

**IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE
SINGLE MEMBER CASE**

SHRI S.S. GODARA, JUDICIAL MEMBER

ITA No. 03/PUN/2021: Assessment Year : 2012-13

Suyojit Biotech
F-1/2 Suyojit Heights,
Opp. Rajiv Gandhi Bhavan,
Nashik 422 002
PAN: ABGFS 7627 G

:Appellant

Vs.

The Tax Recovery Officer, Satara

: Respondent

Appellant by : Shri Pramod S. Shingte

Respondent by : Shri M.G. Jasnani

Date of Hearing : 29-07-2022

Date of Pronouncement : 11-08-2022

ORDER

This assessee's appeal for A.Y. 2012-13 arises against the CIT(A)-12, Pune's order dated 31-07-2020 passed in case No. ITBA/APL/S/250/2020-21/1027622049(1) Involving proceedings u/s 143(3) of the Income-tax Act, 1961, in short "the Act".

Heard both the parties. Case file perused.

2. The assessee raises following substantial grounds in the instant appeal.

"1. On the facts and in the circumstances of the case and as per law, the CIT(A)-12, Pune, is not justified in confirming the reworking of the deduction claimed u/s 80JJA as well as u/s 80-IB(11) of the Act.

2. On the facts of the acts, in the circumstances of the case and as per law, the CIT(A)-12, Pune is not justified in upholding addition by the AO of the transfer of untreated compost from Mushroom Division to Fertilizer Division @ Rs. 1.25 per kg. as against claimed by the appellant @ Rs. 0.20 per k.g. resulting into addition of Rs. 17,35,233/-. The CIT(A)-12, Pune is further not justified in basing his decision on the aspects not connected with the issue involved."

3. I next note that the CIT(A) has affirmed the assessment findings increasing the purchase price of the untreated compost from Rs. 0.20 paise per kg. to Rs. 1.25 per k.g. during the course of assessment framed on 30-3-2015 as follows:

2.2 I have considered the materials placed before me. Brief facts are that the appellant was running a business of cultivation of mushroom and manufacturing of bio-fertilizers. The appellant ran two separate divisions namely mushroom division and bio-fertilizer division. The appellant claimed deduction u/s 80IB(11A) of the Act of

ITA 03/PUN/2022
 Suyojit Biotech
 A.Y. 2012-13

Rs. 1,61,329/- on income derived from mushroom division and deduction *uls* 80JJA of the Act of Rs. 40,47,201/- on the income derived from bio-fertilizer division. During the assessment proceeding, the AO noticed that waste compost of mushroom division was transferred to bio-fertilizer division at Rs.0.201- per kg. The appellant was allowed deduction of entire profit of the bio-fertilizer division *uls* 80JJA for the year under consideration. The AO noted that no major expenses was booked by the bio-fertilizer division except purchase of compost from mushroom division at Rs. 0.201- per kg, which was sold to around Rs. 1.501- per kg to third party which in turn sold the same to Sun Infrastructure Pvt Ltd (another group company) at Rs. 3/- per kg. The AO considering the market value of compost adopted rate of Rs. 1.251- per kg which reduced the profit of fertilizer division and increasing the profit the mushroom division. This re-working resulted reworking of deduction *uls* 80IB(11A) to Rs. 7,39,743/- and deduction *uls* 80JJA to Rs. 17,33,547/-. During the appellate proceedings, the main contention of the appellant was that compost which was delivered by the mushroom division was used upto 4 times by the mushroom division itself. Therefore, the compost is of very little or less value. The appellant claimed that the market value of treated compost is Rs. 1.50 to Rs. 3 per kg and the compost under consideration is untreated one.

2.3 I have considered contentions raised by the appellant. The main contention was the market value of the compost transferred by the mushroom division to the fertilizer division. The assessee claimed the market values of treated compost ranges from Rs. 1.50 to Rs. 3 per kg though no document was produced to support the same. Therefore, considering the appellant's own admission the market value of untreated compost could not be as low as Rs. 0.20 as claimed. What is surprising to note here the appellant in the fertilizer division was able to generate a sale of Rs. 48,23,658/- and the direct expenses debited to effect such sale was only 5,35,5041- and fertilizer expenses were separately shown at Rs. 2,78,253/-, resulting in a profit of Rs. 40,47,201/- which was claimed as deduction *uls* 80JJA. In fact, the GP ratio of mushroom division is 48.7% while for the fertilizer division, it is 89.67%, as most of the direct expenses like wages, power & fuel etc. are claimed in mushroom division only. Further, the NP of the mushroom division on sales of Rs. 2,34,92,1411- is only Rs. 6,45,316/- with NP ratio of 2.7% while on the sale of Rs. 48,23,658/- in fertilizer division, Net Profit of Rs. 40,47,2011- is shown giving the NP ratio of 83.91 % . Such stark difference in ratio is because all expenses have been claimed in mushroom division only except for fertilizer expenses of Rs. 2,78,2531- claimed in fertilizer division. The appellant claimed all the expenses under mushroom division resulting in low net taxable profit. The justification given by the appellant of employing labour and transport to earn this profit lacks merit since out of the total direct expenses of Rs. 5,35,504/- major expenses of Rs. 4,40,696/- was on account of compost purchase and labour employed was only Rs. 42,308/-. Therefore, it is apparent that the appellant is suppressing direct and indirect cost of the fertilizer division to inflate profit to get the benefit of section 80JJA of the Act. Further the appellant failed to produce any supporting evidence in respect of the cost of compost vis-a-vis market price and subsequent sale price. Therefore, considering all these facts in totality, the AO was justified in adopting the transfer rate of compost at Rs. 1.25/- per kg which is reasonable since ever after this disturbance, the NP ratio of fertilizer division is 35.9% compared to 12.6% worked out for the mushroom division. Therefore, the AO had been very reasonable to the assessee even while re-working the profits. Thus, the reworking of profit of mushroom division and bio-fertilizer division done by the AO needs no interference and subsequent reworking of deduction claimed *uls* 80IB(11A) and 80JJA by the AO is upheld and ground raised by the appellant is thus dismissed. “

4. I have given my thoughtful consideration to the vehement rival contentions against and in support of correctness of impugned addition. Suffice to say, it is clear from perusal of the CIT(A)'s foregoing detailed discussion that the Assessing Officer had increased the purchase price of the compost derived from Mushroom division from 0.20 paise per kg. to Rs. 1.25 per kg. There is hardly any dispute as the same is not based on any market price comparison or other supporting material which could indicate that the assessee had engaged itself in any kind of under-invoicing. It is made clear for the sake of clarity that I sought to clarify as to whether there is any other market comparable in the relevant segment or not and only "negative" reply has come from the Revenue's side. Faced with this situation, I conclude that both learned lower authorities have erred in law and on facts in disturbing the impugned purchase price of untreated compost from 0.20 per kg. to Rs. 1.25 per kg. The same is directed to be deleted.

5. Delay of 79 days in filing of the instant appeal instituted on 04-01-2021 is condoned since falling in Covid 19 Pandemic outbreak period.

6. This assessee's appeal is allowed.

Order pronounced in the open Court on this 11th August 2022.

(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune; Dated, this 11th day of August 2022
 Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT, Central, Nagpur
4. The CIT(A)-12, Pune
5. The SMC Bench, ITAT Pune.
6. Guard File

BY ORDER,

Sr. Private Secretary
 ITAT, Pune.

		Date	
1	Draft dictated on	02-08-2022	Sr.PS
2	Draft placed before author	03-08-2022	Sr.PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on	11-08-2022	Sr.PS/PS
7	Date of uploading of order	11-08-2022	Sr.PS/PS
8	File sent to Bench Clerk	<i>11-08-2022</i>	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		