

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, एच, मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCHES "H", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

ITA Nos.292 & 293/Mum/2015

Assessment Years: 2004-05 & 2005-06

DCIT-1(3)(2), Room No.564, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	बनाम/ Vs.	M/s Sumitomo Chemical India Pvt. Ltd. 7 th Floor, Moti Mahal, 195 J. Tata road, Churchgate, Mumbai-400020
(राजस्व /Revenue)		(निर्धारिती /Assessee)
PAN. No.AAEC3750L		

राजस्व की ओर से / Revenue by	Shri B.D. Naik
निर्धारिती की ओर से / Assessee by	Ms. Radhika Thakkar & Shri Aplesh Gandhi

सुनवाई की तारीख / Date of Hearing :	22/08/2016
आदेश की तारीख /Date of Order:	06/09/2016

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

Both these appeals are by the Revenue, aggrieved by the impugned order both dated 22/10/2014 of the Ld. First Appellate Authority, Mumbai. In these appeals, the Revenue has challenged deletion of penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter the Act), being A & P Subsidy paid to Godrej Saralee Ltd. without discussing the facts amounting to Rs.45 lakhs and further Rs.35 lakhs being commission paid to Sumitomo Corporation India Pvt. Ltd. and also cancelling penalty on the amount of Rs.82,33,041/-, for Assessment year 2004-05 and identically Rs.30 lakhs, Rs.25,47,937/- for Assessment year 2005-06.

2. During hearing, the ld. counsel for the assessee, Ms. Radhika Thakkar along with Shri Alpesh Gandhi, at the outset, claimed that so far as, the disallowance of Rs.45 lakhs on advertisement and promotional expenditure u/s 37(1) of the Act is concerned, the Ld. Commissioner of Income Tax (Appeal) deleted the penalty and the Tribunal also decided in favour of the assessee. So far as, disallowance of Commission, amounting to Rs.35 Lakhs, and Rs.82,33,041/- paid to Sumitomo Corporation India Pvt. Ltd. and to Karamchand Appliances Pvt. Ltd., respectively, is concerned, the order of the Ld. Commissioner of Income Tax (Appeal) was set aside to the Assessing Officer with a direction to factually examine the matter. On the other hand, the ld. DR, Shri B.D.

Naik, did not controvert the assertion made by the ld. counsel for the assessee.

2.1. We have considered the rival submissions and perused the material available on record. Considering the above factual matrix so far as deleting the penalty with respect to disallowance of advertisement and promotional expenditure u/s 37(1) of the Act amounting to Rs.45 lakhs is concerned, we affirm the stand of the Ld. Commissioner of Income Tax (Appeal) as the Tribunal has affirmed his stand, consequently, deletion of penalty on this issue by the Ld. Commissioner of Income Tax (Appeal) is affirmed.

2.2. So far as, disallowance of commission paid to M/s Sumitomo Corporation India Pvt. Ltd., amounting to Rs.35 lakhs and to Shri Karamchand Appliances Ltd. amounting to Rs.82,33,041/-, considering the facts, the issue was restored to the file of the Assessing Officer with a direction to make proper enquiries, regarding payment of commission by the assessee and to record a definite finding, thus, on both this count, the penalty is also restored to the file of the ld. Assessing Officer and take a view, in accordance with law on the basis of outcome of the remand proceedings as contained in para-8 of the order dated 03/02/2016 (ITA No.1353 and 1354/Mum/2012). Consequently, on both these additions, the issue of penalty is remanded back to the file of the Assessing Officer, thus, allowed for statistical purposes.

3. So far as, ITA No.293/Mum/2015, Assessment year 2005-06, is concerned, the disallowance of advertisement and promotional expenditure u/s 37(1) of the Act with respect to the amount of Rs.30 lakhs, the penalty is directed to be deleted and we affirm the stand of the Ld. Commissioner of Income Tax (Appeal) as the Tribunal has decided in favour of the assessee.

3.1. So far as, the disallowance of commission paid to Sumitomo Corporation India Pvt. Ltd., amounting to Rs.25,47,937/- is concerned, the matter was restored to the Assessing Officer by the Tribunal, therefore, the penalty is also restored to the file of the Assessing Officer with a direction to take a view on the basis of outcome of the direction of the Tribunal as contained in page-8 (para-25), therefore, on this count, the issue is restored to the file of the ld. Assessing Officer, consequently, allowed for statistical purposes.

Finally, both these appeals are partly allowed for statistical purposes.

This order was pronounced in the open court in the presence of Ld. representatives from both sides at the conclusion of the hearing on 22/08/2016.

Sd/-

(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated :

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

06/09/2016

Shekhar, P.S/निजी सचिव

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT (TDS), Mumbai.
4. आयकर आयुक्त / CIT(A)-14, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai