

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 1994/Mum/2018

(निर्धारण वर्ष / Assessment Year 2013-14)

The Asst. Commissioner of Income Tax, Circle 17(2), Room No. 134A, Aayakar bhavan, M.K. Road, Mumbai-20	बनाम/ Vs.	Meghji Thoban & CO. 2 nd Floor, NTC House NM Marg, Ballard Estate, Mumbai-400 038
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAFFM8121M		

अपीलार्थी की ओर से / Appellant by	:	Shri Suman Kumar, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Fenil Bhatt & Ms. Sonalkshi Jhunjhunwala, ARs'

सुनवाई की तारीख / Date of hearing:	10.07.2019
घोषणा की तारीख / Date of pronouncement :	04.10.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal by assessee is arising out of order of the Commissioner of Income Tax (Appeals)]-57, Mumbai [in short CIT(A)], in Appeals No. Nil vide dated 30.01.2018. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle 17(2), Mumbai (in short ACIT/ ITO/ AO) for the A.Y. 2013-14 vide order dated 16.03.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) in deleting the addition made by Assessing Officer of amount received on sale of license accrued on the export made during the year under consideration amounting to Rs.57,83,006/-, whereas the Assessing Officer has added the entire sum of Rs.77,83,067/-. For this, Revenue has raised the following three grounds: -

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting an amount of Rs.77,83,067/- without appreciating the fact that the licenses have been accrued on the export during the year under consideration.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in appreciating the fact that the assessee firm is following mercantile system of accounting and therefore the income accrued during the year is chargeable to tax during the year.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in appreciating the fact the assessee has received an amount



of Rs. 20 lakhs out of the total claim of Rs.77,83,067/-."

3. Briefly stated, facts are that the assessee is engaged in the business of trading and export of cotton bales and earning income from 'Business and profession' and income from 'Other sources'. The Assessing Officer, during the course of assessment proceedings, on perusal of Form 3CD, noted that the assessee is following mercantile system of accounting and in the Profit & Loss Account has shown income from 'Premium on sale of license'. The Assessing Officer required the assessee to file details of licenses receivable invoice-wise and also show caused as to why the income from licenses should not be added to the returned income of the assessee on accrual basis as the assessee is following mercantile system of accounting. The assessee replied vide letter dated 11.03.2016 and filed complete details of invoice-wise license income accrued to it. It was claimed by the assessee that since inception of the firm, it is offering income of entitlement of licenses received under various export promotion schemes like DEPB scheme, DFIA schemes and SHIS scheme in the year when the entitlements are sold and this basis has always been accepted by the Department previously. The assessee filed complete details including the scheme of entitlement, but according to the Assessing Officer, since the assessee is following mercantile system of accounting, whatever income is booked in the books of account of export benefit recognition during the year, the same should have been added. The Assessing Officer

accordingly made addition of Rs.20 lacs on account of 'Duty credit' transfer letter dated 08.12.2014 (countersigned by Union Bank of India) being amount on account of license transfer under IEIS to M/s. Sun Exports Pvt. Ltd. Further, the Assessing Officer also added the sum of Rs.57,83,006/- which was recognized by the assessee in Form nos. 3CB and 3CD. The Assessing Officer has given those details in para 4.9 of the assessment order, which reads as under: -

"4.9 In the Notes forming part of the Accounts in Schedule-II to the Audit Report u/s. 44AB in Form No. 3CB & 3CD, dated 19.09.2013, for the year ended 31.03.2013, at point no. 5 under the head "Recognition of Export Benefit during the year" the assessee has stated that:

The Firm has made an application to 'DGFT' under Incremental Export Incentivisation Scheme on the basis of export made during the period 1st January, 2013 to 31st March, 2013 for Export Incentive. The Firm is eligible for incentive at the rate 2% on incremental growth on the basis of export during the period 1st January, 2012 to 31st March, 2012 amounting to Rs.77,83,067/-.

The partners of the firm have stated about trade view, that export of cotton falls under the validity/qualified for 2% incremental exports. However, some still believe that cotton is not qualified being the raw material export and not value added export.

Hence, in the opinion of partners, the said income should not be recognized in the books of accounts for the financial year 2012-13, since there is no certainty of revenue.

If the firm would have recognized the income during the period under audit, loss would have been lowered by Rs.77,83,067/-."

Aggrieved, assessee preferred appeal before the CIT(A).

4. The CIT(A) has confirmed the addition of Rs.20 lacs actually received by assessee on account of transfer of IEIS license to M/s. Sun Exports Pvt. Ltd. and the balance amount of Rs.57,83,006/- was deleted as assessee has not received any payment and the income has not accrued. For this, the CIT(A) followed the decision of Hon'ble Supreme Court in the case of CIT vs Excel Industries Ltd., 358 ITR 295 (SC) and observed in para 3.2 (viii) and (ix) as under: -

"viii) The stand of the respondents is that if the right to receive a sum by the assessee does not accrue till such time the claims are accepted by the Government, it would amount to giving a complete go-by the rule of law and would tantamount to alleging that the Government would not abide by its law, is not convincing at all. As far as the accrual of income is concerned, sections 4 and 5 of the Act governs. The law as explained by the Supreme Court in Excel Industries Ltd. (supra) is that until and unless the right to receive accrues in favour of the assessee no income can be said to have accrued. [Para 81]"

ix) Following the above guidelines I agree with the contention of the appellant that no income in respect of the license under the new scheme has accrued and so the same cannot be taxed. Moreover, the AO accepts in his asst. order that during the year the appellant has transferred 'IEIS' license for Rs. 20 lacs to M/s. Sun Export Pvt. Ltd. and the firm has confirmed that the appellant has not

received any further payment out of balance amount of Rs.57,83,006/-. Hence in the light of discussion above I am of the considered opinion that balance amount of payment which has not yet been received by the appellant during the year cannot be taxed and so addition made by the AO is hereby deleted. This ground of appeal is allowed."

5. We have heard the rival contentions and gone through the facts of the case. We noted that the assessee is engaged in the business of export of cotton bales and the assessee has received income to the extent of Rs.20 lacs from licenses sold to M/s. Sun Exports Pvt. Ltd., which has been added by the Assessing Officer and confirmed by the CIT(A), and assessee is not in appeal. The dispute is regarding the balance amount of Rs.57,83,006/-, being income from licenses. The assessee before us argued that the Assessing Officer has erred in considering the Incremental Export Incentivisation Scheme as the scheme of DEPB. We noted that the assessee has filed the following details :-

<i>Date</i>	<i>Particulars</i>
<i>28/12/2012</i>	<i>Government of India announced a new Scheme, Incremental Export Incentivization Scheme</i>
<i>January to March 2013</i>	<i>The Appellants made export of cotton</i>



17/05/2013	<i>The Application Form for making application under the Scheme was notified</i>
12/07/2013	<i>The Appellant made Application under the Scheme</i>
26/11/2013	<i>Deficiency letter issued by Ministry of Commerce and Industry to the Appellant, rejecting the claim of the Appellant</i>
13/10/2014	<i>Grant of part benefit under the Scheme by Authorization Forwarding Letter</i>
08/12/2014	<i>Transfer of License from the Appellant to buyer along with transfer letter</i>
	<i>Claim not yet allowed for the balance amount</i>

6. We noted that the scheme was announced on 28.12.2012 and as an exporter, assessee was entitled to 2% of benefit on incremental export for the period 01.01.2013 to 31.03.2013 over the export turnover for the similar period in the earlier years, i.e. 01.01.2012 to 31.03.2012. Under this scheme, assessee was eligible for benefit only in respect of incremental export to USA, Europe and Asian countries. Accordingly, under the scheme, assessee was entitled to duty credit and the same was transferable. The assessee made application under the scheme, which was notified on 17.05.2013, and accordingly, assessee made claim of Rs.77,83,067/- vide application dated 12.07.2013. Assessee's claim for duty credit claim under the scheme was initially rejected by the appropriate authority vide letter dated 12.07.2013, a copy of which is enclosed in assessee's paper book. Thereafter, a claim was made and finally assessee was granted benefit of only Rs.20 lacs vide letter dated 13.10.2014. The balance was not given in the year under

consideration, which means that the amount of Rs.57,83,067/- is balance. Before us, the assessee contended that this amount accrued and was received in October, 2014 and was also offered for tax in the return of income for the relevant assessment year 2015-16. It was contended that once it has been offered in assessment year 2015-16 and has actually accrued and received in that year, then addition cannot be sustained. We also find that this issue is covered by the decision of the Hon'ble Supreme Court in the case of Excel Industries Ltd. (supra), wherein the concept of taxability of entitlement of benefit under licenses as well as under duty entitlement passbook and corresponding liability on the Customs authority to pass on the benefit of duty-free imports to the assessee is elaborately discussed. The relevant extract from the order of Hon'ble Supreme Court in the case of Excel Industries Ltd. (supra) is as under: -

"20. It follows from these decisions that income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then can it be said that for the purposes of taxability that the income is not hypothetical and it has really accrued to the assessee.

21. In so far as the present case is concerned, even if it is assumed that the



assessee was entitled to the benefits under the advance licenses as well as under the duty entitlement pass book, there was no corresponding liability on the customs authorities to pass on the benefit of duty free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialize and its money value is therefore not the income of the assessee."

.....

"27. Applying the three tests laid down by various decisions of this Court, namely, whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having been made; and the probability or improbability of realization of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports), it is quite clear that in fact no real income but only hypothetical income

had accrued to the assessee and Section 28(iv) of the Act would be inapplicable to the facts and circumstances of the case. Essentially, the Assessing Officer is required to be pragmatic and not pedantic."

In view of the above, we are of the view that the CIT(A) has rightly allowed the claim of assessee and we confirm the same.

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

Order pronounced in the open court on 04.10.2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 04.10.2019.

SSL

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

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)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai



Sr. No.	Particulars	Date	Initials	Person concerned
1	Draft dictated on	30.09.19		Sr.PS
2	Draft placed before author	30.09.19		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	File sent to the Bench Clerk			Sr.PS
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order	Yes		