

THE INCOME TAX APPELLATE TRIBUNAL
“SMC” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 3494/Mum/2019 (Assessment Year 2009-10)

M/s. Specific Engineering Corporation Plot No. R 494, TTC Industrial Area, MIDC, Navi Mumbai-400701. PAN : AAKCS7144L (Appellant)	Vs.	ITO-15(3)(4) Room No. 15B Ground Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Vaibhav Banjan
Department by	Shri Jeetendra Kumar
Date of Hearing	19.10.2020
Date of Pronouncement	01.01.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee directed against order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 28.2.2019 and pertains to assessment year 2009-10.

2. The grounds of appeal read as under :-

- “1. Excise duty deducted from sales Rs. 19,97,702. Total tax effect Rs. 6,17,290/-
2. Right to add alter the grounds of appeal.”

3. Brief facts of the case are as under :-

The assessee is a company. The return of income for the year under appeal was e-filed on 30. 09.2009 declaring Nil income. Assessment u/s. 143(3) r.w.s.147 was completed by the Ld. AO on 29.12.2017 determining the total income of Rs.21,61 045/-. In this case, the Ld Pr. CIT-15, Mumbai cancelled the assessment order passed u/s 143(3) of the I.T. Act on 28.03,2015 and passed the order u/s.263 of the Act on 30.03.2017. Ld. Pr. CIT-15, Mumbai has observed that from the Schedule M of the Profit and loss

account the sales income of Rs.2,27,74,891/-, an amount, of Rs.19,97,702/- was deducted on account of excise duty The Ld. Pr. CIT-15. Mumbai seen that the sales of the assessee are inclusive of excise duty, deducting the sales for arriving at the sales amount was not in order. Pursuant to this order, the Assessing Officer reopened the assessment and issued notice u/s.143(2) & u/s. 142(1) r.w.s.263 of the I.T Act. During the assessment proceedings the assessee was issued show-cause notice to explain the deduction of excise duty claimed from the sales. The submissions of the assessee were considered but not accepted by the Assessing Officer. Therefore, the excise duty of Rs. 19,97,702/- was added back to the total income of the assessee.

4. Upon assessee's appeal learned CIT(A) elaborately reproduced the submissions of the assessee. However he summarily rejected the assessee's contentions by observing that necessary documentary evidence was not produced. He has concluded as under :-

“The appellant has submitted that it has made the adjustment of excise duty only for the purposes of reflecting the sales as per the Revised Guidelines to Schedule VI of the Companies Act, 1956. Per se, there has not been any changes in the accounting treatment in the books of accounts. Whilst, the appellant has submitted the copies of the written submissions it filed before the Ld. AO and Pr. CIT, it has not furnished the details of the sales excluding taxes (sales ledger account) and the tax impact thereon and co-related the sales as per the books of accounts and financial statements as the appellant has contended that there has not been any change in the accounting system and the sales are reflected including taxes only for the purposes of disclosure of sales in financial statements. The appellant has also not furnished the details of the sales invoices to substantiate its claim of how the sales are recorded. In the absence of these details, which would form the basis of the decision to verify the correctness of the appellant's claim, the argument of the appellant cannot be accepted by its mere submissions without any cogent supporting and documentary evidence substantiating the same. In light of these facts, I uphold the addition made by the Ld. AO of Rs.19,97,702/- towards excise duty.”

5. Against this order assessee is in appeal before us. We have heard both the parties and perused the records. Learned counsel of the assessee stated that assessee has given all the necessary submissions and documentary evidences. He submitted that these details were submitted before assessing officer as well as learned CIT(A). He submitted that without examining the

evidences submitted by the assessee, authorities below have summarily rejected the assessee's contentions. In this regard summary of assessee's contention is as under :-

- “1. Method of Accounting for Duties of taxes consistently followed is exclusive.
2. Submission filed with Assessing Officer (including certificate from previous year auditor confirming exclusive method followed in recognizing income and valuating inventory.
3. Working of inventory and income on exclusive method followed along with supporting filed of statement of Sales along with invoice copies and excise returns with excise duty reconciliation.
4. Form 3CD also states exclusive method followed by the company : Ref Annexure No
5. Above submission of facts ignored by the Assessing Officer and confirmed by CIT(A)
 - a) Financials for the year ending 31st March 2009
 - b) Tax Audit Report (Form 3 CD) along with Annexures
 - c) Returns of Income Filed
 - d) Notice u/s 263 dated 8th March 2017 of the Act without specifying the reason of income escaping the assessment
 - e) Submission dated 17th March 2017 made to the notice u/s 263
 - f) Order u/s 263 dated 30th March 2017
 - g) Submissions made to the Assessing Officer during reassessment
 - h) Order u/s 143 wrt 263 passed by Assessing Officer on 29th December 2017.
 - i) Submission made to CIT (A) during appeal hearing
 - j) Order passed by CIT (A) on 28th February 2019

All the above documents were submitted to the Assessing Officer in response to the compliance of u/s 145 A of the Income Tax Act regarding following exclusive method for valuation of Stock. This was accepted in the Assessment Order passed u/s 143(3) wrt 263 of the Act.”

6. Learned departmental representative on the other hand did not have any serious objection if the matter is remitted to the file assessing officer for examination of the submissions of the assessee

7. Upon consideration in the substantial interest justice we are of the opinion that the issue needs to be remitted the file of assessing officer. The assessee has submitted details as well as canvassed various propositions which have not at all been addressed by the authorities below. Hence the assessing officer shall examine the factual veracity of assessee's submissions.

Thereafter he should decide as per law taking into account the submissions and the case laws submitted by the assessee. Needless to add assessee should be granted adequate opportunity of being heard.

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

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 1.1.2021.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/01/2021

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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