

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE “SMC-A” BENCH, BANGALORE**

Before Shri George George K, Judicial Member

ITA No.917/Bang/2019: Asst.Year 2015-2016

M/s.Holebasaveshwar Petroleums NH 13. Muttagi Cross, Golasangi Tq.basawan Bagewadi Vijayapura. PAN : ABDFS6995E.	v.	The Income Tax Officer Ward 3 Vijayapura.
(Appellant)		(Respondent)

Appellant by : Sri.Pranav Krishna, Advocate

Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

Date of Hearing : 16.09.2021	Date of Pronouncement : 20.09.2021
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ORDER

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 29.01.2019. The relevant assessment year is 2015-2016.

2. There is a delay of 8 days in filing this appeal before the Tribunal. The assessee has filed a condonation petition along with an Affidavit, stating therein the reasons for the belated filing of this appeal. I have perused the reasons stated in the affidavit for belated filing of the appeal. I am of the view that there is sufficient cause for filing this appeal belatedly and no laches can be attributed to the assessee. In the facts and circumstances of the case, I condone the delay for 8 days and proceed to dispose of the appeal on merits.

3. Nine grounds are raised. Ground Nos.1, 2, 6 to 9 are general in nature and no specific arguments were raised,

hence, these grounds are rejected. The surviving grounds, namely, ground Nos.3, 4 and 5 read as follows:-

“3. The learned Commissioner of Income tax (Appeals) erred in sustaining the addition made on alleged undisclosed sales amounting to Rs.10,97,132/- on the facts and circumstances of the case.

4. The learned Commissioner of Income tax (Appeals) erred in confirming the addition made on toll charges amounting to Rs.24,370/- on the facts and circumstances of the case.

5. The learned Commissioner of Income-tax (Appeals) erred in enhancing the addition made with regards to alleged purchases made from undisclosed income from Rs.4,526/- to Rs.7,950/- without complying the mandatory conditions laid down u/s 251(2) on the facts and circumstances of the case.”

We shall adjudicate the above grounds as under:

Ground No.3 : Addition of Rs.10,97,137

4. During the course of assessment proceedings, the Assessing Officer noticed that total sales shown in the VAT return filed is Rs.9,44,01,977 whereas, the total sales as per the trading account of the assessee was only Rs.9,33,04,665. The A.O. directed the assessee to reconcile the difference. In absence of any reply from the assessee, the excess sale of Rs.10,97,132 was added to the total income.

4.1 The addition made by the Assessing Officer was confirmed by the CIT(A). The relevant finding of the CIT(A) reads as follow:-

“7.1.1. The assessee during remand proceedings before the AO has stated that due to petrol bunk supervisor, the monthly sales figures are being sent hurriedly by 10th of every month due to which there was an error in declaring the lesser amount under total sales. The reasoning given by the assessee is not justifiable. Sending monthly sales figures hurriedly by 10th of every month is not a genuine reason for declaring lower sales. The AO after examining the sales, has

confirmed the addition made during the assessment proceedings. As the assessee could not reconcile the difference even during the appellate proceedings and his reasoning not based on any evidence, the addition made on this issue is hereby confirmed.”

4.2 The assessee being aggrieved, is in appeal before the Tribunal. The assessee has filed a paper book comprising of 27 pages enclosing therein copy of audited balance sheet and profit and loss account for the relevant assessment year, communication of the assessee before the Assessing Officer and the CIT(A), copy of the return filed under VAT, copy of the statement issued by the IOC, etc. The learned AR reiterated the submissions made before the Income Tax Authorities.

4.3 The learned Departmental Representative supported the orders of the Assessing Officer and the CIT(A).

4.4 I have heard rival submissions and perused the material on record. The assessee even before the Tribunal could not reconcile the difference as per the sales disclosed in the VAT return and as per the trading account maintained by the assessee. Since the assessee has not been able to dispel the finding of the A.O. and the CIT(A), the addition of Rs.10,97,132 is upheld. Hence, ground No.3 is rejected.

Ground No.4 : Addition of Rs.24,370

5. The Assessing Officer noticed during the course of assessment proceedings that the assessee was paid a sum of Rs.24,370 as toll charges by the IOC. Since the same was not offered to tax, the amount was added to the total income of the assessee.

5.1 Aggrieved, the assessee preferred an appeal to the first appellate authority. The view taken by the Assessing Officer was confirmed by the CIT(A). The CIT(A) held that the above amount constitute the income and assessee ought to have offered the same to tax.

5.2 Aggrieved, the assessee has raised this issue before the Tribunal.

5.3 I have heard rival submission and perused the material on record. There is no dispute that the impugned amount of Rs.24,370 received from IOC is not declared in the turnover of the assessee. The above amount whether it constitute income has not been disputed by the assessee before the Tribunal. Hence, the addition of Rs.24,370 is confirmed.

Ground No.5 : Addition of Rs.4,526 enhanced to Rs.7,950

6. The Assessing Officer during the course of assessment proceedings noticed that the total purchases during the financial year 2014-2015 as per the IOC statement was Rs.9,28,86,503, whereas, the trading account of the assessee shows purchases of only Rs.9,28,81,977. Therefore, the difference of Rs.4,526 was brought to tax.

6.1 Aggrieved, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority, the A.O. in the remand report submitted that as per VAT report, the purchases of petroleum products is declared at Rs.9,28,89,927 annually and in the assessment order it is as Rs.9,26,86,507, as per the details furnished by the IOC.

Therefore, the additional difference of Rs.3,424 was also brought to tax. In other words, the CIT(A) enhanced the addition to Rs.7,950 instead of Rs.4,326 made by the Assessing Officer.

6.2 Aggrieved, the assessee is in appeal before the Tribunal.

6.3 I have heard rival submissions and perused the material on record. As per the IOC statement, the total purchases made by the assessee was at Rs.9,28,86,503. As per the assessee's trading account, the purchases from IOC is only a sum of Rs.9,28,81,970. Therefore, the difference of Rs.4,526 is sustained. As regards the enhancement, the CIT(A) relied on the purchases declared under the VAT return instead of statement of IOC. I noticed that there is no enhancement notice given by the CIT(A). Further the IOC had clearly stated that the assessee had made purchases only to the extent of Rs.9,28,86,503. Therefore, the statement of IOC is to be taken as sacrosanct. Hence, the enhancement made by the CIT(A) is deleted. Therefore, ground No.5 is partly allowed.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 20th day of September, 2021.

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 20th September, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Belagavi
4. The Pr.CIT, Belagavi.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore