

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1992/Mds/2017
निर्धारण वर्ष /Assessment year : 2008-2009

The Assistant Commissioner of
Income Tax,
Central Circle 3,
Coimbatore.

(अपीलार्थी/Appellant)

Vs. M/s. Sakthi Masala Private Ltd,
No.6, Mamarathupalayam,
Erode 638 004.

[PAN AADCS 3130R]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S. Bharath, CIT
प्रत्यर्थी की ओर से /Respondent by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 28-11-2017
घोषणा की तारीख /Date of Pronouncement : 12-12-2017

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against an order dated 01.05.2017 of Id. Commissioner of Income Tax (Appeals)-18, Chennai for the impugned assessment year.

2. Department has filed this appeal with a delay of two days. Condonation petition has been filed. Reason shown for the delay

seems to be justified. Ld. Authorised Representative did not raise any serious objection. Delay is condoned. Appeal is admitted.

3. Revenue through its thirteen grounds, assailed deletion of an addition of Rs.2,01,74,275/- made by the Id. Assessing Officer towards inflation in purchase of turmeric.

4. Facts apropos are that assessee, in the business of manufacturing and trading masala powder and spices, had filed its return of income for the impugned assessment year disclosing income of Rs.16,18,41,130/-. There was a search conducted in the premises of the assessee in 12.09.2014. During the course of search, purchase report for the period covering 2001 to 2014 reflecting purchases of various raw materials was found. Ld. Assessing Officer conducted a verification of figures mentioned in such purchase report with the books of accounts of the assessee. As per Id. Assessing Officer there was difference in the turmeric purchase. It seems turmeric purchase during the period 01.11.2007 to 31.03.2008 was recorded in such report at Rs.4,98,23,804/- against which purchase recorded in the books of accounts was Rs.6,99,98,079/-. As per the Id. Assessing Officer there was a difference of ₹2,01,74,275/-.

5. Ld. Assessing Officer also verified the process of recording purchases, followed by the assessee. According to him, when raw

materials were purchased, purchase details including supplier name, quantity and price were manually entered in a purchase register. Each raw material purchased was aggregated on a monthly basis and average purchase price for each of the raw material was computed manually and entered in such register. As per the Id. Assessing Officer, figures of quantities purchased and average price, extracted from such register were tabulated in the purchase report found at the time of search. Such details as per Id. Assessing Officer tallied with the purchase register except for turmeric. According to the Id. Assessing Officer the purchase register did not correctly record details regarding purchase of turmeric. Further, as per Id. Assessing Officer purchase of turmeric was by payment of cash. According to him, purchases of turmeric recorded in the purchase report when cross verified what was entered by the assessee in the accounts maintained on computer system, brought out huge inflation in turmeric purchase for the period of 01.11.2007 to 31.03.2014. As per Id. Assessing Officer, inflation of turmeric purchase during the period came to Rs.59,75,91,224/-. It seems this amount included the difference of ₹2,01,74,275/- for the period 1.11.2007 to 31.03.2008 mentioned in the preceding para.

6. Ld. Assessing Officer also referred to a sworn statement recorded from one Shri. P.C. Duraisamy, Managing Director of the assessee company at the time of search. As per the Ld. Assessing Officer Shri. P.C. Duraisamy could not substantiate the difference in turmeric purchase and had offered income of Rs.29,40,00,000/-. Further as per Ld. Assessing Officer both Shri. P.C. Duraisamy as well as one of the employees of the assessee named Shri. P.P. Sampath had given vague replies regarding mismatch of turmeric purchases between what was given in the purchase report and what was recorded in the accounts. It is to be noted that Shri. Sampath had confirmed the purchase report to have been prepared by him and represented true purchases. Further, he also mentioned that with regard to turmeric purchases, he was not maintaining any register. In other words according to Shri. Sampath, he had no data with regard to turmeric purchases. Ld. Assessing Officer noted that assessee claimed purchase of substantial part of the turmeric directly from the farmers by making payment in cash. In support of the purchases assessee had cess bill given by the Erode Marketing Committee. However, as per the Ld. Assessing Officer such cell bills could not be accepted as evidence for purchase of turmeric since it contained no details.

7. Assessee was put on notice on the above disparities. Reply of the assessee was that turmeric purchases were correctly entered

in the computer system. According to the assessee turmeric was purchased from regulated markets and the various marketing committee had issued weighment slips which recorded quantity and cess amount. As per the assessee payments had to be made in cash when turmeric was brought directly from the agriculturists and for this bought note was prepared and kept. Another contention of the assessee in its reply was that purchase report was prepared only in the month of July, 2014 and this was confirmed by Shri. Sampath in the sworn statement recorded from him. As per the assessee, purchase report was prepared only for finding the average price of the raw materials and it was not authentic record of the actual transactions undertaken. Assessee also furnished comparative study of quantity of turmeric as per purchase report and as recorded in the books of accounts and this study read as under:-

<i>Turmeric Purchases</i>			
<i>Month</i>	<i>Actual Quantity as per books of accounts (in Kgs)</i>	<i>Quantity as per incriminating and alleged seized material (purchase Report) (in Kgs)</i>	<i>Difference (in Kgs.)</i>
<i>April 2007</i>	<i>15,38,104.75</i>	<i>15,38,105.00</i>	<i>-0.25</i>
<i>May 2007</i>	<i>7,18,033.75</i>	<i>7,18,033.00</i>	<i>0.75</i>
<i>June 2007</i>	<i>2,78,938.75</i>	<i>2,78,938.00</i>	<i>0.75</i>
<i>July 2007</i>	<i>1,34,553.00</i>	<i>1,34,553.00</i>	<i>0.00</i>

<i>August 2007</i>	<i>1,92,668.25</i>	<i>1,92,668.00</i>	<i>0.25</i>
<i>Sept 2007</i>	<i>1,37,733.50</i>	<i>1,37,733.00</i>	<i>0.50</i>
<i>Oct 2007</i>	<i>77,847.75</i>	<i>77,847.00</i>	<i>-0.25</i>
<i>Nov 2007</i>	<i>51,085.50</i>	<i>51,085.00</i>	<i>0.50</i>
<i>Dec 2007</i>	<i>7,81,999.25</i>	<i>7,96,108.00</i>	<i>-14,109.75</i>
<i>Jan 2008</i>	<i>2,11,407.00</i>	<i>2,11,407.00</i>	<i>0.00</i>
<i>Feb 2008</i>	<i>2,95,912.00</i>	<i>2,95,912.00</i>	<i>0.00</i>
<i>March 2008</i>	<i>9,16,944.75</i>	<i>3,07,460.00</i>	<i>6,09,484.75</i>
<i>Total</i>	<i>53,35,228.25</i>	<i>47,39,851.00</i>	<i>5,95,377.25</i>

As per assessee, all purchases were included in the closing stock as on 31.03.2008.

8. However, Id. Assessing Officer did not accept the above reply. According to him, purchase report found at the time of search proved that assessee was manipulating purchases of turmeric. According to him, purchase report was a genuine document since details of all raw material, other than turmeric recorded in such purchase report tallied with the books of accounts. Thus, according to him, assessee had indulged in bogus purchase of turmeric. Purchase report as per Id. Assessing Officer reflected much less purchase during March, 2008 than the actual purchase claimed by the assessee. He held that assessee had actually purchased turmeric worth

Rs.4,98,23,804/- only during the period 1.11.2007 to 31.03.2008 against accounted purchase of Rs.6,99,98,079/-. An addition of Rs.2,01,74,275/- was made for the impugned assessment year for inflation in purchase of turmeric.

9. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Contention of the assessee before Id. Commissioner of Income Tax (Appeals) was that purchase report prepared during July 2014 was based on figures available in books of accounts and it considered only estimates for working out average cost. According to the assessee, what was available in the computer system alone gave the correct details of the purchases. Further, as per assessee, if the purchases of turmeric as per purchase report was considered, it resulted in negative sock. For substantiating this argument a work out was furnished as under:-

<i>Asst. year</i>	<i>Opening Stock</i>	<i>Purchases</i>	<i>Consumption</i>	<i>Closing Stock</i>	<i>Production</i>
2009-10	694729	2216926	4862940	-1951284	4679595
2010-11	(-)1951284	4930420	6500127	-3520991	5489508
2011-12	(-)3520991	5136457	6438894	-4823428	5336850
2012-13	(-)4823428	7137171	6752850	-4439107	5946431
2013-14	(-)4439107	6781556	7416915	-5074466	6460421
2014-15	(-)5074466	6939116	8250676	-6386026	6805379

Assessee also relied on assessment orders passed by the Id. Assessing Officer for assessment years 2009-2010 to 2015-16 u/s.153A r.w.s.143(3) of the Act. As per the assessee in such assessments, Id. Assessing Officer had gave a clear finding that purchase of turmeric as per books of accounts reflected the actual purchase. Further, as per the assessee in the statement recorded from Shri. P.C. Duraisamy u/s.132(4) of the Act, he had specifically mentioned that details found in the purchase report were not reliable and the actual purchases were recorded in the books of accounts maintained in the computer system. Contention of the assessee was that purchase report was prepared only for its guidance's and figures therein could not be considered as verified and correct. Ld. Commissioner of Income Tax (Appeals) after considering the submission of the assessee and also the records relied on by the Id. Assessing Officer, came to a conclusion that purchase report did not have in it any reliable figures. According to him, if the purchase report was adopted as correct it would result in negative stock. Further as per Id. Assessing Officer in the assessment orders for the assessment years 2009-2010 to 2015-16, Id. Assessing Officer himself had confirmed purchase of turmeric as recorded in the books of accounts maintained in the computer system of the assessee as the actual purchase. Again, according to him, if there was inflation in purchase in turmeric as

concluded by the Id. Assessing Officer then there would have been some difference in physical stock when the search was conducted. Thus, according to him, addition made by the Id. Assessing Officer, solely based on the purchase report could not be sustained. He deleted the addition made by the Id. Assessing Officer.

10. Now before us, Id. Departmental Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that except for turmeric all other items in purchase report tallied with the books of accounts. According to him, purchase report was a reliable document, since all figures therein, except these for turmeric were correct. Only possible conclusion according to him is what was recorded with regard to turmeric was also correct. Purchase of turmeric shown by the assessee for the month of March, 2008 was much less than what was recorded in the books. According to him, by assessee's own admission the purchase report was prepared for working out the average cost and therefore assessee would not have relied on incorrect data for such work out. Further, as per Id. Departmental Representative, Id. Commissioner of Income Tax (Appeals) placed undue reliance on assessment orders for assessment years 2009-10 to 2015-2016. Contention of the Id. Departmental Representative was that during the said period the purchase report

might have tallied with the books of accounts but that did not mean that figures for the impugned assessment year also tallied. Id. Departmental Representative also made submissions on each of the supporting grounds 3 to 12 of the appeal, regarding confidential nature of purchase report, statements of Shri Sampath, disclosure made by assessee during course of search, absence of purchase bills for turmeric, reliability of the statement of Accountant Shri. D. Selvakumar in respect of bought note, on the statement recorded from Shri. P.C. Duraisamy disputing the figures in brought note and on exceptionally high process loss claimed by the assessee. Thus, according to him, addition made by the Id. Assessing Officer were deleted by the Id. Commissioner of Income Tax (Appeals) without any good reasons.

11. Per contra, Id. Authorised Representative submitted that impugned assessment order was done after reopening. As per Id. Authorised Representative even during the scrutiny of original return no defect was found in the books of accounts. Further, as per Id. Authorised Representative purchase report on which reliance was placed by the Id. Assessing Officer was prepared in July, 2014 and not a contemporaneous document. Thus, according to him, Id. Commissioner of Income Tax (Appeals) was justified in deleting the

addition, considering the assessment done for the subsequent years.

12. We have considered the rival contentions and perused the orders of the authorities below. Question before us is whether the purchase report could be considered as authentic with regard to quantity and value of turmeric purchased by the assessee. Assessee says it is only a report for reference and what could be relied on was only the figures recorded in its books. Ld. Commissioner of Income Tax (Appeals) has given a clear finding that if turmeric purchase as per the purchase report is adopted, it would result in negative stock as per the table reproduced in para 9 above. As against this Ld. Assessing Officer was of the view that data in the purchase report tallied with what was in the computer system except for turmeric. What we find is that the purchase report is admitted to be in the handwriting of Shri. Sampath an employee of the assessee. There was a statement recorded from Shri. Sampath on 04.12.2014 u/s.131(1A) of the Act. Questions 11, 13 and 15 posed to Shri.Sampath and his answers to the are relevant for adjudication the issue and these are reproduced hereunder:-

"11: In your answer to earlier questions, you had deposed that you had prepared the

purchase reports and handed over to the MD Shri.P.C.Duraisamy. The aforesaid purchase report contain the details of turmeric purchase also. If it is so; how you have extracted the data for the purchase of turmeric and provide the details to your MD Shri P.C.Duraisamy.

Ans: For turmeric purchase I have no data with me and hence, I collect the details of stock details from the system and on the basis of that I prepared the purchase report in respect of turmeric.

Q.13: Now, I am showing the summary of turmeric purchase by M/s.Sakthi Masala Private Ltd. which was provided at the time of search u/s.132 on 12.09.2014 regarding the turmeric coriander and other raw materials the figures mentioned in those registers are perfectly matching with the purchase report why the figures in the purchase summary of turmeric does not match with the figures reflected in the purchase report? Further, you had deposed in. your answer to Q.No.11 that you had given the figure based on the stock summary. In that case, the summary report provided at the time of search does not match with your purchase report. Please explain the reasons in detail?

Ans: I have seen the summary of turmeric purchase shown by you. I also accept that in my earlier answer to Q.No.11 I had deposed that I had prepared the purchase report based on the stock summary details. Now, I clarify that I had not taken the figures reflected in the stock summary for preparing the purchase report. I take the stock summary as a base and give the figures on my own. Hence, the turmeric purchase is not matching with the figures in the purchase report. Since the turmeric purchases are local purchases and it is looking after by the MD himself the question can be answered by him only.

Q .15: Please state how this purchase report is prepared and when it is prepared?

Ans: The-purchase report is prepared based on the registers maintained for each purchase and it represent the true purchases. This purchase report was prepared during the month of July, 2014. After preparing this report and after taking printout I have deleted all the data relating to purchase report”.

There is also a statement recorded from Shri. D. Selvakumar, Accountant of the assessee on 04.12.2014. Question Nos.10 & 11 posed to him are also relevant. These question and the reply given by him are reproduced hereunder:-

‘Q.I0: Are you maintaining any manual purchase register for Turmeric purchased by the company?

Ans: No Sir, I am not maintaining any manual purchase register for Turmeric purchased by the company.

Q. 11. Is there any manual purchase register available in the company towards purchase of Turmeric and whether any other person in the company is maintaining manual purchase register for the turmeric purchase?

Ans: No sir we are not maintaining or recording any purchases related to turmeric manually in any form of register. No other person in the company is also maintaining and recording in the manual purchase register with regard to purchase of turmeric”.

What we discern from the above is that, Shri. Sampath though he originally stated that the purchase report was based on actual purchases, had at a later stage retracted from such statement, in so far as turmeric was concerned. That there was no manual purchase register maintained for turmeric was confirmed by Shri. D. Selvakumar, Accountant of the assessee also. In the statement recorded from Shri. P.C. Duraisamy, Managing Director u/s.132(4) of the Act on 12.09.2014, a question was posed on purchases of turmeric and this question and his answer are reproduced hereunder:-

"Q.12: Please go through the purchase report for the period from 2001-2014 and also go through the purchases recorded in your software for the period from 01.11.2007 to 31.03.2014 in respect of turmeric. As per the purchase report, the total value of purchases is Rs.239,23,32, 102/- whereas the purchases recorded and claimed in the books of accounts is to the tune of Rs.298,99,23,326/-. Thus, the purchases are overstated to the tune of Rs.59,75,91,224/-. Please state as to why the above mentioned Rs.59,75,91,224/- should not be treated as corresponding over statement of expenditure in the books of accounts of the company M/s. Sakthi Masala Pvt. Ltd.?"

Ans: I have gone through the purchase report and also the extracts obtained from the system marked as Annexure-III & IV respectively and also I hereby affix my signature for having gone through the same. I would like to clarify that the details found in the system alone represent the actual purchases and the details found in the

purchase report are not reliable because the same were not supported by further details and therefore, I am not in a position to substantiate the details compiled in the purchase report. Further, I would like to state that the figures were compiled on approximation basis for determining average price at which we can buy from the market yard in Erode. Therefore, I request you to not consider the said working of difference in purchases shown in purchase report and purchases recorded in system where books of accounts are maintained regularly wherein quantitative details are available datewise and bill wise, which can be subjected to further verification”.

Only conclusion that can be reached from all the above is that authenticity of the figures in the purchase report was doubtful. Ld. Assessing Officer in assessment orders for assessment years 2009-10 to 2015-16, based on proceedings initiated on the assessee u/s.153A r.w.s. 143(3) of the Act, subsequent to the search had observed as under:-

“Other than the "Purchase Report" seized from the premise of the assessee, there is no other evidence to substantiate that the purchase of turmeric as per the books of account is an inflated figure. The above analysis logically and factually affirms the argument of the assessee that the purchase of turmeric as per the books of account maintained in the system is the actual purchase.

Books of account for all the years involved were filed along with all schedules, quantitative details of purchases, sales, opening and closing stock etc. Copy of returns filed with sales tax authorities, wherein

quantitative details of month wise purchase and sales recorded were also submitted. Quantitative details of receipts and issues of each raw materials finished goods and that had been sold off were also submitted, verified and reconciled with the books of account”.

Thus, for all subsequent years Id. Assessing Officer had accepted the contention of the assessee that purchase report seized from the premises of the assessee could not be relied upon and purchase of turmeric as per books maintained in the system reflected the actual purchase. As already mentioned by us the difference of ₹2,01,74,275/- computed for the period 1.11.2007 to 31.03.2008 was the part of a larger difference of ₹59,75,91,224/- for the period 1.11.2007 to 31.03.2014 originally alleged by the Revenue. When for subsequent years it was found that no such difference were actually there, we cannot fathom how such difference could be presumed for impugned assessment year alone. In our opinion a different conclusion could not have been reached for the impugned assessment year based on the very same evidence considered for the subsequent years. Assessee was able to show that the purchase report did not have in it correct data with regard to turmeric. Id. Commissioner of Income Tax (Appeals) in our opinion was therefore justified in deleting the addition. We do not find any reason to interfere with the

order of the Id. Commissioner of Income Tax (Appeals).

13. In the result, the appeal of the Revenue stands dismissed.

Order pronounced on Tuesday, the 12th day of December, 2017, at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated:12th December, 2017.

KV

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

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/**ACCOUNTANT MEMBER**