

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

**Before: Shri Rajpal Yadav, Judicial Member
and Shri Amarjit Singh, Accountant Member**

[Conducted through E-Court at Ahmedabad]

**ITA Nos. 72 & 73/Rjt/2013
Assessment Year 2004-05 & 2005-06**

Sureshbhai Makanshi Gadesha, Prop. Ganesh Soap and Chemical Industry, Veraval (Shapar) PAN: AGHPG5642F (Appellant)	Vs	The ITO, Ward-5(2), Rajkot (Respondent)
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Revenue by: Shri Praveen Verma, Sr. D.R.
Assessee by: None

Date of hearing : 26-08-2019
Date of pronouncement : 13-09-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

The instant appeals for assessment year 2004-05 and 2005-06 vide ITA Nos. 72 & 73/Rjt/2013 have been filed against the decision of CIT-IV, Rajkot on the identical issue in sustaining the addition of Rs. 2,50,000/- and Rs. 10 lacs respectively on earning commission importing quantity of CPO for lending his license. The assessment for both the years i.e. 2004-05 and 2005-06 was

completed u/s. 144 of the act. In spite of giving number of opportunities, the assessee not made any compliance to the letters and notices issued during the course of assessment proceedings. Since the issue in appeal in both the assessment years is on identical facts, therefore, for the sake of convenience, we are taking assessment year 2004-05 contested vide ITA No. 72/Rjt/2013 as lead case and its finding will also be applicable to ITA No. 73/Rjt/2013.

2. The fact in brief is that the assessee received information from DRI, Gandhidham that assessee had made an application before Central Excise Divison-2 Rajkot intending to import 1250.000 MT of CPO (IG) on the basis of their Central Excise Registration obtained by the assessee. Accordingly, the assessee had imported total 1245.64 MT of CPO (IG) during the period from March, 2004 to August, 2004 which is reproduced as under:-

<i>Vessel's name</i>	<i>Bill of entry no. & dt</i>	<i>Quantity MT</i>
<i>Novena</i>	<i>3357/05/03/04</i>	<i>250</i>
<i>Novena</i>	<i>5978/29/04/04</i>	<i>250</i>
<i>Shamrock moon</i>	<i>9078/24/06/04</i>	<i>245.46</i>
<i>Shamrock moon</i>	<i>10599/15/07/04</i>	<i>250</i>
<i>Pacific sound</i>	<i>12239/09/08/04</i>	<i>250</i>
<i>Total</i>		<i>1245.64</i>

The assessee had admitted in his statement recorded before the DRI that assessee under his proprietary concern Sri Ganesh Soap and Chemical Industries has given his license for importing the aforesaid consignment through Mr. Dinesh Pavari to other parties and he has received an amount of Rs. 2.5 lacs per import.

Consequently, the assessing officer has added an amount of Rs. 2.5 lacs to the total income of the assessee.

3. The assessee has filed appeal before the Id. CIT(A). During the course of appellate proceedings before the Id. CIT(A), the authorized representative of the assessee has suggested income of the assessee be estimated at 5% of the total receipt of Rs. 2.5 lacs and the assessing officer was not justified in estimating the income at Rs. 2.5 lacs without any material. The Id. CIT(A) has rejected the contention of the assessee and held that it is undisputed fact that it is evident from the admission of the material on record that assessee has imported 1245.64 MT (IG) during the period from Marcy, 2004 to August, 2004 for some other business houses for which he has received an amount of Rs. 2.50 lacs for each bill of lading for just lending his license. This undisputed fact could not be disproved by the assessee before the Id. CIT(A) , therefore, the appeal of the assessee was dismissed.

4. During the course of appellate proceedings before us, it is noticed that the instant appeal was filed by the assessee in 2013 and the case was adjourned for 15 times, most of the times, the adjournment was taken by the counsel of the assessee. Considering the facts that it was quite old case, the adjournment application of the assessee was not found to be appropriate after considering the old appeal and issue involved in this case, therefore, request for adjournment was rejected.

5. We have Id. departmental representative and perused the material on record carefully. It is noticed from the statement of the assessee given before the Directorate of Revenue and the material referred by the assessing officer mentioned in detail at page 4 to 6 of the assessment order and submission of the

assessee made before the Id. CIT(A) that it is clearly undisputed fact that assessee has received an amount of Rs. 2.50 lacs for which bill of lading for just lending his license. In spite of giving opportunities by the assessing officer and the Id. CIT(A) during the course of assessment and appellate proceedings, the assessee has failed to disprove the material fact that assessee has not disclosed the aforesaid amount earned from lending his license to some other business houses. During the course of appellate proceedings, the assessee has not given any evidence that he has incurred any expenditure for earning such income. Under such circumstances, we observed that it is not possible to earn such income without incurring any expenditure, therefore, we consider that it appropriate to allow 20% of such income which comes to Rs. 50,000/- as expenditure incurred for earning the aforesaid income. Accordingly, an amount of Rs. 2 lacs (Rs. 2,50,000/- - Rs. 50,000/-) is sustained as income earned from lending license. Similarly on identical fact and issue for assessment year 2005-06, 20% of 10 lacs which comes to Rs. 2 lacs is allowed as expenditure for earning the income in assessment year 2005-06. Therefore, an amount of Rs. 8 (10 lacs- 2 lacs) is sustained as income earned from lending his license to some other parties. Therefore, the appeal of the assessee is partly allowed.

6. In the combined result, both the appeals of the assessee are partly allowed.

Order pronounced in the open court on 13-09-2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 13/09/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालिम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot