

ITA No.1071 TO 1073/Bang/2019
& ITA Nos.814 to 816/Bang/2019
M/s. APS Steel Pvt. Ltd., Bangalore

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.1071 to 1073/Bang/2019
AssessmentYear:2010-11, 2011-12 & 2015-16

ITO Ward-1(1)(2) Bangalore	Vs.	M/s. APS Steel Pvt. Ltd. # 71, 72, 2 nd Floor Industrial Layout 5 th Block Koramangala Bengaluru 560 095 PAN NO :AALCA6169Q
APPELLANT		RESPONDENT

ITA Nos.814 to 816/Bang/2019
Assessment Year:2010-11, 2011-12 & 2015-16

M/s. APS Steel Pvt. Ltd. # 71, 72, 2 nd Floor Industrial Layout 5 th Block Koramangala Bengaluru 560 095	Vs.	ITO Ward-1(1)(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Priyadarshi Mishra, D.R.
Respondent by	:	Shri S. Parthasarathi, A.R.

Date of Hearing	:	22.09.2021
Date of Pronouncement	:	28.09.2021

ORDER

PER BENCH:

These cross appeals relate to assessment years 2010-11, 2011-12 & 2015-16 and they are directed against the orders passed by Ld. CIT(A)-1, Bengaluru.

2. All these appeals were heard together and hence they are being disposed of by this common order, for the sake of convenience.

3. In the appeals of the revenue, the common issue urged in all the 3 years relates to the relief granted by Ld. CIT(A) in respect of addition relating to suppressed sales.

4. In the appeal of the assessee, the assessee is challenging following issues:-

- a) Validity of re-opening of assessment in assessment years 2010-11 & 2011-12.
- b) Addition sustained by Ld. CIT(A) in respect of suppressed turnover in all the three years.
- c) Addition of sundry creditors in all the three years.
- d) Addition of prior period expenditure in Assessment year 2010-11.

5. The facts relating to the case are stated in brief. The assessee is engaged in the business of manufacture and sale of steel by running a mini steel plant. The assessee is converting metal scraps into steel billets. The assessee belongs to OPG Group of companies. The revenue carried out search & seizure operation u/s 132 of the

Income-tax Act,1961 [the Act' for short] in the case of OPG Group of companies on 7.8.2014. During the course of search, it was noticed that OPG Group is under the control and management of Shri Ravi Gupta and Shri Alok Gupta. The search officials took a statement from Shri Alok Gupta. In the statement, he was asked to furnish actual profit& loss account of the assessee herein for the year of search as well as previous 6 financial years. Shri Alok Gupta admitted that the companies under their management including M/s. APS Steels are indulging in unaccounted sales and such unaccounted sales are in the range of 5% to 10% of the turnover admitted in the books. Based on the above said information, the A.O. reopened the assessment of assessment years 2010-11 & 2011-12. In the assessment proceedings, the A.O. added 10% of the sales turnover as undisclosed income of the assessee as detailed below:

Assessment year	Sales reported	10% thereof
2010-11	26,07,65,920	2,60,76,592
2011-12	41,90,39,290	4,19,03,929
2015-16	36,80,82,430	3,68,08,243

6. During the course of assessment proceedings, the A.O. asked the assessee to furnish the details of sundry creditors and also confirmations from them. Since the assessee did not furnish the details, the A.O. added the balance of sundry creditors to the total income of the assessee as detailed below:

Assessment year	Sundry creditors Amount
2010-11	2,05,12,678
2011-12	3,62,602
2015-16	43,01,897

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7. The A.O. also noticed that the assessee has debited a sum of Rs.5 lakhs and Rs.5,50,000/- respectively in the years relevant to the assessment years 2010-11 & 2015-16 as “prior period expenses”. Since the assessee did not furnish the details there of, the A.O. held that the prior period expenditure is not allowable as deduction and accordingly disallowed the claim.

8. In the appellate proceedings, the Ld. CIT(A) noticed that Shri Alok Gupta has stated in his statement that there is unaccounted sales as well as unaccounted purchases. Accordingly, the Ld. CIT(A) directed the A.O. to restrict the disallowance to gross profit margin on the suppressed sales. However, he confirmed the disallowance relating to sundry creditors and prior period expenses. He also upheld the validity of reopening of assessments of AY 2010-11 and 2011-12.

9. Aggrieved by the order passed by Ld. CIT(A), both the parties are in appeal on the issues decided against each of them.

10. We shall first take up the validity of reopening of assessment urged in the appeals filed by the assessee in Assessment Years 2010-11 and 2011-12. The Ld A.R submitted that the assessee company was earlier owned by some other group and it came into the control of OPG group only in April, 2012. The Ld A.R submitted that the assessing officer has reopened the assessment on the basis of statement recorded from Mr. Alok Gupta u/s 132(4) of the Act. He submitted that Shri Alok Gupta was not in charge of the assessee company during the impugned two years and hence his statement could not have been relied upon by the AO for the purpose of reopening of assessment. Accordingly the Ld A.R submitted that there is no credible material available with the AO to

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form the belief that there was escapement of income in the years relevant to AY 2010-11 and 2011-12. Accordingly, the Ld A.R contended that the reopening is bad in law.

11. The Ld D.R, on the contrary, submitted that the assessee is a limited company and hence it is separate entity independent of its share holders/directors. Further, as per the provisions of sec.132(4) of the Act, the statement is taken from any person who is found to in possession or control of any books of accounts, documents etc. There is no dispute that Shri Alok Gupta was in possession or control of the affairs of the assessee company during the course of search and hence statement was taken from him. The Ld D.R submitted that even though the assessee company came to be acquired by OPG group in 2012, yet Shri Alok Gupta did not mention in the statement that he was not aware of details of transactions prior to its acquisition in 2012. In fact, he has revealed the trend prevailing in their group, including that of the assessee company. Further, the statement so given has not been retracted by the assessee till date. He submitted that as per the provisions of sec.132(4) of the Act, the statement taken u/s 132(4) may be used in evidence in any proceeding under the Act. Accordingly, the Ld D.R submitted that the statement so given by Shri Alok Gupta is a valid material and forms the basis of reopening of assessment of the two years under consideration. Accordingly he contended that the Ld CIT(A) was justified in confirming the validity of reopening of assessment.

12. We heard the parties and perused the record. We find merit in the contentions made by Ld D.R. As rightly pointed by Ld D.R, Shri Alok Gupta has not expressed his ignorance about the affairs of the assessee company prior to the period of acquisition, meaning

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thereby, it can be safely presumed that he was aware of the transactions of the assessee company prior to its acquisition by OPG Group. Further, the statement so given u/s 132(4) has not been retracted till date. Under the provision of sec.132(4), the statement so given may be used in evidence in any proceeding under the Income tax Act. Hence we are of the view that the AO was justified in placing reliance on the statement given by Alok Gupta for the two years under consideration for reopening the assessments of these two years. Accordingly, we hold that the Ld CIT(A) was justified in confirming the validity of reopening of assessment of the two years under consideration.

13. The next issue is a common issue urged both by the assessee and revenue. It relates to the addition made by the AO on account of suppressed sales. We noticed earlier that Shri Alok Gupta has stated in the sworn statement that the suppressed sales will be in the range of 5% to 10% of the declared turnover. Accordingly, the AO added 10% of the declared turnover as income of the assessee in all the three years under consideration. The Ld CIT(A) noticed that the suppression has taken place both from sales and the corresponding expenditure. Accordingly, the Ld CIT(A) has taken the view that only gross profit margin should be applied on the suppressed sales. Both the parties are aggrieved.

14. We heard the parties and perused the record. The addition on account of suppression of sales has been made in all the three years on the basis of statement taken from Shri Alok Gupta, more particular question no.24 and 25. For the sake of convenience, the relevant question and the answers given to them are extracted below:-

“Q24. Going by the notings in the sized material page nos.87 to 90, it is understood that there are two sets of books maintained and the unaccounted books which shows the actual profit is maintained in the name "Katcha". Please explain what is the modus operandi of generation of this unaccounted income in your business concerns.

Ans: Sir, in the steel industry due to the factors like business competition demands of customers and due to business exigencies 5 to 10 percentage unaccounted sale of the turnover has to be done to survive in the business. Accordingly, my concern was also doing the same in the business. Sir, at my steel companies. I request you to give a week's to workout the same.

Q.25. It is observed that your companies M/s.Sonal Vyapar, M/s. Sri Srirukmani Rolling Mills Pvt Ltd and M/s Aps Steels Ltd has a combined turnover around Rs.250 crores. Going by the estimation of combined turnover of around Rs.250 crores of the said companies, approximately Rs. 250 crores of unaccounted sales per annum must have been around Rs.75 crores of accounted sales. Please state the application of the revenue realized from unaccounted sale.

Ans: Sir, similar to the unaccounted sale due to business exigencies we are also indulged in unaccounted expenditure like unaccounted purchase of raw materials. Major part of revenue realized though unaccounted sale is used for unaccounted cash purchase. I request you a weeks time for me quantify the unaccounted income earned by way of unaccounted sales. Sir, I also submit that in M/s. APS Steels Ltd due the burst of the transformer the business was shut down for the past six months. The net actual incomes received by me out of the normal books of Accounts are being used by me for personal expenses of the family”.

A perusal of answer given to question no.25 would show that the assessee has admitted that there is suppression of expenditure due to business exigencies, which included unaccounted purchase of raw materials. Hence there is suppression of both purchases and sales. Accordingly, the Ld CIT(A) has taken the view that, in the

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facts and circumstances of the case, the gross profit only should have been assessed instead of assessing entire suppressed sales. In our considered view, there is no error in the decision so reached by Ld CIT(A). When there is suppression of both purchases and sales, then what could be assessed is the profit element embedded therein. Before us, both the parties could not show as to how the decision so reached by Ld CIT(A) was not correct, in the facts and circumstances of the case. Hence, we are of the view that the Ld CIT(A) was justified in directing the AO to restrict the addition to the gross profit amount in respect of suppressed sales. Accordingly, we confirm his order passed on this issue.

15. Accordingly, the appeals of the revenue and the ground of the assessee on this issue in all the three years are rejected.

16. The next issue urged by the assessee in all the three years relate to the addition of sundry creditors balance for want of details. As noted earlier, the AO made the addition for want of details, since the assessee failed to furnish PAN number of creditors, confirmation from creditors etc. Before Ld CIT(A) also, the assessee did not furnish any details and hence the first appellate authority confirmed the addition of sundry creditors in all the three years.

17. The Ld A.R submitted that the sundry creditors balance relates to trade creditors and it is a running account. The assessee has made the payments in subsequent years through banking channels. He further submitted that the AO, having accepted the purchases, could not have disbelieved the sundry creditors. Accordingly, the Ld A.R submitted that the addition of sundry creditors balance in all the three years is liable to be deleted.

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18. On the contrary, the Ld D.R submitted that the assessee has failed to furnish the details relating to Sundry creditors called for by the AO and hence he has made the addition. He submitted that the assessee has not furnished the details till date.

19. We heard the parties on this issue and perused the record. The Ld A.R has submitted that the sundry creditors balance represents trade creditors and all the creditors have running account. He also contended that the AO could not have disbelieved the trade creditors while accepting the purchases. However, the fact remains that the assessing officer has made the impugned addition only for the reason that the assessee has not furnished relevant details called for by him. Hence, in the interest of natural justice, we are of the view that the assessee should be provided with one more opportunity to furnish explanations and details on this issue. Accordingly, we set the order passed by LD CIT(A) on this issue in all the three years and under consideration and restore the same to the file of AO for examining the same afresh. After providing adequate opportunity of being heard, the AO may take appropriate decision in accordance with law.

20. The last issue urged in AY 2010-11 relates to disallowance of prior period expenses. The AO made this disallowance for want of details and also for the reason that this expense did not relate to AY 2010-11. The Ld CIT(A) confirmed the same on identical reasoning. Before us also, no detail was furnished. Accordingly, we confirm the order passed by Ld CIT(A) on this issue.

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21. In the result, all the appeals filed by the assessee are treated as partly allowed and all the appeals of the revenue are dismissed.

Order pronounced in the open court on 28th Sept, 2021.

Sd/-
(N.V. Vasudevan)
Vice President

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 28th Sept, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.