

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 6917/Del/2017 : Asstt. Year : 2013-14

ITA No. 6918/Del/2017 : Asstt. Year : 2014-15

Kingsway Service Station, 47, Mall Road, Opp. International Student School, New Delhi-110054	Vs	ACIT, Circle-35(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAPK4613K		

Assessee by : Sh. V. K. Aggarwal, AR

Revenue by : Ms. Mrinalini Sapra, Sr. DR

Date of Hearing: 23.08.2021

Date of Pronouncement: 25.08.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of Id. CIT(A)-12, New Delhi dated 10.08.2017 and 15.09.2017.

2. Since, the issues involved in both the appeals are identical which were heard together.

3. In ITA No. 6917/Del/2017, following grounds have been raised by the assessee:

"1. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the assessment order

which was bad in law being against the provisions of the IT Ac, 1961 and principles of natural justice.

2. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the disallowance of Rs.88,856/- being 1/10th of the vehicle expenses including depreciation.

3. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the disallowance of Rs.11,792/- being 1/10th of the telephone expenses.

4. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the disallowance of Rs.7,90,894/- on account of proportionate interest.

5. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the addition of Rs.1,37,00,132/- on account of alleged unreported sales.”

4. Brief facts of the case are that the assessee is engaged in the business of Petrol Pump of Indian Oil Corporation and filed return of income on 27.09.2013 declaring total income at Rs.15,47,950/-.

Telephone & Vehicle Expenses:

5. The AO disallowed 1/10th of the telephone & vehicle expenses claimed by the assessee on ad-hoc basis on account of alleged personal expenditure. The similar disallowances made by the AO have been deleted by the Id. CIT (A) during the earlier years. We also find that the AO has not pinpointed any expenses that are personal in nature. Hence, the disallowances made without any basis is hereby directed to be deleted.

Proportionate Interest:

6. During the assessment proceedings, the AO found that the assessee had given interest free advances to various parties as under:

S. No.	Name	Amount as on 31.03.2013
1.	Arun Kumar (HUF)	Rs.10,000/-
2.	Bharat Dhawan	Rs.19,00,000/-
3.	Kingsway Enterprises Pvt. Ltd.	Rs.12,852/-
4.	Ravi Investment Pvt. Ltd.	Rs.11,000/-
5.	Siddhartha Samnath	Rs.49,06,749/-
6.	Viay Dhawan	Rs.18,00,000/-
7.	Mr. M. P. Gulati	Rs.11,45,382/-
	Total	Rs.97,85,983/-

7. The AO disallowed interest paid of Rs.7,90,894/- on the grounds that the assessee failed to charge interest from the loan party whereas interest paid has been debited to P&L account.

8. Before us, it was submitted that the assessee has own funds in the form of capital to the tune of Rs.1,34,04,800/- which is more than the interest free loan given of Rs.97,85,900/-, thus, undisputedly proving that sufficient interest free funds were available with the assessee which leads to the presumption that the investment were made out of own fund but not from interest bearing funds. Hence, no disallowances on account of interest called for.

Unreported Sales:

9. The Assessing Officer made the addition of Rs. 1,37,00,132/- on account of unreported sales. The AO held that from the audited books of account, it is deciphered that the handling loss of Unleaded Petrol as shown in closing stock was 2,81,892.38 liters which comes to be 6.3% of the total value sold by the assessee. The AO held that according to the Essential Commodities Act, the upper limit of allowable handling loss is 0.75% only. Therefore, the AO disallowed the differential quantity on account of unreported sales. The Ld. CIT(A) confirmed the same on the ground that the assessee has not brought any new facts on record to justify the higher handling loss.

10. During the course of hearing before us, the Id. AR reiterated the argument taken up before the AO as well as Ld. CIT(A). The assessee filed a chart showing details of stock. From perusal of the chart it is found that there are two types of sales in ULP, i.e., normal sales and premix sales. The quantity sold in normal sale is 44,69,534.68 ltrs. and quantity sold in premix sales is 2,49,685.98 ltrs and the handling loss is just 32206.31 ltrs. The same fact is also evident from the trading account itself wherein premix sales of 2,49,685.98 ltrs (Rs. 1,50,59,240.37 + Rs. 3,63,373.90) is included in the total sales of Rs. 41,80,46,015.62. A chart showing quantity wise trading account is also submitted.

11. It was argued that the handling loss of the assessee during the year was just 0.68% [$32206.31 / (4469534.68 + 249685.98) * 100$], i.e., within the prescribed upper limit of

0.75% and the amount appearing in tax audit report is just a clerical mistake which is admitted by the auditor himself. Hence, in the interest of justice, we deem it proper to remand the matter to the file of AO to reconcile the closing stock with that of the opening stock of the next year and allow the handling losses on re-computation and reconciliation after affording an opportunity to the assessee.

12. The appeal of the assessee on this ground is allowed for statistical purposes.

13. In the result, both the appeals of the assessee are allowed for statistical purpose.

Order Pronounced in the Open Court on 25/08/2021.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 25/08/2021

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR