

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, 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.669 & 670/PUN/2014
निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

The Assistant Commissioner of Income Tax,
Circle – 6, Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Stauff India Private Limited,
GAT No. 2340, Pune Nagar Road,
Pune – 412207

PAN : AAACK7672D

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak and
Shri Nimit Gujarathi

Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 19-04-2018

घोषणा की तारीख / Date of Pronouncement : 26-04-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These two appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-IT/TP, Pune dated 31-01-2014 common for the assessment years 2008-09 and 2009-10. In both the

appeals the Revenue has assailed the order of Commissioner of Income Tax (Appeals) by raising identical grounds.

2. The grounds raised by the Revenue in assessment year 2008-09 are as under :

1. *“On the facts and in the circumstances of the case and in law, the CIT(A)-IT/TP erred in accepting the additional evidence which is factually incorrect on the basis of TP study report submitted by the assessee.*
2. *On the facts and in the circumstances of the case and in law, the CIT(A)-IT/TP erred in accepting the contention of the assessee that the assessee is engaged in the manufacturing activity, when no such details were submitted in TP proceedings.*
3. *For these and such other reasons as may be urged at the time of hearing, the order of the CIT(A)-IT/TP, Pune may be vacated and that of the Assessing Officer be restored.*
4. *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of appellate proceedings before the Hon'ble Tribunal.”*

Identical grounds are raised by the Revenue in assessment year 2009-10.

3. Shri Achal Sharma representing the Department submitted that the assessee is a wholly owned subsidiary of Walter Stauffenberg, Germany. The assessee is engaged in trading of accessories, spares and components. The assessee is import of accessories and components for reselling in Indian market and is procuring accessories and components from India market for export to parent company. In proceedings before the Transfer Pricing Officer (TPO) the contention of the assessee was that the assessee is engaged in manufacturing process and is exporting finished goods to its Associated Enterprises (AEs). However, in the TP study there was no reference of any manufacturing activity being carried out by the assessee.

The TPO held that the assessee was involved only in trading of accessories and components. The TPO aggregated domestic and export sales and made an adjustment of Rs.1,15,04,012/- in assessment year 2008-09 and Rs.1,16,51,053/- in assessment year 2009-10. During First Appellate proceedings the assessee furnished additional evidence to substantiate that the assessee is also engaged in manufacturing activity. The Commissioner of Income Tax (Appeals) forwarded the additional evidence to TPO and Assessing Officer for their comments. The TPO furnished his remand report on 09-12-2013 and the Assessing Officer furnished his report vide letter dated 02-01-2014. The ld. DR submitted that the Commissioner of Income Tax (Appeals) has erred in admitting additional evidence without recording the reasons as mandated under Rule 46A(1) & (2) of the Income Tax Rules, 1962. The assessee has failed to show reasonable cause for not producing the documents before TPO which were furnished as additional evidence before the Commissioner of Income Tax (Appeals). No reason whatsoever has been given by the assessee indicating the circumstances which prevented the assessee from producing the documents at the time of assessment. The ld. DR submitted that merely forwarding of documents for comments to Assessing Officer/TPO submitted by assessee as additional evidence does not suffice the mandatory provisions specified in Rule 46A(1) & (2). In support his submissions the ld. DR placed reliance on the following decisions :

- i. Commissioner of Income Tax Vs. Ranjit Kumar Choudhary, 288 ITR 179 (Gauhati);
- ii. Haji Lal Mohd. Biri Works Vs. Commissioner of Income Tax, 275 ITR 496 (Allahabad);
- iii. Income Tax Officer Vs. Prem Kumar Jindal, 27 SOT 228 (Chandigarh).

4. On the other hand Shri Nikhil Pathak appearing on behalf of the assessee submitted that the assessee is engaged in manufacturing activities as well as trading of hydraulic equipments/components. The ld. AR pointed that in the TP study though it may not have been prominently mentioned about the manufacturing activity being carried out by the assessee but there is a reference of export of finished goods by the assessee to its AE. The ld. AR referred to TP study report at page 184 of the paper book. The ld. AR further contented that the assessee had furnished additional evidence before Commissioner of Income Tax to substantiate the fact that the assessee is engaged in manufacturing activity as well. To support its claim the assessee had furnished a copy of cost sheet, manufacturing process chart, sample copies of invoices and photographs of the actual site where manufacturing activity is carried out. The Commissioner of Income Tax (Appeals) forwarded all the aforesaid documents to the TPO. The TPO in remand report dated 09-12-2013 admitted the fact that the assessee is engaged in manufacturing and trading activities. The ld. AR asserted that the Assessing Officer/TPO was given opportunity to examine the documents furnished by the assessee as additional evidence before the Commissioner of Income Tax (Appeals). The assessee has not raised any new issue or fresh plea before the Commissioner of Income Tax (Appeals). The ld. AR prayed for dismissing the appeals of the Revenue.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also examined the case laws and the documents on which both the sides have placed reliance. The solitary issue raised by the Revenue in both the appeals is against admission of fresh evidence in First Appellate

proceedings without compliance of Rule 46A(1) & (2) of the Income Tax Rules. Undisputedly, the assessee has filed following documents as additional evidence before the Commissioner of Income Tax (Appeals) :

- a. a cost sheet in respect of Flanges giving the details and the break-up of value addition.
- b. manufacturing process chart.
- c. sample copies of invoices and
- d. Photographs of the actual site where the activity is carried out.

In proceedings before the TPO the assessee could not substantiate manufacturing activity being carried out by the assessee in respect of goods being exported to its AE to the satisfaction of TPO. Resultantly, the TPO concluded that there is no logic in bifurcating trading activity in domestic sales and export sales. Whereas, the case of the assessee is that the assessee apart from trading of components is also engaged in export of finished goods. Before the Commissioner of Income Tax (Appeals) the assessee filed manufacturing process chart, cost sheet, sample copies of invoices and photographs of the manufacturing activity, etc. to show that the assessee is engaged in manufacturing of goods as well. A perusal of TP study report reveal that the entire emphasis of the assessee is on highlighting the trading activity being carried out by the assessee. Nevertheless, in the TP report the assessee has made marginal reference of export of finished goods to AE and other group companies. The relevant extract of the TP study report reads as under :

“Further, we have been informed that during the financial year ended 31 March 2007, Stauff India has started the facilities for assembling of accessories and components (i.e. flanges). During the year FY 2007-08, Stauff India manufactured (assembled) and exported Flanges of Rs.8,747,907 to Germany. In substance, the detailed process undertaken by Stauff India in terms of the said assembling function vis-à-vis trading function for the purpose of export has been provided in the table below :

<i>Export of Finished Goods</i>		
<i>Process</i>	<i>Manufactured</i>	<i>Process</i>
<i>Purchase of Raw Forgings</i>	<i>Vendor-Material</i>	<i>Vendor-Material</i>
<i>Machining</i>	<i>In-house</i>	<i>Vendor-Labour</i>
<i>Platting</i>	<i>Outsourced, logistics and cost arranged by Stauff India</i>	<i>Outsourced, logistics arranged by Vendor and included in his cost</i>
<i>Export Shipping</i>	<i>Stauff India</i>	<i>Stauff India</i>

The assessee has furnished additional evidence before the Commissioner of Income Tax (Appeals) to strengthen his claim of carrying out manufacturing activity for export of manufactured/finished goods.

6. A perusal of remand report dated 09-12-2013 at page 354 of the paper book would show that the TPO after examining the additional evidence has accepted that the assessee company is engaged in manufacturing and trading activity. Thus, the documents placed on record by the assessee as additional evidence were vital for proper adjudication of the issue.

7. In so far as the case laws relied by the ld. DR to contend that the additional documents have been admitted by the Commissioner of Income Tax (Appeals) in violation of provisions of Sub-Rule (1) and (2) of Rule 46A is concerned, we observe that the same are distinguishable.

- In *Haji Lal Mohd. Biri Works Vs. Commissioner of Income Tax* (supra) the Commissioner of Income Tax (Appeals) admitted additional evidence (a certificate from third party) without affording opportunity of rebuttal to the Assessing Officer. Thus, there was clear violation of principles of natural justice.

- In Commissioner of Income Tax Vs. Ranjit Kumar Choudhury (supra) again the principles of natural justice were not followed. The Commissioner of Income Tax (Appeals) accepted the additional evidence (xerox copy of sales proceeds and receipts) adduced by the assessee without verification and without affording opportunity to the Assessing Officer to cross-verify and examine the same.
- In Income Tax Officer Vs. Prem Kumar Jindal (supra) the Tribunal restored the appeal back to the Commissioner of Income Tax (Appeals) to follow the provisions of Rule 46A before admitting additional evidence. In the said case, however, the Commissioner of Income Tax (Appeals) has given opportunity to Assessing Officer to offer his comments.

8. From perusal of the judgments of Hon'ble High Courts it emerges that the Commissioner of Income Tax (Appeals) admitted additional evidence without giving chance to Assessing Officer to rebut or cross-examine the fresh material filed as additional evidence. It is a settled position that additional evidence cannot be admitted as matter of right, unless the opposite side is allowed opportunity to controvert.

9. In the present case the additional evidence furnished by assessee were referred to TPO/Assessing Officer for examination and comments. The TPO after examining the documents agreed that manufacturing activity is being carried out by the assessee. Thus, there is due compliance of principles of natural justice. Each case has to be decided on its own facts. The general principle reiterated by the Hon'ble High Courts in the

cases referred above is that no person should be condemned without giving opportunity of hearing.

Thus, we do not find any infirmity in the impugned order, accordingly, the same is upheld and the appeals of the Revenue for assessment years 2008-09 and 2009-10 are dismissed.

10. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on Thursday, the 26th day of April, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th April, 2018
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-IT/TP, Pune
4. The DIT (TP/IT), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune