

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.453/CTK/2024
(निर्धारण वर्ष / Assessment Year : 2017-2018)

Utkal Flour Mills Pvt. Ltd. 246, Lewis Road, Bhubaneswar	Vs	ITO, Ward-1(2), Bhubaneswar
PAN No. : AAACU 3984 C		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri K.K.Bajoria, CA
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	27/11/2024
घोषणा की तारीख/ Date of Pronouncement	:	27/11/2024

आदेश / ORDER

Per Bench :

This is an appeal filed by the assessee against the order of Id. Addl./JCIt(A)-2, Kolkata, dated 30.08.2024, passed in Appeal No.CIT(A), Bhubaneswar-1/14688/2019-20 vide DIN & Order No.ITBA/APL/S/250/2024-25/1068157737(1) for the Assessment Year 2017-2018.

2. The assessee has challenged the appellate order by taking the following grounds :-

1. *For that, in the facts and circumstances, the impugned Order is arbitrary, not based on facts but based on surmises and conjectures and the Ld Addl /Jt CIT(A) has erred in confirming the additions to income of Rs 1,99,318/- towards payment of Entry Tax demand which is otherwise an allowable business expense.*
2. *For that, in the facts and circumstances, the impugned Order is arbitrary, not based on facts but based on surmises and conjectures and the Ld Addl/Jt CIT(A) has erred in confirming the additions to income of Rs 4,16,785/- towards alleged probable proceeds of sale of wastage, which is contrary to the books of accounts, records and registers submitted in course of assessment.*

3. *For that, in the facts and circumstances, the impugned Order is arbitrary, not based on facts but based on surmises and conjectures and self contradictory, and the Ld Addl / Jt CIT(A) has erred in confirming the additions to income of Rs 4,16,785/- towards alleged probable proceeds of sale of wastage, on estimate basis, in self contradiction of agreeing to the existence of normal process loss or wastage and without rejection of books of accounts submitted in course of assessment, and such Order is liable to be quashed.*
4. *For that, the Ld Addl/ Jt. CIT(A) has passed the Order u/s 250 of the Income Tax Act, 1961, without affording an opportunity of personal hearing or by video conferencing, in gross violation of principles of natural justice, despite a request for the same having been made, and such order is liable to be annulled.*
5. *For that the impugned Order dt 30.08.2024 issued by the Ld Addl / Jt. CIT(A) is based on Notice dt. 29.05.2024 issued by the appellate authority, giving the name and location of the said appellate authority and is contrary to the principles of Faceless Appeal Scheme, and such Order is bad in law.*
6. *For that the impugned Order dt 30.08.2024 issued by the Ld Addl/ Jt. CIT(A) is based on Notice dt. 29.05.2024 issued by the appellate authority, giving the location at Kolkata, in West Bengal, of the said appellate authority, is not only contrary to the principles of Faceless Appeal Scheme, but is also outside the local jurisdiction of the appropriate appellate authority, and such Order is bad in law.*
7. *For that, the Appellant be allowed to modify or adduce further grounds at the time of hearing.*

3. At the outset, on perusal of the appeal record, it is found that the appeal of the assessee is barred by 04 days. In this regard, the assessee has filed an application with affidavit for condonation of delay stating sufficient reasons. Ld. Sr. DR did not raise any serious objection. Accordingly, delay of 04 days in filing appeal by the assessee is hereby condoned and appeal is disposed off in the following manner.

4. Brief facts of the case are that the assessee is a private limited company engaged in the business of flour mill at Charampa, Bhadrak and having its registered office at Lewis Road, Bhubaneswar, Odisha. The return of income for the year under appeal was filed on 09.10.2018 at total income of Rs.14,26,030/-. The assessment was completed u/s 143(3) vide order dated 23.12.2019 by making disallowances of Entry Tax expenses claimed at Rs.1,99,318/- and further by making addition of Rs.4,16,785/- as estimated sales of wastages. In first appeal the Id. Addl./JCIT(A)-2, Kolkata has confirmed the disallowances, therefore, the present appeal is filed before us by the assessee.

5. The Ground no 1 is in relation to the disallowances of Rs 1,99,318/- made towards the Entry Tax claimed as expenditure u/s 37(1) of the Act.

6. Before us Id AR submitted that the assessee has sold Chokad for which the entry tax demand of Rs 2,19,318/- was created. The said demand relates to the period from 1.04.2005 to 30.11.2006. The assessee filed the appeal against the levy of such entry tax before the competent authority i.e. the Commissioner of Sales Tax (LTU), Balasore Range, Balasore and had paid Rs.20,000/- in Financial Year 2013-2014. This amount of Rs.20,000/- was claimed as expenditure and was allowed in assessment year 2014-2015 i.e. the year under which the same was paid in the assessment completed u/s.143(1) of the Act. During the year under appeal, the remaining amount of Rs.1,99,318/- was recovered from the assessee's bank account and since it was paid during the previous year, therefore, the same was claimed in the year under appeal. The AO

has disallowed the same by observing that the demand created by the department towards the entry tax is penal in nature without appreciating the fact that the entire demand was in relation to the entry tax and interest thereon and no penalty was imposed. Ld. AR also submitted that the appeal filed before the Commission of Sales Tax (LTU), Balasore Range, Balasore was decided in subsequent year where a relief of Rs.70,385/- was allowed to the assessee and since the entire payment of entry tax demand was claimed as expenditure by the assessee, therefore, the amount of relief of Rs.70,835/- was offered for tax in subsequent year. The Id. AR, thus, prayed that since the expenditure claimed was towards the tax and interest and is allowable expenditure u/s.37(1) of the Act, therefore, the disallowance may be deleted, more particularly, when the assessee itself has included the amount of relief granted to it in the total income in subsequent years.

7. On the other hand, Id. Sr. DR vehemently supported the orders of the lower authorities and submitted that the issue may be restored to the file of AO for verification as to whether this amount is in the nature of penal or is with regard to the tax and interest only.

8. We have heard rival submissions and perused the material available on record. As the levy of entry tax is subjudice before the competent authorities and since the amount was paid during the year, it was claimed as expenditure. He further claimed that the amount of relief granted by appellate authority in Entry Tax dispute of Rs.75,835/- was offered for tax in subsequent year. Also, the expenses of Rs.20,000/-

claimed in assessment year 2014-2015 was also not disputed by the department. In these circumstances, we are of the view that the amount of entry tax and interest thereon cannot be disallowed. However, in absence of precise details, we send this issue for the limited purpose of verification to the file of the AO to verify whether the entire demand relates to tax and interest only. Had it be towards the tax and interest and if the amount was actually paid during this year, the same be allowed to the assessee as expenditure. With this direction, this issue is set aside to the file of AO for limited purpose as stated above. The Ground No.1 is partly allowed for statistical purposes.

9. Ground Nos.2 & 3 of appeal relate to the addition of Rs.4,16,785/- made by the AO by estimating the sales of wastages.

10. Brief facts pertain to this grounds are that the assessee has made total purchases of wheat of 86,368.32 quintals out of which the production was of 83,449.82 and partly was sold/available in stock and claimed balance quantity of 833.57 quintals as wastage/processing loss which is 0.9988% or nearly 1% approx. of the quantity issued for production of flour. The AO was of the view that the wastage produced during the course of milling of wheat has some value and is not total wastages and, therefore, he estimated base price of wastage @500/- per quintal and made the addition of Rs.4,16,785/- towards 833.75 quintal of wastage produced. In first appeal the Id. Addl./JCIT(A)-2, Kolkata though found force in the arguments of the assessee that only 1% of the quantity issued for production was claimed as wastages which is quite reasonable,

however, since the assessee has not disclosed these figures in the tax audit report, therefore, he upheld the action of the AO in making the addition by estimating the sale price of such wastages against which the present appeal is preferred by the assessee.

11. During the course of hearing, the Id. AR reiterated the arguments made before the authorities below and submitted that the wastage produced from the production of flour is nothing but a total loss and having no market value and, therefore, it was claimed as total loss. The AO without bringing on record any comparable case merely on assumption and presumption held that such wastage might have some value and estimated the sales at Rs.4,16,785/-. He, thus, prayed for the deletion of the addition made.

11. On the other hand, Id. Sr. Dr vehemently supported the orders of lower authorities and submitted that the assessee has failed to disclose the quantity of wastage in the quantitative details appearing in form 3CD annexed to tax audit report while filing the return, therefore, the AO was right in making the estimation of the shortage of the quantity being wastage as sales and, therefore, he prayed for the confirmation of the addition so made.

12. We have considered the rival submissions and perused the material available on record. In this case, it is seen that out of total quantity issued for production of wheat at 83,449.82 quintals, only 833.57 quintals was claimed as wastage which is nearly 1% of the total quantity issued for production. This wastage 1% of the total material used in production is a

very reasonable claim. The claim of assessee that such wastage has no market value has not been controverted by the revenue. Moreover, the AO has not brought on record any comparable case by which the wastage claim by the assessee could be held as excessive or unreasonable. It is a matter of common knowledge that the wastage generated during the production of flour from wheat has no market value and the AO also has estimated the value of such waste on assumption and presumption. In the present case, though in all the previous years the results declared by the assessee were accepted u/s.143(1) of the Act, however, the fact remained that in all these years, the assessee also claimed amount of wastage and was in parity with the wastage claimed in the year under appeal. Looking to these facts and circumstances of the case, we are of considered view that the AO has failed to appreciate the nature of business of the assessee where the claim of wastage as low as 1% is quite reasonable and also failed to appreciate that such wastage could not yield in any income, thus, we direct to delete the addition of Rs.4,16,785/-. These grounds of appeal are allowed.

13. Grounds No.4 to 6 are relating to the Addl./JCIT(A) in not allowing the Video Conferencing and providing name and location in the notice as well as in the appellate order which is contrary to the faceless appellate scheme.

14. Since, we have already decided the appeal on merits of the issues and the Id. AR also not made any arguments in support of these grounds

of appeal, therefore, these grounds have become academic in nature and are not adjudicated.

15. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 27/11/2024

**Sd/-
(GEORGE MATHAN)**

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 27/11/2024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Utkal Flour Mills Pvt. Ltd.
246, Lewis Road, Bhubaneswar
2. प्रत्यर्थी / The Respondent-
ITO, Ward-1(2), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack