

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

ITA No.1152/Hyd/2018		
Assessment Year:2014-15		
Kamalnarayan Kishanlal Mandhani, Nirmal District, Telangana. PAN: AABHM 4805 L	Vs.	Income Tax Officer, Ward-I, Nirmal.
(Appellant)		(Respondent)
Assessee by:	Shri Tej Prakash Toshniwal	
Revenue by:	Smt. N. Swapna, DR	
Date of hearing:	31/08/2020	
Date of pronouncement:	01/09/2020	

ORDER

PER A. MOHAN ALANKAMONY, A.M:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-5, Hyderabad in appeal No. 0475/2016-17/CIT(A)-5, dated 9/3/2018 passed U/s. 143(3) r.w.s 250(6) of the Act for the A.Y.: 2014-15.

2. Assessee has raised the following grounds: -

- "1. *That the confirmation of Income Tax assessment order passed by the Income Tax officer, Nirmal by the CIT (A)-5, Hyderabad for the assessment year 2014-15 is quite contrary to law, against the weight of evidence and probabilities of the case.*

2. *That the opinion of the tax consultant at Nanded that the liability under the VAT and CST Act do not arise in respect of sale of cotton as it falls under 17 of the Schedule A to the Maharashtra VAT, 2002, due to which the petitioner although collected from the buyers, but did not pay the sales tax. Mere collection of sales tax in the sale invoice do not amount to fastening of tax liability. In case, the liability of sales tax does not arise, the petitioner can refund back the sales tax to the buyers. In case the liability of sales tax arises, the petitioner cannot subsequently asked the buyer to pay the sales tax against the sale of cotton to them. No buyer will pay sales tax subsequent to sale of goods.*
3. *The petitioner filed the return of income tax first and later submitted the sales tax returns along with the payment of sales tax. Hence, the observation of the lower authorities is in correct.*
4. *That the addition of difference deduction of TDS of Rs. 19,606/- remitted by M/s. Sukuma Exports Ltd under 26AS is unwarranted and bad in law, since the petitioner did not receive the interest as alleged by M/s. Sukma Exports Ltd.*
5. *That the restriction of 5% disallowance of expenditure is unwarranted, without identifying the defect in the voucher is arbitrary. Self prepared voucher is not a crime. Hence addition is unwarranted.*
6. *That the petitioner may be permitted to add alter or amend the grounds of appeal.”*

3. At the outset, the ld. AR stated before us that he has submitted additional evidence before the Tribunal and therefore, the appeal of the assessee may be remitted back to the file of the Ld. AO for fresh consideration. The Ld. DR strongly opposed to the submission of the Ld. AR and requested for deciding the case on merits.

4. After hearing both sides, I am of the considered view that the matter is required to be remitted back to the file of the Ld. AO for fresh consideration, because the fresh evidence filed by the assessee has to be examined by the Ld. AO. I also find that the assessee has failed to appear before the Ld. CIT (A) and therefore he was forced to pass ex-

parte order. This attitude of the assessee before the Revenue is not appreciable. However, in the interest of justice, I hereby remit the matter back to the file of the Ld. AO for de novo consideration. I also hereby direct the assessee and its Counsel to cooperate before the Ld. Revenue Authorities failing which they shall be at liberty to pass appropriate order in accordance with merit and law based on the materials on record.

5. In the result, appeal of the assessee is allowed for statistical purposes as indicated herein above.

Pronounced in the open Court on the First September, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: First September, 2020.

OKK

Copy to:-

- 1) Kamalnarayan Kishanlal Mandhani, C/o. Tejprakash Toshniwal, Advocate, 4-1-6/B/4, Ramkote, Hyderabad-500095.
- 2) Income Tax Officer, Ward-(1), Nirmal.
- 3) The CIT(A)-5, Hyderabad
- 4) The Pr. CIT-5, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File