

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI ARUN KUMAR GARODIA, AM
AND
SHRI PAVAN KUMAR GADALE, JM**

ITA No. 270/Bang/2019
Assessment Year : 2015 – 16

M/s Pooja Petroleum, No. 10, Hulsoor Road, Near KSRTC Bus Stand, Basavakalyan - 585327 PAN: AAKFP8697E	vs.	ITO, Ward – 1, Bidar
APPELLANT		RESPONDENT
Assessee by	:	Shri Sreehari Kutsa, Advocate
Revenue by	:	Shri Sunil Kumar Agarwal, Addl. CIT DR
Date of Hearing	:	05.12.2019
Date of Pronouncement	:	03.01.2020

ORDER

PER SHRI A.K. GARODIA, AM:

This appeal is filed by the assessee and it is directed against the order of learned CIT (A), Kalaburagi dated 21.12.2018 for A. Y. 2015 – 16.

2. Although the assessee has raised 6 Grounds but the effective grievance of the assessee is only one that CIT (A) is not justified in approving the assessment order as per which he made an addition of Rs. 40,11,497/- including Rs. 36,09,844/- for alleged suppression of sales and Rs. 401,653/- for alleged unreported interest on RD Account with HDFC Bank.

3. Brief relevant facts are that it is noted by the AO in Para 11 of the assessment order that total sales of the assessee is Rs. 27,29,82,473 which included Rs. 27,01,44,612/- being cash sales, Rs. 921,623/- being Cheque Sales as per HDFC Bank Account and Rs. 19,16,238/- being Credit Card sales as per HDFC Bank Account. In the same para, he has noted that sales reported by the assessee in P & L Account is Rs. 26,93,72,629/- and he worked out the difference in these two figures at Rs. 36,09,844/- and made addition by alleging that much sale is suppressed by the assessee. In para 12 of the assessment order, the AO noted that the assessee has not offered as income Rs. 258,878/- being interest received from HDFC Bank on RD maturity and Rs. 142,775/- being sales Incentive Received from HPCL. Some other additions were also made by the AO but when the assessee carried the matter in appeal before CIT (A), those other additions were deleted by CIT (A) but the abovesaid additions were confirmed by him and now the assessee is in further appeal in relation to these additions confirmed by CIT (A) and those other additions made by the AO but deleted by CIT (A) are not relevant for this appeal.

4. Various oral arguments were made by the learned AR of the assessee and as directed by the bench, learned AR of the assessee has filed written submissions on 09.12.2019 in which, he has summarized his arguments. As per the same, it is explained that addition of Rs. 36,09,844/- made by the AO by alleging that this much sale is suppressed by the assessee, includes three items i.e. (a) Rs. 921,623/- being Cheque Sales as per HDFC Bank Account, (b) Rs. 19,16,238/- being Credit Card sales as per HDFC Bank Account and (c) Rs. 771,983/- being difference between cash

deposited in bank and sales reported in P & L Account. Regarding the first two items being a & b noted above, it is explained that Diesel sales ledger is available on pages 118 to 125 of Paper Book Two and Petrol Sales Ledger is available on pages 110 to 117 of Paper Book Two and Ledgers of the Debtors from whom cheques in question were received is available on pages 153 to 157 of paper Book Two and these two sales are duly accounted for in the books. Regarding the third item being the alleged difference of Rs. 771,983/- between cash deposited in bank and sales reported in P & L Account, it is submitted that this is a wrong conclusion of the AO. In the Synopsis 2 filed by the learned AR of the assessee, it is explained that there are cash withdrawals from bank on various dates of Rs. 72,06,530/- and date wise details of such cash withdrawals are given in the said Synopsis 2 and these are verifiable from Cash Book and Bank Statements available on record. It was submitted in the oral arguments that once these cash withdrawals are considered as a source of part of total cash deposits, there is no extra cash deposit in bank. It was submitted that the AO has proceeded on a wrong premise that cash deposit in bank cannot exceed cash sales without considering cash available out of various cash withdrawals and therefore, this objection of the AO is also without any merit.

5. In respect of the issue in respect of addition of Rs. 258,878/- made by the AO in respect of unreported interest on RD, it is submitted that this amount of addition made by the AO includes opening balance of Rs. 2,25,000/- and actual interest received in the present year is only Rs. 33,878/-. It is submitted that this fact can be verified from page 32 of the paper book which contains

capital accounts of both partners Mr. Ashok Patil & Mallikarjun Patil and in their individual accounts, an amount of Rs. 15,439/- is credited total of which adds up to Rs. 30,878/- which is by mistake credited to their capital accounts instead of P & L Account. It is also submitted that the ledger account of RD is available on pages 39 to 44 of the paper book and it has opening balance of Rs. 225,000/- and after contribution and repayment on maturity, interest is only Rs. 30,878/- and hence, this addition should be restricted to this amount. Regarding the remaining issue in respect of the addition of Rs. 142,775/- in respect of Incentive from HPCL, it is submitted in Synopsis 2 that the assessee is not contesting this issue. Learned DR of the revenue supported the orders of the lower authorities.

6. We have considered the rival submissions. We find that the dispute is about total addition of Rs. 40,11,497/- made by the AO and confirmed by CIT (A). This addition includes addition of Rs. 36,09,844/- made by the AO by alleging that this much sale is suppressed by the assessee. This amount of Rs. 36,09,844/- also has three parts. i.e. (a) Rs. 921,623/- being Credit Sales as per HDFC Bank Account, (b) Rs. 19,16,238/- being Credit Card sales as per HDFC Bank Account and (c) Rs. 771,983/- being difference between cash deposited in bank and sales reported in P & L Account. Regarding the first two items, we find that on page No. 153 of the paper book is the ledger account of one customer (1) Shri A S Mali having total Diesel sales of Rs. 405,112/- for which payments are received by cheques deposited in HDFC Bank. Ledger Account of Diesel sales is available on pages 118 to 125 of the paper book and we have verified on test cheque basis that all credit

sales debited to this party are credited to Diesel sales Account. During 02.04.2014 to 11.04.2014, there are ten instances of diesel sale of Rs. 20,000/- in each instance and all ten sales are credited to Diesel Sales Account. Thereafter on 25.09.2014, there is sale of Rs. 25,112/- as debited to this account of the party and this is also credited in Ledger Account of Diesel sales available on page 121 of the paper book. Thereafter, there are nine instances of sale of Rs. 20,000/- each to this party during 26.09.2014 to 04.10.2014 and as per pages 121 & 122 of the paper book, all are accounted for as sales. Hence, it is seen that all credit sales debited in ledger account of this party are duly credited to Diesel sales Account.

Similarly, the ledger account of another credit sale party is available on page 154 of the paper book and the name of the party is (2) APMC. To this party, there is total sale of Diesel of Rs. 111,493/- having total five instances on 01.04.2014, 01.07.2014, 01.08.2014, 01.10.2014 and 01.01.2015 and all are credited to Diesel sales Account on pages 118 to 124 of the paper book.

Similarly, the ledger account of another credit sale party is available on page 155 of the paper book and the name of the party is (3) Govt. Hospital. To this party, there is total sale of Diesel of Rs. 385,962/- having total seven instances on 01.04.2014, 01.06.2014, 01.07.2014, 01.08.2014, 01.10.2014, 01.01.2015, 01.02.2015 and 01.03.2015 and all are credited to Diesel sales Account on pages 118 to 125 of the paper book.

Similarly, the ledger account of another credit sale party is available on page 156 of the paper book and the name of the party

is (4) HPCL Data Card. To this party, there is total sale of Diesel of Rs. 151,775/- having only two instances on 26.06.2014 and both are credited to Diesel sales Account on pages 120 of the paper book.

Similarly, the ledger account of another credit sale party is available on page 157 of the paper book and the name of the party is (5) Police Dept. To this party, there is total sale of Diesel of Rs. 1,254/- having only one instance on 01.10.2014 and the same is credited to Diesel sales Account on pages 122 of the paper book. In this manner, it is seen that there are total five credit sale parties with credit sales of Rs. 10,55,596/- as against Rs. 921,623/- added by the AO and total credit sales is duly accounted for.

7. Regarding Credit/Debit Card Sales of Rs. 19,16,238/-, he explained the method of accounting. He submitted that such sales are accounted for as cash sales and the payment received by such credit card is debited to HDFC Bank Account by credit in cash book. In this regard, he drawn our attention to page 126 to 152 of the paper book and pointed out that first such debit to bank is of Rs. 4,500/- on 04.04.2014 on page 126 of the paper book and the corresponding cash book entry is on page 2 of the paper book where total cash sale of diesel and petrol is accounted for as cash sales and Rs. 4,500/- is debited to HDFC Bank by credit to Cash Book. He submitted that all such sales against Debit/Credit Cards are accounted for in similar manner and we verified this contention on test check basis and found the same correct and this system of accounting card sales is acceptable and it cannot be said that card sales is not accounted for.

8. As per above two paras, we have seen that credit sales and card sales are accounted for and hence, now we have to decide the third aspect i.e. excess of cash deposit in bank over and above cash sales. Since, the sales reported by the assessee is inclusive of credit sales and card sales, such excess of cash deposit in bank over and above cash sales will get increased by the amount of credit sales and card sales. But no addition on this account is called for because for cash deposit in bank, there is one other source i.e. cash withdrawal from bank, which is totally ignored by the AO. Such cash withdrawal is of Rs. 72,06,530/- and date wise details of such cash withdrawals are given in the said Synopsis 2 filed by the AR of the assessee and the same is supported by cash book and bank statements. Hence, the same has to be considered and once we consider the same as well as cash expenses and other cash payments which all are accounted for in cash book, no addition is called for on that account and this allegation of the AO that there is under reporting of sales only on this basis that cash deposit in bank is in excess of cash sales is without any basis and hence not acceptable because such excess cash deposit is explained by showing cash withdrawal from bank of Rs. 72,06,530/-. Hence, this addition on the basis of alleged under reporting of sales is deleted.

9. In respect of the second issue i.e. about interest on RD, in view of the facts discussed above, we uphold the addition of Rs. 30,878/- and delete the balance addition because addition can be made only in respect of interest earned on RD and not including opening balance Rs. 2.25 Lacs. The part addition of Rs. 2.25 Lacs being opening balance is deleted.

10. The third issue about addition of Rs. 142,775/- being sales Incentive Received from HPCL is not pressed by the learned AR of the assessee and accordingly, this issue is decided against the assessee.

11. In the result, the appeal of the assessee is partly allowed.

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

Sd/-

(PAVAN KUMAR GADALE)

Judicial Member

Bangalore,

Dated, the 03rd January, 2020.

/NS/_{AKG}

Copy to:

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

Sd/-

(ARUN KUMAR GARODIA)

Accountant Member

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.