

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

I.T.A. No. 562/HYD/2016

Assessment Year: 2011-12

M/s.Kapitan Distillery, HYDERABAD [PAN: AAEFK5917A]	Vs	Addl. Commissioner of Income Tax, Range-11, HYDERABAD
(Appellant)		(Respondent)

For Assessee : Shri A. Srinivas, AR
For Revenue : Shri Rajat Mitra, DR

Date of Hearing : 16-11-2020
Date of Pronouncement : 18-11-2020

ORDER

PER D.S. SUNDER SINGH, A.M. :

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax(Appeals)-5, Hyderabad, for the AY.2011-12.

2. All the Grounds of Appeal are related to the addition of Rs.16,56,225/- as short admission of bottling charges.

3. During the assessment proceedings, the AO found that the firm has admitted the sum of Rs.1,52,27,635/- towards bottling charges, whereas the actual bottling charges said to be received from M/s. Sovereign Distilleries Pvt. Ltd., (SDL) is to the tune of Rs.1,68,83,860/- as per Form 26AS resulting in

short admission of Rs.16,56,225/-. During the assessment proceedings, assessee explained that the short admission was due to reduction in contracted bottling of SDL. As against the contracted bottling of 23,30,000 Proof Liters (PLs) equivalent to about 3,59,568 cases, the SDL negotiated and reduced the bottling to 21,30,000 PLs by surrendering of 2 Lakhs PLs to Kapitan i.e. the assessee. This fact is supported by the permission granted by the Commissioner of Prohibition & Excise vide his 04/03/2011. Thus, the assessee submitted that the contractor, SDL transacted only 21,30,000 PLs consisting of 328706 cases and the corresponding bottling charges worked out to Rs.1,52,27,635/- which was received by the assessee. The assessee further submitted that the SDL neither paid the balance amount nor transacted the remaining 2 Lakhs PLs, therefore, argued that the assessee has rightly admitted the bottling charges of Rs.1,52,27,635/-.The AO not being convinced with the explanation offered by the assessee treated the difference as income and added back to the returned income.

4. Against the order of the AO, the assessee went on appeal before the CIT(A) and reiterated the submissions made before the AO. The CIT(A) also gone with Form No.26AS and confirmed the addition made by the AO. Hence, the assessee is in appeal before the Tribunal.

5. During the appeal hearing, Ld.AR submitted that the assessee is in the manufacture of bottling of IMFL. For the AY.2011-12, assessee had the licensed capacity of 62,20,800

PLs which is equivalent to 6.48 per case as per IMFL, it works out to 9,60,000 cases and out of which permission was granted by the Commissioner of Prohibition & Excise, A.P., to enter into tie up agreement with SDL for bottling of IMFL to the tune of Rs.23,30,000 PLs equivalent to 3,59,568 cases. As SDL could not bottle as per the tie up agreement, it had requested Commissioner of Prohibition & Excise, for surrender of allotted capacity to the extent of 2 Lakhs PLs to the assessee and the same was approved by the commissioner vide order dated 04/03/2011. Accordingly, the SDL was debited with 328706 cases of IMFL and received the sum of Rs. 1,52,27,635/- The assessee submitted the information with regard to licensed capacity, and bottling charges, PLs debited to SDL as under:

S.No.		
1.	Licensed capacity permitted	21,30,000 PLs
2.	Equivalent No of cases	328706
3.	Bottling charge/case	Rs.42/-
4.	Total bottling charges	Rs.1,38,05,652/-
5.	Service tax thereon @10.30%	Rs.14,21,982
	Bottling charges debited to SDL	1,52,27,635

5.1. The assessee further submitted that sum of Rs.1,68,83,360/- was never received by the assessee and the same was neither backed by the factual nor based on production, hence argued that there is no case for making the addition and accordingly, requested to delete the addition and allow the appeal.

6. On the other hand, Ld. DR argued that as per Form No.26AS, the assessee had received the sum of Rs.1,68,83,360/-. Though SDL was stated to have permitted to surrender 2 Lakhs litres to the assessee, the same was subject to the conditions mentioned in the order dt.04-03-2011 of Commissioner of Prohibition & Excise, as per which there must be an agreement for rescheduling of the agreed quantity between the assessee and the other parties. Assessee never produced the agreement nor supported his contention of non-receipt of the amounts as per Form 26AS. Thus, argued that there is no reason to interfere with the order of the Ld.CIT(A), hence requested to upheld the order of Ld.CIT(A).

7. We have heard both the parties through video conference and gone through the material placed on record. In the instant case as per Form No.26AS, the assessee was paid a sum of Rs.1,68,83,860/-, whereas the assessee has taken the amount of Rs.1,52,27,635/- in the books and there was a difference of Rs.16,56,225/-, which was short admitted by the assessee and the same was brought to tax by the AO. The contention of the assessee is that SDL has not manufactured the quantity of 23,30,000 PLs as per agreement entered by the assessee and the SDL and it had surrendered 2 Lakhs PLs and bottled only 328706 cases consisting of 2130000 Pls, for which the assessee rightly debited 328706 cases and accounted the sum of Rs.1,52,27,635/- on account of bottling charges as per the order of Commissioner of Prohibition & Excise, dt.04-03-2011. We find that the AO has not verified the actual amount received by the assessee whether it was Rs.1,68,83,860/- or

Rs.1,52,27,635/- from the books of accounts or the Bank account. No finding was given in the assessment order with regard to actual receipts as per the Books of account and the Bank account. When there is difference in Form No.26AS and the books of account, the AO ought to have verified the bank account and the books of account and given a finding with regard to actual amount received by the assessee before making the addition. This exercise was not done by the AO. Similarly, the Commissioner of Prohibition & Excise, permitted the distilleries to surrender 2 Lakhs PLs subject to certain terms and conditions. As per the order, there must be an agreement for re-scheduling of the agreed quantity by both the parties as required under Rule 11 of A.P. Distilleries Rules. Such agreement was not placed before the AO, supporting the surrender of permitted capacity. All the above information is required to determine the actual amount received by the assessee or the actual number of cases bottled by the SDL. Therefore, we are of the considered opinion that the issue needs to be verified at the end of the AO and obtain the details by making necessary enquiries from SDL/ Commissioner of Prohibition & Excise/ assessee with regard to utilized capacity and surrender of PLs. It is also to be verified from the books of account and the bank account with regard to actual payments received by the assessee during the year under consideration and reconcile the same with Form 26AS. Hence, we set aside the order of Ld. CIT(A) and remit the matter to back to the file of AO to redo the assessment denovo after making the detailed enquiries. Of course, the AO need to give sufficient and reasonable opportunity to the assessee.

8. In the result, the appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 18th November,2020

Sd/-
(P.MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(D.S.SUNDER SINGH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 18-11-2020

TNMM

Copy to :

1.M/s.Kapitan Distillery, C/o.VASG Associates, Chartered Accountants, Pent House, Kubera Towers, Naraynguda, Hyderabad.

2.The Addl.Commissioner of Income Tax, Range-11, Hyderabad.

3. CIT(Appeals)-5, Hyderabad.

4. Pr.CIT-5, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.