

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'A' BENCHES :: PUNE

BEFORE SHRI R.S. SYAL, HON. ACCOUNTANT MEMBER &
SHRI PARTHA SARATHI CHAUDHURY, HON. JUDICIAL MEMBER

ITA Nos.780 & 781/PUN/2023
(A.Y. 2016-17 & 2017-18)

Jaishriram Sugar and Agro Products Ltd., 10/12 St. Crispin's Home, Karve Road, Pune, Maharashtra. PAN: AABCJ 6396 A	vs	JCIT, Central Range-2, Pune.
Appellant		Respondent

Assessee by	:	Shri Suhas P Bora, CA
Revenue by	:	Shri Keyur Patel, CIT-DR
Date of hearing	:	20/09/2023
Date of pronouncement	:	22/09/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

These appeals preferred by the assessee emanates from the separate orders of National Faceless Appeal Centre [NFAC], Delhi, both dated 09.05.2023 for A.Y.2016-17 & 2017-18 as per the grounds of appeal on record.

2. In both these appeals, assessment was framed u/sec. 144 of the Act as the best judgment assessment and the loss claimed by the assessee was disallowed. Both the parties herein conceded that the facts and circumstances and the issues involved in these twin appeals are absolutely similar and identical and, therefore, both the matters were heard and disposed of vide this consolidated order.

3. That, for the purpose of illustration of facts for adjudication, we

would take up ITA No.780/PUN/2023 for A.Y. 2016-17 as the lead case.

4. The relevant facts of the case are that the assessee had filed its return of income claiming loss of Rs. 26,19,61,414/- on a sale of Rs.61,48,84,611/-. During the course of assessment proceedings, the Assessing Officer (AO) asked the assessee to file various details including the details of expenses. The assessee was also asked to produce the books of accounts along with subsidiary record for substantiating the expenses claimed. Besides these, many other details were specifically asked by the AO vide questionnaire dated 24/08/2019 as appearing in the assessment order. However, none of these details were filed by the assessee before the AO. The assessee also did not produce books of accounts before the AO although it was specifically requested for the same. The AO, accordingly, held that the assessee has failed to substantiate the genuineness of various expenses debited in the profit & loss account which had ultimately led to the claim of such heavy loss. The AO further observed that it is settled position of law that onus substantiating the claim of expenditure is entirely on the assessee and unless assessee discharges the said onus, the book results of the assessee cannot be accepted. That, as a matter of fact, during the assessment proceedings, the assessee-company has not complied with the notice issued u/sec. 143(2) of the Act nor it has complied with notice u/sec. 142(1) of the

Act. Furthermore, even a specific notice issued to the assessee as to why the provisions of sec.144 of the Act should not be invoked, to that also, no reply was filed nor any compliance by the assessee. Accordingly, the AO resorted to framing the best judgment assessment as per sec.144 of the Act and disallowed the loss amounting to Rs. 26,19,61,414/- as claimed in the return of income.

5. When the matter went before the NFAC, the assessee had filed some details of expenses as additional evidences which were forwarded to the AO for examination and comments. In this regard, the AO has reported that the additional evidences filed during the appellate proceedings are some of the details of direct and indirect expenses and ledger extract of cane purchase account, stock in hand, stores & spares and fixed assets. Besides these, the assessee filed some specimen copies of high value assets acquired. Since the evidences filed by the assessee were not sufficient to substantiate the genuineness of expenses claimed, accordingly vide letter dated 03/09/2021, the assessee was again requested to file various details as mentioned in the remand report. As per the remand report of the AO, in response to this letter, the assessee company had produced ledger extracts of direct and indirect expenses and fixed assets. However, during the remand proceedings also, the assessee has not filed any supporting evidences to substantiate the genuineness of direct and indirect expenses. Even the specimen copies of vouchers

were not filed. The NFAC at para 28 categorically states that AO has mentioned in the remand report that during the remand proceedings, assessee was required to file complete details along with supporting evidences, however, the same were not filed by the assessee. The NFAC as per detailed reasoning and observation appearing in its order, finally had dismissed the appeal of the assessee.

6. In this background, we observe that admittedly during the original assessment proceedings, the assessee has not complied with any of the notices issued by the Department and had failed to substantiate the genuineness of the loss claimed in the return of income, as a result, the AO resorted to best judgment assessment u/sec. 144 of the Act and disallowed such loss claimed by the assessee. Similarly, in the remand proceedings, as per the following para which is extracted, clearly specifies the fact that the assessee even during the remand proceedings has not submitted any supporting documentary evidences to prove the genuineness of huge expenses incurred. The relevant part is extracted as follows:-

"In the letter dated 03/09/2021, it was specifically required to submit supportive documentary evidences to prove the genuineness of huge expenses occurred. But the assessee company did not provide any other details or any supporting evidences to substantiate the genuineness of the direct & indirect expenses and depreciation. The assessee did not even provide specimen copies of vouchers about which he mentioned in his submission before the CIT(A). The liability is on the assessee company to produce correct and complete vouchers to prove genuineness of expenses claimed."

6.1 That, even the NFAC has given a finding at para 30 which

precisely brings out that even before the NFAC, the assessee was unable to substantiate its claim with the help of supporting documents.

The relevant para is extracted as follows:-

"30. The appellant has taken another plea that the assessing officer cannot make any addition on the basis of presumption. The said legal proposition does not apply to the facts of the present case. It is a well settled legal position that the onus of substantiating the claim of expenses with the help of documentary evidences, is on the assessee. The facts mentioned earlier in this order clearly suggest that the appellant has miserably failed in discharging the said onus. It is not a case where the assessing officer has made additions on the basis of any presumption. Rather, in this case the loss was disallowed because the appellant failed to substantiate its claim with the help of supporting documents. Therefore, the said contention of the appellant is rejected."

6.2 The assessee has given certain justification for such huge loss claimed in the return of income sans any bills/vouchers supporting documents etc. This is also evident in the submission of the assessee, which is extracted as follows:-

"c. It is further submitted that sugar production in India is a heavily regulated sector. Sugar is defined as an essential commodity under "The Essential Commodities Act" of 1955. The Government controls production, supply and distribution, of sugar as an essential commodity. The Government announces a guaranteed price to be paid to cane growers and it is the responsibility of the millers to buy all the cane provided. In addition to sugarcane price, quantity of sugarcane and area, quantum of monthly sugar sales and price for the same are decided through Government controls. Thus, essentially purchase price, sale price and stocks all are regulated & controlled by the government and as a result, the company has little control over the losses if incurs. The AO's doubt over loss of Rs.26,19,61,414/- claimed by the company is therefore explained."

6.3 In this contention, the assessee is merely giving certain oral explanations without any corroboration to the materials on fact. The assessee has not furnished any documentary evidences/supporting bills and vouchers of the expenses claimed in the profit & loss account

neither before the AO at the original assessment stage nor during the remand proceedings and also not during the proceedings before the NFAC.

6.4 At the time of hearing, Id.AR submitted that the assessee was always ready to furnish any additional details as and when called for by the Department and if during remand proceedings, any further, supporting evidences were required, then the AO should have specifically asked for the same. In any case, Id.AR prayed that in order to verify the genuineness of the loss claimed and the corresponding expenses claimed, they are ready to furnish all supporting bills/ vouchers before the AO and let him verify as per law and adjudicate the matter.

6.5 *Per contra*, Id.DR vehemently contended that ample opportunities have been provided to the assessee and he has not furnished the relevant details of bills and vouchers and that the assessee has only produced the ledger during the remand proceedings. The assessee was waiting for the AO to issue notices asking for various details of bills and vouchers whereas in fact it is the onus of the assessee to justify the expenses claimed in the books of accounts, and, therefore, the assessee should have *suo motu* submitted all the relevant details at least at the remand proceedings or before the NFAC. That, further Id.DR has also relied on certain case laws which are not relevant to the present facts and circumstances of the case of the assessee since

those case-laws deals with the proposition of validity of proceedings u/sec. 144 of the Act. In this case, the assessee has not challenged the validity of the assessment completed u/sec. 144 of the Act. Furthermore, this is the case where the additional evidence has been accepted by the Id. CIT(A) and it was forwarded to the AO asking for a remand report and, therefore, the best judgment assessment u/sec. 144 ultimately as culminated to remand proceedings and when such remand proceedings have been undertaken, it is fruitless and frivolous for the Id.DR to again travel back to the original assessment stage. Having said that we observe that this Tribunal being the highest fact finding authority, as on date, the genuinity of loss claimed by the assessee has remained unverified for the fact that supporting bills and vouchers etc. were not furnished by the assessee and now before us, Id.AR has prayed for one opportunity to substantiate the claim through those necessary evidences before the AO. It is, but natural that on verification if it is found by the AO that expenses claimed are illegal or that they are not supported by the necessary documents, then the Department shall have every right to disallow such loss, but let there be a complete verification on the facts at the level of AO. In view thereof, we set aside the order of the NFAC and remand the matter to the file of the AO for proper verification and examination of all the supporting bills, vouchers and other documentary evidences as would be necessary in this case and shall adjudicate as per law complying with the principles of natural justice. At the same time, the assessee is

directed to comply with the hearing notices and represent its case substantially on merits before the AO. With these directions, the matter is remanded to the file of AO and the grounds in ITA No.780/PUN/2023 for A.Y. 2016-17 are allowed for statistical purposes.

7. In the result, appeal of the assessee in ITA No.780/PUN/2023 is allowed for statistical purposes.

8. At the outset, the parties have conceded that the facts and circumstances and the issues involved in both these appeals are absolutely similar and identical, therefore our decision taken in ITA No.780/PUN/2023 shall apply *mutatis mutandis* to ITA No.781/PUN/2023 for A.Y. 2017-18. Therefore, grounds raised in this appeal are also allowed for statistical purposes.

9. In the result, appeal of the assessee in ITA No.781/PUN/2023 is allowed for statistical purposes.

10. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in open Court on 2nd September, 2023.

Sd/-
(R.S. SYAL)
VICE-PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 22nd September, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "A" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.