

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" (SMC) BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
आयकर अपील सं./ **I.T.A. Nos.1308 & 1309/Mds/2015**
(निर्धारण वर्ष / Assessment Years : 2004-2005 & 2005-2006)

Amar Sparklers Factory,
No.38, M.C. Street,
Sivakasi 626 123.

The Deputy Commissioner of
Vs Income Tax,
C.C. III,
Madurai

[PAN:AAEFA 4270G]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. V. Rajasekaran, C.A.
प्रत्यर्थी की ओर से / Respondent by : Shri. A.B. Koli, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 28.08.2015
घोषणा की तारीख /Date of Pronouncement : 02.09.2015

आदेश / ORDER

These appeals by the assessee are directed against common order of the Commissioner of Income-tax (Appeals)-19, Chennai, dated 24.02.2015 for the above assessment years. Since the issue involved in these appeals are common in nature, these appeals are combined, heard together, and disposed of by this order for the sake of convenience.

2. The assessee has raised the following ground in ITA No.1308/Mds/2015

'1. The Respectable Commissioner of Income Tax (Appeals)-19, Chennai was not justified while passing the order on account of difference amount in sales ₹2,85,754/- and being handling and forwarding charges collected/credited in packing materials account of ₹2,80,800.41 instead of credit in Profit and Loss account and Mahamai paid ₹4,953.42'.

3. The facts of the case are that there was a search u/s.132 of the Act in the case of M/s. Amar Sparklers Factory and its partners on 21.10.2008. Books of accounts, documents and other materials relating to the assessee and the group concerns were found and seized. Subsequently, relevant statutory notices were issued. The assessee filed return of incomes for the AY 2004-05 and 2005-06 admitting ₹4,58,860/- and ₹6,39,634/- respectively on 23.12.2009. During the course of assessment proceedings, it was found out that the sales turnover as per Sales tax Order is ₹79,60,649/- and ₹90,15,228/- for the assessment years 2004-05 and 2005-06 respectively whereas the assessee firm had admitted only ₹76,74,894/- and ₹.87,11,015/- for the same as sales made including Mahamai and insurance.

Hence, the Assessing Officer completed the assessment by making an addition of Rs.2,85,754/- and ₹3,04,213/-for the AYs 2004-05 and 2005-06, being the difference between the sales tax order and the sales made to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. On appeal, The Commissioner of Income Tax (Appeals) observed that the contention of the assessee are found to be apparently not correct and against the uncontrolled fact recorded in the assessment order. The Assessing Officer in the assessment order for the assessment year 2004-05 has observed that the sales as per Sales Tax Order is Rs.79,60,649/- whereas the assessee firm had admitted ₹76,74,894/- as sales including mahamai and insurance. Similarly these figures of turnover as per Sales Tax order and as admitted turnover at Rs. 9015228/- and Rs. 8711015/- respectively have been recorded in the assessment order for the assessment year 2005-06. The assessee has not controverted the above said facts recorded in the assessment orders with any material or evidence. No evidence has been brought on record in support of the grounds of appeal taken

by the assessee. In the absence of any material or evidence brought on record to controvert the facts recorded the assessment order to support the grounds of appeal, there was no reason or basis to interfere with the orders of the Assessing Officer in making the aforesaid additions on account of difference in the sales as per the admitted turnover in the income tax and turnover as per the Sales Tax order in both assessment years under appeal. Accordingly, the Commissioner of Income Tax (Appeals) upheld the order of the Assessing Officer. Against this, the assessee is in appeal before us.

5. Both sides heard. The Id. Authorised Representative for assessee submitted that there was difference in turnover disclosed to the sales tax department and the turnover disclosed to the Income tax department on account of inclusion of Mahamai, handling charges and transit insurance and if the above items are excluded, there will be no difference of turnover disclosed to the sales tax department and the income tax department.

6. In my opinion, the assessee has not properly reconciled these two turnovers before the Assessing Officer and only argued without

any supportive evidence. In my opinion, it is appropriate to remit the issue back to the file of the Assessing Officer with a direction to the assessee to properly reconcile these two turnovers with supportive evidence before the Assessing Officer. Accordingly, this issue is remitted back to the file of the Assessing Officer for fresh consideration.

7. Since the issue is common in ITA No.1309/Mds/2015, this issue is also remitted to the Assessing Officer on similar direction.

8. In the result, the appeals of the assessee in ITA No.1308 & 1309/Mds/2015 are partly allowed for statistical purposes.

Order pronounced on Wednesday, the 5th day of September, 2015, at Chennai.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य/ ACCOUNTANT MEMBER

चेन्नई/Chennai.

दिनांक/Dated: .09.2015.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2.प्रत्यर्थी/ Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.

