

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 3235/MUM/2023 (A.Y. 2021-22)

Infinite Water Solutions Pvt. Ltd.

B1/B2 701, Marathon Innova,
Off. Ganpatrao Kadam Marg,
Lower Parel,
Mumbai – 400 013

PAN: AABCL8898N

..... Appellant

Vs.

CPC, Bengaluru,
Karnataka – 560500

..... Respondent

Appellant by : Shri Ronak Doshi and
Ms. Vrushti Gala
Respondent by : Shri H.M. Bhatt
Date of hearing : 28/12/2023
Date of pronouncement : 05/01/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Ld. CIT (A), NFAC dated 20.07.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2021-22. The assessee has raised the following grounds of appeal:-

1. on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in upholding the action of the CPC, of making addition on account of non-inclusion of the GST on sales in profit and loss account, thereby resulting in alleged violation of section 145A of the Act.

2. The Appellant prays that the aforesaid addition made to the total income be deleted.

2. The brief facts of the case are that assessee filed his return of income on 12.3.2022 declaring total income at Rs. 10, 31, 45,840/- under the normal provisions of the Act. Return of the assessee was processed vide intimation dated 13.11.2022 in which an amount of Rs. 8,07,66,818/- towards Goods and Service Tax (GST) collected from customers was added back. For this proposed adjustment, assessee was informed vide notice dated 18.5.2022, same was replied by the assessee vide letter dated 19.5.2022. As the response of the assessee was not considered while passing the original intimation dated 13.11.2022, assessee filed an application u/s. 154 of the Act vide dated 30.11.2022 (order against the same is still awaited). Assessee being aggrieved with this intimation, processed u/s. 143 (1) (A) preferred an appeal before the Ld. CIT (A), who in turn confirmed the action of CPC, Bengaluru. Assessee being further aggrieved preferred this present appeal before us.

3. We have gone through the intimation u/s. 143(1) (a), reply of the assessee thereon, tax auditor's report (relevant column No.16(a)), order of the Ld. CIT (A) and submissions of the assessee alongwith ground raised before us. The issue involved in this matter pertains to Section 145A of the Act for a better understanding and adjudication of the issue involved we deem it fit to reproduce the relevant section as under:

Section - 145A, Income-tax Act, 1961 - FA, 2023

[Method of accounting in certain cases].

145A. *For the purpose of determining the income chargeable under the head "Profits and gains of business or profession",—*

- (i) *the valuation of inventory shall be made at lower of actual cost or net realisable value computed in accordance with the income computation and disclosure standards notified*

under sub-section (2) of section 145;

- (ii) **the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation;***
- (iii) the inventory being securities not listed on a recognised stock exchange, or listed but not quoted on a recognised stock exchange with regularity from time to time, shall be valued at actual cost initially recognised in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145;*
- (iv) the inventory being securities other than those referred to in clause (iii), shall be valued at lower of actual cost or net realisable value in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145:*

***Provided** that the inventory being securities held by a scheduled bank or public financial institution shall be valued in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145 after taking into account the extant guidelines issued by the Reserve Bank of India in this regard:*

***Provided further** that the comparison of actual cost and net realisable value of securities shall be made category-wise.*

Explanation 1.—For the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment.

Explanation 2.—for the purposes of this section,—

- (a) "public financial institution" shall have the meaning assigned to it in clause (72) of section 2 of the Companies Act, 2013 (18 of 2013);*
- (b) "recognised stock exchange" shall have the meaning assigned to it in clause (ii) of Explanation 1 to clause (5) of section 43;*

4. In addition to section 145A of the Act, we have gone through the provisions of section 145 of the Act also, wherein there is a reference of Notification No. SO 3079(E), dated 29-9-2016 for Income Computation and Disclosure Standards and Circular No. 10/2017, dated 23-3-2017

[Clarifications on Income Computation and Disclosure Standards (ICDS) notified. Relevant extract of both (Notification and Circular) is as under:

“Question 25: ICDS-I requires disclosure of significant accounting policies and other ICDS requires specific disclosures. Where is the taxpayer required to make such disclosures specified in ICDS?”

Answer: Net effect on the income due to application of ICDS is to be disclosed in the Return of income. The disclosures required under ICDS shall be made in the tax audit report in Form 3CD. However, there shall not be any separate disclosure requirements for persons who are not liable to tax audit.”

5. Now, considering the provision of section 145A of the Act and Notification No. SO 3079(E), dated 29-9-2016 for Income Computation and Disclosure Standards and Circular No. 10/2017, dated 23-3-2017 [Clarifications on Income Computation and Disclosure Standards (ICDS) issued under section 145 of the Act, it is established position that the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee and by virtue of ICDS-I (As enumerated above, FAQ-25), Tax Auditor is simply required to report the factual position.

6. We note that the assessee has been recording its transactions of purchase, sales, and valuation of inventories, net of Goods and Service Tax (GST) consistently. Thus, if the sales are enhanced by the amount of GST attributable to it, then the amount of corresponding purchases should also be increased by the said amount which will result in tax neutral exercise. Thus, in our considered view, the CPC, Bengaluru erred in enhancing the value of the closing stock without giving effect to the purchases. Considering GST in sales will work as contra entry and has to be considered in opening stock, purchase and closing stock also, which ultimately result in tax neutral exercise.

7. It is observed that when the opening and closing stock of business are both undervalued (exclusive of any tax, duty, cess or fee) and consequently same treatment is being given to sales and purchase also, it is perfectly plain that profits which is brought forward and transactions of current year also are tax neutral until unless prove by the revenue. As per the facts of this case, enhancing the value of sales without giving corresponding effect to the valuation of opening stock/closing stock and purchase is not proper. In view of the above, we are of the firm view that adjustment made by the CPC, Bengaluru is unwarranted and in violation of section 145A of the Act, hence the same is not sustainable. In the result ground raised by the assessee is allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 5th day of January, 2024.

Sd/-

(VIKAS AWASTHY)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 05/01/2024

Mini, Sr. PS

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai