

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI D.KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA Nos.1965 and 1981 to 1983/PUN/2014
निर्धारण वर्ष / Assessment Years : 2003-04 and 2004-05

Heera Petrochemicals Pvt. Ltd.,
C/o. Shri Indarsing Vanesing Rajput,
Director,
Behind Motha Maruti Temple,
Gavali Wada, Nandurbar,
Dist. Nandurbar - 425 412
PAN : AAACH8124P

.... अपीलार्थी/Appellant

Vs.

ACIT, Circle-3(1),
Dhule -424001

.... प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Ganoo
Revenue by : Shri Achal Sharma, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 23.01.2018	घोषणा की तारीख / Date of Pronouncement: 24.01.2018
--	--

आदेश / ORDER

PER BENCH :

There are 4 appeals filed by the assessee under consideration involving Assessment Years 2003-04 and 2004-05. The appeals ITA Nos. 1981 and 1982/PUN/2014 filed by the assessee are the quantum appeals against the orders of CIT(A)-I, Nashik dated 22-09-2014 and the appeals ITA Nos. 1965 and 1983/PUN/2014 filed by the assessee relate to the penalty levied u/s.271(1)(c) of the I.T. Act, 1961.

First we proceed to adjudicate the quantum appeals pertaining to additions.

ITA Nos. 1981 and 1982/PUN/2014
By Assessee – A.Yrs. 2003-04 and 2004-05
Assessments u/s.144 r.w.s148 of the Act

2. Before us, at the outset, Ld. AR for the assessee submitted that the assessee is a company and engaged in the business of manufacturing of industrial solvent, mineral turpentine oil, paints, solvents, etc. Assessee filed the returns of income on 01-12-2003 and 01-11-2004 for A.Yrs. 2003-04 and 2004-05 declaring loss of Rs.32,35,445/- and Rs.6,67,957/- respectively. There was investigation by the Sales Tax and Central Excise departments on the assessee and the same resulted in seizure of incriminating documents and books of account of the assessee. The sales-tax department was of the view that the differential amount of inter-state and intra-state sales have been evaded by the assessee and the same constitutes undisclosed income of the assessee. Therefore, AO reopened the assessments of the assessee and the reassessed income of the assessee at Rs.3,01,13,406/- and Rs.2,95,84,459/- was determined for A.Yrs. 2003-04 and 2004-05 respectively. Ld. AR for the assessee submitted that non-availability of the documents created insurmountable hurdles for the assessee in representing the cases properly before the income-tax authorities. He further submitted that proceedings before the sales-tax department are now pending before the Sales Tax Appellate Tribunal. Ld. AR for the assessee submitted that the additions made by the AO in both the years are on adhoc basis and required to be deleted, in principle.

3. Further, Ld. AR submitted that the case of the assessee is comparable to many other cases where there was allegation of unaccounted production of Napthelene as well as the allegation of adulteration of oils. Further, Ld. AR for the assessee filed a copy of the

order of the Pune Bench of the Tribunal in the case of Shriram Petroleum Industries Vs. ITO in ITA Nos. 293 & 294/PN/2012, order dated 16-01-2014 and submitted that the present quantum appeals under consideration needs to be set-aside to the files of the AO. He drew our attention to the facts of the said case and submitted that issues and the proceedings of the said case before the Sales-tax, Central Excise and Income-tax authorities are identical to the case of the assessee. He also submitted that, in the said case, there was CBI raid also additionally. The fact that the documents necessary for proper adjudication of the disputes were not readily available as they are seized by the relevant authorities cited above. Same is the problem with the assessee. Therefore, taking a cue from the said Tribunal order, Ld. AR for the assessee submitted that assessments made u/s.144 r.w.s.148 of the Act should be set-aside to the file of AO for fresh adjudication. Ld. AR made a statement at BAR that he shall cooperate with the proceedings meticulously and file required papers to the AO. This is the reply of Ld. AR to the allegation of Ld. DR for the Revenue that the assessee never cooperated to the reassessment proceedings and never complied with the statutory notices issued to him.

4. We heard both the parties on this issue of request of the Ld. AR for the assessee for remanding the issues to the file of AO. We have perused the order of the Tribunal in the case of Shriram Petroleum Industries (supra) relied upon by the Ld. AR for the assessee and find it relevant to extract the findings given by the Tribunal and the same reads as under :

“4. The matter was carried before the CIT(A) on various counts who confirmed the order of the Assessing Officer. The stand of the assessee before us is that CIT(A) has erred in confirming reopening without appreciating the fact that the Assessing Officer has simply relied on

information given by sales tax department without giving his own findings and applying his own mind and CIT(A) erred in relying on the documents and evidences obtained on the back of the assessee without giving any opportunity to rebut the same. This is violation of principles of natural justice. The CIT(A) also erred in rejecting books of accounts, without appreciating the fact that the books and all the documents/papers were not at all available with the assessee and were in custody of the CBI, and alternatively submitted that the CIT(A) failed to appreciate the fact that the Assessing Officer has not pointed out any specific defects in the books of accounts. The CIT(A) also failed to adjudicate ground No.6 to 15 which were on the merit. The CIT(A) also erred in confirming the addition of Rs.2,40,22,290/- being alleged sales tax evaded as per the Sales tax department. It was also pointed that the sales tax is sub judicious before concerned sales tax tribunal. The Assessing Officer has not justified in making addition based on account of evasion sales tax while the concerned documents were with the CBI. The learned Departmental Representative did not dispute the fact that the issue of additions based on sales tax evasion is sub judicious before the concerned sales tax department and documents were with the CBI at the relevant point of time. In view of above, we find that the assessee has not been provided due opportunity of hearing because he was not having the benefit of books of account at relevant point of time as the same were with the CBI at that time. Moreover, the issue of addition based on sales tax evasion is sub judicious before the concerned Sales Tax Tribunal. From the above facts, we are of the view that the assessee has not been provided due opportunity of hearing before making various additions against him on various counts, which is violation of principles of natural justice. So, in the interest of justice, we set aside the order of CIT(A) and restore the issue to the Assessing Officer with a direction to decide the same as per fact and law. The assessee will be at liberty to have the benefit of documents claimed to have been seized by the CBI at the relevant point of time and the Assessing Officer is also at liberty to look into the relevant findings of sales tax department touching the issue before him. The assessee is also directed to cooperate in the proceedings before the Assessing Officer, so that, the proper adjudication of the matter may be done. Since we are restoring the issue to the Assessing Officer on a preliminary issue, we are refraining from commenting on the merit of the issue at hand. As a result, the appeal filed by the assessee is allowed for statistical purposes.”

5. Considering the above finding which supports the case of the assessee, we are of the opinion that it is a fit case for remanding the issues on merit to the file of AO for fresh adjudication.

6. So far as the issues relating to the correctness of reopening of the assessments u/s.144 r.w.s. 148 of the Act raised in Grounds of appeal No.1 to 4 of both the years, Ld. AR for the assessee submitted that they may be treated as ‘not pressed’. After hearing for the Ld. DR for the Revenue on the legal issues, we proceed to dismiss Grounds of appeal No. 1 to 4 in both the appeals as ‘not pressed’.

7. During the assessment proceedings, on the issues raised vide Grounds of appeal No. 6 to 11, we direct the AO to adjudicate these issues afresh after obtaining relevant documents from the assessee for both the years. Assessee is also directed to comply with the directions of the AO in the remand proceedings. Even if some of the said details are to be filed for the first time in the nature of additional evidences, the AO is directed to admit the same and make use of those papers in the interest of administration of justice. With these directions, we set aside the orders of the AO/CIT(A) and remand the grounds raised before us in both the appeals on merits for fresh consideration and for want of a speaking order by the AO. AO shall grant reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice. Accordingly, grounds raised by the assessee in both the years are partly allowed for statistical purposes.

8. In the result, the appeals of the assessee are partly allowed for statistical purposes.

ITA Nos. 1965 and 1983/PUN/2014
By Assessee – A.Yrs. 2003-04 and 2004-05
Penalty u/s.271(1)(c) of the Act

9. Coming to the penalty orders passed by the AO u/s.271(1)(c) of the Act, we find these penalty orders are relatable to the additions made by the AO in the appeals discussed above in ITA Nos. 1981 and 1982/PUN/2014 for the A.Yrs. 2003-04 and 2004-05 respectively. In Para No.9 above, we have remanded the grounds raised by the assessee on merits for both the assessment years under consideration to the file of AO for fresh adjudication and want of a speaking order on each of the issues. We have accepted the plea of Ld. AR for the assessee and dismissed the legal grounds raised by the assessee as

‘not pressed’. Consequent to the same, we are of the opinion that the penalty levied by the AO and confirmed by the CIT(A) in both the assessment years under consideration are not sustainable in the present form as the additions stands remanded to the file of the AO. Therefore, we set aside the penalty orders passed by the AO. Accordingly, the grounds raised by the assessee in these appeals also allowed for statistical purposes.

10. In the result, the appeals of the assessee are allowed for statistical purposes.

11. To sum up, ITA Nos. 1981 and 1982/PUN/2014 filed by the assessee are partly allowed for statistical purposes and ITA Nos. 1965 and 1983/PUN/2014 filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 24th day of January, 2018.

Sd/-

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

(D. KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 24th January, 2018.
सतीश

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-I, Nashik
4. CIT-I, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A Bench"
Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune