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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 117/2023, CM APPL. 9624-25/2023

PR. COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr. Sanjeev Menon, Adv. for Mr. Zoheb Hossain, SSC

Versus

M/S. SSS LOHA MARKETING PRIVATE LIMITED

..... Respondent

Through: Dr. Rakesh Gupta, Mr. Somil Agarwal, Mr. Dushyant Agarwal, Mr. Prateek Bhati, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 13.03.2024

CM APPLs. 9624-25/2023

Bearing in mind the disclosures made, the delay in filing and re-filing the appeal is condoned.

The applications shall stand disposed of.

ITA 117/2023

1. The Commissioner impugns the order dated 10 August 2021 passed by the Income Tax Appellate Tribunal ["**ITAT**"] and proposes the following questions of law for our consideration:-

> "A. Whether on the facts and circumstances of the case and in law, the Ld. ITAT erred in holding that the books of account of the assessee were not rejected during the assessment proceedings whereas the same was specifically rejected by the Assessing officer?
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> B. Whether on the facts and circumstances of the case and in law,

the Ld. ITAT erred in concluding that the sales were genuine and deleting the addition made in the assessment order in view of the contrary findings rendered by CIT(A) after examining all evidences and documentary records?

C. Whether on the facts and circumstances of the case and in law, the Ld. ITAT erred in admitting and allowing the application under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 and holding that the entre sales to M/s Punj Lloyd Ltd. of Rs 4,05,53,574/- was evidence based and genuine, keeping in view the specific admission made by the Director of the assessee company?

D. Whether on the facts and circumstances of the case and in law, the impugned order passed by Ld. ITAT is perverse and that Ld. ITAT has erred in dismissing the appeal of the revenue?"

2. The dispute itself appears to have emanated from an asserted sale of TMT Bars amounting to INR 4,06,37,895/- to M/s Punj Lloyd Ltd. by the assessee. The controversy itself arose in the backdrop of a statement purported to have been made by one of the Directors of the assessee.

3. However, when the matter reached the Commissioner of Income Tax, Appeals [**"CIT(A)"**], in the report which was submitted by the Assessing Officer ["**AO**"], the following disclosures were made:-

"*Now coming to the verification of details of purchase bills and sales bills as directed by your goodself a letter F.No. DCIT/CC-2/2014-15 dated 11.08.2014 was written to the transporter M/s Alok Transport P. Ltd., Kolkata which contained details of 35 trucks showing the date, sale bill ref. no. particulars, issued quantity, transport bill no. and vehicle no. and the said transporter was requested to send the documentary evidence of barrier crossing fee paid by them in respect of each of the 35 vehicles per details mentioned in the letter. The said transporter M/s Alok Transporter P. Ltd. vide their letter dated 22.08.14 have sent the copy of ledger account of the assessee M/s SSS Loha Marketing P. Ltd., copy of ack. Of returned, copy of bills for goods transported of SSS Loha Marketing P. Ltd. and confirmed that they had transported the goods of M/s SSS Loha Marketing P Ltd. which were lifted from the warehouse of M/s Ramsarup Industries Ltd. and were transported to Punj Lloyd Ltd. With regard to the* *expenses incurred by them on barrier crossing fee during the course of transportation of goods, they have submitted that these transactions are more than 5 years old and the records of such petty expenses are not kept so cautiously and that too for such a long period of time and therefore these are not traceable.*

The above reply is not helpful to the assessee for the purpose of verification of sales in as much as it has already been proved during search/survey proceedings coupled with the contents of the statement of one of the directors of the assessee company that these transaction are just book entries and no goods had been traded. On the other hand the transporter has also not been able to provide documentary evidence in respect of barrier crossing fee paid by them in respect of each of the 35 trucks. This goes to prove that in fact no sales have been made. just book entries in respect of sales have been made no material has been transported and only bills have been arranged through the entry operator. This fact further finds support from the fact that just from 16th to 19th Sep., 2009, 35 trucks of goods were sent but the transporter has no documentary evidence of expenses incurred in respect of barrier fee etc. even in respect of a single truck. Since these are just accommodation entries taken by the assessee as has been discussed in details in the assessment order, the contention of the assessee that sales have been made to Punj Lloyd is not accepted under the law and these sales remain unverifiable."

4. While dealing with the aforesaid, the CIT(A) ultimately took the position that although documentation had been subsequently placed in order to establish the genuineness of the transaction in question, it would be the statement which would prevail. This is evident from paragraphs 10.5 and 10.6 of the order of CIT(A) which are extracted hereunder:-

"10.5 It is stated by the appellant before AO that the sales and purchases are true and correct, duly reflected in the books of accounts, supported by the bills and vouchers and also provided the records related to Sales tax, VAT and CST etc to show that the purchase and sales made is genuine. It is also submitted before undersigned that the goods are transported through one transporter M/s Alok Transport P. Ltd. of Kolkata and its bill, builty etc. were provided and tax was also deducted at source on the payments made. In nut -shell the appellant tried to prove the genuineness of the transaction by providing various details/documents.

10.6 On verification of purchase and sales the AO stated in his report dated 29.10. 2014 that M/s Alok Transport P. Ltd. confirmed that they had transported the goods of M/s SSS Loha Marketing P. Ltd., which were lifted from the warehouse of M/s Ramsarup Industries Ltd. and transported to Punj Lloyd Ltd. However, they could not produce the details / evidence with respect to the expenses incurred on barrier crossing fee etc. during the course of transportation of goods stating to be that it is 5 years old record and not kept cautiously and not traceable. Therefore, it has been stated by AO that the sales are not proved to be genuine but only book entry."

5. The CIT(A) ultimately gave precedence to the statement of Director and observed as follows:-

"10.8 After considering both the view points and the facts of this case it is found that the statement given by the director of appellant during survey cannot be overlooked and the contention that the sales and purchases are just book entries cannot be negated. Statement given during survey is prime document. It is not lengthy enough to say that Mr. Dilip Didwania got exhausted, tortured and forced to give this incorrect statement without application of mind. The last line of statement is in the handwriting of Mr. Didwania itself. Therefore, there is no reason to dispute the content of the statement."

6. On an overall conspectus of the facts which otherwise obtained, the CIT(A) held that since both purchase and sales appeared to be bogus, there would in any case be no surplus. This lead the CIT(A) to opine as under:-

"11.2 In view of the above, and as also recorded by the AO that the sales and purchases both are merely book entries, the same is liable to be reduced from the as purchases, considering that since there is no sales, there cannot any purchases. Since, there is no purchase or sale the elimination of same from the profit and loss account will only show surplus between sale and purchase, if any. Accordingly, the addition on the basis of sales alone cannot be tenable. Further, the sales have already been recorded in the books, hence any addition in this regard amounts to double addition."

7. The ITAT has while proceeding to deal with the issue independently come to record the following conclusion:-

"8. The assessee has filed appeal under Rule 27 of the Income Tax

> Appellate Tribunal Rules, 1963 relating to the contrary findings given by the CIT(A) to the factual aspect of the evidences produced before the Assessing Officer as well as before the CIT(A). As regards the observation of the CIT(A) that sales are bogus are contrary to the findings of the CIT(A) in the order itself as well as while going through the records also the sales are properly explained by the Assessee before the Revenue authorities. When we looked into the evidences, we found that all the entries as well as bills and vouchers of each transaction along with transportation receipts and details were meticulously given before the Assessing Officer as well as before the CIT(A), amounting to Rs. 4,05,53,574/ -. Therefore, the observation made by the ClT(A) is contrary to the records. Thus, we allow application filed by the assessee under Rule 27 of the Income Tax Rules, 1963."

8. Bearing in mind the aforesaid, we are of the considered opinion that the appeal merely requires us to reappraise and reappreciate the evidence which would clearly be beyond the remit of an appeal under Section 260A of the Income Tax Act, 1961.

9. Consequently, we find the appeal raises no substantial question of law. The same shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 13, 2024

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