

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 5866/Del/2011 : Asstt. Year : 2002-03

ITA No. 5312/Del/2011 : Asstt. Year : 2003-04

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| DCIT, Central Circle-22, New Delhi | Vs | M/s Accurate Meters Ltd., 8, Local Shopping Centre, 2 nd & 3 rd Floor, Vardhman Sidharth Plaza, Savita Vihar, Delhi-110092 |
| (APPELLANT) | | (RESPONDENT) |
| PAN No. AAACA6996J | | |

Assessee by : None

Revenue by : Sh. Satpal Gulati, CIT DR

Date of Hearing: 01.07.2021

Date of Pronouncement: 02.09.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the revenue against the orders of Id. CIT(A)-III, Delhi dated 15.09.2011 and 05.10.2011.

2. Since, the issues involved in both the appeals are identical, which were heard together.

3. In ITA No. 5312/Del/2011, following grounds have been raised by the revenue:

"1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting

the addition of Rs.13,51,500/- made by the Assessing Officer on account of unaccounted sale of scrap.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in holding that the Assessing Officer was not justified in estimating speed money expended at 17,94,500.

3. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.1,03,12,050/- made by the Assessing Officer on account of disallowance of commission.

4. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,00,000/- made by the Assessing Officer on account of unvouched expenses.

5. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in deleting the addition of Rs.2,94,98,958/- made by the Assessing Officer on account of bogus purchase.”

4. Brief facts of the case are that search & seizure action u/s 132 of the Income Tax Act, 1961 was carried out in Accurate Group of cases on 26.07.2006 relevant to the assessment year 2007-08.

5. The issues before us pertain to assessment years 2002-03 and 2003-04 wherein the assessee filed original return of income on 31.10.2002 and 02.12.2003. Hence it is hereby held that the assessments before us are to be treated as completed assessments but not abated assessments which create an obligation on the revenue to make any addition only based on the material and documents found and seized during the search action.

6. The grounds raised by the revenue have been mentioned above.

7. We have gone through the record before us and heard the arguments of Id. DR.

8. The addition made on account of sale of scrap is not based on any seized material. The seized material reflecting the scrap belongs to the financial year 1999-2000 and also doesn't belong to the assessee. The Id. CIT (A) has given a categorical finding that the addition is based on estimation. In the absence of any seized material produced before us proving *contra*, we decline to interfere with the order of the Id. CIT (A).

9. With regard to the speed money, the AO made addition of amount @ 0.5% on the sales of Rs.35.69 Crores made to SEBs. The Id. CIT (A) gave a categorical finding that the amount has been added on estimate basis and no incriminating material is found or seized. The Id. CIT (A) has also held that the expenses have not been claimed in the books of accounts and hence no disallowance is attracted as per Section 37 of the Income Tax Act, 1961. In the absence of any seized material produced before us proving *contra*, we decline to interfere with the order of the Id. CIT (A).

10. Apropos, disallowance of commission, we find that the addition has been made based on the information received from the Addl. CIT, Range-3, Kolkata that the case of one of the recipients of commission has been reopened u/s 148. This issue has been examined during the proceedings u/s 143(3). Duly considering this fact on record, still the issue doesn't cross the

threshold of being emanated from the seized material. Hence, in the absence of any seized material no addition is called for. The action of the Id. CIT (A) is not interfered with.

11. In relation to the unvouched expenses of Rs. 1,00,000/-, the AO made the addition on the grounds that the assessee has not produced bills & vouchers. Such disallowance made do not fall under the purview of Section 153A. Hence, we decline to interfere with the order of the Id. CIT (A).

12. In connection with the bogus purchases and wrong claim of CENVAT while the claim of the assessee was that the addition has been made merely based on the show cause notice issued by the Excise Authorities the finality of which was still pending. The Id. CIT (A) deleted the addition after obtaining the remand report from the AO. For the sake of ready reference, the remand report and the findings of the Id. CIT (A) is reproduced as under:

“In the remand report dated 15.07.2011, the Assessing Officer has stated as under:

Bogus Trading Loss (AY 2003-04)

On perusal of case records it is seen that in the assessment order, addition of Rs.2,93,61,596/- has been made by the then assessing officer by taking the trading purchase at Rs. 3,11,23,930/- and sales at Rs. 17,62,334/-. As per the details available on records, the trading purchases are shown at Rs. 3,11,23,930/- and sales at Rs. 3,23,83,313/- and if these

figures are taken for computation then the resultant profit comes to Rs. 12,59,383/-.

Finding of the Id. CIT (A):

From the finding in assessment order with respect to above ground of appeal it is seen that the AO has disallowed the huge loss of Rs.2,93,61,596/- incurred by assessee during the year on trading as the list of trading purchases and corresponding sales amounted to Rs.3,11,23,930/-and Rs.17,62,334/-, respectively. The AO has noted that there appears no reasonable cause for having incurred huge loss on the trading transactions. That the assessee has not furnished any details of stock inventory to show that any trading stock was included in the inventory. From the above facts the AO is of the view that the assessee had made bogus trading purchases and sales to reduce the taxable profit.

On receipt of the remand report on the issue it is observed that there has been a factual inaccuracy in the order of the AO which is now been correctly reported in the remand report which shows that the trading purchases are at Rs.3,11,23,930/-and corresponding sales are at Rs.3,23,83,313/- which results in a profit of Rs.12,59,383/-.

The basic reason for disallowance of the loss for Rs.2,93,61,593/- by the A.O. is on account of the fact that there was no reasonable cause for having incurred huge loss on the trading transactions and that the assessee had made bogus trading purchases and sales to reduce it's taxable profit. Now as factually the above state of affairs is proved to be incorrect therefore the basic premise on which the addition to income is made goes off. In a result the said disallowance and thereby addition to income for Rs.2,93,61,593/-, is also directed to be deleted."

13. Since, the finding of the Id. CIT (A) could not be controverted on facts and as well as on jurisdictional issue, we hereby affirm the order of the Id. CIT (A).

14. In the result, both the appeals of the revenue are dismissed.

Order Pronounced in the Open Court on 02/09/2021.

Sd/-

(Amit Shukla)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 02/09/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR