

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B” SMC BENCH: HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT

ITA. No.1642/Hyd/2017
Assessment Year: 2008-2009

Kiran Industries, H.No.1-5-284, Kaman Road, Karimnagar. PAN: AAFFK 6016 P (Appellant)	vs.	Income Tax Officer, Ward-1, Karimnagar. (Respondent)
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For Assessee:	Shri K.A. Sai Prasad
For Revenue :	Smt. B.K. Vishnu Priya, DR

Date of Hearing :	08.03.2018
Date of Pronouncement :	14.03.2018

ORDER

PER D. MANMOHAN, VP.

This appeal is filed at the instance of the assessee-firm and it arises out of the order passed by the Ld. CIT(A)-2, Hyderabad.

2 At the outset, it may be noticed that the first appellate authority has not adjudicated one of the grounds raised before him i.e., reopening of assessment, which lead the assessee to contest before us that the order passed by the first appellate authority is not correct on facts as well as in law. In other words, the assessee challenges before us the validity of reopening of the assessment as well as the justification in confirming the addition of Rs. 12,35,384/-.

3. Brief facts necessary for disposal of the appeal are as under. The assessee-firm is engaged in purchase and sale of Maize and it carries on business on its own account as well as a commission agent. For the year under consideration, assessee declared a total income of Rs. 2,31,910/- and the same was processed u/s 143(1) on 21.07.2009.

Thereafter the case was converted into scrutiny and a notice u/s 143(2) was issued and while making assessment u/s 143(3) of the Act, the A.O observed that the assessee received handling charges of Rs. 17,51,511/- from M/s. Cargil India P. Ltd., for the grains purchased for them. He has also gone through the ledger account extract furnished by the assessee and highlighted that the assessee had shown an amount of Rs. 16,87,585/- as against Rs. 17,51,511/- received, resulting in discrepancy of Rs. 63,926/-. Similarly, the A.O. also noticed that the assessee received commission of Rs. 12,55,920/- from M/s. Cargil India P. Ltd., for the grains purchased for them. In sum and substance the Assessing Officer admitted in the assessment that the assessee's main source of income is purchase and sale of grains as commission agent and it derives commission as well as handling charges. In fact Income Tax Authorities having conducted a survey u/s 133A of the Act, the A.O. had taken into consideration the report of the DDIT (Inv.) to arrive at the conclusion that the discrepancy in handling charges and discrepancy in commission income are assessable to tax. In other words, the books of account maintained by the assessee are verified by the investigation authorities as well as by the Assessing Officer while making the assessment u/s 143(3) of the Act. This assessment was made on 20.12.2010. Thereafter, the A.O. sought to reopen the assessment by issuing a notice u/s 148 of the Act on the ground that the assessee has shown closing stock of maize consignment at Rs. 12,35,584/- in the balance sheet whereas the same has not been included in the closing stock admitted in the trading account which resulted in escapement of income to the tune of Rs. 12,35,584/-. A notice was duly served on the assessee on 26.03.2015. Admittedly the reopening proceedings commenced after a lapse of more than four years and only five days before the end of sixth year, which is the time limit

available to the Assessing Officer to reopen the assessment with necessary approval from the Commissioner of Income Tax.

4. In response to the notice the assessee contended before the Assessing Officer (vide letter dated 06.11.2015) wherein the assessee explained as under:

“The assessee is commission agent, and purchases the maize for others mainly to Cargil India Pvt Ltd., Secunderabad & Bangalore and Bengani Food Products, Kolkatta to some extent. The assessee firm purchases the maize on behalf of the principal / consignor and keep the same stock in different godowns. When the stock is purchased on behalf of the principal / consignor, the entry for the same purchase will be as under:

*Durshed godown or other godowns A/c Dr
To the Farmers A/c.*

To be more clear when the stock is purchased and kept in a particular godown, wherein the stock is kept, that “Godown account” is debited by giving credit to the “farmers” Accounts.

When the assessee raises the Consignment bill the “principal / consignor” account will be debited and “maize for consignment” account is credited. At the end of the year debit balance in the “Godown account” will be transferred to “Maize for consignment account” by crediting “Godown account” and debiting the “maize for consignment A/c”.

The debit balance in the “maize for consignment” account standing at the end of the year will be shown as “consignment stock” in the balance sheet as the assessee has purchased that stock only for the principal / consignor.

The consignment bills are raised on the principle / consignor which includes value of the stock transferred from the godowns plus the hamali, market fee, bardan etc., which will be settled by the principal / consignor after receiving stocks from the assessee firm.

This is the regular practice by the assessee firm in dealing with the consignment stock. As such it is submitted that the amount shown under the consignment stock in the balance sheet to the assets side is the stock belonging to the principal / consignor on which the assessee firm does not have any right to sell stocks at their will and wish. The stocks are to be sold only at the instructions of the principal / consignor, for which the assessee firm raises the consignment bill as stated above.

We submit that the consignment bills file has been already taken by then IT Authorities who have conducted the survey u/s 133A and verified by the that Assessing Officer at the time of assessment.

We are submitting herewith five ledger account copies of “maize godown account” for your ready reference.

We are also herewith submitting the copy of the “maize for consignment” account wherein you can see the amount of maize transferred to the principal / consignor and the credit is given to the “maize for consignment” a/c. It can also be seen in the “maize for consignment” account that at last this account is debited to the concerned “Godown account” along with market fee, bardan, hamali etc., as stated above.

We are also herewith enclosing the copy of the commission account wherein the commission received from the principal / consignor are shown.

Respected Sir, we bring to your kind notice to the assessment order u/s 143(3) of I.T. Act for the Asst. Year 2008-09 in the case of assessee wherein the then Assessing Officer has mentioned that the assessee derives income from the commission from gains business. Further, while making additions, the then Assessing Officer has mentioned that “on going through the report of the D.D.I.T (Inv.), Unit-ii(3) it is seen that during the financial year 2007-2008 the assessee has received commission of Rs. 12,55,920/- from M/s. Cargil India Pvt Ltd., Kolkata for the maize purchased for them”. This mainly denotes that the assessee is an agent for purchase of maize for others and it is obvious in the case of the assessee to hold the stocks of the principal / consignor.

Further, we also bring to your kind notice that the assessee-firm has already submitted the trading account of maize of its own purchase and sale. It can be seen that the total quantity to the debit of trading account is only 6,263.60 quintals which is tallied with quantity of sale and closing stock of 5,624.30 and 639.30 respectively. When the alleged stock of 1,515.10 quintals of maize is taken as closing stock of the assessee the purchase would also be increased by same quantity of 1,515.10 quintals. Then the profit or loss in the trading account shall not have any effect and it does not affect the profitability of the assessee.

In these circumstances, the assessee firm submits that the consignment stock shown in the balance sheet is correct and shall not have any effect to profitability of the assessee-firm.”

5. Again vide letter dated 23.03.2016 it was submitted that the purchases related to the consignment stock, as shown in the balance sheet, was not debited to the purchases account shown in the trading account of maize. It was further submitted that the closing stock of the maize consignment is considered as the stock belonging to the assessee-firm, relevant purchase is also to be considered in the hands of the assessee and if the same is considered, there will be no bearing on the gross or net profit declared and there would be no revenue loss. It was also clarified that the general practice followed in such cases is to show the stock purchased on behalf of the consigner separately and at the

end of the year it is shown in the balance sheet under the head “maize consignment stock” and this practice is followed even in the earlier years and in this regard the relevant balance sheet, Profit and Loss Account for the A.Y. 2006-07 was also placed before the A.O. It was also stated that this was considered by the then Assessing Officer while completing the original assessment. It was further submitted that there is no jurisdiction to reopen the assessment, without any additional information. In other words, when an assessment is sought to be reopened after expiry of four years period of limitation, there should be some independent material in the possession of the Assessing Officer to show that some income has escaped assessment and it was on account of omission on the part of the assessee to place such material whereas the entire material was placed before the Assessing Officer as well as the Investigation Wing and hence by taking the same material into consideration it would not empower the A.O. to reopen the assessment. A copy of the letter addressed by the consigner M/s. Cargil India P. Ltd., was also placed for the consideration of the Assessing Officer to buttress the stand of the assessee.

6. The Assessing Officer observed that the assessee is mainly engaged in the business of purchase and sale of maize and hence it is the primary duty of the assessee to enter in its books of account any stock purchased and brought into the premises of the assessee. Since the assessee could not give any reason for not entering the same in the purchase and sale account and instead kept the same in “closing stock of maize consignment account”, A.O. was of the opinion that the assessee has not followed an appropriate method. In his opinion the assessee was not correct in following the same method over the years. He thus concluded that it was clearly an accounting mistake and the same can be treated as suppression of closing stock which in turn decreases the gross profit as well as the net profit. Therefore, the value

of closing stock of maize consignment of Rs. 12,35,584/- was added, to the income determined in 143(3) proceedings.

7. Aggrieved, assessee contended before the Ld. CIT(A) that the A.O. erred in observing that it was not debited to the assessee's own purchases accounts shown in the own trading account of the assessee-firm. It was further contended that the stock having been debited to the purchase account, it cannot be shown in the closing stock since closing stock consists of assessee's own stock and not the consignment stock. It was also contended that the A.O erred in not taking cognisance of the detailed explanation provided vide letter dated 23.03.2016. Vide Ground no.4 it was contended that the A.O. erred in reopening the case without having any additional information, after the completion of original assessment u/s 143(3) of the Act by the then Assessing Officer.

8. Ld. CIT(A) rejected the appeal filed by the assessee without going into the technical aspect as to whether the reopening of assessment was justified or not. No doubt, the Ld. CIT(A) reproduced the grounds filed by the assessee which includes the challenge to the validity of the reopening of the assessment but the fact remains that the order contains virtual reproduction of the grounds of appeal, statement of facts filed by the assessee, order passed by the Assessing Officer and the submissions of the assessee and even in his conclusions, we notice virtual reproduction of the order of the Assessing Officer indicating that as a quasi-judicial authority he has not done sufficient justice to the case on hand and proceeded to reproduce the same sentences, picking out from the assessment order, while confirming the assessment order. He omitted to consider the aspect of reopening of assessment since this issue was not figuring in the assessment order. As rightly pointed out by the Learned Counsel for the Assessee there is a lack of application of mind on the part of the Ld. CIT(A).

9. The assessee has filed a detailed explanation before the Assessing Officer indicating the method of accounting followed by it with regard to entries made vis-à-vis the purchases made on behalf of the consigner but both the Assessing Officer as well as the Ld. CIT(A) has not properly appreciated the points. It is not in dispute that the assessee has been following this method of accounting over the years and even if it is assumed that there is an accounting mistake, the correction process should be followed on a logical basis by taking stock of the maize as closing stock and purchase also should be increased by the same quantity in which event there would be no effect to profit in the trading account.

10. The most important fact of the instant case is that during the proceedings u/s 143(3) of the Act, the Assessing Officer had the benefit of the report of the DDIT (Inv.), Unit-II(3), Hyderabad and had also gone into the books of account and the method followed by the assessee and thus it cannot be said that there is any omission on the part of the assessee in furnishing the details, so as to enable the Assessing Officer to reopen the assessment beyond the period of four years.

11. No material whatsoever was filed by the Learned Departmental Representative to prove that there were sufficient reasons for reopening of the assessment. In fact the assessment record was not available with the Learned Departmental Representative and no report of the Assessing Officer was filed before us to indicate that the Assessing Officer has recorded the finding in the satisfaction note to the effect that the reassessment proceedings were initiated on account of omission on part of the assessee in furnishing true and correct particulars. It is well settled that reassessment is not permissible in the absence of failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment of income, particularly after lapse of four

years and this view has been affirmed by various Courts and in line with the view taken by the Courts wherein it was held that in the absence of proving that there was sufficient material, reassessment proceedings are not valid.

- (i) *ITA No.515/H/2015 (A.Y. 2005-06) in the case of ACIT vs. M/s. TNS India Private Ltd and*
- (ii) *Decision of the Hon'ble Madras High Court in the case of CIT vs. Arvind Remedies Ltd (378 ITR 547) (Mad.)*

12. In fact Hon'ble Andhra Pradesh High Court in the case of Tecumseh Products India Pvt Ltd vs. ACIT (361 ITR 429) (AP) observed that before any notice is issued after expiry of four years, the officer concerned must be satisfied that there has been an escapement in assessment of income, which is chargeable to tax and this is because of the failure on the part of the assessee to disclose proper income. It should not be done mechanically to recompute the deductions despite the fact that there was no failure by the assessee to disclose material facts necessary for assessment.

13. Learned Departmental Representative was unable to place before us the order sheet copy of the Assessing Officer and the reasons recorded therein to indicate that some new material was found by the Assessing Officer to enable him to reopen the assessment and the notice was issued essentially on account of the fact that the return filed by the assessee does not contain true and correct particulars of income. As noticed by us, upon going through the assessment order passed u/s 143(3) of the Act, the Assessing Officer had the benefit of examining the books of accounts in detail and examined the nature of business for the purpose of making additions towards handling charges and commission income, impliedly reflecting that the A.O admitted that the assessee was mainly carrying on the business as a commission agent for and on behalf of the consigners. Such being the case, the notice issued u/s

148 itself is bad in law. Thus on both the counts, I am of the opinion that the assessment order deserves to be quashed. Accordingly, I set aside the order of the Ld. CIT(A) and direct the A.O. to delete the impugned addition.

14. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 14th March, 2018.

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Hyderabad, Dated: 14th March, 2018.

OKK, Sr.PS

Copy to

1.	Kiran Industries C/o. Parthasarathy & Co., 1-1-298/2/B/3, 1 st Floor, Sowbhagya Avenue, Street No.1, Ashoknagar, Hyderabad – 500 020.
2.	Income Tax Officer, Ward-1, Karimnagar.
3.	CIT (A)-2, Hyderabad.
4.	Pr. Commissioner of Income Tax-2, Hyderabad.
5.	DR, ITAT, Hyderabad.
6.	Guard File