

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

ITA No.68 of 2009

M/s Jaiswal Plastic Tubes Limited *Appellant*

-versus-

Asst. Commissioner of Income Tax, Respondent
Balasore Circle, Balasore

Advocates, appeared in these cases:

For Appellant : Mr. Prakash Kumar Jena
Advocate
For Respondent : Mr. R. Chimanka,
Senior Standing Counsel
along with
Mr. A. Kedia,
Junior Standing Counsel

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

JUDGMENT
19.05.2022

Dr. S. Muralidhar, C.J.

1. The present appeal by the Assessee is directed against an order dated 11th December 2008 passed by the Income Tax Appellate Tribunal, Cuttack Bench, Cuttack (ITAT) in ITA No.98/CTK/07 for the assessment year (AY) 2003-04.

2. While admitting the present appeal on 4th September 2009, the following Questions were framed for consideration:

"(i) Whether on the facts and in the circumstances of the case, the ITAT was right in law in holding that the Assessee's explanation with regard to addition of Rs.41,78,650/- cannot be accepted as true and whether that finding was vitiated by ignoring relevant evidences and submissions made before it and taking into account irrelevant materials?

(ii) Whether on the facts and in the circumstances of the case, the ITAT was right in law in confirming the addition of Rs.72,478/- on account of fittings which has been sold along with the pipes, the value of which has been included in the closing stock of finished goods?

(iii) Whether on the facts and in the circumstances of the case, the ITAT was right in law in confirming the addition of Rs.6,62,393/- on account of unexplained/non-existence alleged sundry creditors?"

3. The background facts are that the Assessee is engaged in manufacture of PVC pipes and fittings. For the AY in question, the Assessee filed its return of income on 28th November 2003 disclosing an income of Rs.3,67,370/-. The aforementioned return was processed initially under Section 143 (1) of the Income Tax Act, 1961 (Act) and the Assessee was granted a refund of Rs.10,200/-. Subsequently, however, the Assessing Officer (AO) i.e., the Assistant Commissioner of Income Tax (ACIT), Balasore Circle, Balasore issued notice to the Assessee under Section 143 (2) and 142 (1) of the Act. The AO asked the Assessee to file the details of its sundry creditors with their postal addresses and copies of the ledger accounts.

4. As per the books of account of M/s. Reliance Industries Limited (RIL), the Assessee had a debit balance of Rs.9,38,898/- whereas the books of account of the Assessee reflected a credit balance of Rs.2,16,50,327/- in the name of RIL. The AO, therefore, required the Assessee to reconcile the difference.

5. The Assessee explained that it was purchasing PVC resin from RIL and M/s. K.M. Enterprises (KME) was acting as an agent of RIL. It was further submitted that payment for such purchases were made to KME. In support of the contention, certain bills of RIL for purchase of PVC resin were furnished by the Assessee which showed KME to be an agent of RIL for the Calcutta region.

6. The Assessee claimed that there was a debit balance in the sum of Rs.1,65,32,778/- in the name of KME as on 31st March, 2003. Since the credit balance in the name of RIL was Rs.2,16,50,327/- and debit balance in the name of KME was Rs.1,65,32,778/-, the net credit balance in the name of RIL was worked out by the AO at a figure of Rs.51,17,549/-. The AO then took note of the figure of debit balance for the Assessee in the books of RIL i.e. Rs.9,38,898/- and worked out that the inflated credit balance as on 31st March 2003 was Rs.41,78,651/-.

7. The Assessee then gave an explanation, but the AO considered it to be vague, unsubstantiated and illogical and therefore rejected it. Accordingly, the aforementioned amount being the inflated credit balance of RIL was added as the income of the Assessee.

8. Likewise, as regards other sundry creditors, the Assessee had disclosed a credit balance of Rs.5,97,210/- in the name of Kabra Extrusion Technik Ltd. (KETL) Mumbai whereas the copy of the account of the Assessee in the books of KETL revealed that the credit balance should have been Rs.39,757/- as on 31st March, 2003. Again, the explanation offered by the Assessee was not accepted and the excess credit balance of Rs.5,57,453/- was considered as income of the Assessee and this amount was added to the taxable income. Similarly, in the case of Coastal Road Carriers (CRC) and Air Control & Chemical Company Ltd. (ACCCL), the credit balance of Rs.2,96,693/- was considered as income of the Assessee.

9. In appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] confirmed the addition of Rs.41,78,650/-. As regards the addition of Rs.5,57,453/- on account of KETL, this too was confirmed by the CIT(A). As regards the stock of finished goods, the Assessee's explanation regarding fittings was not accepted and the CIT(A) confirmed the addition of Rs.72,478/- on this account.

10. The ITAT confirmed the additions to the tune of Rs.41,78,650/- which had been found by the AO to be the inflated credit balance of RIL. Relief was granted to the Assessee as regards addition of Rs.5,57,453/- on the account of KETL. The addition of Rs.72,478/- with regard to discrepancy of stock was also confirmed.

11. As regards the addition of Rs.6,62,393/-, it was noted that the CIT (A) had required the AO to submit a remand report in ten cases of sundry creditors whereas the AO had issued summons under Section 131 of the Act only in eight cases. Effort was not taken by the AO to enforce the attendance of some of the above parties. The ITAT concluded that the AO had given sufficient opportunity to the Assessee to furnish evidence to prove the genuineness of credit balance. It was held that if the parties did not appear despite notices, the burden shifted to the Assessee to ensure the presentation of such witnesses to justify its claim that the credit balance in the name of such party was genuine. Consequently, this addition was also not interfered with.

12. This Court heard the submissions of Mr. Prakash Kumar Jena, learned counsel for the Appellant and Mr. R. Chimanka, learned Senior Standing Counsel for the Income Tax Department.

13. Mr. Jena, learned counsel appearing for the Appellant pointed out that the AO had mentioned credit balance instead of debit balance and not considered the debit balance of KME amounting to Rs.25,74,770.29/-. In the memorandum of appeal, an entire reconciliation statement as per the ledger account of RIL and KME has been set out. It was contended that treating the debit balance of KME of Rs.1,65,32,778/- as income was erroneous in terms of accounting standards. The debit balance of 25,74,770.29/- in the account of KME could not have been treated as the income of the Assessee. In fact, no information had been called by the AO from KME at all and that would have confirmed

to the AO what the debit balance was in its accounts. Reliance was placed on the decision of this Court in ***J.K. Corporation Ltd. v. Commissioner of Central Excise and Customs, Bhubaneswar 2007 (210) ELT 501 (Ori)*** where it was held that if the Tribunal does not consider the materials which are furnished before it and comes to a conclusion that consideration of relevant materials was necessary, such finding can be set aside by the High Court. To the same effect is the decision in ***Achutananda Baidya v. Prafulla Kumar Gayen AIR 1997 SC 2077*** and ***Omar Salay Mohamed Sait v. Commissioner of Income Tax, Madras AIR 1959 SC 1238***.

14. The above submissions have been considered. As regards the Question No.(ii), the issue concerning differential stock has resulted in addition of only Rs.72,478/- and the Court therefore does not wish to examine this Question any further. The Court has examined the concurrent findings of the AO, CIT(A) and the ITAT in this regard and is of the view that they do not call for interference.

15. As regards Question No.(iii) concerning the addition of Rs.6,62,393/- on account of unexplained non-existent creditors, the Court is satisfied that sufficient opportunity was granted to the Appellant to furnish the evidence to prove the genuineness of such credit balance and the Appellant was unable to avail of such opportunity. Consequently, on Questions (ii) and (iii), this Court answers the Questions in the affirmative i.e. in favour of the Department and against the Assessee.

16. However, as regards Question No.(i), this Question is answered in the negative and relying on the above decisions of the Courts, the question of addition of Rs.41,78,650/- is remanded to the CIT(A) for examining it afresh in light of the evidence produced by the Assessee, which was not examined earlier. For this purpose, the matter would be listed before the CIT(A) on 18th July, 2022. It will be open to the CIT(A) to seek a fresh remand report from the AO and in particular, after issuing notice under Section 131 of the Act to KME to ask for its books of account for the relevant period.

17. The appeal is accordingly disposed of in the above terms.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Guin/Sr. Stenographer