

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1644/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)

&

आयकर अपील सं./ ITA No.1645/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

Nayagi Fire Works Factory 4/70, Thayilpatti – 626 128, Sivakasi Via, Virudhunagar District.	बनाम/ Vs.	ACIT Virudhunagar Circle, Virudhunagar.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAEFN-1168-L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri D. Anand (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT) –Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	29-08-2022
घोषणा की तारीख / Date of Pronouncement	:	07-09-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AYs) 2011-12 & 2012-13 arises out of the separate orders of learned first Appellate Authority. It is admitted position that facts as well as issues are pari-materia the same in both the years and adjudication in any one year shall have equal application for the other year also. The appeal for AY 2011-12 arises out of the order of learned Commissioner

of Income Tax (Appeals)-3, Madurai [CIT(A)] dated 12.04.2017 in the matter of an assessment framed by Ld. AO u/s 143(3) r.w.s. 147 on 31.03.2016. Though the assessee has raised multiple grounds, however, the grounds urged before us is merit of quantum addition of suppression of sales and disallowance of interest expenditure. No other ground has been urged before us and therefore, no adjudication has been rendered against the legal & remaining grounds.

2. The Ld. AR assailed the confirmation of addition of sales by lower authorities based on extrapolation. The Ld. AR also pleaded for reasonable estimation of profit on alleged suppression of sales. The Ld. Sr. DR, on the other hand, controverted the arguments of Ld. AR and submitted that the additions are evidenced by documents found during the survey operations. Having heard rival submissions, our adjudication would be as under.

Assessment Proceedings

3.1 The assessment was so framed since the assessee group was subjected to survey operations on 13.11.2014 wherein facts of out-of-books sale of crackers came to light. The same was contained in document impounded and marked as Annexure No. ANN/JP/B&D/imp 17. The three concerns of assessee group were engaged in manufacturing of crackers but the products were sold centrally. The impounded document contained unaccounted sales for the period from 01.09.2010 to 30.09.2011. The document was in the shape of nameless voucher book. The amounts were written in such a way that the last two digits were written in words outside the line. The Ld. AO found that total suppression of sales considering the last two digits amounted to Rs.193.51 Lacs for the group as a whole. The assessee

firm's representative admitted of carrying out unaccounted sales which were stated to be invested in construction activities.

3.2 In the said background, Ld. AO proceeded to estimate the quantum of suppression of sales by extrapolating the data contained in the impounded documents. The aggregate unaccounted sales of the group for Rs.193.51 Lacs was allocated to the three firms on the basis of reported sales. Since the assessee firms' share in reported sale was 20.55%, the unaccounted sales of the assessee was worked out to be Rs.39.76 Lacs which was added to the income of the assessee as suppression of sales for the period 01.09.2010 to 31.03.2011. Proceeding further, the probable sale suppression figures for the period from 01.04.2010 to 31.08.2010 were extrapolated, the working of which has been given in Tables (B) to (D) of the assessment order. The unaccounted sales so extrapolated worked out to be Rs.36.72 Lacs which was separately added to the income of the assessee.

3.3 The assessee was saddled with interest disallowance u/s 36(1)(iii) for Rs.1.64 Lacs on the allegation that interest bearing funds to the extent of Rs.15.25 Lacs were advanced to its sister concern i.e., M/s Natchiar Board Pvt. Ltd. without interest.

Appellate proceedings

4. The assessee assailed addition of projected probable sales suppression for the period 01.04.2010 to 31.08.2010 on the ground that no material was recovered in that respect. However, this plea was rejected by Ld. CIT(A) who confirmed the action of Ld. AO qua quantum of suppression of sales for the whole year. However, Ld. CIT(A) opined that only profit embedded in such transactions was to be added. Considering the average gross profit rate of the group, Ld.

CIT(A) estimated the same @35% without allowance of any expenditure.

5. Regarding interest disallowance, the assessee submitted that it had adequate own funds in the form of capital contribution and the advances were business advances and therefore, no such disallowance would be warranted, However, Ld. CIT(A) chose to confirm the disallowance. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

6. We find that the assessee group was subjected to survey wherein fact of suppression of sale was noted. The three entities of the assessee group were engaged in manufacturing of crackers but the sale was being made centrally. In other words, the document as impounded by the department contains sale figures of three entities for the period from 01.09.2010 to 30.09.2011. Accordingly, Ld. AO allocated allocation of sales as per reported turnover ratio amongst the three entities. The share of assessee thus worked out to be Rs.39,76,631/-.

Based on these figures, the probable sale suppression for the period 01.04.2010 to 31.08.2010 was estimated. However, this estimation is merely based on extrapolation of data and not backed by any material found by the department during survey. It is trite law that no addition could be made on the basis of probability, estimation or presumptions. There is no evidence on record that the assessee suppressed sales during this period also. Therefore, the sale suppression for this period is not sustainable in law. We order so.

7. So far as the application of gross profit rate by Ld. CIT(A) is concerned, we are of the considered opinion that only net profit rate and not gross profit rate as embedded in unaccounted sales was to be brought to tax in the hands of the assessee since the presumptive profit rate as per statutory provision is 8%. Therefore, this rate is to be adopted for estimation of income on unaccounted sales. The same would be 8% of Rs.39,76,631/- which comes to Rs.3,18,130/-. The addition to that extent is sustained and the balance addition stand deleted. The corresponding ground stand partly allowed.

8. So far as interest disallowance u/s 36(1)(iii) is concerned, the position that the assessee has own funds in the shape of partner's capital to advance interest free loans to sister concern, remain undisturbed before us. Therefore, unless one-to-one nexus is established by revenue, the presumption would arise in assessee's favor that own funds were used to make the investments / advances. Therefore, disallowance of Rs.1.64 Lacs is not sustainable. We order so. This ground stand allowed. The appeal stands partly allowed.

Assessment Year 2012-13

9. The facts as well as issues are pari-materia the same in this year so far as suppression of sales and disallowance of interest is concerned. Therefore, our adjudication as for AY 2011-12 shall mutatis mutandis apply to this year also. The Ld. AO is directed to rework the amount of addition qua suppression of sales. The addition of Rs.32,85,197/- for the period 01.10.2011 to 31.03.2012 which is not backed by any material stand deleted. The addition of 8% on sale during the period 01.04.2011 to 30.09.2011 for Rs.12,73,352/- would be sustained. The same comes to Rs.1,01,868/-. The balance addition

stand deleted. The interest disallowance stand deleted. The issue of disallowance u/s 40A(3) and issue of disallowance of car expenses has not been urged in the appeal. The appeal stands partly allowed.

Conclusion

10. Both the appeal stands partly allowed.

Order pronounced on 07th September, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 07-09-2022
EDN/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF