
(2013) 02 GUJ CK 0021
In the Gujarat High Court
Case No : Tax Appeal No. 763 of 2012

Kalind Stainless Steel Products (P.) Ltd. APPELLANT
Vs
ITO RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Income Tax Act, 1961 — Section 69C

Citation : (2013) 02 GUJ CK 0021

Hon'ble Judges : Sonia Gokani, J; Akil Kureshi, J

Bench : Division Bench

Advocate : S.N. Divatia, J, for the Appellant;

Judgement

1. The assessee is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 30.6.2011 raising following questions for our consideration:-

A. Whether on the facts and in the circumstances of the case, income tax Appellate Tribunal, was right in law in confirming the addition of Rs. 18.74 lakh made by the CIT(A) as bogus purchases?

B. Whether on the facts and circumstances of the case, the conclusion reached by the Income Tax Appellate Tribunal to uphold the addition of Rs. 18.74 lakh made by the CIT(A) was perverse and based on irrelevant material?

2. Issue pertains to addition of Rs. 18.74 lakhs made by the Assessing Officer, which was confirmed in appeal by CIT(Appeals) as well as by the Income Tax Appellate Tribunal. Learned counsel for the Assessee eventually contended that both the Revenue authorities as well as the Tribunal have committed a serious error in making the additions. He submitted that the Assessing Officer as well as higher authorities have given different reasons for confirming the additions. He pointed out that the Assessing Officer had made additions of only Rs. 5.98 lakhs towards burning losses, which was enhanced by the Commissioner (Appeals).

3. From the record, however, we notice that Commissioner (Appeals) as well as the Tribunal both concurrently held that this is a case of bogus purchases in which the assessee was involved. This being a pure question of fact, no question of law arises.

4. In particular, the Tribunal confirmed the view of CIT(Appeals) making following observations:-

5. It was pointed out that as per these figures, the closing stock of the assessee should have been to the extent of Rs. 3,47,421 kg. The assessee is showing closing stock of 137421 only and in addition to that, the assessee is claiming that it has shown sales of scrap of 105500 kg and hence, even after considering this, there is shortage of 104500 kg. and therefore, how the Ld. CIT(A) is not justified in holding that the claim of the assessee relating to purchase of 105000 kg. of scrap for trading is claim of bogus purchase. In spite of this, Ld. AR of the assessee could not satisfy us regarding the discrepancy. He merely submitted that there is no other purchase by the assessee for trading to the extent of 105000 kg. He did not produce before us the trading and Profit and Loss account of the assessee company to bring home his claim that there is no purchase claimed by the assessee in addition to purchase of 1421380 kg. Scrap valuing Rs. 246.05 lakhs. The Ld. D.R. of the Revenue supported the order of Ld. CIT(A).

6. We have considered the rival submissions, perused the material on record and have gone through the orders of the authorities below. We find that as per the quantity details as per Annexure-IX to Tax Audit Report in form No. 3 CD as appearing on page 12 of the paper book, summary of which has been reproduced in the above paragraph, it is seen that there is discrepancy of 104500 kg. even after considering this claim of the assessee that the assessee has already taken the income on account of sale of the scrap to the extent of 105500 kg. for the value not shown before us. The assessee has not submitted a copy of the trading and profit and loss account to show that the assessee has credited sale proceeds of 105500 kg. of metal scrap for which it is an allegation of the Excise Department that such sale was made by the assessee without paying Central Excise duty but even if we accept this claim of the assessee because the same was accepted by the authorities below, we find that there is still a difference of 104500 kg. of metal scrap as per the quantity details submitted by assessee on page-12 of the paper book and hence, we find no infirmity in the order of the Ld. CIT(A) wherein it was held by him that the claim of the assessee regarding purchase for trading to the extent of 105000 kg. is bogus. The assessee could not satisfy us by bringing evidence on record that there is no such actual purchase of 105000 kgs. scrap. We therefore, decline to interfere in the order of the Ld. C.I.T. (A) on this issue.

5. In the result, Tax Appeal is dismissed.