

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**  
*(Virtual hearing)*

**ITA No. 401/Ind/2023**  
**Assessment Year: 2014-15**

Farha Khan, Rajdhani Petro Point, Jahangirabad Chiklod, Bhopal (Appellant/Assessee)	<b><u>बनाम/</u></b> <b><u>Vs.</u></b>	ITO, 1(4), Bhopal (Respondent/Revenue)
<b>PAN: AFXPK 1062 L</b>		
Assessee by	Shri Gagan Tiwari, Adv.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	05.03.2024	
Date of Pronouncement	01.04.2024	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 24.08.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"], which in turn arises out of assessment-order dated 15.12.2016 passed by learned ITO-1(4), Bhopal ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2014-15, the assessee has filed this appeal on following grounds:

- "(1) That on the facts and in the circumstances of the case the order of the learned lower authorities are vitiated on several grounds, hence the same may kindly be quashed.

- (2) That the order of the learned lower authorities passed are unlawful and illegal.
- (3) That the learned lower authorities were not justified in not allowing proper and meaningful opportunity of being heard. Also the Ld. CIT(A), National Faceless E-Appeal Centre, was also not justified in not allowing any opportunity before confirming the addition.
- (4) That the various findings of the learned lower authorities are opposed to the facts, hence the same may kindly be quashed.
- (5) That on the facts and circumstances of the case, the Ld. CIT(A) erred in confirming the addition on account of under-reporting of gross profit at Rs. 15,76,956/-."

2. Brief facts of case are such that the assessee-individual, engaged in the business of running a petrol pump, filed her return declaring a total income of Rs. 9,26,840/- which was subjected to scrutiny-assessment through notices u/s 143(2)/142(1). Ultimately, the AO completed assessment vide order dated 15.12.2016 u/s 143(3) after making certain additions, one among them was of Rs. 27,82,822/- to the gross-profit. The AO made addition of Rs. 27,82,822/- vide Para 8 of assessment-order by following order:

*"8. On perusal of information supplied to the undersigned by M/s. Bharat Petroleum Corporation Limited in compliance to notice u/s 133(6) of the Act [copy enclosed for ready reference], it is seen that the BPCL has passed a commission of Rs. 59,32,106/- to you during the year under consideration whereas you have shown gross profit of Rs. 31,49,284/-. The under-reporting of gross profit is further substantiated by the claim of excessive evaporation/handling loss in your accounts than the admissible loss as per above mentioned letter of BPCL. Please show cause as to why the difference of Rs. 27,82,822/- [59,32,106/- minus 31,49,284/-] may not be added to your total income.*

*No reply was received in compliance to above notice.*

*Thus, the above sum of Rs. 27,82,822/- is added to the total income of the assessee."*

3. Aggrieved, the assessee contested in first-appeal whereupon the CIT(A) granted part-relief as well as partly upheld addition to the extent of Rs. 15,76,956/- by following order:

*"7.2.1 Ground of appeal No. 2 is against the addition made by the AO at Rs. 27,82,822/- on account of difference in gross profit on the basis of information gathered u/s 133(6) of the Act. It was contended that since the trading results, as declared by the appellant was on the basis of actual verification of stock-in-trade at the year-end i.e. as on 31<sup>st</sup> March, 2014, the addition so made was unwarranted.*

*7.2.2 In the course of assessment, the AO obtained information u/s 133(6) from M/s. Bharat Petroleum Corporation Limited (BPCL) on the basis of which it was concluded that BPCL had passed a commission of Rs. 59,32,106/- to the assessee during the year under consideration whereas the assessee had shown gross profit of Rs. 31,43,284/- only. The AO opined that the claim of excessive evaporation/handling loss in the assessee's accounts exceeding the admissible loss as per BPCL further substantiated that there was under reporting of gross profit. Accordingly, the difference of Rs. 27,82,822 [59,32,106 – 31,49,284] was added to the total income of the assessee.*

*7.2.3 In the course of appellate proceedings, the assessee submitted that*

*as per Schedule II appended to the Ministry of Petroleum & Natural Gas Order dated 28<sup>th</sup> December, 1998, which was also submitted before the AO, evaporation/handling loss is permissible @ 0.60% in case of Petrol and 0.20% in case of Diesel, if the annual average sale is above 600 kiloliters. During the relevant year, your appellant has sold 2,741 kiloliters of Petrol and 833 Kiloliters of Diesel. According to the above*

prescribed norm, shortage in Petrol is permissible upto 16,446 Liters i.e. 0.60% of 2,741 kiloliters and in case of Diesel, shortage is permissible upto 1,666 Liters i.e. 0.20% of 833 kiloliters. That shortage occurred during the year in case of Petrol is 30,917 Liters and that of Diesel, shortage is 937 Liters only. That means, shortage in case of Diesel was far below the permissible limit. However, in case of Petrol, shortage occurred at 30,917 Liters, which was exceeded by 14,471 Liters [30,917 (-) 16,446]. Average purchase price of petrol during the year under review was Rs. 73.10 per Liter and the total amount of 14,471 Liters comes to Rs. 10,57,830/- only.

As submitted herein above, that considering the fact that this excess shortage is due to certain inherent reasons, such as wastage on unloading in underground tanks, as also excessive filling in vehicles on sale, which happens due to sale and filling of smaller amounts. Further, valuation of closing stock at the year-end was made on the basis of actual quantities of Petrol and Diesel verified as on 31<sup>st</sup> March 2014, and hence there was no question of under-reporting of gross profit, which may please be so held by your honour.”

7.2.4 The Assessing Officer, vide remand report, submitted on this issue as under:-

“In this case the assessee has claimed shortage of diesel to the extent of 937 Ltrs. and petrol to the extent of 30,917 ltrs in the quantitative details of Audit Report. Since the diesel loss is within the threshold limit it can be considered and in the case of petrol it should be limited to 16,446 ltrs. Only. Therefore, considering the average rate of diesel of Rs. 58/- during the period the total value of shortage/loss comes to Rs. 54,346/- and in respect of petrol it comes to Rs. 11,51,220/- taking average rate of Rs. 70/-. As such total shortage/loss value of Rs. 12,05,566/- can be considered from Rs. 59,32,106/-. As if considered so, the gross profit should have been Rs. 47,26,540/-

*the assessee has declared gross profit of Rs. 31,49,584/- only thereby under reporting profit of Rs. 15,76,956/-."*

*7.2.5 Having duly considered the facts on record, the assessee's submissions and the AO's report, the addition made on account of underreporting of gross profit attributable to evaporation/handling loss of petrol and diesel is restricted to Rs. 15,76,956/- as against the addition made at Rs. 27,82,822/-. This ground is partly allowed."*

4. Dissatisfied, the assessee has come in next appeal challenging the addition of Rs. 15,76,956/- sustained by CIT(A).

5. Before us, Ld. AR made vehement pleadings to contend that the AO has wrongly made addition as under:

(i) Firstly, he submitted that the AO made addition by relying on an information claimed to have been received from Bharat Petroleum Corporation Ltd. (BPCL) u/s 133(6) showing commission-payment of Rs. 59,32,106/- to assessee. The AO has mentioned in Para 8 of assessment-order "copy enclosed for ready reference" but there is no such copy of information attached to the assessment-order. Ld. AR submitted that the assessee did not receive any commission from BPCL and therefore made a direct communication with BPCL to clarify the position. Ld. AR has filed a copy of trailing e-mails exchanged between assessee and BPCL at Page No. 10 to 13 of Paper-Book, relevant pages are scanned and re-produced below:

09/12/2022, 13:56

bpclretail.in User : rajdhani138480@bpclretail.in

PREVIEW MAIL

Dec 09, 2022 Friday 01:54:56 PM

Convert to HTML

**From** rajdhani138480@bpclretail.in [162591143]  
**To** prateek gayakwad (प्रतीक गायकवाड) <prateekgayakwad@bharatpetroleum.in>  
**Subject** Re : FW: [EXT] Information From Income Tax Department  
**Date** 12 Oct 2022 03:22:00 PM

Thank you for your kind help sir.

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**From:** prateek gayakwad (प्रतीक गायकवाड) <prateekgayakwad@bharatpetroleum.in> Mailto: [162591143]  
**To:** "rajdhani138480@bpclretail.in" <rajdhani138480@bpclretail.in>  
**Subject:** FW: [EXT] Information From Income Tax Department  
**Date:** 11 Oct 2022 05:53:52 PM

Please refer to reply from finance department in trailing mail.

Regards,

Prateek Gayakwad  
Manager Sales (Retail)  
Bhopal  
+91-9009574209

**From:** jatin grover (जतिन ग्रोवर)  
**Sent:** Tuesday, October 11, 2022 11:55 AM  
**To:** prateek gayakwad (प्रतीक गायकवाड)  
**Cc:** prashant v bathe (प्रशांत वी बाथे); jatin m joshi (जतिन एम जोशी); chayan chhajlani  
**Subject:** RE: [EXT] Information From Income Tax Department

Dear Sir,

BPCL does not pay any commission to any dealer. We are selling at principal to principal basis only.

Dealer's Margin details will be available with the dealer only.

**From:** prateek gayakwad (प्रतीक गायकवाड) <prateekgayakwad@bharatpetroleum.in>  
**Sent:** 11 October 2022 11:37  
**To:** jatin grover (जतिन ग्रोवर) <jatingrover@bharatpetroleum.in>  
**Cc:** prashant v bathe (प्रशांत वी बाथे) <prashantvbathe@bharatpetroleum.in>; jatin m joshi (जतिन एम जोशी) <jatinmjoshi@bharatpetroleum.in>  
**Subject:** RE: [EXT] Information From Income Tax Department

Dear Jatin,

Kindly update so that dealer can give reply to Income tax department with reference to the above mail.

Regards,

Prateek Gayakwad  
Manager Sales (Retail)  
Bhopal  
+91-9009574209

**From:** jatin m joshi (जतिनएमजोशी)  
**Sent:** Friday, October 7, 2022 10:26 AM

T.C  
R

02/2022, 13:56

bpciretail.in User : rajdhani138480@bpciretail.in

To: jatin grover (जतिनग्रावर)  
Cc: prateek gayakwad (प्रतीकगायकवाड)  
Subject: FW: [EXT] Information From Income Tax Department

Dealer M/s Rajdhani Petro Point (CC 138480) wishes to know total dealer commission for FY 2013-14. Is there any report through which dealer can know?

Regards,  
Jatin Joshi

From: jatin m joshi (जतिन एम जोशी)  
Sent: 06 October 2022 11:43 AM  
To: prateek gayakwad (प्रतीक गायकवाड) <prateekgayakwad@bharatpetroleum.in>  
Cc: mathur aditya (माथुर आदित्य) <mathura@bharatpetroleum.in>  
Subject: FW: [EXT] Information From Income Tax Department

Please speak with regard to below.

Regards,  
Jatin Joshi

From: rajdhani138480@bpciretail.in <rajdhani138480@bpciretail.in>  
Sent: 06 October 2022 10:44 AM  
To: jatin m joshi (जतिन एम जोशी) <jatinmjoshi@bharatpetroleum.in>  
Cc: prateek gayakwad (प्रतीक गायकवाड) <prateekgayakwad@bharatpetroleum.in>  
Subject: [EXT] Information From Income Tax Department

**Warning:** This email has not originated from BPCL. Do not click on attachment or links URL unless sender is reliable. Malware/Viruses can be easily transmitted.

Sender Email ID : [rajdhani138480@bpciretail.in](mailto:rajdhani138480@bpciretail.in)

Respected Sir,

I am a dealer of BPCL, Bhopal CC Code: 138480. We have received a notice from income tax department which says in the FY 2013-14 (AY 2014-15) according to income tax they received information from BPCL that rajdhani received ₹59,32,106, But in our balance sheet it is ₹31,49,584. We wanted to know how did BPCL calculated this amount we have to prove this to income tax department. Please support. We have also attached a copy of notice please find the same attached herewith.

thank you

2/2022, 13:56

bpcretail.in User : rajdhani138480@bpcretail.in

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2) **Addition on account of Commission received:**

After considering the information received from M/s Bharat Petroleum Corporation Limited and the submissions of the assessee an amount of Rs. 27,82,822/- was added back to the income of the assessee. Before making such addition a Show Cause Notice was served upon the assessee vide letter dated 09/12/2016. But the assessee had not responded to the said Show Cause Notice which implies that the assessee had nothing to say and agreed to the addition. It is pertinent to mention here that as per information received from M/s BPCL, Bhopal the assessee had received an amount of Rs. 59,32,106/- as commission and compensation on sale of petroleum products during the previous year whereas she has declared a gross profit of Rs.31,49,584/- only thereby under reporting profit of Rs.27,82,522/-. However, considering the fact that the Audit Report disclosed shortage of 937 ltrs of Diesel and 30917 ltrs of Petrol, the Petroleum Company has also set certain norms and limit in respect of loss due to evaporation/ handling etc; the assessee has also applied the same principal in respect of lossess, loss claim to certain extent as prescribed by M/s BPCL can be considered. In this case the assessee has claimed shortage of diesel to the extent of 937 ltrs. and petrol to the extent of 30,917 ltrs. in the quantitative details of Audit Report. Since the diesel loss is within the threshold limit it can be considered and in the case of petrol it should be limited to 16,446 ltrs only. Therefore, considering the average rate of diesel of Rs.58/- during the period the total value of shortage/loss comes to Rs. 54,346/- and in respect of petrol it comes to Rs. 11,51,220/- taking average rate of Rs. 70/-. As such total shortage/loss value of Rs. 12,05,566/- can be considered from Rs. 59,32,106/-. As if considered so, the Gross Profit should have been Rs. 47,26,540/- but the assessee has declared G.P. of Rs. 31,49,584/- only thereby under reporting profit of Rs. 15,76,956/-.

Yours faithfully,

(SURESH.B.)

Income Tax Officer - 1(4),  
Bhopal

सूचना  
आपके पत्र को भेजने के लिए धन्यवाद।

\*\*\*\*\* अस्वीकृति Disclaimer \*\*\*\*\*

यह संदेश भारत पेट्रोलियम कॉर्पोरेशन लिमिटेड (बीपीसीएल) - भारतवर्ष की मेलिंग संदेश प्रणाली से भेजा गया है। संदेश में जो विचार व्यक्त किये गये हैं वे प्रेषक के अपने हैं, जब तक कि इन्हें बीपीसीएल द्वारा स्पष्ट रूप से अधिकृत न किया गया हो। इस संदेश एवं किसी भी अनुलग्नक में दी गई जानकारी, प्राप्तकर्ता(ओं) के अनन्य उपयोग के लिए है और इसमें मालिकाना, गोपनीय या विशेषाधिकार की जानकारी हो सकती है। अनभिप्रेत प्राप्तकर्ता कृपया इसको हटा दें एवं प्रेषक को तुरंत सूचित करें।

[http://mail.bpcretail.in?to=hmPreviewMail.in](mailto:bpcretail.in?to=hmPreviewMail.in)

Referring to above email, Ld. AR submitted that the BPCL has confirmed in e-mail dated 11.10.2022 thus “BPCL does not pay any commission to any dealer. We are selling at principal to principal basis only. Dealer’s margin details will be available with the dealer only.” Thus, Ld. AR contended, when no commission was given by BPCL, how the AO has picked the figure of commission-receipt at Rs. 59,32,106/- remains a question. Ld. AR submitted that the AO has wrongly and baselessly alleged that the assessee received commission, which was in fact not received at all, only to make the impugned addition.

- (ii) Secondly, Ld. AR submitted that the CIT(A) has applied the standard % of evaporation-loss as per *Schedule II appended to the Ministry of Petroleum & Natural Gas Order dated 28<sup>th</sup> December, 1998* and accordingly accepted full shortage of 937 liters declared by assessee in Diesel but accepted part-shortage of 16,446 liters (0.60%) in petrol as against the actual loss declared by assessee at 30,917 liters (1.128%) and arrived at excess shortage at 14,472 liters (0.528%). Ld. AR submitted that the assessee has genuinely suffered shortage of 30,917 liters due to variety of factors such as evaporation, handling and filling in smaller quantities to vehicles. Ld. AR also filed a statement, on 11.03.2024 with a copy served upon Ld. DR as per liberty given by bench during hearing, showing the figures of excess-shortage declared by assessee in preceding year at 0.543% and succeeding year at 0.569%. Thus, Ld. AR submitted that the excess-shortage of 0.528% shown in current year is in line with consistent declaration by assessee year-after-year. Ld. AR went on submitting that assessee’s accounts are audited and audit-report is on record which are not rejected by AO. Therefore, the lower-authorities ought to have accepted the actual shortage declared by assessee. Relying upon decision of ***ITAT, Indore in Shri Ravi Prakash Langar Vs. ACIT, ITA No. 717/Ind/2017***

**order dated 26.12.2018**, Ld. AR submitted that the ITAT has accepted the actual loss declared by assessee in place of standard limit of 0.60%, therefore the assessee's case is covered by said decision and in the light of said decision, the shortage declared by assessee must be accepted.

6. Per contra, Ld. DR for revenue submitted that the AO show-caused assessee after collecting information from BPCL specifically asking as to why the addition of Rs. 27,82,822/- made not be made. But, however, the assessee made non-compliance of notice and therefore the AO made addition. He further submitted that the CIT(A) has already considered standard evaporation loss permissible under the Rules of Ministry of Petroleum and granted sufficient relief. Ld. DR referred Para No. 5 of another decision titled ***M/s Mohdammad Bhai Esufali & Sons Vs. ITO, ITA No. 131/Pun/2020 order dated 01.07.2022 of ITAT, Pune Bench*** filed in assessee's paper-book to show that in the said decision, a specific reason of 'breakage of diesel and petrol tank' was explained by assessee which has led the ITAT to accept the higher shortage declared by assessee. But in the present case, there is no such specific reason, the assessee has merely advanced general and vague reasons of handling and filling loss, which again are not substantiated by any evidence. Therefore, the relief given by CIT(A) as per standard norms is sufficient and there cannot be any grievance to assessee.

7. We have considered rival submissions of both sides and perused the orders of lower authorities as also other documents filed in Paper-Book. We

find that the very basis of addition as noted by AO in assessment-order is an information claimed to have been received from BPCL u/s 133(6) showing that the assessee was paid a commission of Rs. 59,32,106/-. However, Ld. AR claims that no such information has been attached with assessment-order nor it was supplied to assessee. Ld. AR is further controverting the receipt of commission, as alleged by AO, on the basis of e-mails exchanged by assessee with BPCL wherein the BPCL has confirmed that they are not paying any commission to any dealer and entire sale is made on principal-to-principal basis. We find that the e-mail being relied by assessee, reproduced above, is dated 11.10.2022 which is much after passing of assessment-order on 15.12.2016, therefore this e-mail was not before AO. However, this e-mail was submitted to CIT(A) as mentioned in Para No. 6.2.1 of Written-Submission filed by assessee to CIT(A), copy at Page No. 7 and 10-13 of Paper-Book. But the CIT(A) has not considered assessee's submission and confined his decision to giving the benefit of standard evaporation loss. Thus, the CIT(A) has not given his finding qua the clinching point claimed by assessee that there was no commission-receipt of Rs. 59,32,106/- as alleged by AO. We feel that the order of CIT(A) is deficient in as much as it does not adjudicate the claim made by assessee. Further, the receipt or non-receipt of the commission is the primary basis for keeping or deleting addition, therefore first of all this point has to be adjudicated appropriately. Therefore, in the circumstance, we feel that the matter should go back to CIT(A) for a proper adjudication on the claim made by assessee. Needless to mention

that the CIT(A) may seek a remand-report from AO on the point or otherwise conduct further enquiries on the claim of assessee in accordance with law. The assessee shall also be given opportunities to make representation and file submission which the assessee shall avail. Thereafter, the CIT(A) shall pass a well-reasoned order covering all claims of assessee including the claim of non-receipt of commission. Since we are remanding to CIT(A), other pleadings made by assessee are not required to be adjudicated by us at this stage. Ordered accordingly.

**8. Resultantly, this appeal is allowed for statistical purpose.**

*Order pronounced in open court on 01.04.2024.*

sd/-  
(MS. MADHUMITA ROY)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 01.04.2024.

CPU/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore