

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.965/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

The Income Tax Officer,
Ward – 1, Jalna

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Shree Balaji Udyog,
C/o. M/s. Girish Trading Company,
New Mondha, Mama Chowk,
Jalna – 431213

PAN : AAJFP5934F

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं. / CO No.28/PUN/2018
निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Shree Balaji Udyog,
C/o. M/s. Girish Trading Company,
New Mondha, Mama Chowk,
Jalna – 431213

PAN : AAJFP5934F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 1, Jalna

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranik
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 12-07-2019

घोषणा की तारीख / Date of Pronouncement : 01-08-2019

आदेश / ORDER**PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-1, Aurangabad dated 08-02-2016 for the assessment year 2011-12. The assessee has filed Cross Objections in the appeal filed by the Revenue.

2. The brief facts of the case as emanating from the records are : The assessee is a partnership firm engaged in extraction of oil and manufacturing of Soya De Oil Cakes (DOC). The assessee filed its return of income for the impugned assessment year on 30-09-2011 declaring total income as 'Nil'. In scrutiny assessment proceedings, the Assessing Officer inter alia made additions on account of :

- i. Suppression of yield of soya crude oil Rs.46,95,397/-; and
- ii. Under valuation of closing stock of soya crude oil Rs.21,67,103/-.

Aggrieved against the assessment order dated 14-03-2014 passed u/s. 143(3) of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The First Appellate Authority deleted the aforesaid two additions. Against the findings of Commissioner of Income Tax (Appeals), the Revenue is in appeal before the Tribunal.

3. Shri S.N. Puranik appearing on behalf of the assessee vehemently defended the findings of Commissioner of Income Tax (Appeals) in respect of the aforesaid additions made by the Assessing Officer. The ld. AR submitted that the additions have been made merely on surmises and conjectures. The assessee has maintained proper books of account and

the same were subject to audit. The Assessing Officer without rejecting books and without any basis has estimated yield of crude oil @ 18% as against the yield of 17.06% disclosed by the assessee. The Assessing Officer before making addition has not made any enquiries and has estimated the yield merely on assumptions.

3.1 In respect of addition on account of valuation of closing stock the Id. AR submitted that the assessee is consistently valuing its closing stock at market value or cost, whichever is less. The assessee is regularly following FIFO method for maintaining its stock. The assessee's method of valuation of stock was accepted by the Department in the past. The assessment year under appeal is the first year when the Assessing Officer has disturbed the valuation of closing stock. The Assessing Officer has referred to the valuation of closing stock by one M/s. Gauri Agrotech Private Limited, Jalna while disturbing the valuation of closing stock. Without examining the method of valuation of closing stock, the quality of product, etc., the Assessing Officer has adopted the value of stock declared by the said company to the case of assessee.

4. Per contra, Shri N. Ashok Babu representing the Department vehemently defended the assessment order and prayed for reversing the findings of Commissioner of Income Tax (Appeals) on both the issues.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The Department is in appeal against the additions deleted by the Commissioner of Income Tax (Appeals). The Assessing Officer during assessment proceedings had inter alia made addition on account of suppressed yield of finished goods and under valuation of closing stock. A perusal of assessment order shows

that the Assessing Officer while making addition on both the aforesaid counts has not rejected the books of account of assessee. The Assessing Officer has not pointed any discrepancies in the regular books of account maintained by the assessee including purchase and sale register. No positive evidence was brought on record by the Assessing Officer to reject the annual yield of finished goods declared by the assessee. Neither the Assessing Officer made any investigation to come to a finding that the assessee has suppressed the yield of finished goods. The assessee has disclosed annual yield of 17.06%. The Assessing Officer merely on surmises and conjectures has adopted yield of 18%. No reasons whatsoever have been given by the Assessing Officer for adopting such rate. On the contrary the assessee had filed a comparative chart indicating yield of crude oil in the period relevant to the last three assessment years.

The same is reproduced here-in-below:

	AY 2009-10	AY 2010-11	AY 2011-12
Oil	16.48%	15.87%	17.06%
DOC	80.85%	80.92%	79.90%
Shortage	02.67%	03.21%	03.04%

The Assessing Officer has simply brushed aside the relevant information furnished by the assessee and has estimated yield on self assumptions.

6. It is a well settled law that when the Assessing Officer does not believe the books of assessee, the onus shifts on the Department to prove that the assessee has failed to report the correct income that is liable to be taxed. In the present case, the Assessing Officer failed to discharge the onus heavily cast upon him before making the addition. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in

deleting the addition of Rs.46,95,397/- on account of suppressed yield of finished goods. Accordingly, ground Nos. 1 to 3 of the appeal by Revenue are dismissed.

7. In ground No. 4 of the appeal, the Revenue has assailed the findings of Commissioner of Income Tax (Appeals) in deleting the addition of Rs.21,67,103/- made by Assessing Officer on account of under valuation of closing stock. The assessee has been consistently valuing its closing stock on market value or cost, whichever is less. The assessee is regularly maintaining closing stock on FIFO method. The method of valuation of closing stock regularly followed by the assessee was accepted by the Revenue in past. This is the first year when the Assessing Officer has raised question over the valuation of closing stock. A perusal of assessment order shows that the Assessing Officer at the time of making addition on account of under valuation of closing stock has referred to the rates of soya crude oil as on 31-03-2011 in the case of M/s. Gauri Agrotech Private Limited. No reason whatsoever has been given by the Assessing Officer for selecting the rates of M/s. Gauri Agrotech Private Limited. The Assessing Officer has not carried out any enquiry to come to a conclusion that the quality of oil extracted by the assessee and M/s. Gauri Agrotech Private Limited is same quality. The Assessing Officer has disturbed valuation of closing stock merely on self presumptions and whimsical figures without assigning any reasons. No valid reason has been assigned by the Assessing Officer for rejecting the valuation of closing stock made by assessee. The Commissioner of Income Tax (Appeals) has rightly deleted the addition and we see no reason to interfere with the well reasoned findings of the First Appellate Authority. Accordingly, ground No. 4 of the appeal by the Department is dismissed.

8. The ground Nos. 5, 6 and 7 of the appeal by Revenue are general in nature, hence, require no adjudication.

9. In the result, the appeal of Revenue is dismissed sans merit.

CO No. 28/PUN/2018

10. The assessee has filed Cross Objections by raising following grounds:

- “1. Honourable CIT(A) has not erred in deleting the additions made by Assessing officer, Assessing officer made additions alleging law yield of finished goods Rs.46,95,387/- and under Valuation of Respondent prays closing stock Rs.21,67,103/- to uphold CIT(A) order on these two deletions by CIT(A).
2. Honourable CIT(A) has erred in confirming the addition of Rs.10,54,539/- alleging Interest on Interest free advance to sister concern. Same may please be deleted.
3. Honourable CIT(A) has erred IS confirming the -addition of Rs.4,91,571/- for burden purchases. Same may please be deleted.
4. CIT(A) has erred is not granting just and equitable relief by deleting/reducing additions made by Assessing officer.
5. Respondent prays to add, alter, amend, and/or withdraw the Ground/ s as occasion may demand.”

11. The ground No. 1 of the Cross Objections is in support of findings of Commissioner of Income Tax (Appeals) with respect to deleting of addition on account of suppression of yield of finished goods and under valuation of closing stock. We have upheld the findings of Commissioner of Income Tax on both the counts, thus, the ground No. 1 of Cross Objections has become infructuous and hence, the same is dismissed as such.

12. In respect of ground Nos. 2 and 3 of Cross Objections, the Id. AR has fairly admitted that the assessee had raised these grounds in a separate appeal in ITA No. 789/PUN/2016 for the assessment year 2011-12. The said appeal of assessee was dismissed by the Tribunal vide order dated 18-04-2018. Since, the issues raised in ground Nos. 2 and 3 of Cross

Objections have already been adjudicated by the Co-ordinate Bench against the assessee, the same are dismissed.

13. The ground Nos. 4 and 5 of the Cross Objections are general in nature and hence, require no adjudication.

14. In the result, the Cross Objections filed by the assessee is dismissed.

15. To sum up, the appeal of Revenue, as well as, Cross Objections filed by the assessee are dismissed.

Order pronounced on Thursday, the 01st day of August, 2019.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st August, 2019
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)-1, Aurangabad
4. The Pr. Commissioner of Income Tax-1, Aurangabad
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