

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1916/Mds/2015

निर्धारण वर्ष /Assessment year : 2003-2004.

The Deputy Commissioner of
Income Tax,
Corporate Circle 2(2)
Chennai 600 034

Vs.

M/s. Hwashin Automotive India
Pvt. Ltd,
Plot No.65-A, SIPCOT Industrial
Park, Irungattukottai,
Sriperumbudur Taluk,
Kancheepuram.

(अपीलार्थी/Appellant)

[PAN AAACH 9909E]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. A.V. Sreekanth, IRS, JCIT.

प्रत्यर्थी की ओर से /Respondent by

: Shri. Raghunathan Sampath, Adv

सुनवाई की तारीख/Date of Hearing

: 19-04-2016

घोषणा की तारीख /Date of Pronouncement

: 11-05-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the Revenue is directed against order of the Commissioner of Income-tax (Appeals)-6, Chennai in ITA No.138/CIT(A)-6/2010-2011, dt 02.03.2015 for the assessment year 2003-

2004 passed u/s.143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The Revenue has raised the following grounds:-

2.1. The Id. CIT(A) ought not to have allowed the pre-production income of the assessee.

2.2 The Id. CIT(A) failed to appreciate that the assessee even during the course of appellate proceedings, had not distinguished this particular activity of distribution of samples vis-à-vis with other sales to show beyond doubt that the claim were actually for delivering samples only.

2.3. The Id. CIT(A) before allowing relief ought to have sought for the confirmation from M/s. Hyundai Motors India Ltd.

2.4. The Id. CIT(A) ought to have appreciated that when the assessee had offered the same for the sales tax purposes and paid due taxes thereon, the same should have been offered for the purpose of the Income tax also.

2.5 The Id. CIT(A) erred in not giving a specific finding that the sales were not charged from the buyer (no ledger alc, debit etc.) / invoice raised"

3. The Brief facts of the case that the assessee is engaged in manufacturing of automobile components & sub-assemblies and filed return of income admitting a loss of ₹6,89,46,779/- and assessment was completed u/s.143(3) determining loss of ₹6,28,44,220/-. Subsequently, proceedings u/s.263 of the Act was initiated and assessment was further revised and determined loss at ₹4,41,29,379/-. The assessment was reopened initiating proceedings u/s.147 of the Act. The assessee was in the initial year of trial production and the products are sent to the customers to check the quality standards. The assessee company had

raised invoices to comply with the provisions of indirect tax laws VAT/Sales tax. The Id. Assessing Officer rejected the assessee's contentions and made addition of ₹2,39,18,377/- being the difference of turnover disclosed in financial accounts and in sales tax return. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) heard the arguments and submissions of the Id. Authorised Representative. Further discussed elaboratively on the findings of the Assessing Officer and the assessee, and concluded that the assessee has not received any consideration from Hyundai Motors in respect of supply of materials in pre-production period observed at para Nos.4.2.1 to 4.2.3 as under:-

“The assessee before the undersigned reiterated its submissions made before the Assessing Officer. The assessee further submitted that since these automobile spares manufactured on trial run and send to Hyundai Motors India Ltd for quality checking do not carry any value, Hyundai Motors India Ltd was not under any obligation to pay any amount to the assessee. Hence the assessee submitted that, though there were invoices and delivery challans issued while moving the trial run produced automobile spares to Hyundai Motors as per the compulsory requirement of the excise duty / sales tax acts, the assessee is not going to realize any amount (value) from Hyundai Motors India Ltd on account of the supply of the trial run produced automobile spares. Thus, the assessee claimed that these items are like free samples and hence will not form part of sales for the purpose of income Tax and hence excluded from the total sales in the P&L account. The relevant portion of the assessee's submissions, as contained in the statement

of facts enclosed to Form No.35 is as under:

The Appellant is a Company assessed to Income Tax by the Assistant Commissioner of Income Tax, Company Circle II (2) Chennai on PAN AAACH9909E. The appellant had filed its Return of Income for the Assessment Year 2003-04 returning a loss of Rs. 68, 946,779/ -. The Assessment was completed after scrutiny under section 143(3) determining a loss of Rs. 62, 844,220/- Proceedings under section 263 was initiated subsequently, and the assessment was further revised to determine loss at Rs.44, 129,379/ -. The assessment was reopened initiating proceeding under section 147. The appellant Company was in the initial years of production and trial production carried on in the relevant Assessment Year and the products were sent to the customer to check, their Standards were conformed. The appellant Company had to raise invoices on record to comply with the provisions of Indirect Tax. Laws. The Assessing Officer had rejected the appellant's contention and made additions of Rs.23, 918,377/ being the difference in turnover as disclosed in accounts to that sales tax. return. The appellant prefers this appeal against the order of Assistant Commissioner.

4.2.2 I have considered the assessee's submissions carefully. The assessee company has been floated for manufacturing and supplying certain automobile parts/spares, required in the production of Hyundai brand of cars in India, to M/s. Hyundai Motors India Ltd. Thus, the assessee is exclusively manufacturing the specialised automobile parts required for Hyundai Motors. All sales are required to be made to Hyundai Motors India Ltd only. The manufacturing and supply of the automobile parts to Hyundai Motors India Ltd, is as per the terms and conditions specified in the agreement between the assessee and Hyundai Motors India Ltd. The company commenced its commercial production of manufacturing the automobile parts during the financial year 2002-03 relevant to the current A.Y.2003-04. Before the commercial production, the assessee was required to manufacture the said spares on trial run and send to Hyundai Motors India Ltd for quality checking. The automobile parts so produced and supplied to Hyundai Motors India Ltd will not carry any value. However, as per the requirement of excise duty/sales tax, no goods can be removed from the factory without paying the excise duty. Hence the assessee had to raise invoices and delivery challans while sending the pre-production/trial production items to Hyundai Motors India Ltd for quality testing. As per the terms, the pre-

production/trial production items sent to Hyundai Motors India Ltd for quality testing will not be charged. Hence, these pre-production/trial production items sent to Hyundai Motors India Ltd for quality testing, though suffered excise duty and also included in the total sales for the purpose of sales tax assessment, were not to be included in the total sales in the P&L account. It is also important to note that the assessee has not received any consideration from Hyundai motors on account of the pre-production/trial production items sent to them

4.23. Therefore, the Assessing Officer is not justified in considering the pre-production /trial production items sent Hyundai Motors as part of sales and bring them to tax is not justified. The addition of ₹2,39,18,377/- made by the Assessing Officer stands deleted. The assessee succeeds in its appeals in this regard.

and partly allowed the appeal. Aggrieved by the order of Commissioner of Income Tax (Appeals), the Revenue has assailed an appeal before Tribunal.

5. Before us, the Id. Departmental Representative made exhaustive submissions that the Id. Commissioner of Income Tax (Appeals) should have called for the remand report from the Assessing Officer and Id. Commissioner of Income Tax (Appeals) further erred in not highlight observations as no evidence was filed on record or confirmation to substantiate the claim by the assessee and prayed for allowing the appeal.

6. Contra, the Id. Authorised Representative relied on the order of Commissioner of Income Tax (Appeals) and opposed the grounds of the Revenue.

7. We heard the rival submissions and perused the material on record. The assessee is in the manufacturing of automobile components used for passenger cars. During the financial year 2002-03 it has supplied automobile parts to the Hyundai Motors free of cost as per the terms and conditions of the agreement. The pre-production value of goods being ₹2,39,18,377/- for which the assessee company has raised the invoices and to comply with sales tax and excise duty provisions. The assessee also raised delivery challans for sending the pre-production/trial production goods to Hyundai Motors for quality testing and no consideration was received. The Id. Commissioner of Income Tax (Appeals) has discussed elaborately in his order but not called for any report or confirmation from the Hyundai Motors in respect of supply of goods. The assessee has raised the claim as supply in the nature of samples distributed to be allowed as Business expenditure. The Id. Authorised Representative drew attention to the assessee company affidavit dated 26th February, 2016 were the samples distributed by the company are not charged and used only for quality testing purpose without any monetary considerations and filed reconciliation of the sales

turnover. Considering the apparent facts and evidence, we are of the opinion that the matter has to be re-examined by the Assessing Officer completely with proper reconciliation and confirmation of value and quantity from the Hyundai Motors. We set aside the order of Commissioner of Income Tax (Appeals) and remit the disputed issue to the Assessing Officer for adjudication. The Assessing Officer shall provide adequate opportunity of being heard to the assessee before passing the orders.

8. In the result, the appeal of the Revenue in ITA No.1916/Mds/2015 is allowed for statistical purpose.

Order pronounced on Wednesday, the 11th day of May, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य /JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:11th May, 2016.

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF