

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **392/Chny/2019**
निर्धारण वर्ष / Assessment Year: 2014-15

Sanmar Speciality Chemicals
Limited,
9 Cathedral Road,
Chennai 600 086.

[PAN: AABCS-0201-P]

(अपीलार्थी/Appellant)

Deputy Commissioner of
v. Income-tax,
Corporate Circle 6(1),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri. R. Vijayaraghavan, Advocate
: Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 01.12.2022

घोषणा की तारीख/Date of Pronouncement

: 31.01.2023

आदेश / O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-16, Chennai, dated 12.12.2018 and pertains to assessment year 2014-15.

2. The assessee has raised the following grounds of appeal:

a) The order of the learned Commissioner of Income Tax (Appeals)- 16, is contrary to the law, facts and circumstances of the case.

(b) The learned Commissioner of Income Tax (Appeals)- 16, erred in confirming the disallowance made towards adjustment to sales turnover without appreciating the facts of the case.

(c) The learned Commissioner of Income tax (appeals)- 16, failed to appreciate the fact the liability accrues to the Appellant in respect of the year under appeal as per Accounting standard - 4 and not in the subsequent Assessment year.

(d) The learned Commissioner of Income Tax (Appeals) - 16 has erred in not following the decision of Jurisdictional High Court in the case of TYCO San mar Limited in TC No.512 of 2014 wherein the facts are identical. The learned Commissioner of Income Tax (Appeals) - 16 also erred in following the decision of Apex Court in the case of CIT Vs Swadeshi Cottom ft Flour Mills Ltd (53 ITR 134) wherein the facts are entirely different.

The Appellant craves leave to add, alter or modify the grounds of appeal at any time before or during the hearing of appeal.

For these and other reasons to be adduced at the time of hearing, the Appellant prays for a favourable Order on the points of appeal.

3. The brief facts of the case are that, the assessee company is engaged in the business of manufacturing fertilizers, chemicals, paints, drugs & pharmaceuticals, filed its return of income for assessment year 2014-15 on 29.11.2014, declaring nil income, after adjusting brought forward loss. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has reduced a sum of Rs. 2,69,40,640/- from export sales. Therefore, the AO called

upon the assessee to file necessary details and justification for reduction in sales turnover. In response, the assessee had filed a copy of agreement with the foreign buyer namely M/s. Syngenta Asia Pacific Ltd., and explained that based on the terms of agreement with buyer, sale price of product has been adjusted at the end of the financial year. With reference to the reversal of sales for the assessment year 2014-15, the assessee explained that as per the formula provided in the agreement, an adjustment of USD \$848693 was effected and in this regard a credit note was also issued to the vendor on 11th July, 2014, and after taking into account the conversion of adjustment for the part period from January to March, 2014, the value in terms of rupees 2.69 crores was reduced from the turnover for the purpose of income-tax.

4. The AO, however was not satisfied with the explanation furnished by the assessee and according to the Assessing Officer, when the assessee has raised sales bills, the question of reversal of sales in subsequent financial year does not arise. The AO, further noticed that in so far as sales tax assessment is concerned, the assessee has declared sales as per books without any reversal of price adjustment. However, in so far

as income-tax assessment is concerned, the assessee has reduced sales turnover. Therefore, the AO opined that the assessee could not satisfactorily explain reversal of sales turnover and thus, a reference was made to the Additional. CIT, Corporate Circle 6(1), Chennai u/s. 144A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). Further, the Addl. CIT has issued directions u/s. 144A vide his letter dated 21.12.2016. The AO, after considering relevant facts and also by following the directions of the Addl. CIT made addition of Rs. 2,69,40,640/- towards reversal of sales turnover from export sales.

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the CIT(A), the assessee filed a detailed written submission along with certain judicial precedence including the decision of Hon'ble High Court of Madras in the case of CIT vs M/s. Tyco Sanmar Ltd in Tax Case Appeal No. 512 of 2014, and argued that when the assessee has adjusted sale price in terms of agreement between the parties, the same needs to be reversed from the sales. The assessee is following said method of accounting right from assessment year 2010-11, and wherever increase in

sales the same has been added to sales account and wherever reduction in sales, the same has been reduced. The AO, without appreciating relevant facts simply made addition.

6. The Ld. CIT(A), after considering relevant submissions of the assessee and also taken note of certain judicial precedence, opined that there is no error in the reasons given by the AO to make addition towards reversal of export turnover, because the assessee could not able to explain why and how sales accrued for earlier period get reversed in subsequent assessment year. The relevant findings of the CIT(A) are as under:

8.1 Assessee reduced Rs 2,69,40,640/- as price difference in Export Sales from the turnover as figuring for the purpose of sales-tax and disclosed the balance turnover only for Income-tax purpose. The assessee explained that - as per the formula for the calendar year 2013-14, an adjustment of US \$ 848693 was effected and a credit note was issued to the vendor on 11/7/2014 and after taking into account the conversion and the adjustment for the part period from January to March 2014, the value in rupee terms of Rs.2.69 crores was reduced from the turnover for the purpose of Income-tax. Assessee explained that as per AS-4, events happening after the balance sheet date needs to be disclosed in the printed Annual accounts.

Assessing Officer stated that the .relevant Para No. 8 in AS-4 speaks about need for adjustment to assets and liabilities alone and does not speak about reversing income which had already accrued on the basis of the method of accounting followed by the assessee. Assessing officer further stated that similar view was held in CIT Vs Alampally Brothers Ltd. (Ker) 50 DTR 325 and CIT Vs Swadeshi Cotton 86 Flour Mills

(P) Ltd. (53 ITR 134) (SC). Accordingly, the Assessing Officer taxed Rs.2,69,40,640/-.

8.2 In the grounds of appeal, the appellant contested as under:

"Adjustment to Sales on account of Price difference

a) The Deputy Commissioner of Income Tax erred in not considering the adjustment relating to Price difference.

*b) The Deputy Commissioner of Income **Tax is** wrong in coming to the conclusion that the Appellant had not made provision in the books of accounts. The Appellant Instead of debiting the expenses has reduced the price difference from sales, which has no impact on the taxable income of the Appellant.*

c) The learned Deputy Commissioner of Income Tax ought to have appreciated the fact that every corporate assessee is required to comply with the Accounting Standards prescribed under section 211(3A) of the Companies Act 1956. Section 211(3A) of the Companies Act, 1956 prescribes that "every profit and loss account and balance-sheet of the company shall comply with the accounting standards." The accounting standards for the purposes of this clause are the Accounting Standards prescribed by National Advisory Committee on Accounting Standards under section 211(3C). Section 211(3C) provides"(3C) For the purposes of this section, the expression 'accounting standards' means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section 210A :"

d) The learned Deputy commissioner of Income tax ought to have appreciated the fact that as per Accounting standard 1 issued by section (1) of Institute of Chartered Accountants of India, every company to provide in the relevant financial year for known liabilities whether the same is contractual or statutory, and was therefore wrong in coming to the conclusion that the liability crystallizes only in the year in which credit note is issued.

e) The learned deputy Commissioner of Income tax ought to have appreciated the fact that Section 145_ of the Income Tax Act also deals with issue of accounting standards under Income Tax Act and has prescribed the Accounting standard 1 relating to disclosure of accounting policies. Reference can

be made to Paragraph 4(i) of Accounting Standard where the term "prudence" has been conceived as "Provision should be made for all known liabilities and losses even the amount cannot be determined with certainty and represents only a best estimate in the light of available information".

f) The learned Deputy Commissioner of Income tax erred in following the decision of the Hon'ble SC in the case of CIT Vs Swadeshi Cotton & Flour Mills (P) Ltd - 53 ITR 134, wherein the facts of the case are entirely different from that of the Appellant. In the case of CIT Vs Swadeshi Cotton & Flour Mills (P) Ltd the issue is whether previous year accounts can be re-opened or not for items for which provision was not made in the books, whereas in the case of the Appellant, the Appellant had made provision for Price difference and the question of reopening of books does not arise.

g) The learned Deputy Commissioner erred in coming to the conclusion that a contractual liability crystallizes only at the time of settlement based on the decision of Alembic Chemical Works Ltd Vs CIT - 266 ITR 47 as in the decision of Alembic Chemical Works Ltd, the issue was whether the liability was in the nature of contingent or not which could not be allowed as expenses, whereas in the case of the Appellant the price difference was based on the formula as agreed between the Parties.

h) The learned Deputy Commissioner of Income tax erred in not following the decision of Jurisdictional High court in the case of TYCO SanmarLtd in Tax Case Appeal No 512 of 2014, where in similar issue has been allowed by the Hon'ble Chennai High court."

8.3 As stated by the Assessing Officer the relevant Para No. 8 in AS-4 is about need for adjustment to assets and liabilities alone and not about reversing income which had already accrued on the basis of the method of accounting followed by the assessee.

Moreover, the Assessing officer did not accept the adjustment made by the assessee following the decision of the Hon'ble Supreme Court in the case of-CIT vs Swadeshi Cotton 86 Flour Mills (P) Ltd. (53 ITR 134) (SC). In CIT vs Swadeshi Cotton 86 Flour Mills (P) Ltd (53 ITR 134) Hon'ble Supreme held - "The system of reopening of accounts does not fit in with the scheme of the IT Act. As far as receipts are concerned there can be no reopening of accounts, and the position is the same in respect of expenses."

Hence respectfully following the above stated decision of the Hon'ble Supreme Court of India the addition of Rs 2,69,40,640/- is upheld."

7. The Ld. Counsel for the assessee, referring to agreement between the assessee and M/s. Syngenta Asia Pacific Ltd., more particularly clause 6 to 6.4 submitted that, the agreement between the parties provide for price adjustment at the end of the relevant calendar year. The assessee has issued credit note towards price difference for total supply made to the party at the end of the year and has issued credit note in July, 2014. The assessee is following said method of accounting from assessment year 2010-11 and wherever there is a price difference, whether increase in price or decrease in price, the same has been adjusted to sales. The AO, without appreciating the relevant facts simply made additions. In this regard, he relied upon the decision of Hon'ble High Court of Madras in the case of CIT vs Tyco Sanmar Ltd (Supra).

8. The Ld. DR, supporting the order of the Id. CIT(A) submitted that assessee could not explain proper reasons for reduction in sales and thus, the AO has rightly made additions and their order should be upheld.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The assessee has reversed a sum of Rs. 2,69,40,640/- from export turnover pertains to financial year 2013-14. The assessee claims that as per agreement between the buyer M/s. Syngenta Asia Pacific Ltd., supplies were made throughout the year on the basis of random price, and a price adjustment will be effected at the end of the year on the basis of prescribed formula provided in the agreement. As per the agreement between the parties, more particularly clause 6 to 6.4, there is a method for providing price adjustment, which depends upon supplies made during the relevant financial year and as per said formula, the assessee has provided credit note of USD \$848698 for the period from 01.01.2013 to 31.12.2013, which works out to Rs. 4,83,91,095/-. The assessee had also estimated proportional adjustment for the period 01.01.2014 to 31.03.2014, which is estimated at Rs. 67,97,390/-. The assessee had also made an adjustment for the financial year 2012-13 amounting to Rs. 2,82,47,845/-. The accumulative effect of three works out to Rs. 2,69,40,640/- and the same has been reduced from the exports turnover.

10. We find that the assessee claims to have following this method of accounting right from assessment year 2010-11 and the department has accepted the billing adjustment made in the books of accounts for turnover. We find that the assessee has furnished details of adjustment to sales turnover right from assessment year 2010-11 to assessment year 2015-16. The assessee had also furnished the chart explaining amount adjusted at Rs. 2,69,40,640/-. There is a arithmetical jugglery, which needs thorough verification from the Assessing Officer. In other words, in principal the claim of the assessee appears to be in accordance with agreement between the parties. Further, when there is adjustment towards price difference on supplies, the same needs to be reconciled in the books of accounts either by reducing from sales turnover or debiting to the profit and loss account. To this extent, we find that there is a merit in submissions of the Ld. Counsel for the assessee. Further, Hon'ble High Court of Madras in the case of CIT vs Tyco Sanmar Ltd (Supra), has also considered an identical issue and held that if any adjustment is made for price difference, the same needs to be allowed. But fact remains that, the assessee has filed a chart and explained how adjustment is made to export turnover. In

our considered view, these documents needs verification from the Assessing Officer in light of agreement between the parties. Thus, we set aside the issue to the file of the AO and direct the AO to re-examine the claim of the assessee in light of agreement between the parties and also various statements filed by the assessee explaining reconciliation of price difference. We further, direct the AO to take note of ratio laid down by the Hon'ble High Court of Madras in the case of CIT vs Tyco Sanmar Ltd (Supra), while re-examining the issue.

11. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the court on 31st January, 2023 at Chennai.

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिकसदस्य/**Judicial Member**

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 31st January, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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