

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 902/Ind/2016  
निर्धारण वर्ष /Assessment Year: 2006-07

M/s Som Distilleries Pvt. Ltd.  
Bhopal

PAN – AACCS-0397P :: अपीलार्थी /Appellant

Vs.

Asstt. Commr. of Income Tax 1(2),

Bhopal :: प्रत्यर्थी /Respondent

निर्धारिती की ओर से/Assessee by	Shri Sumit Nema
राजस्व की ओर से/Revenue by	Shri Mohd. Javed - DR
सुनवाई की तारीख Date of hearing	23.2.2017
उद्घोषणा की तारीख Date of pronouncement	28.2.2017

**आदेश / O R D E R**

**PER SHRI C.M. GARG, JM**

This appeal has been filed by the assessee against the order of the learned CIT(A)-31, New Delhi, Camp Bhopal, having concurrent

jurisdiction over the CIT(A), Bhopal, dated 13.5.2016 in First Appeal No. 598/11-12 for the assessment year 2006-07.

3. At the time of hearing, the learned counsel for the assessee did not press ground no. 2 regarding issuance of notice u/s 148 of the Act. The same is, therefore, dismissed being not pressed.

2. The sole effective ground raised by the assessee–appellant reads as follows :-

*“That, on the facts and in the circumstances of the case and in law, it be held that the assessee did not incur any unexplained expenditure amounting to Rs.1368780/-, hence the addition u/s 69C on the basis of assumptions and presumptions is wholly unlawful and unjustified, therefore, be deleted.”*

3. Briefly stated, the facts of the case are that the assessee is a private limited company engaged in the business of manufacturing of spirit, country liquor and IMFL. The assessee filed the return of income on 28.11.2006 declaring total loss of Rs.(-) 1,21,48,516/-. A notice u/s 148 of the Act was issued in response to which the assessee stated that the original return filed may be treated as return filed in response to notice u/s 148 of the Act.

4. During the course of assessment proceedings the Assessing Officer found that the assessee company purchased coal from Shree Coal India Pvt. Ltd. of Rs.13.68 lacs and made payments in cash in violation of section 40A(3) of the Income Tax Act. From the Ledger account in the books of Shree Coal India Pvt. Ltd. the Assessing Officer found that the during the period from 1.4.2005 to 31.3.2006 the assessee company has made cash payments of Rs.13,68,780/- to this company. The Assessing Officer, therefore, required the assessee to produce the books of accounts along with audit report of the concerned period as also to show as to why the total amount of Rs. 13,68,780/-made in cash for purchase of coal should not be added to the total income as per provisions of section 69C of the Act as unexplained expenditure. In response, the assessee submitted that it has never made any cash payment to Shree Coal India Pvt. Ltd. However, no books of accounts or audit report were produced. The Assessing Officer afforded a number of opportunities to the Assessing Officer but the assessee failed to do so. The Assessing Officer also summoned Shree Coal India Pvt. Ltd. Company to produce its books of accounts but no compliance was made. The Assessing Officer, therefore, inferred that the non-compliance of the

assessee shows that the assessee did not have any evidence in support of its claim of cash payment. The Assessing Officer, therefore, disallowed the claim of the assessee and added back the total amount of Rs. 13,68,780/- to the total income of the assessee u/s 69C of the Act.

5. Felt aggrieved, the assessee preferred first appeal before the learned CIT(A). On consideration of facts of the case in the light of the submissions of the assessee, the learned CIT(A) observed that *“Only when initially the appellant rebuts the allegation, the onus shifts to the A.O. but if the appellant in the beginning itself does not controvert the finding with necessary documentary evidence viz. books of accounts etc. in this case, it can be said that he has failed to discharge his onus”*. In this view of the matter, the learned CIT(A) confirmed the addition made by the Assessing Officer.

6. Against the above order of the learned CIT(A), the assessee is in appeal before the Tribunal.

7. We have heard the arguments of both the sides and carefully perused the relevant material placed on record of the Tribunal and the orders of the authorities below.

8. The learned counsel for the assessee drew our attention towards reasons for issuance of notice u/s 148 of the Act placed at page 4 of the assessee's paper book and submitted that the main grievance of the Assessing Officer for initiation of reassessment proceedings was that the assessee company has purchased coal from Shree Coal India Pvt. Ltd. of Rs. 13.68 lacs and made payments in cash in violation of section 40A(3) of the Act. Further, the learned counsel for the assessee took us through the last para of the assessment order and submitted that the Assessing Officer has made the disallowance of entire cash payment by invoking the provisions of section 69C of the Act as unexplained expenditure and the same was added to the total income of the assessee. The learned counsel for the assessee also submitted that the authorities below wrongly noted that the books of accounts were not shown to them whereas the factual position is that the assessee vide reply dated 14.12.2011 submitted all the relevant audited books of accounts for the period from 1.4.2005 to 31.3.2006 including the copy of ledger account of Shree Coal India Pvt. Ltd. Therefore, it is clear that the authorities below have ignored the books of accounts and other relevant material including the explanation of the assessee

pertaining to this expenditure and wrongly inferred that the assessee has not submitted the books of accounts and other relevant material. We may point out that during the course of arguments, the learned DR submitted that if it is found just, proper and necessary, then the Department has no objection if the issue is restored to the file of the learned CIT(A) or the Assessing Officer for fresh adjudication after considering the entire assessment record and documents supporting the claim of the assessee.

9. On careful consideration of the above submissions in view of the submissions and the documents placed by the assessee before the authorities below, it cannot be inferred that the assessee has not placed any books of accounts or other material before the Assessing Officer during the assessment proceedings. However, the addition has been made by alleging that the assessee could not explain the cause of cash payments and books of accounts and audited report was not produced even after giving several opportunities. We are, therefore, of the opinion that the issue requires a fresh adjudication at the end of the Assessing Officer. Thus, the case is restored to the file of the Assessing Officer for

fresh adjudication of the issue after affording due opportunity of hearing to the assessee. We also direct the Assessing Officer that he will decide the issue afresh without being prejudiced from the earlier assessment order and the first appellate order. Accordingly, the sole ground of the assessee is restored to the file of the Assessing Officer and the same is allowed in the manner as indicated above.

10. In the result, the appeal is allowed for statistical purposes.

The order has been pronounced in open Court on 28<sup>th</sup> February, 2017.

Sd/-

लेखा सदस्य  
(O.P.Meena)  
Accountant Member

sd/-

न्यायिक सदस्य  
(C.M. Garg)  
Judicial Member

**February 28<sup>th</sup> , 2017.**

Dn/