

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.2406 to 2412/PUN/2016  
निर्धारण वर्ष / Assessment Years : 2007-08 to 2013-14

M/s. Sparco Engineering Pvt. Ltd.,  
12, Bhosale Nagar,  
Near Godavari Apartments,  
Pune - 411007

PAN : AACCS3386A

.....अपीलार्थी / Appellant

बनाम / V/s.

Asstt. Commissioner of Income Tax,  
Central Circle - 2(3), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke  
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 22-03-2022  
घोषणा की तारीख / Date of Pronouncement : 07-06-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

All the above said appeals by the assessee against the common order dated 16-08-2016 passed by the Commissioner of Income Tax (Appeals)-12, Pune [‘CIT(A)’] for assessment years 2007-08 to 2013-14, respectively.

2. Since, the issues raised in all the appeals are similar basing on the same identical facts and upon hearing and with the consent of both the

parties, we proceed to hear all the appeals together and to pass a consolidated order for the sake of convenience.

**3. Let us take up appeal in ITA No. 2406/PUN/2016 for A.Y. 2007-08.**

4. The assessee raised ground Nos. 1.a, 1.a.(i), 1.a.(ii), 2.a, 2.b and 2.c amongst which the only issue emanates for our consideration is as to whether the CIT(A) is justified in confirming the addition made by the AO on account of alleged unrecorded sale consideration on sale of scrap in the facts and circumstances of the case.

5. Heard both the parties and perused the material available on record. We note that the assessee is a part of S.M. Auto Group i.e. M/s. S.M. Auto Engineering Pvt. Ltd. (in short hereinafter called as "SMAEPL"). The group is having common registered office in Pune. A search and seizure was conducted on SMAEPL on 28-08-2012 and incriminating material said to be under invoicing of scrap sale was found which is identified as Page No. 21 of Bundle 1 of seized material which is reproduced at Page No. 7 of the AO's order for A.Y. 2007-08. According to the AO Page No. 21, the seized material is about the quantum of cash generated by the assessee group, he observed that the assessee group is substantially suppressing its scrap sale to an extent of Rs.2,26,41,000/-. Further, the said page is a summary revealing scrap generation during the period 17-06-2004 to 31-05-2008 and the assessee group received Rs.4,89,17,082.51 through banking channel and the difference of actual cash of Rs.2,26,41,000/-

(Rs.2,77,90,196.91/- – Rs.51,49,196.91/-) was not recorded in the books of account. Accordingly, added an amount of Rs.9,97,920/- to the total income of the assessee in respect of the year under consideration. The CIT(A) confirmed the same.

6. Before us, the contention of ld. AR is that the SMAEPL offered total amount of Rs.3,71,94,261/- as additional income voluntarily to avoid protracted litigation and to buy peace of mind and referred to Page No. 36 of the paper book. He submits that the amounts referred in Page No. 21 of the seized material basing on which the AO made addition, as confirmed by the CIT(A) is not maintainable in the hands of the assessee as the same were offered to tax in the hands on “SMAEPL”. On perusal of incriminating material at Page No. 31 of the paper book, we note that the AO held Rs.7,67,07,279.42 is a total value of scrap sale and the assessee was received Rs.4,89,17,082.51 through banking channel. We note that the difference of actual cash which is Rs.2,26,41,000/- as per Page No. 21 of incriminating material. We find the statement of Shri Sanjay Mohanlal Chopda being the Managing Director of SMAEPL was recorded u/s. 132(4) of the Act. In answer to Q. No. 15 which is at Page No. 36 of the paper book he said referring to Page No. 21 that “the summary sheet at Page No. 21 contains the expected revenue from scrap sale. However, the receipt is as per the cheque column which is recorded in our books of account. The total cash receipt as per our calculation is approximately Rs.90,00,000/-. However, one of the cell contains higher amount of probable cash receipt which is Rs.2.26 Crores. To avoid protracted litigation and to buy peace of mind we are offering an amount of Rs.3,71,94,261/- as additional income

voluntarily in SMAEPL. We are offering amount of Rs.61,99,044/- every year starting from F.Y. 2006-07 to 2011-12.” On perusal of the above in comparison with Page No. 21 of seized material, we note that the SMAEPL which is flagship company of assessee in whose possession Page No. 21 was impounded, the said SMAEPL offered more than cash receipt as projected by the AO. The only contention of ld. AR is that when the SMAEPL offered the said amount on behalf of the group companies and no addition is maintainable in the hands of the assessee.

7. Further, we find Shri Sanjay Mohanlal Chopda representing SMAEPL in answer to Q. No. 5 as given the list of group companies which is at Page No. 33 of the paper book wherein we note that the assessee is also one of them. We find an amount of Rs.3,71,94,261/- which is above the cash receipt projected by the AO offered to tax in the hands of SMAEPL in which the assessee is sister concern, in whose hands the AO made addition again is, in our opinion, not maintainable. We note that in order to make said addition in the hands of assessee the AO relied on the same incriminating material of Page No. 21 which is not disputed by the ld. DR. However, the ld. DR, M.G. Jasnani placed on record report dated 29-03-2022 issued by the office of ACIT, Circle-5, Pune and submits that the declaration made during the course of Settlement Commission proceedings in the case of SMAEPL pertain only to the said company and nowhere included undisclosed income or receipts or sales made by the other concerns. The amounts are disclosed in the case of SMAEPL and the disclosure does not pertain to assessee or any other concern. On perusal of the said report we note that the ACIT clearly stated that the assessee group disclosed an

additional income of Rs.3,99,94,261/- on account of unaccounted scrap sale but however the said additional income was offered only in the hands of SMAEPL but not in the hands of other two group companies. We find no substance in the report of ACIT as relied on by the ld. DR for the reason in answer to Q. No. 15 the said Shri Sanjay Mohanlal Chopda admitted the additional income voluntarily on behalf of the group and the AO also relied on the same figures which are reflected in the incriminating material of Page No. 21. Therefore, we reject the contention of ld. DR that the additional income as offered in the SMAEPL excludes the other two group companies. For ready reference Q. No. 15 and answer is reproduced here-in-below :

*“Q.15 It is seen from the summary of scrap sale recorded at Page No. 21 of Bundle No.1 that there is difference between actual sale and the sale recorded in the books. Similarly there is difference in the rate of scrap quoted in various quotations given by various parties and that recorded in the books of account. Please comment.*

*A.15. The summary sheet contains the expected revenue from scrap sale. However, the receipt is as per the cheque column which is recorded in our books of account. The total cash receipt as per our calculation is approximately Rs.90,00,000/-. However, one of the cell contains higher amount of probable cash receipt which is Rs.2.26 Crores. To avoid protracted litigation and to buy peace of mind we are offering an amount of Rs.3,71,94,261/- as additional income voluntarily in SMAEPL. We are offering amount of Rs.61,99,044/- every year starting from F.Y. 2006-07 to 2011-12.”*

8. In the light of the above we find force in the arguments of ld. AR and the addition made in the hands of the assessee is not maintainable in view of fact the same was considered in the hands of SMAEPL before the Settlement Commission which is substantiated vide answer to Q. No. 15 in the statement recorded u/s. 132(4) of the Act. Therefore, the ground Nos. 1.a, 1.a.(i), 1.a.(ii), 2.a, 2.b and 2.c raised by the assessee are allowed.

9. In ground No. 3 of the appeal, the assessee has assailed charging of interest u/s. 234A, 234B, 234C and 234D of the Act. Charging of interest u/s. 234A, 234B, 234C and 234D are consequential and mandatory, hence, ground No. 3 raised in appeal by the assessee is dismissed being devoid of any merit.

10. In ground No. 4 of the appeal the assessee has assailed the initiation of penalty levied u/s. 271(1)(c) of the Act. The ground No. 4 of the appeal is pre-mature at this stage. Accordingly, the same is dismissed as such.

11. In the result, the appeal of assessee in ITA No. 2406/PUN/2016 is allowed.

**ITA No. 2408/PUN/2016 for A.Y. 2009-10**

12. In respect of ground 3 regarding the purchase made through a party declared as Hawala Operator by the Sales Tax Department of Maharashtra, the ld. AR submits that the assessee is not interested to prosecute ground No. 3 and prayed to dismiss the same as not pressed. Accordingly, ground No. 3 is dismissed as not pressed.

**ITA Nos. 2407 to 2412/PUN/2016 for A.Ys. 2008-09 to 2013-14**

**1383/PUN/2017 (A.Y. 2012-13)**

13. Both sides are unanimous in stating that the issue raised in the appeal and the facts in ITA Nos. 2407 to 2412/PUN/2016 are identical to ITA No. 2406/PUN/2016 except the variance in amount. Since, the facts in ITA Nos. 2407 to 2412/PUN/2016 are similar to ITA No.

2406/PUN/2016, the findings given by us while deciding the grounds of appeal of assessee in ITA No. 2406/PUN/2016 would *mutatis mutandis* apply to ITA Nos. 2407 to 2412/PUN/2016, as well. The appeals of assessee are allowed, accordingly.

14. To sum up, all the appeals of assessee are allowed.

Order pronounced in the open court on 07<sup>th</sup> June, 2022.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 07<sup>th</sup> June, 2022.  
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune
4. The Pr. CIT, Central, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune