

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6928/MUM/2014
Assessment Year: 2011-12**

ACIT 14(1)
R. No. 204, 2nd Floor,
Earnest House, Nariman Point
Mumbai - 400021

Vs.

M/s. Amratlal & Dhirajlal & Co.
412, Lalsingh Bhavan, Sheikh
Memon Street,
Mumbai - 400002

PAN No. AAHFA8103H

(Appellant)

(Respondent)

Revenue by: Shri B.S. Bist, DR
Assessee by: Ms. Kshipra Singhvi, AR

Date of Hearing : 12/01/2017
Date of pronouncement: 31/01/2017

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner (Appeals) - 25, Mumbai and arises out of order u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the revenue read as under:-

- i. On the facts and in the circumstances of the case, the CIT(A) has erred in law by deleting addition made u/s 40A(2) of Rs. 3,91,76,267/- on account unreasonable and excessive expenditure as the assessee failed to furnish the details called for during the assessment proceedings, despite of ample opportunity given.
- ii. On the facts and in the circumstances of the case, the CIT(A) erred in deviating from the findings made by the AO in the assessment order and deleting the addition by ignoring the fact that due to non-compliance by the

assessee the AO has completed the assessment u/s 144 of the Income Tax Act, 1961.

- iii. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in accepting the additional evidence submitted by the assessee during the appellate of the Income Tax Rules, 1962 as during the assessment proceedings the assessee has not submitted the relevant details even after repeated opportunity given.
- iv. For the above mentioned reason and any other reasons that may be urged at the time of hearing it is requested that the order of the CIT(A) be quashed and that of the A.O. be restored.

3. Briefly stated, the facts are that the Assessing Officer (AO) observed that the assessee had made purchases of Rs. 270.94 lacs from a related concern i.e. M/s. A to Z Retail Ltd. ("ARL"). There was an agreement for sale on consignment basis between ARL and the assessee, wherein it was provided that the assessee would purchase stock from ARL at a price less than 5% of MRP and even sell the products at a price less than MRP. The assessee had given a non-interest bearing deposit of Rs. 3 crores to ARL for use of brand name "A to Z". The AO came to a finding that the said contract apparently aimed at benefitting the related party and hence should not be considered as a genuine business expense. In order to get the fair market value of goods and services as per provisions of section 40A (2), the AO split the profits earned by the assessee on account of purchases from ARL and others and arrived at GP ratio @8.20% and 41.45% respectively. By taking GP ratio @41.45% for purchases from ARL, the AO arrived at the excess amount paid of Rs. 3,91,76,264/-. The AO thus made an addition of Rs. 3,91,76,264/- to the income shown by the assessee.

4. The assessee preferred an appeal before the learned CIT(A). We find the following facts arrived at by the learned CIT(A)

"I have perused facts of the case and the appellant's submissions carefully. I find that the addition has been made primarily on the basis of DP ratio calculated by A.O. found lower in the case of transactions with related party "ARL" at 8.20% as against the GP ratio of 41.45% in respect of transactions with others. However, according to appellant, the A.O. has taken arbitrary figures and computed the GP ratio @41.45%. The appellant has shown that its GP ratio is actually 12% in respect of related party and 25.29% in respect of others giving an average GP ratio on entire sales @16.01%. The A.O. has further contended that in subsequent A.Y. 2012-13, the margin earned by the

firm is around 35%, which according to him confirms that the purchase price paid to related party in the year under consideration is over and above the Fair Market Value thus attracting provisions of section 40A(2). In this regard, the appellant has shown by figures that its GP ratio A.Y. 2012-13 was only at 6.3, as against around 35% alleged by the A.O. In this background, I find that the very basis of A.O.'s impugned additions are not based on correct finding of facts and figures"

4.1 The assessee submitted before the learned CIT(A) the average GP rate calculated @18.40% of few established companies in the same line of business. The learned CIT(A) noted that in order to set the bench mark, the AO could have found the comparable cases himself and confronted the same to the assessee, or alternatively could have asked the assessee to submit such comparables. However no such exercise was done by the AO. The learned CIT(A) also observed that the AO failed to bring on record relevant facts to show that the assessee as a group benefited by showing excessive or unreasonable expenditure in respect of transactions with related party. Therefore, the learned CIT(A) deleted the addition of Rs. 3,91,76,264/- made by the AO u/s 40A(2) of the Act.

5. The learned DR supports the order passed by the AO.

6. The learned counsel of the assessee relies on the order of the learned CIT(A). She submits that the industry average of gross profit in similar business is 18.40% which is clear from the following data

SL No.	Company	G.P. in %
1	V-Mart Retail Limited	29
2	Bhatia Industries	8
3	Brandhouse Retails Limited	16
4	V2 Reatil Limited	25
5	Anshus Clothing	14
	Arithmetic Mean	18.40

6.1 The learned counsel of the assessee further submits that M/s. ARL was giving 10 - 12 months credit to the assessee. So the assessee saves 12% to 15% interest on this account alone. The higher gross profit earned on the transaction with third parties (which is 25.29%) is not comparable as they were in different segments i.e. institutional sales and one time activity. Further it is

stated that the AO has mentioned in the assessment order that in the A.Y. 2012-13, the margin of the assessee is 35%. This is factually wrong. In fact, the margin for the A.Y. 2012-13 is only 6.3%. Thus it is stated that the GP declared by the assessee for the impugned assessment year is at arm's length price and reasonable.

7. We have heard the rival submissions and perused the relevant material on record. We find that the gross profit in the instant case on purchase from M/s. ARL is 12.22%. M/s. ARL is giving 10 – 12 months credit to the assessee. Thus the assessee saves 12 to 15% interest on this account alone. Taken together the above, the gross profit of 24.22% on purchases from the related party is at arm's length price. We also find that the margin of the assessee in the A.Y. 2012-13 is 6.3%. The AO has wrongly mentioned the same at 35%.

7.1 The AO could have confronted the assessee to prove the reasonableness of expenses in respect of transactions with related parties. He has not done so. The assessee is not supposed to *suo moto* file its explanations. The AO could have found the comparable cases himself and confronted the same to the assessee. He has not done so. Alternatively, the AO could have asked the assessee to submit such comparables. But the AO has failed to do so.

7.2 As the gross profit of 24.22% narrated here-in-above in the case of the assessee on purchases from related party is at arm's length price, we uphold the order of the learned CIT(A).

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 31/01/2017

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 31/01/2017

Biswajit, Sr. P.S.

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,

(Dy./Asstt. Registrar)
ITAT, Mumbai