

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.27/Mds/2016

निर्धारण वर्ष / Assessment Year : 2009-10

The Deputy Commissioner of
Income Tax,
Corporate Circle 2,
Madurai.

v. M/s Shri Parameswari Spinning
Mills (P) Limited,
38, 4-A, Mills Premises
Great Cotton Road, Pandalgudi,
Aruppukottai – 626 113.

(अपीलार्थी/Appellant)

PAN : AABCS 5356 F

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. A.S. Sriraman, Advocate

सुनवाई की तारीख/Date of Hearing : 01.06.2016

घोषणा की तारीख/Date of Pronouncement : 22.07.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 1, Madurai, dated 13.10.2015 and pertains to assessment year 2009-10.

2. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the first issue arises for consideration is with regard to addition on account of excess claim of power and fuel. According to the Ld. D.R., the assessee-company is engaged in the business of manufacturing of cotton yarn, poly cotton yarn and man made fabrics. During the year under consideration, the Assessing Officer found that there was huge variation in the cost of power consumption claimed by the assessee. The Assessing Officer found that the average percentage of expenditure of power for other 14 similar manufacturing units was 15.60. In the case of the assessee, it was 22.70. According to the Ld. D.R., the average power consumption / expenditure cannot be so high when compared to other similarly placed manufacturing units. Therefore, the Assessing Officer disallowed the excess claim to the extent of ₹3,20,70,718/-. On appeal by the assessee, according to the Ld. D.R., the CIT(Appeals) found that the Assessing Officer made ad hoc addition without examining the books of account. Referring to the order of the CIT(Appeals), the Ld. D.R. pointed out that the Assessing Officer made comparison of the similar expenditure with that of other 14 companies. However, the CIT(Appeals) found that the addition was made on estimation basis. According to the Ld.

D.R., when the similarly placed manufacturing unit was claiming the expenditure for power at 14.60%, the expenditure of the assessee cannot be at 22.70. Therefore, according to the Ld. D.R., the CIT(Appeals) ought not have deleted the addition made by the Assessing Officer on the ground that the books were not rejected.

3. On the contrary, Sh. A.S. Sriraman, the Ld.counsel for the assessee, submitted that admittedly, the assessee is in the business of manufacturing cotton yarn, poly cotton yarn and man made fabrics. The consumption of power is depending upon the condition of the machinery used in manufacturing activity, utilization of raw material and resultant product. What is to be seen is whether the assessee has actually consumed the electricity / power as claimed. The assessee has filed all the details of the expenditure and maintaining the books of account in the regular course. The Assessing Officer without examining the material available on record, including the books, simply compared the expenditure with that of 14 companies. According to the Ld. counsel, the other 14 companies referred by the Assessing Officer are in the same locality where the assessee was. Some of the textile units selected by the Assessing Officer as comparable are engaged in the manufacturing

of ginned cotton yarn. Therefore, those spinning mills cannot be compared with that of the assessee.

4. The Ld.counsel for the assessee submitted that there are various parameters to determine the power consumption. Such parameters were not compared with that of the assessee-company. The books of account maintained by the assessee were audited with reference to expenditure incurred and the same were not rejected by the Assessing Officer. Placing reliance on the order of this Tribunal in DCIT v. Tamil Nadu Jaibharath Mills Ltd. in I.T.A. No.7/Mds/2016 dated 13.04.2016, the Ld.counsel submitted that an identical issue was considered by this Tribunal. This Tribunal found that when the assessee was maintaining the books of account, there is no reason in estimating the expenditure. According to the Ld. counsel, this Tribunal further found that manufacturing expenditure and consumption of fuel or power would depend upon various factors depending upon the machinery used and maintenance of machinery in a proper condition. Ultimately, this Tribunal found that there was no reason to estimate the expenditure for power consumption. Accordingly, the Tribunal confirmed the similar order of the CIT(Appeals).

5. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer made addition of ₹3,20,70,718/- on estimation basis on comparing the expenditure made by the assessee with that of other 14 companies. An identical issue was examined by this Tribunal in Tamil Nadu Jaibharath Mills Ltd. (supra). This Tribunal found that there are various factors / parameters for consumption of electricity / fuel. The maintenance of machinery is one of the factors, which is necessary to consider for consumption. This Tribunal further found that when the assessee was maintaining books and the same were audited, the Assessing Officer cannot estimate the expenditure without rejecting the books. In view of the order of this Tribunal in Tamil Nadu Jaibharath Mills Ltd. (supra), this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. The next ground of appeal is with regard to excess purchase price.

7. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that there was considerable variation in the purchase

price of various types of cotton, which was used as raw material, when compared to other 14 similar manufacturing units. The Assessing Officer has taken 38 numbers of purchases on random basis and compared with average monthly price. Out of 38 purchases made, 19 purchases were at a price lesser than the average monthly price. Therefore, the Assessing Officer made an addition of ₹68,06,628/- being the excess purchase price.

8. The Ld. Departmental Representative further submitted that on appeal by the assessee, the CIT(Appeals) deleted the addition made by the Assessing Officer on the ground that the Assessing Officer has not made any enquiry with the vendors of the cotton. According to the Ld. D.R., when the assessee has paid apparently higher price than the market price, the same was only to inflate the expenditure and thereby to reduce the taxable income. Therefore, according to the Ld. D.R., the CIT(Appeals) ought not to have deleted the addition made by the Assessing Officer.

9. On the contrary, Sh. A.S. Sriraman, the Ld.counsel for the assessee, submitted that the Assessing Officer compared the purchase price of the assessee with that of the price announced by Cotton Association of India, Mumbai. The Ld.counsel further

submitted that the Assessing Officer without pointing out any defect in the books, resorted to estimate the addition. According to the Ld. counsel, all the 14 companies compared by the Assessing Officer do not produce the same yarn. Consumption of raw cotton would depend upon the count mix and staple length of cotton and strength sold by particular mill. Therefore, the comparison made by the Assessing Officer without going into technical specifications is not justified. Placing reliance on the order of this Tribunal in Tamil Nadu Jaibharath Mills Ltd. (supra), the Ld.counsel submitted that an identical issue was examined by this Tribunal and this Tribunal found that the price of the cotton would depend on various factors including moisture condition and quality. The Tribunal further observed that the rate declared by Cotton Association of India, Mumbai is only a guideline rate and it would vary depending upon the quality and other factors which are relevant in the cotton market. According to the Ld. counsel, the Tribunal found that in the absence of regularity mechanism governing the vendors and farmers selling the raw cotton at a price over and above the rate fixed by Cotton Association of India, there is no justification for making addition. Therefore, according to the Ld. counsel, the Assessing Officer is not

justified in making the addition on the rate fixed by Cotton Association of India.

10. We have considered the rival submissions on either side and perused the relevant material available on record. In this case, the disallowance was made on the basis of the rate declared by the Cotton Association of India, Mumbai without going into the books of account. The quality of raw cotton purchased by the assessee and the moisture condition were not considered by the Assessing Officer. Therefore, as found by this Tribunal in the case of Tamil Nadu Jaibharath Mills Ltd. (supra), the rate fixed by Cotton Association of India is only a guideline rate and there was restriction in purchase of cotton either at lesser or higher rate than the one fixed by the Cotton Association of India having regard to the quality of cotton.

11. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

12. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 22nd July, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 22nd July, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Madurai
4. Principal CIT, Madurai-1, Madurai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.