

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-II, NEW DELHI

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.7092/DEL/2014
Assessment year : 2007-08

The Rice Company of India Pvt. Ltd., 204-206, Siddharth Chambers, Hauz Khas, Near IIT, New Delhi – 110 016. PAN: AAACO 4163F	Vs.	The Income Tax Officer, Ward 16(2), New Delhi.
APPELLANT		RESPONDENT

Appellant by	:	S/Shri A.M. Rastogi & Ishan Gupta, Advocates
Respondent by	:	Shri S.K. Jain, Sr. DR

Date of hearing	:	14.09.2016
Date of Pronouncement	:	16.09.2016

ORDER

This appeal is preferred by the assessee against the order of CIT(Appeals)-19, New Delhi dated 20.10.2014 *inter alia* on various grounds, which are as under:-

“1. That the Commissioner of Income tax (Appeals) - XIX, New Delhi has grossly erred on facts and in the circumstances of the case and in law in confirming the addition of Rs.31.07,990/- as sales from unexplained sources.

2. That the Commissioner of Income tax (Appeals) - XIX, New Delhi has grossly erred on facts and in the circumstances of the case and in law in confirming the addition of Rs.31,07,990/- as sales from unexplained sources failing to

appreciate an inadvertent/bona-fide error in presentation of financial accounts and ignoring the corroborating evidence on record in the form of purchase contract for imports of 115 Metric Tons of Chinese Speckled Kidney Beans on CIF terms, import bill of lading, import invoice, party ledger account of purchase and bank statement etc.

3. That the Commissioner of Income tax (Appeals) - XIX, New Delhi has grossly erred on facts and in the circumstances of the case and in law in seeking remand report without recording any fact of furnishing of additional evidence on the subject or disallowance or sales from unexplained sources and further therefore grossly erred in forming a fresh view contrary to the view held by his predecessor upon perusal or initial evidence filed by the appellant during assessment proceedings.

4. That the Commissioner of Income tax (Appeals) - XIX, New Delhi has grossly erred on facts and in the circumstances of the case and in law in confirming the addition of Rs.31,07,990/- as sales from unexplained sources and failing to appreciate that goods can be sold even in transit before physical or actual receipt of goods.

5. That the appellant reserves the right to add, alter or amend any other ground at the time of hearing.”

2. Though various grounds are raised, but they all relate to addition of Rs.31,07,990 as sales from explained sources.

3. The facts in brief borne out from the record are that the AO has noticed that the assessee has made the sale to the extent of Rs.31,07,990 without purchasing the said consignment. This addition was challenged before the CIT(Appeals) and the CIT(A) deleted the addition, against which an appeal was filed by the revenue before the Tribunal and the Tribunal vide its order dated 29.08.2011 remanded the matter back to the CIT(Appeals) with a direction to re-examine the claim in the light of

evidence to be filed by the assessee. Accordingly, the matter was examined by the CIT(Appeals). During the course of examination, he called remand report from the AO and the AO has reiterated his contentions that without purchasing the concerned goods i.e., Pulses – Kidney Beans (Chinese speckled kidney beans), the assessee has shown the sales in its books of accounts. Though the assessee has contended that there was typographical error in the accounts, whereas it has disclosed the purchases of the said goods in stock and thereafter it was sold.

4. The CIT(Appeals) re-examined the claim of assessee and he has noticed in his order that the assessee has claimed sales on 07.04.2006, whereas the goods entered the Indian territory on 21.04.2006. The CIT(A) has also recorded the contention of the assessee that these were the goods in transit and the same were sold and payment received on 10.4.2006. The CIT(A) has noted that the assessee has not filed the relevant evidence to claim that these goods were sold prior to their receipt and the payments were realized before the goods were received.

5. Aggrieved, the assessee has preferred the appeal before the Tribunal. During the course of hearing, the Id. Counsel for the assessee has tried to emphasize that in fact the sale transaction was undertaken on high seas and before the sales were effected, the purchases were taken into stock, therefore there is no error in the maintenance of accounts. The Id. Counsel further submitted contended that in the Sale of Goods Act, the

high seas transactions are recognized, therefore, there is no irregularity in the transaction in the high seas. In the high seas transaction, most of the times, the goods are sold during its transit and it is not necessary that sales cannot be effected before the goods entered in the Indian territory.

6. The Id. DR placed reliance upon the order of CIT(Appeals).

7. Having carefully examined the orders of lower authorities in the light of rival submissions, I find that undisputedly the goods were sold on high seas before it entered the Indian territory. Transactions in high seas are possible and it is also recognized under the Sale of Goods Act. Therefore, there is no bar in the transactions on high seas. But, before the sales are to be effected, the assessee should make the necessary entries in the books of accounts with regard to purchases on high seas. Though the assessee has pleaded emphatically, but the relevant evidence is not placed on record. Therefore, I am of the view that the issue requires adjudication by the CIT(Appeals), as this aspect was never examined by the CIT(Appeals). He rejected the claim on the premise that before the entry of goods in the Indian territory, it cannot be sold. Moreover, the assessee has offered the sales and profit earned on it also to tax. Though the AO has not invoked any particular provisions, but the genuineness of the transactions can also be examined. I am therefore of the view that this matter be examined by the CIT(Appeals) in light of the evidence, as to whether before the sales were effected, the same goods were taken into stock of the

assessee. Accordingly, the order of CIT(Appeals) is set aside and the matter is restored to his file with a direction to readjudicate the claim afresh in the light of assessee's contention that goods were sold on high seas before it was received by the assessee. It is also worthwhile to mention that proper opportunity be afforded to the assessee to establish its claim.

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

Pronounced in the open court on this 16th day of September 2016.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

New Delhi,
Dated, the 16th September, 2016.
/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

Assistant Registrar,
ITAT, New Delhi.