

आयकर अपीलीय अधिकरण, "ए" न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1530/Mds/2015

निर्धारण वर्ष /Assessment year : 2005-06

M/s. Sakthi Sugars Limited,
No.180, Race Course Road,
Race Course Road,
Coimbatore 641 018.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 1,
Coimbatore

[PAN AADCS 0651B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shir. B. Lakshminarayan, JCIT.

सुनवाई की तारीख/Date of Hearing : 13-01-2016

घोषणा की तारीख /Date of Pronouncement : 25-02-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-I, Coimbatore in ITA No.292/13-14, dt 21.05.2015 for the assessment year 2005-2006

passed u/s.143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised two substantive grounds:-

- (i) The Commissioner of Income Tax (Appeals) erred in concluding state tax payments have not made and also statements of the assessee were not considered in the appellate proceedings with the necessary evidence.*
- (ii) The Commissioner of Income Tax (Appeals) erred in considering legal contention were the assessment reopened beyond a period of four years.*

3. The Brief facts of the case, the assessee is in the business of manufacture of sugar, industrial alcohol and generation of power and soya products. The assessee filed Return of income on 31.10.2005 admitting Nil income under normal computation and as per the provisions of Sec.115JB of the Act after adjustment of brought forward business losses, Assessment was completed u/s.143(3) of the Act on 28.12.2007. The Id. Assessing Officer noticed that assessee company has claimed deduction on account of sales tax ₹35,68,758/- which was not paid before the due date of filing of the return and also loss on sale of fixed assets and preproduction expenses are not disallowed in computation of income and there is a reason to believe the concealment of income and notice u/s.148 of the Act was issued. In compliance to notice, the assessee filed letter dated 02.04.2012 and

also submitted information from time to time and relied on judicial decisions in respect of proposed additions. The issue in dispute being sales tax payments and Id. Authorised Representative submitted that the assessee company claimed deduction on account of sales tax paid before due date of filing of return u/s.139(1) and deduction was claimed in the computation of income. The Id. Authorised Representative also submitted supporting documents containing the payments of sales tax and prayed for considering the same. But the Assessing Officer after considering the submissions on the sales tax payments has presumed that the assessee has not proved with supporting details with exact payments of sales tax of ₹35,68,758/- with the sales tax department. The Assessing Officer further ignored the submissions that payments has been made out of overall payments. But the Assessing Officer due to nonavailability of exact evidence made disallowance alongwith other disallowances and also confirmed the re-assessment proceedings as valid and relied on various judicial decisions and completed assessment u/s.143(3) r.w.s.147 of the Act on 30.03.2013 with assessed income of ₹15,08,49,515/- and calculated set off of loss in the assessment order. Aggrieved by the order of the Assessing Officer, the assessee assailed an appeal before the Commissioner of Income Tax (Appeals).

4. The Id. Authorised Representative of the assessee submitted that Assessing Officer has erroneously concluded that sales tax payments has not been made. The payments were made with other payments and necessary evidence was filed at the time of hearing and such payments were made before due date of filing of return. The Id. Authorised Representative submitted details of gross sales, purchaseS, tax liability referred at page no.2 of Commissioner of Income Tax (Appeals) order as under:-

^ The company had gross sales and purchase tax liability for the financial year 2004-05 to the tune of ₹12,27,37,789/- as detailed below:-

Sales Tax Collection	₹7,23,16,596
Purchase tax provision	₹2,40,79,130
SC on purchase tax provision	₹11,80,900
Addl. Sales Tax provision	₹2,51,61,163
Total payable for the F.Y. 2004-05	₹12,27,37,789

The company has effected payments to the tune of ₹10,06,81,586/- within the time as prescribed under sales tax. The balance amount is ₹ 2,20,56,203/-. Out of the same a payments of ₹1,25,00,000/- has been made piecemeal in the following manner:-

Date	Payments (₹)
06.05.2005	25,00,000
11.05.2005	15,00,000
13.05.2005	10,00,000
20.06.2005	25,00,000
01.07.2005	25,00,000
15.07.2005	25,00,000
Total payments	1,25,00,000

The Id. Commissioner of Income Tax (Appeals) though considered the submissions but concurred with the findings of the Assessing Officer that no evidence of proof of payments of sales tax was produced and confirmed the Assessing Officer order. The Id. Commissioner of Income Tax (Appeals) on the ground of re-opening of assessment beyond a period of four years, considered the submissions made by the Id. Authorised Representative and relied on the findings of *Kelvinator India Ltd 320 ITR 561(SC)* referred at page no.4 of Commissioner of Income Tax (Appeals) order:-

"One needs to give a schematic interpretation to the words 'reason to believe; failing which section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of 'mere change of opinion; which cannot be per se reason to reopen. One must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review, he has the power to reassess, but the reassessment has to be based on fulfillment of certain pre-conditions and if the concept of 'change of opinion' is removed as contended on behalf of the department, then in the garb of reopening the assessment, review would take place. One must treat the concept of 'change of opinion' as an in-built test to check abuse of power by the Assessing Officer. Hence, after 01. 04.1989, the Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment. Under the Direct Tax Laws (Amendment) Act, 1987, the Parliament not only deleted the words 'reason to believe' but also inserted the word 'opinion' in Section 147. However, on receipt of representations from the

companies against omission of the 4 words 'reason to believe; the Parliament re-introduced the said expression and deleted the word 'opinion' on the ground that it would vest arbitrary powers in the Assessing Officer'.

considering disallowance of sales tax payments of ₹35,68,758/-, the Commissioner of Income Tax (Appeals) has confirmed the re-assessment and also disallowance made by the Assessing Officer and dismissed the appeal. Aggrieved the assessee filed an appeal before the Tribunal.

5. Before the Tribunal, the Id. Authorised Representative of the assessee reiterated his submissions made before Assessing Officer and Commissioner of Income Tax (Appeals) based on the factual information and judicial decisions. The Id. Authorised Representative further argued that necessary evidence was filed before the lower authorities in the assessment proceedings and there is no suppression of any information for claim of sales tax liability. The assessee has submitted details as per Income tax records and also supported the submissions that the disallowance made in the computation of income. The Id.AR drew our attention to the page no.1 & 2 with all the supporting papers with the details of outstanding liabilities of sales tax and also payment by bank transactions and argued that there is no double claim and also referred to the adjustment made in the

computation of income for sales tax payments and explained the system of claim and also challenged the findings of the Assessing Officer on validity of reopening of assessment beyond the period of four years and prayed for allowing the appeal.

6. Contra, the Id. Departmental Representative relied on the findings of the lower authorities and contested heavily against the grounds raised by the assessee.

7. We heard the rival submissions and perused the material on record and judicial decisions cited before us. The Id. Authorised Representative contention based on the reassessment proceeding before the Assessing Officer and the Commissioner of Income Tax (Appeals). Where the Commissioner of Income Tax (Appeals) has dealt and examined the issue with the judicial decisions to which the assessee has also submitted explanations. We are of the opinion that the Id. Commissioner of Income Tax (Appeals) has dealt on the issue of re-assessment in his order. At the time of issue of notice u/sec. 147 of the Act, the Assessing Officer has relevant material jurisdiction and placed requisite belief that there was escapement of income liable to be taxed. So, we are not inclined to interfere in the ground and confirm the order of Commissioner of Income Tax (Appeals).

8. With regard to disallowance of ₹35,68,758/-, the Id. Authorised Representative reiterated his submissions with supporting documents that the assessee has claimed sales tax liability outstanding by making payments before due date of filing of return and also made claim before the Commissioner of Income Tax (Appeals) that the consolidated sales tax payments has been made. In the hearing proceedings, the Id. Authorised Representative submitted details of sales tax payments amounting to 1,25,00,000/- where the payments has been made in piecemeal manner which also includes sales tax payments made for the assessment year 2005-06. So, considering the apparent facts and evidence and also submissions made before us, we are of the opinion that the matter needs to be re-examined in particular to sales tax where consolidated amount of ₹1,25,00,000/- was paid over a period. So, we remit the issue in dispute to the file of Assessing Officer to verify the payments whether relating to assessment year under consideration and also it was made before due date of return and accordingly, the appeal of the assessee is partly allowed for statistical purpose.

9. In the result, the appeal of the assessee in ITA No.1530/Mds/ 2015 is partly allowed for statistical purpose.

Order pronounced on Thursday, the 25th day of February, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:25.02.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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