

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER And  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1192/Ahd/2017

(निर्धारण वर्ष/Assessment Year: 2012-13)

Tristar Remedies Pvt.Limited Urmin House Sindhu Bhavan Road Off:SG Highway Beside HOF Living Bodakdev, Ahmedabad-380054	बनाम/ Vs.	The Income Tax Officer Ward-4(1)(1) Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCB 6827 C		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Aseem L. Thakkar, AR
प्रत्यर्थी की ओर से/Respondent by:	Shri S.K. Dev, Sr.DR

सुनवाई की तारीख/ Date of Hearing	16/05/2019
घोषणा की तारीख /Date of Pronouncement	31/05/2019

**आदेश / ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-7, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-7/131/14-15 dated 16/02/2017 arising in the assessment order passed under s.143(3) of the Income Tax Act, 1961(here-in-after referred to as "the Act") dated 19/12/2014 relevant to Assessment Year (AY) 2012-13.

2. The assessee has raised the following grounds of appeal:-

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- 1. The learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.37,42,652/- made by the Assessing Officer for alleged excess rate difference & special discount expenses.*
- 2. The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of the appeal.*

The issue raised by the assessee is that the Ld.CIT(A) erred in confirming the addition for a sum of Rs. 37,42,652/- made by the AO on account of rate difference and special discount expenses.

The facts of the case are that the assessee a Private Limited Company and engaged in the business of Trading in Bio-medical product and exporting of various tobacco products. The AO during the assessment proceedings observed that the assessee claimed an expense of Rs. 33,70,790/- as rate difference and Rs. 3,61,862/- as a special discount in its profit and loss account. Such a discount was given to M/s Marvel Marketing against the total sale of Rs. 47,65,350/- only.

However, the assessee did not file any relevant documents to substantiate his claim. The assessee also did not give any satisfactory reason for allowing such a huge rate difference and discount expenses to the said party.

Thus the AO was of the view that the assessee claimed such expenses to reduce its profit. Therefore the AO disallowed the claim of Rs. 37,42,652/- i.e. rate difference Rs. 33,70,790/- and Rs. 3,61,862 as discount expenses and added to the total income of the assessee.

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The aggrieved assessee preferred an appeal before the Ld. CIT (A).

The assessee before the Ld. CIT (A) submitted that it sales goods in Maharashtra particularly in Mumbai through M/s Marvel Marketing. As such, the goods are transferred to Marvel Marketing at the uniform sale price (USP), i.e. Rs. 10 per unit. After that, Marvel Marketing sales goods to the various hospitals/customers at a different rate and intimates the same to the assessee. Accordingly, the assessee for the difference between the USP and actual rate on which goods were sold issues credit note to M/s Marvel Marketing.

The allegation of the AO that the rate difference is very high against the sales made to Marvel Marketing is without considering the fact that it may be possible that the goods sold earlier to Marvel Marketing were sold by it in the subsequent year. Therefore there was no direct nexus between the sale shown, and rate difference accounted in the books.

The assessee also claimed that this practice was followed only in the case of M/s Marvel Marketing consistently since the inception of the business, which was accepted by the Revenue.

The assessee further in support of its claim, filed the statement showing the difference in rate between the sale to Marvel Marketing and by Marvel Marketing to ultimate consumers. The assessee also submitted

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that as such there was no major difference in rate/discounts given to the outsiders/direct customers by the M/s Marvel Marketing.

In addition, the assessee also filed the statement of comparison of the rate of discount from earlier years where it was showing that in the earlier years the range of discount was 82.97% to 89.17% while in the year under consideration the range of discount is 59.53% to 89.17%. Thus the allegation of the AO that the discount given in the year under consideration is excessive was wrong.

However, the Ld. CIT (A) from the submission of the assessee along with rejoinder observed that the assessee filed all the documents relating to discounts but did not submit any written agreement with Marvel Marketing. Therefore the basis on which the rate difference and discount was provided was not ascertained. As such the assessee failed to justify for giving such an abnormally high rate discount expenses of Rs. 37,42,652/- against the sale made to Marvel Marketing of Rs. 47,65,350/- only. As such no one can give such a huge discount without any basis or written agreement or increase in sales and it cannot be made arbitrarily. As merely the Revenue accepted it in the earlier years, does not mean that such claim of the assessee was correctly allowed. Therefore the Ld. CIT (A) disregarded the contention of the assessee and confirmed the addition amounting to Rs. 37,42,652/- made by the AO.

Aggrieved by the order of the Ld. CIT (A), the assessee is in before us.

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3. The Ld. AR before us filed a paper book running from pages 1 to 89 and drew our attention on the invoices issued by the assessee to the party and the credit note issued to such party which are placed on record.

4. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

The Ld. DR vehemently supported the order of the authorities below.

5. We have heard the rival contentions of both the parties and perused the material available on record. The assessee in the present case has given a huge discount to its one of the party namely M/s Marvel Marketing which was disallowed by the AO on the ground that the assessee failed to substantiate the same based on the documentary evidence in support of such huge discount. However, the learned CIT (A) subsequently confirmed the view of the AO by observing that the assessee had not filed the copy of the agreement based on which such huge discount was given.

From the preceding discussion, we note that indeed the assessee has given a huge discount to its party, namely M/s Marvel Marketing. But it was the decision of the assessee to give such a huge discount. Now the question arises whether the assessee can give such a huge discount to the party. In this regard, we note that the AO has no authority to enter into the shoe of the assessee and interferes in his decision-making process.

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The role of the AO is to ensure whether such expenses were incurred in the course of the business and pursuance to the provisions of section 37(1) of the Act. As such, there was no tangible material available with the Revenue to hold that such discount was bogus in nature. We also note that all the relevant details were available with the AO about the party.

On perusal of the details filed by the learned AR in the paper book on pages 13 to 53, we note that the necessary details for the sales by the Marvel Marketing to the customer, assessee to the party and credit notes were furnished. All these details were compiled on paper which is placed on page 27 of the paper book. But no defect was pointed out by any of the authority below.

We further note that all such documents cannot be ignored even in the case of non response from the party to the notice issued under section 133(6) of the Act. In our considered view, the assessee has discharged his obligations after furnishing the necessary details about the transactions and the party which has already been discussed in the preceding paragraph.

We also note that the discount was given against the sales made by the assessee to the party. As such, the amount of sale was duly accepted. There was no iota of evidence suggesting that the assessee has received any amount from the party outside the books of accounts against the discount as discussed above. The argument of the Id. AR that such

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discount was given in the earlier years has also not been controverted by the ld. DR for the Revenue.

In view of the above, and after considering the facts in totality, we are of the view that the addition made by the AO which was subsequently confirmed by the learned CIT (A) is not sustainable in the given facts & circumstances. Hence we direct the AO to delete the addition made by him. Thus the ground of appeal of the assessee is allowed.

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

<b>This Order pronounced in Open Court on</b>	<b>31/05/2019</b>
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**Sd/-**  
**(Ms. MADHUMITA ROY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 31/05/2019

*टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-7, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad