

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE-PRESIDENT AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 223/Bang/2013
Assessment Year : 2005-06

The Deputy Commissioner of Income Tax, Circle – 1, Davangere.	Vs.	Shri S. Shivashankarappa, #22/1-2, Chowkipet, Davangere. PAN: ASMPS0084N
APPELLANT		RESPONDENT

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ITA No. 245/Bang/2013
Assessment Year : 2005-06

Shri S. Shivashankarappa, #22/1-2, Chowkipet, Davangere. PAN: ASMPS0084N	Vs.	The Addl. Commissioner of Income Tax, Davangere Range, Davangere.
APPELLANT		RESPONDENT
Assessee by	:	Shri S. Parthasarathi, Advocate
Revenue by	:	Shri Sunil Kumar Agarwal, Addl. CIT (DR)
Date of hearing	:	03.09.2019
Date of Pronouncement	:	25.10.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

These are cross appeals filed by the assessee and revenue and these are directed against the order of Id. CIT(A), Hubli dated 20.12.2012 for Assessment Year 2005-06.

2. The grounds raised by the revenue in its appeal are as under.

“1. The order of the Commissioner of Income Tax (Appeals), Hubli, is opposed to law and not on the facts and circumstances of the case.

2. The order of the CIT(A) is perverse in so far as the reasons given for allowing the deduction u/s.80JJA as claimed by the assessee.

3. *The order of the Commissioner of Income Tax (Appeals), Hubli, is as it is not a speaking order.*

4. *The CIT(A) ought to have appreciated that facts of the instant case is different from that of Sri S S Bakkesh for the AYs 2004-05, 2005-06 & 2006-07 on which basis the relief is allowed.*

5. *The CIT(A) failed to appreciate the fact that no solid waste was sold to the assessee by the city corporation during the relevant previous year relevant to AY 2005-06.*

6. *The CIT(A) failed to appreciate the fact that the assessee had not maintained any register evidencing the entry of solid waste to his premises.*

7. *The CIT(A) failed to appreciate the fact that the assessee had not maintained any register evidencing the entry of solid waste to his premises.*

8. *The CIT(A) failed to appreciate the fact that the assessee had not maintained any stock register evidencing the utilization of solid waste in the manufacturing process of the assessee*

9. *The CIT(A) failed to appreciate that the view taken in the case of Mr. Bakkesh for AYs. 2004-05, 2005-06 and 2006-07 is not applicable for Income-tax assessments of the assessee*

10. *For these and other grounds that may be urged upon at the time of hearing.*

11. *The appellant craves leave to add, alter, amend any of grounds.”*

3. The grounds raised by the assessee in its appeal are as under.

“1. *BECAUSE, the Learned Commissioner of Income Tax (Appeals) erred in law as well as on facts while confirming / making the addition under the head Income From Other Sources amounting to Rs. 6,83,102/-*

2. *BECAUSE, the Learned Commissioner of Income Tax (Appeals) has erred in overlooking and in summarily rejecting the detailed Statement of Facts submitted along with the Memorandum of Appeal, various documents and evidences placed in paper book filed on various dates of hearing.*

3. *Additions under the head Income From Other Sources,*

a) *The leaned CIT (Appeals) has not justified in failing to consider the submissions of the appellant and the observations of the Learned Commissioner of Income Tax (Appeals) in the Order are perverse,*

arbitrary, baseless and misleading. Despite the fact the assessee has maintained detailed Books of Accounts and furnished all the information which as sought by the Learned Commissioner of Income Tax (Appeals). Despite that the Learned Commissioner of Income Tax (Appeals) has mentioned that "There are distortions regarding purchase, transportation and etc." and made the above addition (as stated in para 1) under the head Income from Other Sources amounting to Rs. 6,83,102/- The learned CIT (Appeals) has failed to appreciate the above and has made additions on an adhoc basis, and the same requires to be deleted in the facts and circumstances submitted by the assessee.

4. The assessee craves leave to add / alter any of the grounds of appeal before or at the time of hearing."

4. Brief facts are that it is noted by the AO in the assessment order that the assessee has shown production of bio compost totaling to 12495 MT. It is also noted by the AO that in the P&L account, the assessee has shown a sale of bio compost totaling to Rs. 4,56,83,102/-. The AO has also noted that the assessee has purchased 11292.8 MT of press mud from his sugar companies and 6476.61 MT of city solid waste from the City Corporation which is responsible for collection and disposal of the same. The AO has also noted that there is no other raw-material used by the assessee in the present year. The AO has further noted in the assessment order that in the course of assessment proceedings, information was collected from City Corporation, Davanagere about the disposal or sale of city solid waste. He has also noted that the assessee has also filed a letter issued by the President of City Corporation, Davanagere dated 02.07.2004 in the name of Sri S.S. Bakkesh to lift the city solid waste on the conditions mentioned in the said letter. This was one of the objections of the AO that the total sale of bio compost was shown by the assessee by way of packing in gunny bags but he has also noted that assessee has submitted closing stock details of gunny bags which shows that 53070 gunny bags have been used in the present year for sale of bio compost. The AO has also noted that capacity of one gunny bag is 50 Kg and the total quantity of bio compost sold in gunny bags is 2653.5 MT. The AO raised query on this aspect and reply was submitted on 21.12.2009 to the AO which is reproduced by the AO on page nos. 5 & 6 of the assessment

order in which it was stated by the assessee that the assessee is not only selling bio compost in P.P. bags but also in loose form. It was explained before the AO that the farmers have taken the delivery of the fertilizers in their tractors and got it weighed in the weigh bridge. In the said letter, it was also submitted by assessee before the AO that the assessee can prove that the entire quantity of fertilizers are not sold in bags. It was submitted that under these facts, the AO should accept the assessee's claim that assessee has sold 23097 M.T. of bio compost in the present year. The assessee also offered that the assessee can produce the farmers who have purchased the fertilizers from the assessee.

5. There was one more objection of the AO that the assessee is not able to establish the purchase of city solid waste. On this aspect, it was submitted by assessee before the AO in the same letter dated 21.12.2009 that the purchase of city solid waste is supported with documents and capable of verification and how the Commissioner of City Corporation has given this statement. It was also submitted before the AO that purchase of raw material is inclusive of cowdung, thippegobbara and source of organic wastes. It was also submitted before the AO that the purchases are not only within the limit of Davangere but also in the neighboring cities. After reproduction of this submission of assessee, the AO has concluded on page nos. 6 and 7 of the assessment order that the assessee is not producing quantity of bio compost as claimed by the assessee in the audited accounts for 11 reasons given by him on pages 6 and 7 of the assessment order. The reasons given by him include the letter of City Corporation, Davangere dated 11.12.2009, copy of this letter is enclosed by the AO as per annexure – 2 with the assessment order and in this letter, we find that the query no. 1 is regarding total quantity of city solid waste generated in the area coming under the control of Davangere city corporation during the Financial Years 2006-07 and 2007-08 and in reply to this, it was stated that 110 to 130 tons per day. From this letter, it is seen that the query is for Financial Years 2006-07 and 2007-08 and not for Financial Year 2004-05 which is relevant for present Assessment Year 2005-06 and hence, this basis adopted by the AO is not relevant in

coming to the conclusion that the assessee is not having city solid waste of the required quantity for production of bio compost in Financial Year 2004-05 relevant to Assessment Year 2005-06. On the basis of these conclusions, the AO held that the assessee has manufactured only 2653.5 M.T. which are sold in bags and the balance quantity shown in the account is not treated as bio compost amounting to Rs. 4,04,34,796/- relating to the sale of 20443.5 M.T. of bio compost is treated as income from undisclosed sources which has been shown as sale proceeds received from sale of bio compost. As a consequence, the AO restricted the deduction u/s. 80JJA to the sale proceeds of 2653.5 M.T. equal to Rs. 52,48,305/- and noting this that the assessee has shown net profit ratio of 64.42% and hence, the deduction u/s. 80JJA on the above sale proceeds on sale of Rs. 52,48,305/- comes to Rs. 33,80,992/- and completed the assessment. Being aggrieved, the assessee carried the matter in appeal before Id. CIT(A) who held that out of total claim regarding sale of bio compost, he is not accepting such claim to the extent of Rs. 6,83,102/- which was treated by him as income from other sources and balance amount was treated as income on account of sale of bio compost and allowed claim of the assessee for deduction u/s. 80JJA. Now the revenue is in appeal for relief allowed by Id. CIT(A) and assessee is in appeal for disallowance confirmed by Id. CIT(A).

6. In course of hearing, various arguments were made by both sides. The Id. DR of revenue has submitted written submissions which is reproduced hereinbelow.

“During the course of hearing on 28-8-19, the Bench asked counsel for assessee to submit working in support of his claim and adjourned the case for 3-9-19. The assessee has submitted following details :-

(i)	<i>Copy of the detailed statement of Bio Compost Production and Sales</i>
(ii)	<i>Copy of the Hire Charges paid to M/s Shamanur Sugars Ltd as recorded in the books of the respondent assessee in the FY 2004-05</i>
(iii)	<i>Copy of the receipt of Hire Charges from the respondent assessee as recorded in the books of M/s Shamanur Sugars Ltd</i>
(iv)	<i>Copy of the Journal Voucher issued by M/s Shamanur Sugars Ltd for the transport charges</i>

2. *The statement of Bio Compost Production and Sales are merely the presentation of accounts maintained by the assessee. These are merely presentation of figures which can be accepted only if they pass the test of scrutiny. The Assessing Officer has investigated the claims of the assessee and has passed a speaking order giving detailed reasoning for his conclusions.*

2.1 *The Assessing Officer has clearly established that the assessee is admittedly selling its finished goods of bio compost in gunny bags of 50 kg capacity only and that 53,070 bags only were used during the year for sales. On this basis, the Assessing Officer has primarily proved that the total sale of bio compost could not exceed 2653.5 metric tonnes as against the claim by the assessee of sale of 23,097 MT.*

2.2 *The Assessing Officer further went on to establish that the assessee, despite having been given multiple and sufficient opportunities, failed to substantiate with evidence his claim of purchase of raw material.*

2.3 *Thus, the Assessing Officer established not only that the assessee could not have sold more than 2653.5 MT of bio-compost but also that the assessee did not purchase raw material waste as claimed by him.*

2.4 *In the circumstances, the submissions made by the assessee now, which are nothing more than accounting results and which have already failed the test of detailed investigation during the course of 'scrutiny assessment despite sufficient opportunity given to the assessee, cannot be given any value.*

3. *The hire charges claimed to be paid to M/s Shamanur Sugars Ltd also does not establish the claim of the assessee in respect of the quantum of sales claimed. M/s Shamanur Sugars Ltd is a group concern controlled by the assessee's family. The assessee claims to have purchased 11292.8 MT of press mud from his sugar mills, which has not been contested by the Assessing Officer in the assessment order. However, the hire charges claimed to be paid to M/s Shamanur Sugars Ltd were never an issue in the assessment order. This was never claimed by the assessee at the time of assessment to be supporting evidence of sales. Even now, the assessee is not establishing any link between the hire charges and quantum of sales claimed by the assessee.*

4. *During the hearing before the Bench on 28-8-19, the counsel for the assessee pleaded that the book results of the assessee in respect of purchases / sales have been accepted for the earlier / other assessment years. In this regard, it is respectfully submitted that it is settled law that the principle of res judicata is not applicable in Income Tax proceedings.*

5. *During the hearing before the Bench on 28-8-19, the counsel for the*

assessee submitted on record 2 sheets of paper containing particulars of "Statement of Purchases & Sales of Bio-Compost of M/s S.S. Biogold". The data contains details of purchases, sales and direct expenses. From the same, the following data is extracted which exhibits prima facie discrepancy in the claims of the assessee:-

	Assessment Year		
	2003-04	2004-05	2005-06
<i>Purchases</i>	<i>3967373</i>	<i>1744186</i>	<i>1682573</i>
<i>Freight Inward</i>	<i>1269400</i>	<i>5593700</i>	<i>788</i>

5.1 Admittedly in the assessee's business, freight expenditure is the major component of expenditure- vis-à-vis waste raw material which is comparatively dirt cheap. The assessee has not explained- how in AY 2005-06, freight expenditure of Rs.788 justifies his claim of purchases of Rs.16,82,573.

6. In sum therefore, it is respectfully submitted that the submissions of the assessee before the Bench are of no help to the cause of the assessee. It is respectfully submitted before the Bench that the order of the Assessing Officer be confirmed."

7. On the final date of hearing i.e. on 03.09.2019, the Id. AR of assessee has filed a fresh paper book containing 30 pages and on pages 1 to 2 of this paper book, the assessee has given the quantitative details for various years i.e. Assessment Years 2004-05 to 2006-07. As per this quantitative details in the present year i.e. Assessment Year 2005-06, there was opening stock of finished goods-Bio Compost of 23,558.325 MTs and the sale in the present year is only 23,097.110 MTs and hence, the sale of bio compost claimed in the present year cannot be doubted on this basis that there is some doubt about the purchase of raw materials. Regarding this objection of the AO that the assessee's claim regarding sale of bio compost (taking in gunny bags) is not acceptable because of insufficient number of gunny bags available with the assessee, we find that this was explained by assessee before the AO that major portion of bio compost was sold without packing in gunny bags and it was explained that the delivery was taken by the farmers by way of loading in tractors and weighment was done at weigh bridge. In the same letter, the assessee also submitted that if required the assessee can produce the farmers in support of his contention and this is not the case of the AO that he

asked the assessee to produce the farmers and the assessee could not produce them or that the farmers were produced and examined and assessee's contentions were found to be incorrect and hence, on this basis that gunny bags were not available with the assessee in sufficient quantity, the assessee's claim regarding sale of bio compost in the present year to the extent of 23,097.110 MTs cannot be doubted. On page no. 2 of this paper book, the assessee has also submitted a chart as per which even if the purchase of raw material in the present year as claimed by the assessee to the extent of 17,769.466 MTS is not accepted in view of various objections of the AO then also, such purchase of raw material is of 3139.900 MTs only out of total purchase claimed by the assessee of 17,769.466 MTs and even if this small purchase of 3139.900 MTs doubted by the AO is not considered, then also the production of only 2207.978 MTs can be doubted after reducing the percentage of waste in production process of 29.68%. In view of these facts that as per the assessee also, the claim of sale of bio compost is only 23,097.110 MT in the present year as against opening stock of finished goods of 23,558.325 MTs, we are of the considered opinion that the assessee's claim regarding sale of 23,097.110 MTS of bio compost in the present year deserves to be accepted in full. We hold accordingly.

8. The submissions of Id. DR of revenue as reproduced above are duly considered and we find that in view of this fact that the enquiry of the AO that as per reply of City Corporation, Davanagere dated 11.12.2009, this query was regarding Financial Years 2006-07 and 2007-08 and not for Financial Year 2004-05 which is relevant for the present Assessment Year i.e. 2005-06 and hence, this letter of City Corporation, Davanagere is not relevant in the present year and we have also noted that the AO's objections regarding insufficient number of gunny bags is also not relevant in view of this assertion of assessee before the AO himself that major sale of bio compost was in loose condition of which delivery was taken by the farmers in their tractors and hence, this written submission of Id. DR of revenue is not helping the case of the revenue.

9. In the result, the appeal filed by the revenue is dismissed and the appeal of the assessee is allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V. VASUDEVAN)
Vice-President

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 25th October, 2019.
/MS/

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.