IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K" MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 1978/MUM/2017
Assessment Year: 2012-13

Aramex India Pvt. Ltd, 821, Solitaire Corporate Park Andheir Ghatkopar RD Chakala Andheeri (E), Mumbai-400093.	Vs.	Deputy Commissioner of Income Tax -9(1)(2), Room No. 260A, 2nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
PAN No. AACCA6756A **Appellant**		**Respondent**

Assessee by : Mr. Nishant Thakkar & Hiten Chande, ARs
Revenue by : Mr. Anand Mohan, CIT-DR & C.A.K. Singh, Sr. DR

Date of Hearing : 16/08/2019
Date of pronouncement : 08/11/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2012-13. The appeal is directed against the order passed by the Deputy Commissioner of Income Tax-9(1)(2), Mumbai [hereinafter the 'AO'] u/s. 143(3) r.w.s 144C (13) of the Income Tax Act 1961, (the 'Act').

2. The return of income for the assessment year (A.Y) 2012-13 was filed by the appellant-company on 27.11.2012 declaring total income at Rs. NIL, after claiming carry forward of current year's loss at Rs.43,66,435/-. The appellant is primarily engaged in the business of transportation of time sensitive packages, documents and cargo to various destinations in domestic and international sectors. A reference u/s.92CA(1) of the Act was received from the AO by the Transfer Pricing Officer (TPO) on 13.08.2014. The AO

made the said reference for determination of Arm's Length Price (ALP) with reference to all the international transactions reported in Form 3CEB, which has been filed by the appellant. TPO considered entity level TNMM as the most appropriate method, using net profit on total operating cost margin as the profit level indicator. Considering the appellant as the tested party to benchmark the international transactions with Associated Enterprises (AEs), TPO worked out the margin analysis of express delivery services companies for the financial year (F.Y) 2011-12 as under:

Sr. No	**Name of the Company**	**Operating profits on operating revenues for FY 2011-12**	**Remarks**
1.	Blazeflash Couriers Pvt. Ltd	2.11%	Accepted
2.	DTDC Intracity Courier Ltd	NA	
3.	Gati Ltd (seg.)	23.84%	Accepted
4.	Indo Arya Central (seg.)	-7.99%	Rejected, since the company has extraordinary event of establishing a subsidiary company by the name of M/s. Indo-Arya Global (Malaysia)SDN.BHD. The details are given at Page No. 18 of the annual report of the company.
5.	On-Dot Courriers Ltd	NA	
6.	Overtime Express Ltd	0.10%	Accepted
7.	Patel Integrated Logistics Ltd (seg.)	0.96%	Accepted
8.	Transport Corporation of India Ltd (seg.)	0.01%	Rejected, since the company is an entrepreneur undertaking logistics and supply chain solution provider with a global presence, whose turnover is 1959 Cr which is very high as compared to the turnover of the assessee.
9.	Transworld Courriers	NA	
	Arithmetic mean	**6.75%**	

Thereafter, TPO computed the transfer pricing adjustment for the A.Y. 2012-13 as given below:

Particulars	Reference	Amount (Rs.)
Revenue	A	174,76,31,566
Cost of Service + Overheads	B	176,31,08,760
Net profit for the year	C=(A+B)	-1,54,77,193
Arm's length margin of comparable		6.75%
Arm's length margin	D=[6.75% of A]	11,79,65,131
Arm's length cost of services	E=[A-D]	162,96,66,435
Transfer Pricing Adjustment at entity level	F=[B-E]	13,34,42,325

Accordingly, the TPO made an adjustment of Rs.13,34,42,325/- on account of international transactions of the assessee. A draft order u/s. 143(3) r.w.s 144C(1) was issued by the AO to the appellant -company on 30.03.2016 proposing certain disallowances on account of transfer pricing adjustment u/s.92CA (3) of the Act. The appellant filed objections before the Dispute Resolution Panel-I (WZ), Mumbai (in short 'DRP'). The DRP disposed off the assessee's objections and issued directions u/s.144C(5) on 23.12.2016 to the AO, who passed the impugned order dated 31.01.2017. The assessee is in appeal against the said order passed by the AO.

3. The first ground raised in this appeal is general in nature and requires no specific finding. The ground from 2nd to 19th raised in this appeal relates to transfer pricing issues.

4. Before us, the ld. counsels for the appellant submit in respect of the transfer pricing grounds that the arm's length margin of final comparable set and the working of +/- 5% range as per proviso to section 92C(2) can be examined in the instant case and if only (i) Indo Arya Central Transport Limited and (ii) Indo Arya Central Transport Limited and Transport Corporation of India Limited are reinstated as comparables, the appellant's

margin at an entity level (as considered by the TPO) will be within +/- 5% range.

The ld. counsels filed a copy of working on the above and submit that in case the above is considered, then the entire transfer pricing adjustment of Rs.13,34,42,325/- made by the TPO would stand deleted.

Elaborating further, it is stated by the ld. counsels that the TPO has erroneously stated that the company has established a subsidiary company in F.Y 2011-12. On perusal of the annual report of the company, it is seen that M/s. Indo-Arya Global (Malaysia) SDN.BHD was established as a subsidiary in the previous year. Hence, the same is not an extra-ordinary event in the current year. Our attention was drawn to the following relevant extract of the annual report of the company (page 18) which is as under:

> "Keeping in view the future prospects of the business in the International Market the Company has established during the last year a Subsidiary Company by the name of INDO ARYA GLOBAL (MALSYSIA) SDN.BHD and the newly owned Subdiary Company has been running its business successfully in Malayasia. "

Without prejudice to the above, it is submitted by the ld. counsels that the appellant has considered the standalone results of the company. Hence, rejection of the company on the basis of establishing a subsidiary is incorrect as the same would not affect the profitability of the company since standalone results are considered.

Thereafter, referring to Transport Corporation of India Ltd, the ld. counsels submit that the TPO has stated the company is engaged in providing logistics and supply solutions and hence is not comparable to the assessee. In this connection, it is submitted by them that the appellant has selected the express segment of the company as comparable while benchmarking its

international express segment. Hence, the TPO has erred in rejecting the company on the basis that it is engaged in activities, different from the appellant.

Further it is argued by the ld. counsels that the TPO has rejected the company on the basis that the turnover of TCI is Rs. 1,959 crore which is substantially higher than the appellant. In this connection, it is submitted that the TPO has erroneously considered the entity level turnover of the company. The turnover of the express segment of the company is Rs. 788 crores (refer page 86 of the annual report). Hence, it is stated that the TPO has erred in rejecting the company on this basis.

5. On the other hand, the ld. Departmental Representatives (DRs) submit that the TPO has rightly rejected Indo-Arya Central Limited due to extra-ordinary event of forming new subsidiary in the name of Indo-Arya Global Malaysia SDN.BHD, which is mentioned in the annual report of the comparable and since there are other comparables without any extra-ordinary or special transactions, the said comparable was rejected.

In respect of Transport Corporation of India Limited, the ld. DRs submit that the TPO has rightly rejected the said comparable on the ground that the turnover as compared to the turnover of the appellant was not comparable and as entity level comparison has to be done and not on segmental basis, the said comparable of the appellant was rejected by the AO.

Thus, the ld. DRs support the order passed by the AO in pursuance to the direction of the DRP dated 23.12.2016.

6. We have heard the rival submissions and perused the relevant materials available on record. The reasons for our decision are given below:

The appellant's range of services are classified as under:

"International express services:-

This service entails on time pick-up and delivery of time sensitive documents, samples and small parcels to and from various destinations in the world.

Freight forwarding services:

This service entails air, land and ocean freight forwarding, consolidation, warehousing, customs clearance and break-bulk services.

Domestic distribution services:

This service entails pick-up and delivery of shipments from city to city within India."

6.1 We refer here to the standalone balance sheet of Indo-Arya Central Transport Ltd. for the period 01.04.2011 to 31.03.2012. It is mentioned therein under the head "Foreign Subsidiary" the following:

"Keeping in view the future prospects of the business in the international market the company has established during the last year a subsidiary company by the name of INDO-ARYA GLOBAL (MALYASIA) SDN.BHD and the newly owned subsidiary company has been running its business successfully in Malyasia."

We come across that the ITAT "K" Bench, Mumbai in assessee's own case for AY 2013-14 [ITA No. 6749/MUM/2017] observed that the TPO had rejected Indo-Arya Central Transport Ltd. on the plea that the company had set up subsidiary in the previous year due to which it is incurring losses. The Tribunal held that:

"66. In this regard we observe that the assessee has considered the standalone financial statements of the company for comparability analysis which does not include any subsidiary results. Set-up of subsidiary is recorded as an 'investment' in the Balance Sheet of the company and has no effect on the Profit & Loss account/profitability of the company. Hence, rejection of the company on the basis that it established a subsidiary would not be appropriate. Reliance is placed on Mumbai Tribunal decision in the case of Goldstar Jewellery Design Pvt. Ltd vs. ITO [2013] 36 taxmann.com 292 (Mumbai-Trib) wherein it is held that balance sheet transactions have no effect on profitability."

A fortiori, we find that the appellant has considered the standalone results of the company and therefore the rejection of the company on the basis of establishing a subsidiary is incorrect as the same would not affect the profitability of the company since standalone results are considered.

6.2 In the case of Transport Corporation of India Ltd, the TPO has rejected it on the basis that the company is an entrepreneur undertaking logistics and supply chain solutions with a turnover of Rs.1,959/- crores which is very high compared to the appellant.

On the above, we find that the TPO has erroneously considered the entity level turnover of the company, whereas the turnover of the express segment of the company is Rs.788 crores. We refer hereto page 86 of the annual report.

Further, the TPO has held that the above company is engaged in providing logistics and supply solutions and hence not comparable to the appellant.

In this regard, we find from the financials that the appellant has selected the express segment of the company as comparable while benchmarking its international express segment. Therefore, the TPO has erred in rejecting the company on the basis that it is engaged in activities different from the appellant.

6.3 In view of the above reasons, we are of the considered view that Indo-Arya and Transport Corporation of India are to be included in the final comparable set. Once they are included, the appellant's margin at an entity level (as considered by the TPO and AO) is within the +/- range. Accordingly, once either Indo-Arya or Indo-Arya and TCI are reinstated, then the entire transfer pricing adjustment of Rs.13,34,42,325/- would stand deleted. We

order accordingly. Thus, grounds from 2nd to 19th raised in this appeal are allowed.

7. The 20th and 21st ground raised in this appeal relates to carry forward and set off of losses u/s.79 of the Act. It is stated that the AO erred in holding that the appellant is not entitled to carry forward the business loss of Rs.1,69,78,728/- incurred in AY 2009-10 and Rs.1,60,24,215/- incurred in AY 2011-12 in view of the provision of section 79 of the Act. Further, it is stated that the AO erred in not allowing to carry forward the business losses of the appellant in accordance with the provisions of section 79 of the Act without appreciating the fact that the beneficial holder of the shares of the appellant has not undergone any change and the conditions specified in section 79 of the Act has not been fulfilled by the appellant.

8. Briefly stated the facts are that till FY 2011-12, 95.83% of shareholding of the appellant was held by Aramex International Limited, Bemuda which was 100% directly held by Aramex International LLC (UAE) and 100% indirectly held by Aramex PJSC (UAE). During the year under consideration i.e. FY 2011-12, pursuant to their global restructuring, the shares of the appellant held by Aramex International Limited, Bemuda was transferred to Aramex International Logistics Private Limited, Singapore which was 100% directly held by Aramex International LLC (UAE) and 100% indirectly held by Aramex PJSC. Due to such transfer and on account of further issue of shares by the appellant, Aramex International Logistics Private Limited, Singapore now held 99.99% shareholding of the appellant.

However, the AO was not convinced with the above explanation of the assessee for the reason that the shareholders holding 51% of voting rights as on 31.03.2011do not hold 51% voting rights as on 31.03.2012 and thus the

assessee is not eligible to carry forward/ set off the business loss which it incurred in AY 2009-10 of Rs.1,69,78,728/- and in AY 2011-12 of Rs.1,60,24,215/-.

9. Before us, the ld. counsels submit that for the purpose of section 79, it is necessary that the majority of the voting power continues to be beneficially held in the year of carry forward and set off of loss by the persons who held such voting right at the end of the year in which the loss was incurred, it is the control over the voting rights (i.e. the beneficial holding), which is relevant. Thus, it is contended by them that in the instant case, since the shares of the appellant was beneficially held by Aramex PISC, pre and post re-organization i.e. Aramex PISC had beneficial voting power in the appellant, therefore, the provisions of section 79 of the Act is not triggered in the case of the appellant.

Reliance is placed by them on the order dated 07.12.2015 in the case of *Lodha Land Development Pvt. Ltd v. Addl. CIT* (ITA No. 2819/MUM/2012 for AY 2008-09) by ITAT, Mumbai; order dated 14.02.2018 in the case of *Wadhwa and Associates Realtors (P.) Ltd v. ACIT* (2018) 92 taxmann.com 37 (Mum-Trib.), *CLP Power India (P.) Ltd. v.* DCIT (2018) 93 taxmann.com 326 (Ahd-Trib.) and *CIT v. AMCO Power Systems Limited* (2015) 62 taxmann.com 350 (Karn.).

Relying on the above decisions, the ld. counsels submit that in the instant case since the shares of the assessee was beneficially held by Aramex PISC, pre and post the re-organisation i.e. Aramex PISC had beneficial voting power in the appelant and therefore the provisions of section 79 of the Act is not triggered in the present case.

10. On the other hand, the ld. DRs relying on the decision in the case of *Yum Restaurants (India) P. Ltd v. ITO* (2016) 66 taxmann.com 47 (Del.) submit that

indeed there was a change of ownership in the present case and since there is nothing on record to show that there was any agreement or arrangement that the beneficial owner of such shares would be the holding company, the AO has rightly declined to allow the carry forward and set off of losses u/s.79 of the Act.

11. We have heard the rival submissions and perused the relevant materials available on record. The reasons for our decisions are given below.

At this moment, we discuss the case laws relied on by the Ld. counsels for the appellant. In the case of *Wadhwa & Associates Realtors (P.) Ltd* (supra), it is held by the Tribunal that as per section 79 of the Act, test to be satisfied is not whether 51% shares should be held by same persons on the last day of previous year in which loss is incurred and on last day of previous year in which loss so incurred was to be set off, test is whether 51% of voting power is beneficially held by same persons on aforesaid 2 days; thus, ownership of shares with same person is not contemplated for denying set off of loss.

In *CLP Power India (P.) Ltd* (supra), it is held by the Tribunal that where holding company of assessee transferred its entire shareholding in assessee-company to another subsidiary company, in view of fact that in such a case beneficial ownership of assessee-company continued to vest in its ultimate holding company, provisions of section 79 placing restrictions in respect of carry forward of losses incurred in previous years against profits of subsequent years would not apply to assessee's case.

In *Lodha Land Development Pvt. Ltd* (supra), the Tribunal observed that the shareholding pattern of the assessee-company remained in the same group i.e. before transfer M/s. Lodha Developers P Ltd. was holding 9,994 shares out of 10,000 shares in each of the company M/s. Lodha Developers P. Ltd (assessee) and Lodha Attentive Developers & Farms Pvt. Ltd. After the

transfer of shareholding pattern, the ownership of shareholding also remained with Lodha Developers P. Ltd, which was holding 9,994 shares out of 10,000 shares in Lodha Attentive Developers & Farms Pvt. Ltd and it was holding 9,994 shares out of 10,000 shares in the assessee-company. Following the decision of the Hon'ble Karnataka High Court in *AMCO Power System Limited* (supra), the Tribunal held that the prohibition of carrying forward losses as per section 79 does not operate.

In *AMCO Power Systems Ltd* (supra), upto the assessment year 2000-01, all the shares of the respondent-Company were held by the ABL. In the assessment year 2001-02, the holding of ABL was reduced to 55% and the remaining 45% shares were transferred to a subsidiary of ABL, namely AMCO Properties and Investments Limited (for short 'the APIL'). In the assessment year 2002-03, ABL further transferred 49% of its remaining 55% shares to Tractors and Farm Equipments Limited (for short 'the 'TAFE') and consequently ABL retained only 6% shares and its subsidiary APIL held 45% shares and the remaining 49% shares were with TAFE. Similar shareholding continued for the assessment year 2003-04. During the course of proceedings, the AO noticed that there was a change in shareholding during the period, in which, the assessee has claimed set off of carry forward business loss. As per section 79 of the IT Act, benefit of carry forward of business loss is to be denied unless on the last date of the previous year 51 per cent of the voting power is beneficially held by the persons who similarly held 51 per cent of the voting power on the last date of the previous year in which such losses were incurred. The Hon'ble High Court held:

> **"17.** The fact that ABL is the holding Company of APIL, which is the wholly owned subsidiary of ABL and that Board of Directors of APIL are controlled by ABL, is not disputed. The submission of the learned counsel for the respondent-assessee that

the shareholding pattern is distinct from voting power of a Company, has force. Section 79 of the Act specifies that 'not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the Company carrying not less than 51% of the voting power.' Since the ABL was having complete control over the APIL, which is the wholly owned subsidiary of ABL, in our view, even though the shareholding of ABL may have reduced to 6% in the year in question, yet by virtue of being the holding Company, owning 100% shares of APIL, the voting power of ABL cannot be said to have been reduced to less than 51%, because together, both the companies had the voting power of 51% which was controlled by ABL.

17A. The purpose of Section 79 of the Act would be that benefit of carry forward and set-off of business losses for previous years of a company should not be misused by any new owner, who may purchase the shares of the Company, only to get the benefit of set-off of business losses of the previous years, which may bear profits in the subsequent years after the new owner takes over the Company. For such purpose, it is provided under the said Section that 51% of the voting power which was beneficially held by a person or persons should continue to be held, then only such benefit could be given to the Company. As we have observed above, though ABL may not have continued to hold 51% shares, but Section 79 speaks of 51% voting power, which ABL continued to have even after transfer of 49% shares to TAFE, as it controlled the voting power of APIL, and together, ABL had 51% voting power. Meaning thereby, the control of the company remained with ABL as the change in shareholding did not result in reduction of its voting power to less than 51%.

18. While dealing with a case under Section 79(a) and (b) of the unamended Section [Clause (b) was deleted w.e.f. 01.04.1988] and while relating to Clause (a) of Section 79 of the Act, the Apex Court in *CIT* v. *Italindia Cotton (P.) Ltd.* [1988] 174 ITR 160, held that the Section would be applicable only when there is change in shareholding in the previous year which may result in change of control of the Company and that every such change of shareholding need not fall within the prohibition against the carry forward and set-off of business losses. In the present case, though there may

have been change in the shareholding in the assessment year 2002-03, yet, there was no change of control of the Company, as the control remained with the ABL as the voting power of ABL, along with its subsidiary Company APIL, remained at 51%. The Supreme Court further observed that the object of enacting Section 79 appears to be to discourage persons claiming a reduction of their tax liability on the profits earned in the Companies which had sustained losses in earlier years. In the present case, the control over the Company, with 51% voting power, remained with ABL and, as such, in our view, the provisions of Section 79 of the Act would not be attracted.

19. Accordingly, we answer the first question in favour of the assessee and against the Revenue, and confirm the finding of the Tribunal in this regard."

11.1 Then we turn to the case law relied on by the ld. DR. In the case of *Yum Restaurants (India) (P.) Ltd*. (supra) during the year in question, the assessee's shareholding changed hands from Yum Restaurant Asia Pvt. Ltd. to Yum Asia Franchisees Pvt. Ltd. On being called upon to explain as to why the business loss of the assessee for the earlier years be not considered for set off and carry forward in view of change in shareholding pattern of the company, the assessee stated that the ultimate holding company of the previous parent company and the current parent company is the same and hence, the case cannot be covered u/s 79 of the Act. The Hon'ble Delhi High Court held:-

"18. As regards the issue concerning the disallowance of carry forward of accumulated business losses of the past years and set off under Section 79 of the Act, the AO did not accept the contention of Yum India that since the ultimate holding company remained Yum USA, it was the beneficial owner of the shares, notwithstanding that the shares in Yum India were held through a series of intermediary companies. The AO observed that the requirement of Section 79 was that the shares should be beneficially held by the company carrying 51% of voting power at the close of the financial year in which the loss was suffered. The parent company of Yum India on 31st March 2008 was the equitable owner of the shares

but not as on 31st March 2009. Accordingly, Yum India was not permitted to set off the carry forward business losses incurred till 31st March 2008.

19. In dealing with this issue, the ITAT has in the impugned order analysed Section 79 of the Act and noted that the set off and carry forward of loss, which is otherwise available under the provisions of Chapter VI, is denied if the extent of a change in shareholding taking place in a previous year is more than 51% of the voting power of shares beneficially held on the last day of the year in which the loss was incurred. In the present case, there was a change of 100% of the shareholding of Yum India and consequently there was a change of the beneficial ownership of shares since the predecessor company (Yum Asia) and the successor company (Yum Singapore) were distinct entities. The fact that they were subsidiaries of the ultimate holding company, Yum USA, did not mean that there was no change in the beneficial ownership. Unless the Assessee was able to show that notwithstanding shares having been registered in the name of Yum Asia or Yum Singapore, the beneficial owner was Yum USA, there could not be a presumption in that behalf.

20. Having examined the facts as well as the concurrent orders of the AO and the ITAT, the Court finds that there was indeed a change of ownership of 100% shares of Yum India from Yum Asia to Yum Singapore, both of which were distinct entities. Although they might be AEs of Yum USA, there is nothing to show that there was any agreement or arrangement that the beneficial owner of such shares would be the holding company, Yum USA. The question of 'piercing the veil' at the instance of Yum India does not arise. In the circumstances, it was rightly concluded by the ITAT that in terms of Section 79 of the Act, Yum India cannot be permitted to set off the carry forward accumulated business losses of the earlier years.

21. Consequently, the Court declines to frame a question at the instance of the Assessee Yum India on the issue of carry forward and set off of the business losses under Section 79 of the Act."

11.2 Another decision cited during the course of hearing was *Agile Electric Sub Assembly (P.) Ltd v. DCIT* (ITA No. 2497/Mds/2016 for AY 2011-12) by

ITAT, Chennai, wherein it is held by the Tribunal that Section 79 is applicable in the given facts and circumstances and, accordingly, no part of the brought forward loss of the three subsidiary companies of Agile EDTHPL (holding company of the assessee company), including the assessee-company, shall be carried forward (to the current year) or set off.

11.3 During the year under consideration there was a change in the shareholding as mentioned at para 10 of the assessment order, which is as under:

	As on 31st March, 2012		As at March 31, 2011	
Name of the shareholder	No. of shares	% shareholding	No. of shares	% of shareholding
Aramex International Limited, Bermuda	-----	------	23,000,000	95.83%
Aramex International Limited, Bermuda	43,650,998	99.99%	-----	------

11.4 Thus till FY 2011-12, 95.83% of shareholding of the appellant was held by Aramex International Limited, Bemuda which was 100% directly held by Aramex International LLC (UAE) and 100% indirectly held by Aramex PJSC (UAE). During the year under consideration i.e. FY 2011-12, pursuant to their global restructuring, the shares of the appellant held by Aramex International Limited, Bemuda was transferred to Aramex International Logistics Private Limited, Singapore which was 100% directly held by Aramex International LLC (UAE) and 100% indirectly held by Aramex PJSC. Due to such transfer and on account of further issue of shares by the appellant, Aramex International Logistics Private Limited, Singapore now held 99.99% shareholding of the appellant.

Having examined the facts of the case, in the light of the case laws relied on by both sides, we find that there was indeed a change of ownership of 95.83% shares of the appellant held by Aramex International Ltd., Bermuda (shareholding as on 31.03.2011) to 99.99% by Aramex International Logistics Pvt. Ltd., Singapore (shareholding as on 31.3.2012), both of which were distinct entities. Although, they might be AEs of Aramex PJSC (UAE), there is nothing to show that there was any agreement or arrangement that the beneficial owner of such shares would be the holding company. Unless the appellant was able to show that notwithstanding shares having been registered in the name of Aramex International Ltd., Bermuda or Aramex International Logistics Pvt. Ltd, Singapore, the beneficial owner was Aramex PJSC (UAE), there could not be a presumption in favour of the assessee.

We are of the considered view that a specific finding is to be arrived at to establish that there was any agreement or arrangement that the beneficial owner of such shares would be the holding company i.e. Aramex PJSC (UAE). As the appellant is a company registered in India, one has to examine whether mandatory disclosure has been made as per the relevant provisions of the Companies Act. If the appellant is able to show that notwithstanding shares having been registered in the name of Aramex International Ltd, Bermuda or Aramex International Logistics Pvt. Ltd, Singapore, the beneficial owner is Aramex PJSC(UAE), there would be presumption in favour of the assessee. As the above facts have not been examined by the lower authorities, we restore the matter the file of the AO to make an order afresh, keeping in mind our observations hereinabove and after giving reasonable opportunity of being heard to the appellant. We direct the appellant to file the relevant documents/evidence before the AO. Thus, 20th and 21st grounds of appeal are allowed for statistical purposes.

12. In the 22nd ground of appeal, the appellant has stated that the AO erred in making disallowance of Rs.23,850/- u/s. 36(1)(va) of the Act for employee's contribution towards ESIC by holding that the sum was paid by it beyond the due date of relevant fund without appreciating the fact that said funds was paid by the appellant into the employee's ESIC account before the due date of filing return of income u/s.139(1) for the year under consideration and thus deduction is allowable under the provisions of section 43B r.w.s 36(1)(va) of the Act.

13. During the course of assessment proceedings, the AO found that the assessee has made payments amounting to Rs.23,850/- in respect of employee's contribution towards provident fund beyond the respective due dates and even beyond the respective grace period allowed under the relevant Acts.

The above issue is decided in favour of the appellant by the judgement of the Hon'ble Bombay High Court in *CIT v. Ghatge Patil Transports Ltd*. [2015] 53 taxmann.com 141 (Bom.), where it is held that both employee's and employer's contributions are covered under amendment to section 43B and the decision of the Supreme Court in *CIT v. Alome Extrusions Ltd* (2009) 319 ITR 306 would apply and hence deduction is allowable.

Following the above decision, we delete the disallowance of Rs.23,850/- made by the AO and allow the 22nd ground of appeal.

14. The 23rd and 24th grounds of appeal relate to interest u/s.234D and are consequential in nature.

15. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 08.11.2019

Sd/-	Sd/-
(SAKTIJIT DEY)	(N.K. PRADHAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai;
Dated: 08/11/2019
S. Samanta P.S (On tour)

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.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai