

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES 'SMC', JAIPUR

श्री आर.पी.तोलानी, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI R.P. TOLANI, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 391/JP/2013  
निर्धारण वर्ष/Assessment Year : 2008-09

M/s Herbicides (India) Ltd., 12, Industrial Area, Jhotwara, Jaipur.	बनाम Vs.	Assistant Commissioner of Income Tax, Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAFH 6414 R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri N.S. Vyas (CA)  
राजस्व की ओर से/ Revenue by: Shri Raj Mehra (JCIT)

सुनवाई की तारीख/ Date of Hearing : 21/10/2015  
उदघोषणा की तारीख/ Date of Pronouncement : 23/10/2015

आदेश/ ORDER

PER: R.P. TOLANI, J.M.

This is an appeal filed by the assessee against the order dated 02/01/2013 passed by the learned CIT(A)-I, Jaipur for A.Y. 2008-09. The respective grounds of appeal are as under:-

- "1. That the authorities below erred in making the addition of Rs. 2,00,000/- in the declared trading results by the petitioner to cover up any alleged leakage of revenue.

2. *That the authorities below further erred in disallowing a sum of Rs. 11,59,210/- U/s 40a(ia) of the IT Act, 1961 on account of commission expenses claimed.*
3. *That the addition/disallowances so made by the authorities below is bad in law as well as on facts.*
4. *Without prejudice to the above, the disallowances/additions so made in very much excessive."*

2. Brief facts of the case are - that the Assessing Officer found that the G.P. rate of 20.27% disclosed by the assessee was less and made addition of Rs. 5 lacs taking a cue from the preceding year G.P. rate of 20.81%.

3. Aggrieved, the assessee preferred first appeal where the Id CIT(A) held that the assessee's turnover sharply declined from 20.94 crores to 12.94 crores, Id CIT(A) reduced the disallowance of Rs. 2 lacs by following observations:

*"I have considered the facts of the case and the submissions made. It is stated that the stock register has been maintained, various payments were made in cash which are not subject to full verification and, therefore, rejection of books of accounts is justified. The turnover of the appellant sharply declined to Rs. 12.94 crores against Rs. 20.94 crores in the previous year i.e. a drop of Rs. 8 crores on nearly 38%. Through, because of dealing in selective products the GP rate was maintained at 20.27% against 20.81% for previous year. In view of these facts and circumstances and past history of the case lump sum*

*trading addition of Rs. 2 lac is directed to make to cover up possible leakage of revenue. The appellant partly succeeds on this ground.*

4. Aggrieved the assessee is in second appeal. The Id counsel for the appellant has relied on the Hon'ble ITAT's order dated 19/06/2009 passed in ITA No. 1689/JP/2008 in assessee's own case and in that case the Assessing Officer made disallowance of Rs. 4,33,441/-, which was reduced to Rs. One lac by the Id CIT(A). The Hon'ble ITAT further reduced the same to Rs. 50,000/-. It is pleaded that the facts of the case are similar to A.Y. 2005-06.

4.1 Apropos ground No. 2, reliance is placed on the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Vector Shipping Services (P) (2013) 357 ITR 642 (All) in which proposition that Section 40(a)(ia) disallowance can be made only in respect of amount remaining payable at the end of the year on which TDS is not deducted. In this case it is admitted fact that the entire amount of commission was paid during the year itself and no amount was payable. Therefore, in A.Y. 2007-08 in immediate preceding year, the Id CIT(A) has deleted the addition by following observations:

*"However, Sg. N.J. Vyas AR of the assessee has submitted that Hon'ble Apex Court approves the Hon'ble Court's ruling that disallowance U/s 40(a)(ia) applies only to amounts payable as on 31<sup>st</sup> March and not to amounts already paid during the year. Further, it is also seen that department's SLP against this order of Hon'ble Allahabad High court in case of Vector Shipping Services Pvt. Ltd. (supra) has already been dismissed, meaning thereby, Hon'ble Apex Court has approved the judgment of Hon'ble Allahabad High Court in case of Vector Shipping Services Pvt. Ltd. and also the case of Merylyn Shipping and transport Pvt. Ltd., wherein it has been held that disallowance U/s 40(a)(ia) applies only to amounts payable as on 31<sup>st</sup> March but not to amounts already paid during the year."*

It is contended that the departmental SLP against the judgment of Hon'ble Allahabad High Court in case of Vector Shipping Services Pvt. Ltd. (supra) has been dismissed by the Hon'ble Supreme Court. Therefore, the issue is decided in favour of the assessee.

5. The Id DR, on the other hand, contends that as far as GP/trading addition is concerned in A.Y. 2005-06 cannot be compared with the facts of A.Y. 2008-09. Every year is a distinct and separate unit of assessment and principle of res judicata does not apply to factual findings. The Id CIT(A) has taken a reasonable lenient view which may be upheld. Apropos the second ground, reliance is placed on the order of the lower authorities.

6. I have heard the rival contentions of both the parties and perused the material available on the record. Apropos 1<sup>st</sup> ground of appeal, looking on the facts on record, interest of justice will be served if the trading addition is restricted to Rs. One lac instead of Rs. 2 lacs retained by the Id CIT(A). This ground is partly allowed.

6.1 Apropos second ground, I find merit in the argument of the Id counsel for the assessee, it has not been disputed that the entire amount of commission was paid during the year and there was no payable amount at the end of the year. In view thereof, the Hon'ble Allahabad High Court judgment in case of Vector Shipping Services Pvt. Ltd. (supra) is fully applicable. By respectfully following the same, ground No. 2 of the appeal is allowed.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 23/01/2015.

Sd/-  
(आर.पी.तोलाणी)  
(R.P.Tolani)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 23<sup>rd</sup> October, 2015

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Herbicides (India) Ltd., Jaipur..

2. प्रत्यर्थी/ The Respondent- The ACIT, Circle-3, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 391/JP/2013)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar