) has rejected the assessee's contention of the CST debited to the profit and loss account of Rs. 20,70,811/- as pertaining to Pune Branch in respect of purchases made from outside the State which was not eligible for set off against VAT of the State, by stating that the assessee had also made inter-state sale of 10.59 crores during the year on which CST of 2% was charged and the assessee has shown only net sales excluding CST approximately 21.10 lakhs. He has further gone to state that since the assessee was collecting CST on sale the same should not be adjusted against CST paid on purchase. The relevant findings of the Ld.CIT(A) at para 4.1.1 are as under:

> *4.1.1. Since Excise Duty/VAT/CST were excluded from the sales, the appellant was not entitled to claim any such taxes in the trading account along with the purchases and accordingly during the course of reassessment as well as appellate proceedings, the appellant was required to explain the same. In respect of CST debited in trading account at Rs.20,70,811/-, the Ld. Authorized Representative has explained that the same pertains to Pune Branch of firm in respect of purchases from outside of State. It was also stated that CST is not allowed to be set off against VAT of the State Government and hence it was separately claimed. On perusal of the details furnished, I find that appellant has also made sale Inter State amounting to Rs.10,59,68,070/- during the year under consideration on which CST at 2% has been charged. However, in the trading account, the appellant has credited only net sale excluded CST of approximately Rs.21,19,000/-. Thus, it is clear that the appellant was also collecting CST on the sale and hence same should not be adjusted against CST paid on purchases. Accordingly, the arguments of the appellant are found to be incorrect and hence CST debited in trading account at Rs.20,70,811/- deserves to be disallowed.*

17. We have failed to understand what the Ld. CIT(A) is trying to state by the above. The simple contention of the assessee, as is evident from his reply to the Ld.CIT(A) reproduced above, is that the CST of 20 lakhs pertained to inter-state purchase made in the Pune branch which could be set off against inter-state sale made therein and in the absence of any such sale and the amount of CST therefore was ineligible for set off and hence written off in the profit and loss account. The reasoning of the Ld. CIT(A) talks about entire CST sale made by the assessee in its different branches for dismissing this contention of the assessee, which does not address the specific contention of the assessee that the same related to Pune Branch alone and could be

set off against CST sales in Pune which were not there. The fact that assessee had made total CST sales of 10.59 crores does not help the case of the Revenue in meeting and controverting the specific contention of the assessee as aforestated. The same therefore cannot form the basis for rejecting the assesses explanation,we hold.

18. Similarly, we find that in the case of VAT while the assessee's explanation of VAT debited to the profit and loss account was that it represented the excess of amount of VAT receivable on purchases as against amount payable on sales and which was not available for set off, the Ld. CIT(A) has rejected the same by stating that the assessee has shown the same amount of VAT as debited in the profit and loss account as receivable in his balance sheet. The relevant findings of the Ld. CIT(A) to this effect at Para 4.1.3 of his order is as under:

> *4.1.3. In respect of VAT of Rs.5,77,764/-, it is claimed that the same pertained to difference amount of VAT, Additional VAT, Additional Cess etc. receivable. This argument of appellant is also found to be incorrect because in the Balance Sheet under the head loan and advances (Schedule-9), VAT receivable has been shown at Rs.5,77,474/-. Once VAT receivable is shown in the Balance sheet, appellant cannot claim any expenditure separately because the same requires to be first adjusted against the amount of VAT payable. Under these circumstances, claim of the appellant on this account is also rejected.*

19. The presumption of the Ld. CIT(A),it appears from the above , is therefore probably that the VAT receivable was very much available for set off as per the books of the assessee and as opposed to that claimed by it that it was not available for set off. We find that this finding of the Ld. CIT(A) is not based on correct appreciation of facts .Firstly as per double entry system of accounting which is universally followed for book keeping every transaction is represented by both debiting and crediting different accounts. And the outstanding debit and credit balances in the different accounts are reflected either in the profit and loss account or balance sheet as per its nature. As per the Ld.CIT(A) the assessee has both debited

the profit and loss account and also shown the debit balance in the VAT receivable account in the balance sheet ,which is not possible. A debit balance in an account can either be reflected in the profit and loss account as expense or as an asset in the balance sheet. It cannot be reflected in both the financial statements at the same time. Therefore surely the amount of VAT debited to the profit and loss account is not the same as that reflected as receivable in the balance sheet. This is further cemented by the fact on record that the said two amounts are not the same also. While the amount debited to the profit and loss account of VAT amounts to Rs. 6,02,804/- the amount reflected as receivable as per the Ld. CIT(A) himself amounts to Rs. 5,77,764/-.Therefore the basis of the Ld. CIT(A) for rejecting the assessee's explanation of VAT debited to the profit and loss account, we find, has no legs to stand on and is therefore dismissed.

20. Moreover we find that before the Ld.CIT(A) the assessee had contended that similar issue had arisen in A.Y 2014-15 also and the reply of the assessee had been accepted by the AO making no addition. Copies of the reply filed and the assessment order of that year were also filed to the Ld.CIT(A). The submission of the assessee to the Ld.CIT(A) to the above effect 11-07-16 reproduced at page 9 of the CIT(A)'s order is as under:

> *10. During the assessment proceeding of the A.Y. 2014-15, same issue has been raised by the Ld. AO and we have replied on the same line, which was accepted by the Ld. AO and no addition has been made by the Ld. AO. Copy of our reply as well as Assessment Order has been attached here with for your kind reference.*

21. The aforestated contention has also remained uncontroverted by the Revenue. Therefore even by the principle of consistency the impugned addition was not warranted.

22. In view of the above, we hold that the revenue authorities have proceeded on totally incorrect interpretation of facts of the case while making the impugned addition of Rs. 27,24,159/- on account of Excise duty, VAT and CST debited to the profit and loss account which we find the assessee had duly explained for doing so and it is clearly not a case of any extra claim made on account of the same of the assessee.

23. In view of our finding as above, the addition made of Rs. 27,24,159/- is directed to be deleted. Grounds of appeal of ground no. 3.1 and 3.2 are accordingly allowed.

24. In effect, appeal of the Assessee is partly allowed.

Order pronounced in the open court on 24-01-2022

Sd/-	**Sd/-**
(MAHAVIR PRASAD)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER True Copy	**ACCOUNTANT MEMBER**

Ahmedabad : Dated 24/01/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद