

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES 'A, CHANDIGARH**

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No. 102/CHD/2018
Assessment Year : 2008-2009**

The ACIT,
Circle,
Shimla.

Vs

M/s H.P. State Civil Supplies
Corporation Ltd., SDA Complex,
Kasumpti, Shimla.
PAN No. : AABCH4054K

(Appellant)

(Respondent)

Appellant by : Shri Akhilesh Gupta, Addl. CIT
Respondent by: Shri Rajinder Parsad Kapoor
Date of hearing : 10.05.2018
Date of Pronouncement : 20.06.2018

ORDER

PER DIVA SINGH

The present appeal has been filed by the Revenue assailing the correctness of the order dated 05.12.2017 of CIT(A) Shimla (HP) pertaining to 2008-09 assessment year on the following ground :

1. *On the facts and in the circumstances, the Ld. CIT(A) has erred in deleting the addition of Rs. 49,55,812/- made by the A.O. on account of handling charges, without appreciating the facts that the liability on account of handling charges payable to Govt. of Himachal Pradesh was not an ascertained liability and hence, was taxable income of the assessee.*
2. The Id. AR Shri Rajinder Parsad Kapoor appearing on behalf of the assessee submitted that the point at issue is fully covered in favour of the assessee by virtue of the consistent orders of the ITAT in assessee's own case on similar set of facts, the issue has been decided in favour of the assessee. Copy of the order dated 08.11.2012 in ITA 836/2012 pertaining to 2009-10 assessment year which has been followed in 2013-14 assessment year in ITA 972/CHD/2017 pertaining to 2013-14 assessment year dated 04.04.2018 was also filed. The Id. Sr.DR though placed reliance upon the assessment order, fairly conceded that the issue has been decided on the basis of the order of the ITAT as noted by the CIT(A) in para 5.1 of his order.
3. We have heard the rival submissions and perused the material available on record. The facts taken into consideration by the CIT(A) wherein no inaccuracy of facts has been pointed out by the Revenue are as under :

“3.1 The assessee is a State Government Corporation and is engaged in the business of running of various fair price shops for sugar, rice, wheat, flour, edible oil, pulses, LPG, petrol, diesel, cement depots, medicines shops etc. In this case assessee e-filed its return of income declaring income at Rs. 4,14,78,130/- on 30.09.2008. The case was selected for scrutiny through CASS. Assessment u/s 143(3) of the Income Tax Act,1961 was completed on 29.11.2010 at total income of Rs. 5,30,88,130/-. In the assessment an addition of Rs. 1,16,10,000/- was made by the AO by disallowing the claim of the assessee on account of ‘liquidity damager charges’ payable to Director Social Welfare Department and Director of Food & Civil Supplies.

3.2 The AO subsequently noticed that during the year the assessee had received total amount of Rs. 49,55,812/- @ Rs. 1.00 per bag on account of handling charges of cement bags supplied from Government. This amount has not been accounted for by the assessee in the Profit & Loss Account. No additions have been made by the AO on the suppressed income. On perusal of case records, it was also noticed that no query was raised by the A.O. vide questionnaire letter dated 13.08.2010 or during the course of assessment proceedings. Accordingly, the CIT, Shimla set aside the assessment proceedings u/s 263 of the IT.Act, 1961 with the directions to the AO. to re-compute the income after disallowing the amount of Rs.49,55,812/-. The assessee was given show cause to explain as to why the amount of Rs.49,55,812/- may not be added to the total income of the Corporation for the year under consideration.

The reply of the assessee was not found satisfactory and the amount was added back to the total income of the assessee.

Aggrieved' by the addition made by the A.O. the assessee filed the present appeal.

4. Considering the facts, the CIT(A) relying upon orders of the ITAT in assessee's own case decided the issues in the following manner :

“5.1 I have gone through the facts of the case, order of AO and submissions made by the assessee and the orders of my ld. Predecessor. The issue in this appeal stand decided by my predecessor vide orders in the appellant’s own case for the A.Y. 2011-12 & 2012-13 in Appeal No.IT/494 /13-14/Sml dated; 29.12.2014. Appeal No. IT/296/SML/2014-15 dated 06.12.2016 . The same has Appeal No. IT/376/2015-16/SML dated 23.03.2017 in the order pass deciding the issue in favour of the assessee. The order ;of CIT(A) fo also been upheld by the jurisdictional ITAT in ITA No. 836/chd/2012.

5.2 Respectfully following the order of my predecessor and this office and the order of the jurisdictional ITAT in the matter , the appeal of the assessee 2008-09 is allowed, since the issues involved are duly covered by Regarding applicability of section 40(a)(iib), the provisions of this applicable for assessment year 2008-09.

5. We note that the issue has been considered by the Co-ordinate Bench in its order dated 04.04.2018 in ITA 972/CHD/2017 as under :

4. We further find on a reading of the order dated 08/11/2012 passed by the coordinate Bench in ITA/836/CHD/2012 considering the past history of the issue as considered by the CIT(A) in the said year, the coordinate Bench was pleased to hold as under :

4. We have heard the rival submissions and considered facts of the case and the relevant records and found from the facts of the case as recorded by the CIT(Appeals) in para 4.1 of the impugned order that the AO observed therein that appeal of the revenue, against the decision of the Tribunal, on the issue is pending for adjudication with Hon'ble Himachal Pradesh High Court. This led the AO, to make such addition. The relevant findings of the CIT(Appeals) are reproduced hereunder :

“5. The rival submissions have been carefully considered with reference to the facts of the case. It is noted that the issue already

stands decided in favour of the appellant by the Hon'ble ITAT, Chandigarh Bench for the A.Ys. 2005-06 & 2006-07. The issue has also been decided in favour of the appellant by the CIT(A), Shimla for the A. Y.s 2002-03, 2003-04 & 2004-05. It has been held that the conversion of the handling charges into the working capital advance and unsecured loans proves that the receipt is in the nature of an ascertained liability and has been rightly shown as such in the balance sheet by the appellant. It is noted that the appellant is under an obligation to remit the amount of handling charges to the Govt. of Himachal Pradesh @ Rs. 1 per bag of cement. As regards the remaining collection of handling charges to the extent of Rs.0.50 per bag, the appellant has duly shown the income to that extent. Keeping in view the history of the case and the decisions of the CIT(A), Shimla and the ITAT on the given issue for the A. Ys. 2002-03 to 2006-07, it is held that the Ld. A.O. is not justified in treating the handling charges of Rs.27,85,502/- as the taxable income of the appellant.

5. *Having regard to the above rival submissions, facts of the case and respectfully following the decision of the Tribunal, as mentioned above, as also the findings recorded by CIT(Appeals), the appeal of the revenue is dismissed."*

4.1 *Accordingly in the absence of any change either on facts or law brought to our notice by the parties, respectfully following the order of the coordinate Bench, the Departmental appeal is dismissed. None of the parties made any submissions to show that the consistent view taken by the ITAT over the years has been varied by the Hon'ble High Court in appeal. Thus in the aforementioned peculiar facts and circumstances of the present case, as set out herein above, the appeal of the Department is dismissed. Said order was pronounced at the time of hearing itself."*

6. On consideration of the past history in assessee's own case which has been followed by the Co-ordinate Bench in its order dated 04.04.2018 in 2013-14 assessment year, we find that there is no merit in the appeal filed by the Revenue. We have seen that the Co-ordinate Bench in the aforementioned order in ITA 836/CHD/2012 has noted the position consistently on record from 2002-03 onwards. Thus, in the absence of any change in facts, circumstances and position of law, the departmental ground is dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 20th June, 2018.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
'Poonam'

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR

Asstt. Registrar
ITAT, Chandigarh.