(2012) 08 DEL CK 0228

Delhi High Court

Case No: ITA 155 of 2012

CIT		APPELLANT
	Vs	
Indraprastha Gas Ltd		RESPONDENT

Date of Decision: Aug. 22, 2012

Hon'ble Judges: Siddharth Mridul, J; Badar Durrez Ahmed, J

Bench: Division Bench

Advocate: Sanjeev Sabharwal with Mr. Puneet Gupta and Ms. Gayatri Verma, for the Appellant; M.S. Sayali with Mr. Saurabh Agrawal, Mayank Nagi, Rahul Sateeja and Mr. Husnal Syali, for the Respondent

Final Decision: Disposed Off

Judgement

Badar Durrez Ahmed, J.

This appeal, which has been preferred by the revenue, is directed against the order dated 23.08.2011 passed by the Income Tax Appellate Tribunal in ITA3206/Del/2011 pertaining to the assessment year 2005-06. The only issue that arises for consideration in this appeal is with regard to the figure of 3.46% of the purchases which has been shown as a reconciliation difference by the assessee. According to the assessee/respondent, the said 3.46% of the purchases in respect of the assessment year 2005-06, is merely reflective of the normal wastage, which includes loss in transit. According to the assessee/respondent, this figure of 3.46% does not include any gas in the pipeline. The Learned Counsel for the revenue contended that a similar issue had arisen in respect of the earlier years, namely, assessment years 2002-03 to 2004-05. In those years, the Tribunal, by virtue of the order in respect of the assessment year 2002-03 in ITA 989/Del/2006 dated 25.07.2008 held that the reconciliation difference as a percentage of purchases varies between 4.01% to 4.47% in the assessment years 2000-01 to 2004-05, which is based on the balance sheets of the assessee. Consequently, the Tribunal held as under:-

Accordingly, the percentage of loss which works out to be 4% of the purchases during the year under consideration appears to be reasonable, subject to

verification

2. In view of the above observation, the Tribunal, in that case, set aside the order of the lower authorities and restored the matter to the file of the Assessing Officer for deciding the issue afresh in the light of the observations contained in the said order.

3. We may point out that in the case of the present assessment year, namely, 2005-06, in the first round, a similar order was passed by the Tribunal by virtue of its order dated 22.04.2009 in ITA 471/Del/2009. Thereafter, the Assessing Officer, according to the Learned Counsel for the assessee, merely followed his earlier order and added back the entire reconciliation difference of 3.46% without going into the plea of whether the said figure of 3.46% of the purchases did or did not include gas in the pipeline. That order of the Assessing Officer was overturned by the Commissioner of Income Tax (Appeals) by virtue of its order dated 20.04.2011. Being aggrieved by that order, the revenue preferred the said ITA 3206/Del/2011 before the Income Tax Appellate Tribunal, which has been disposed of by the impugned order dated 23.08.2011.

4. The relevant portion of the impugned order reads as under:-

2.1 In reply, the ld. counsel referred to the finding of the Tribunal in its case for assessment year 2002-03. In this order, it has been mentioned that the reconciliation difference as percentage of purchases varies between 4.01% to 4.47% in assessment years 2000-01 to 2004-05, which is an information based on balance-sheet of the assessee. The percentage of loss which works out to be 4% of the purchases during the year under consideration appears to be reasonable, subject to verification. The intent of these observations was to find out the percentage of loss and evaluate it against acceptable loss of 4%. This has not been done. In fact, in this year the loss is only 3.4%, which is lower than 4% and, therefore, the AO should have accepted the loss. In these circumstances, the ld. CIT (Appeals) rightly deleted the addition made by the AO notwithstanding the fact that expert opinion was not obtained from GAIL or ONGC etc.

3. We have considered the facts of the case and submissions made before us. We are of the view that the AO was bound to follow the directions of the Tribunal furnished for this year in decision dated 22.4.2009, in which it is mentioned that the matter has already been restored to the file of the AO for assessment years 2002-03 to 2004-05. Accordingly, the matter was also restored to the file of the AO for this year. However, in the order for assessment year 2002-03 dated 25.07.2008, a clear finding was given that loss of about 4% of purchases is reasonable subject to verification. Instead of verifying the percentage of loss, the AO reproduced his earlier order. The loss of 3.4% is borne out by audited accounts, which is lower than the average loss of about 4%. Therefore, there seems to be no reasonable cause to make the disallowance of reconciliation loss by stating that the details of stock lying in pipe lines were not furnished in qualitative or quantitative terms. What had to be

verified was whether the loss was in the vicinity of 4%, which has been held to be reasonable by the Tribunal. In these circumstances, we do not find any error in the order of the ld. CIT (Appeals) which requires correction from us.

4. In the result, the appeal is dismissed.

5. After having heard the Learned Counsel for the parties, we feel that the entire controversy that has raged on for several years is with regard to the issue of including gas in the pipeline in the closing stock. According to the revenue, gas in the pipeline ought to have been included in the closing stock and ought not to have been shown as a reconciliation difference or as part of loss/wastage.

6. Mr Syali, the learned senior counsel appearing on behalf of the assessee/respondent points out that whatever may have been the position in the earlier years, in the present year, which pertains to the assessment year 2005-06, gas in the pipeline has already been included in the closing stock and, therefore, it does not form part of the reconciliation difference/loss/wastage.

7. According to Mr Sabharwal, who appears on behalf of the revenue, this fact needs to be verified and for this purpose, the matter should be remitted to the Assessing Officer to ascertain as to whether the figure of closing stock includes gas in the pipeline or not. Both the counsel are agreed that if there is any gas in the pipeline, the same has to be included as part of closing stock. Therefore, we dispose of this appeal with the direction that the matter be remitted to the Assessing Officer for the purposes of determining/verifying as to whether gas in the pipeline in respect of the assessment year 2005-2006 has been included in the figure of closing stock or not. If the Assessing Officer finds that there is gas in the pipeline, which has not been included in the closing stock, to that extent, the same shall be added back to the closing stock and insofar as the figure of 3.46% of the purchases is concerned, the same shall be modified accordingly. Furthermore, the modified figure of 3.46%, if any, shall be compared with past years? losses after excluding gas in the pipeline for the earlier years to arrive at a decision as to whether the loss/wastage was normal or not.

With this modification to the Tribunal''s impugned order, this appeal stands disposed of.