

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

I.T.A. No.9211/M/2010 (Assessment Year: **2007-2008**)

Amico Pesticides Ltd., Akhand Jyoti, 8 th Road, Santacruz (E), Mumbai – 400 056.	बनाम/ Vs.	ACIT 10(1), Mumbai.
स्थायी लेखा सं./PAN : AACAA3365K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Vipul Joshi
प्रत्यर्थी की ओर से/ Respondent by	:	Shri A. Ramachandran, DR

सुनवाई की तारीख /Date of Hearing : 29.08.2016

घोषणा की तारीख /Date of Pronouncement : 05.10.2016

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 31.12.2010 is against the order of the CIT (A)-21, Mumbai dated 16.9.2010 for the assessment year 2007-08. In this appeal, assessee raised the following grounds which read as under:-

- "1. Ld CIT (A) erred in disallowing Rs. 13,69,834/- being 15% of Freight and Forwarding Charges of Rs. 91,32,227/- on ad-hoc basis.
2. Disallowance of employees contribution to Provident Fund and Employees State Insurance Scheme of Rs. 1,56,315/- deposited with concerned authorities before due date of filing of return of income.
 - a. The Ld CIT (A) erred in not following the Supreme Court judgment and disallowed ESIC contribution and the PF contribution deducted by the assessee company from its employees and deposited with the concerned authorities before due date of filing of return of income.
 - b. The Ld CIT (A) however failed to appreciate that the employees contribution to the business of the assessee and hence, the same ought to have been allowed in full."

2. In the above grounds, assessee is aggrieved against the confirming of the addition of Rs. 13,69,834/- being 15% of the Freight and Forwarding Charges on ad-hoc basis. Further, assessee also aggrieved against the disallowance of employees' contribution to Provident Fund (PF) and Employees State Insurance Scheme (ESIC).

3. Referring to the **first issue**, relating to the disallowance of Rs.13,69,834/-, Ld Counsel for the assessee narrated the facts that the assessee consistently claiming the payment Freight and Forwarding Charges and no disallowance was made in the earlier assessment years. In the AY under consideration, out of the total claim of Rs. 91.32 lakhs, on clumsy grounds, Assessing Officer disallowed 15% of the same on ad-hoc basis. It is the reasoning of the AO that the said payment constitutes payment on higher side. Books of accounts of the assessee were not rejected and the provisions of section 145(3) of the Act are not invoked. No show cause notice was given by the AO before such disallowance is made (para 4.2 of the CIT (A)'s order is relevant in this regard). Matter travelled to the first appellate authority.

4. During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) confirmed the disallowance as per the discussion given in para 4.3 of his order. Again aggrieved with the said decision of the CIT (A), assessee is in further appeal before the Tribunal.

5. During the proceedings before the Tribunal, bringing our attention to the said para 4.3 of the CIT (A)'s order, Ld Counsel for the assessee submitted that the CIT (A) rejected the arguments of the assessee that the books of accounts and the transactions of these payments were added as per the provisions of the Act. Confirming of the said disallowance on ad-hoc basis is unsupported by any incriminating material against the assessee.

6. After hearing both the parties, we find, the decision given by the CIT (A) in para 4.3 of his order is fair and reasonable. There is no dispute on the fact that this is a case of ad-hoc disallowance. No assessment should be made based on ad-hocism, moreso, when the accounts are audited by the statutory auditors and the books of accounts are complete and accurate. AO has not found any mistake whatsoever in the books of accounts on this issue of Freight and Forwarding Charges. The vagaries in sales and the turnover is common in any business if the said charges have reduced, it will have direct and definite impact on the sales. As such, there is no basis for ad-hocism and also for adopting the fixed percentage of 15% in this case. This kind of payments is not new to this business. Assessee is

consistently incurring such expenditure over the years. Assessing Officer was also regularly accepting the claim of the assessee in other assessments in this case of assessee. Therefore, we allow the arguments of the assessee and the relevant grounds are allowed in favour of the assessee. Accordingly, **Ground no.1 is allowed.**

7. Regarding **Ground no.2**, relating to payment of PF and ESIC, it is an undisputed fact that the payments are made before the due date for filing the return of income. Considering the settled position on the issue in view of the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Hindustan Organics Chemicals Ltd [2014] 366 ITR 1 (Bom.), which is relevant for the proposition that *by virtue of the deletion of the proviso of section 43B of the Act, the payments made up to the due date for filing of the return of income are outside the disallowance u/s 43B of the Act.* Considering the same, we direct the AO to allow the claim of the assessee following the said ratio laid down in the judgment of the Hon'ble jurisdictional High Court. Accordingly, **Ground no.2** raised by the assessee is **allowed.**

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 05th October, 2016.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 05.10.2016
व.नि.स./ OKK, Sr. PS

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**