

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 No.939/PUN/2014
निर्धारण वर्ष / Assessment Year : 2003-04

Progressive Petroleum Co. Ltd.,
33, Housing Society,
Pipprala Road,
Opp. Lokmat Karyalay,
Jalgaon – 425 001

PAN : AAACP9696C

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-2(3),
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.G. Nahar
Revenue by : Shri Rajeev Kumar

सुनवाई की तारीख / Date of Hearing : 16-10-2018
घोषणा की तारीख / Date of Pronouncement : 31-12-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-II, Pune dated 28-01-2014 for the assessment year 2003-04.

2. Briefly, the facts of the case as emanating from records are ; the assessee is engaged in trading and import of petroleum products. The assessee was involved in alleged adulteration of petroleum products, hence, a special investigation was carried out by various agencies

including CBI, Special Investigation Team (SIT), Sales Tax Department, Central Excise Department, etc. The information was received by the Income-tax Department from CBI authorities that there were certain cash deposits in bank accounts of assessee with ICICI Bank, Nariman Point, Mumbai and Akola Urban Cooperative Bank Ltd., Kalbadevi Branch, Mumbai. The assessee filed its return of income for the impugned assessment year on 19-11-2003 declaring total income of Rs.34,54,188/-. During the course of scrutiny assessment proceedings, the assessee failed to produce any documentary evidence explaining cash deposits to the tune of Rs.6,63,11,790/- in the bank accounts. The assessee inter alia made addition of the aforesaid amount as unexplained cash credits in the hands of the assessee.

3. Aggrieved by the additions made in assessment order dated 18-03-2014 passed u/s.143(3), the assessee filed appeal before the CIT(A). The CIT(A) partly accepted the appeal of assessee and deleted some of the additions. However, the addition of Rs.6.63 crores on account of unexplained cash credit was confirmed by the First Appellate Authority. Now the assessee is in second appeal before the Tribunal assailing the said addition vide Ground No.1 and the same reads as under :

“1. On facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that additions made by the Assessing Officer to the tune of Rs.6.63 crores treating the same as unexplained cash credit without properly appreciating the facts prevailing in the case and without properly considering the submission made by the appellant as well as the remand report called by the CIT from the Assessing Officer. The additions so made be deleted being uncalled for. Just and proper relief be granted on this score.”

4. Shri R.G. Nahar appearing on behalf of the assessee submitted at the outset that he is not pressing Ground No.2 raised in the appeal. Ground No.3 is general in nature. The solitary issue for adjudication before the Tribunal is with respect to addition of Rs.6.63 crores on account of unexplained cash credits.

4.1 The ld. Authorized Representative submitted that the assessee is engaged in sale of Kerosene oil and Napta in retail. The books of assessee were seized by the Sales Tax Department for investigation by various agencies, therefore, the assessee could not produce relevant evidence regarding deposit of cash in the bank accounts. The ld. Authorized Representative submitted that Rs.6.63 crores deposited in the bank accounts represent 'sale of products' duly supported by cash memos and has already been offered to tax. The Assessing Officer wrongly made addition of the aforesaid amount as unexplained cash credits without appreciating the fact that during the course of assessment proceedings assessee could not produce the books, vouchers and various other supporting documents due to the reason beyond the control of assessee, since they were seized by the Sales Tax authorities. The assessee had raised this plea before First Appellate Authority and had specifically stated that these amounts are duly reflected in the books of account and the books of assessee are duly audited. The bank accounts are also reconciled. However, due to the seizure of books, the assessee could not substantiate the amounts deposited in the banks. The ld. Authorized Representative submitted that in Paper Book No.2, the assessee has filed :

- (1) Summary of cash sales during the F.Y. 2001-02 relating to A.Y. 2002-03 (page 23 of the paper book);
- (2) Bank statement of Akola Urban Cooperative Bank Ltd. for the period relevant to A.Y. 2002-03 (page Nos. 24 to 58 of the paper book);
- (3) Sales summary for the F.Y. 2002-03, i.e. relevant to A.Y. 2003-04 (pages 59 to 62 paper book);
- (4) Statement under Bombay Sales Tax Act, 1959 (pages 81 to 84 of the paper book);
- (5) Assessment order under Bombay Sales Tax Act, for the period 01-04-2002 to 31-03-2003 (pages 85 to 89 of the paper book).

The Ld. Authorized Representative pointed that the above documents are fresh documents and were not produced before the authorities below as they were seized by the Sales Tax authorities. The documents are essential to explain the deposits made in Bank accounts.

4.2 The ld. Authorized Representative submitted that remand report was sought by the CIT(A) from the Assessing Officer. The remand report is at page 34 of the Paper Book No.1 In remand report Para No.4, the Assessing Officer has observed that “prima-facie this amounts are deposits out of cash sales shown by the assessee”. Thus, the Assessing Officer also admits that the deposits in Bank accounts are on account of cash sales. The ld. Authorized Representative further submitted that, in the past, similar transactions of cash sales were made by the assessee and the same were accepted by the

Department. In earlier years, the Department never raised any doubt on cash sales of Kerosene to the retailers.

5. On the other hand, Shri Rajeev Kumar representing the Department vehemently defended the order of CIT(A) in confirming the addition. The Id. DR submitted that the assessee has indulged in adulteration of Petroleum products. During scrutiny assessment proceedings, inspite of several opportunities, assessee failed to show any document substantiating deposits of Rs.6.63 crores in the bank accounts from cash sales of Kerosene oil. Even in the proceedings before the First Appellate Authority, assessee could not explain cash deposits in the bank accounts with cogent evidences. The Id. Departmental Representative vehemently opposed furnishing of fresh documents before the Tribunal.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered documents filed by the assessee for the first time before the Tribunal at Sr.No.3,4,5,7, & 8 in Index of the Paper Book No.2. The Department has not disputed that books of the assessee and various other documents were seized for the purpose of investigation by various investigating agencies viz., CBI, SIT, State Sales Tax Department, etc. In the absence of books of account and various other documents, assessee could not substantiate/explain cash deposits in the bank accounts. Since books and documents of the assessee were seized by investigating agencies it was beyond the control as assessee to produce the same before Income Tax authorities. Taking into consideration entirety of facts, we are of the considered opinion that a

fair opportunity should be given to the assessee to explain cash deposits. Therefore, we deem it appropriate to restore this issue back to the file of Assessing Officer to consider the documents filed by the assessee before the Tribunal in support of his contentions explaining the cash deposits in the bank accounts and decide the issue denovo, in accordance with law and principles of natural justice. Accordingly, Ground of appeal No.1 is allowed for statistical purposes.

7. The Id. Authorized Representative has stated at the bar that he is not pressing Ground No.2. The Ground No.2 of the appeal is therefore, dismissed as not pressed.

8. The Ground No.3 is general in nature and hence, requires no adjudication.

9. In the result, the appeal of assessee is partly allowed for statistical purposes.

Order pronounced on Monday, the 31st day of December, 2018.

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st December, 2018
Satish

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)-II, Pune
4. आयकर आयुक्त / The CIT Central, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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

		Date	
1.	Draft dictated on	28-12-18	Sr.PS
2.	Draft placed before author	31-12-18	Sr.PS
3.	Draft proposed & placed before the second member		AM
4.	Draft discussed/approved by Second Member.		AM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		