

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.170/Coch/2021 : Asst.Year 2014-2015

M/s.KRS Fuel Station TP,X/553B, Karadi Thamarassery – 673 573 PAN : AAHFK0006D.	v.	The Income Tax Officer Ward 2(3) Kozhikode.
(Appellant)		(Respondent)

Appellant by : Sri.Arun Nedungadi, CA
Respondent by : Smt.V.Swarnalatha, Sr.AR

Date of Hearing : 13.08.2024	Date of Pronouncement : 13.08.2024
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ORDER

Per Bench :

This assessee's appeal in ITA No.170/Coch/2021 for assessment year 2014-2015 arises against the CIT(A)/NFAC's DIN & Order No.ITBA/NFAC/S/250/2021-22/1035073151(1) dated 25.08.2021, passed u/s.250 of the Income-tax Act, 1961; in short "the Act" hereinafter.

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive ground seeking to reverse the lower authorities action disallowing / adding the alleged fuel leakage loss of Rs.5,56,822 in the course of assessment, our attention is invited to the CIT(A)'s detailed discussion upholding the same reading as under:-

“From the above table it is very clear that quantity of the sell has taken by AO for calculation of the commission is as per submission of appellant. Moreover, the appellant does not dispute the rate of commission / dealer margin has taken by AO. It is only quantity of sale is disputed. From the above table, it is very clear that quantity of sell of diesel is 29,99,775 litres and that of petrol is 4,10,878 litres and as per table there, there is no shortage of stock. In fact closing stock and opening stock of both items given in the above table. Therefore, I do not find force in the pleading / arguments of the appellant and this addition of Rs.5,56,822/- is confirmed.

5. Ground No. 4 & 5 of appellant pertains to the addition on account of discount of Rs.3 lakhs. I have carefully gone through the assessment order and submission of the appellant. The AO disallowed mainly because according to him, there is no prevailing practice among the petrol/diesel dealers to give discount on the sales. This opinion of AO is only subjective and not based any data or any facts gathered. To allow or not allow discount depends upon the business prudence of the businessmen according to circumstances. The Ld. AO cannot impose his views regarding the decision taken by businessmen in the interest of his business. Therefore, I do not find any force in the reasons given by the Ld. AO for making the addition. Therefore, addition of Rs.3 lakhs on this ground is hereby deleted. In the result, the appeal is partly allowed.

3. Learned Counsel vehemently argues that the fuel leakage claimed herein is in the regular course of its fuel outlet business is very much within permissible limit(s) as allowed by the oil marketing companies in public sector. He has also filed a compilation chart before us to buttress his argument in this regard.

4. Learned DR, on the other hand, submits that both the lower authorities have gone through the assessee's details for the purpose of making the impugned disallowance / addition.

5. We find that the assessee has claimed the impugned fuel leakage loss going by the oil marketing companies and has also filed a reconciliation figure to this effect. We, thus, deem it appropriate in the larger interest of justice to restore the issue back to the file of the Assessing Officer for afresh examination as per law after affording three effective opportunities of being heard to the assessee. Ordered accordingly.

6. This assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on this 13th Day of August, 2024.

Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Cochin ; Dated : 13th August, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Concerned.
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin