

**आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री वसीम अहमद, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI WASEEM AHMED, AM

**आयकर अपील सं./ ITA No. 6709/Mum/2018**

(निर्धारण वर्ष / Assessment Year 2015-16)

The Asst. Commissioner of Income Tax-25(3) 310, Shyam Kamal Bldg. Agrawal Market, Vile Parle (East), Mumbai-400 057	बनाम/ Vs.	M/s Thana Acid & Chemical Company 6 <sup>th</sup> Floor, C-10, Prtayakshkar Bhawan, Bandra Kurla Complex, Bandra (EAsT), Mumbai-400 051
<b>(अपीलार्थी / Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAFT0627K</b>		

**प्रत्याक्षेप सं./ CO No. 248/Mum/2019**

(Arising out of ITA No.6709/Mum/2018 for AY 2015-16)

M/s Thana Acid & Chemical Company 6 <sup>th</sup> Floor, C-10, Prtayakshkar Bhawan, Bandra Kurla Complex, Bandra (EAsT), Mumbai-400 051	बनाम/ Vs.	The Asst. Commissioner of Income Tax-25(3) 310, Shyam Kamal Bldg. Agrawal Market, Vile Parle (East), Mumbai-400 057
<b>(आपत्ति करनेवाला / Cross objector)</b>		<b>(प्रत्यर्थी/ Respondent/Org. Appellant)</b>

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Amit Pratap Singh, DR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Ajay R Singh, AR

सुनवाई की तारीख / <b>Date of hearing:</b>	13.11.2019
घोषणा की तारीख / <b>Date of pronouncement :</b>	29.11.2019



## आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/  
PER MAHAVIR SINGH, JM:

In these appeals, one appeal filed by Revenue and CO filed by assessee are arising out of order of the Commissioner of Income Tax (Appeals)-37, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-37/IT-430/ACIT-25(3)/17-18 vide dated 27.09.2018. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-25(3), Mumbai (in short ACIT/ AO) for the A.Y. 2015-16 vide order dated 29.12.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by the Assessing Officer by holding that the assessee's firm is into the manufacturing of chemicals which is not been mentioned by assessee in his book of account but is part of audit report. For this, Revenue has raised following three grounds: -

"1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO of ₹2,62,92,142/-*

2. *On the facts and in the circumstances of the case and in law, the*

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*Ld. CIT(A) has erred in completely ignoring the findings made by the AO that the assessee firm is into manufacturing of chemicals which has not been disclosed by the assessee in his books of accounts.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in completely ignoring the findings made by the AO, considering the nature of business as trading whereas in the Audit Report it was mentioned 'Manufacturing'. The AO was right in rejecting the books of accounts."*

3. Briefly stated facts are that the assessee is a partnership firm engaged in the business of trading of acids and chemicals. The assessee is reseller in acids. The assessee is a wholesale selling agent of Gujarat Narmada Valley Fertilizers and Chemicals Limited (GNFC). During the course of assessment proceedings, the Assessing Officer noted from audit report filed in form No. 3CED, item No. 35bA and 35bB that the assessee has disclosed the raw material and finished products which is applicable in the case of manufacturing concern, whereby the quantitative details of items of raw materials, finished products and bye-products is given. The assessee filed the copy of purchase summary with sample of bills, soft copy of sale



summary with summary bills, expenses of ledger account and stock register and also furnished requisite trading details.

4. The Assessing Officer noted that the assessee is in manufacturing and hence, he added the estimated closing stock of Rs. 2,62,92,142/- being manufacturing stock. The assessee explained before the Assessing Officer that in view of the information regarding manufacturing details there was a typographical error due to computer cut and paste operation switching between the files, while preparing audit report in form No. 3CD clause 10A,11,35(aB) and 35(bB). It was explained that due to that error, the details of another assessee are posted in the said form of the assessee and it is not a manufacturer firm. For this, he gave various explanation but the Assessing Officer did not accept. The assessee explained that there is no manufacturing details, no manufacturing account and it is not registered with Central Excise and Customs but the Assessing Officer even after going into the following details noted that the assessee is a manufacturing concern. He noted the fact that the assessee has claimed that there is typographical error in the audit report. However, typographical error could have occurred once or twice in audit report. It is very difficult to believe that typographical error happened in all four clause 10(a), 11 and 35(bA) and (bB) of form 3CD. Clauses 35(bA) and (bB) of Form 3CD are not columns where Yes or No has to be entered but they are detailed columns where opening stock and closing stock in respect of raw material and finished



stock has to be provided. The details in clause 35(bA) and (bB) requires effort and time and hence assessee's story that all entries in clause 35(bA) and (bB) is merely a copy paste error is unbelievable.

5. The AO also noted that as per P & L account, it can be clearly seen that assessee is claiming significant amount of Transport & Hire Charges as income as well as expenses, ware house charges, diesel expenses and trip expenses which clearly indicates that assessee is transporting goods from his place to various purchase parties. In this scenario having such low stock is not possible and not viable from nature of business carried on by assessee. The nature of closing stock clearly indicates that the goods are in form of raw material. Assessee's registered website is thanacid.com. In firm's website, assessee boasts it to be a prominent and esteemed industrial chemicals manufacturer, supplier and exporter of superior quality of industrial chemicals. In the home page of the website manufacturing activity of the assessee is written in bold letters and specifically highlighted. The assessee also posted screen shot of the website, hence for advertisement only). Accordingly, the Assessing Officer made addition of the closing stock at Rs. 2,62,92,142/- being 3% of the turnover of Rs.87,64,04,735/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) deleted the addition by observing in Para 5.11 as under:

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"5.11 In view of the above submission and discussion, the assessing officer has not specified for reasons of rejecting the books of accounts. The AO should recorded clear findings that correct profits cannot be deduced from the method of accounting adopted by the appellant before rejecting the books of accounts. As per the circular dt.11/04 1955, Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. It is evident from the comparative gross profit net profit and sales ratio of the firm that appellant has consistently improve in terms of sales and net profit over a period of time. After considering the totality of facts, rival submissions, the applicable law and o the basis of discussion mentioned above, I

*find force in the argument of the appellant and draw strength from the judicial decision, it is difficult to accept that the books of accounts of the assessee are defective or incomplete from which the correct profit cannot be computed. Therefore, the addition made by the AO cannot be justified. The AO is directed to delete the addition of ₹2,62,92,142/-. This ground is allowed."*

Aggrieved, now Revenue is in appeal before Tribunal.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, assessee contended that the accounts were subject to audit under section 44AB of the Act. The audit report was uploaded hurriedly for filing the return on last date 30.09.2015. While uploading the report in Form 3CB/3CD, there was typographical error due to switching between two different clients' screens simultaneously, as a result the data of the other client was cut and pasted in Clause 10(a) and 11 and corresponding Clauses 35bA and 35bB in the assessee's report. The above typographical error was explained to the AO by letter dated 20.12.2017 along with other proof that the dealer is not a manufacturer having stock of raw materials and finished goods. It was conveyed that the Books of Accounts and Final Accounts did not show any manufacturing account. No manufacturing expenses such as wages, processing

charges were claimed by the assessee. The accounts did not show any factory nor any depreciation on any factory, the items stated in Clauses 35bA and 35bB were not borne out by any purchase or sales invoices, the proceeding and succeeding years and audit reports of the assessee described its business as a trading concern, the AO in the preceding year AY 2014/15 describes the assessee's business as wholesaler of acids and chemicals (para 3 of the last order) and that the Audit Report of the relevant previous year while working the ratios of stock vs. Turnover, the figure of stock did not include unrelated items stated in clauses 35A and 35B of the same Report.

7. The AO has neither considered nor applied here mind to the above explanation in the said letter dated 20/12/2017 but summarily rejected the explanation of the assessee. Instead he has relied on website advertisement of the assessee without informing the assessee or calling for any explanation in respect of its website text which refers to possibility of the assessee to cater to international and domestic market and also experience in dealing with manufactured industrial chemicals. The fact that the assessee primarily deals in acids has been overlooked by the Officer while relying on the publicity material for promoting sales. This fact could have been explained to the officer, had he asked the assessee in respect thereof. The supply is on tanker to tanker/ carboy to carboy/ drum to drum basis and assessee does not have any factory/ godown. The accounts were subject to audit Under section 44AB of the Act. The audit report was



uploaded hurriedly for filing the return on date 30.09.2015. While uploading the report in Form 3CB/3CD, there was typographical error due to switching between two different clients', screens simultaneously, as a result the data of the other client was cut and passed in Clause 10(a) and 11 and corresponding clauses 35bA and 35bB in the assessee's report. The above typographical error was explained to the AO vide letter dated 20.12.2017 along with other proof that the dealer is not a manufacturer having stock of raw materials and finished goods. The books of accounts and final accounts did not show any manufacturing account. No manufacturing expenses such as wages, processing charges were claimed by the assessee. The accounts did not show any factory nor any depreciation on any factory, the items stated in Clauses 35(bA) and 35(bB) were not borne out by any purchase or sales invoices. The AO has rejected Books of Accounts Under section 145(3) on the doubt that the assessee was engaged in manufacturing of chemicals which activity was not disclosed by the assessee.

8. We noted from the above facts that the assessee is able to explain that there was typographical error due to switching between two different clients screens simultaneously and as a result, the data of the other client was cut and pasted in clause 10(a) and 11 and corresponding clauses 35(bA) and 35(bB) in form No. 3CB and CD of the assessee's report. Hence, there is no manufacturing and it is only dealing in the business of trading of acids and chemicals. The CIT(A) has given a

reasonable finding based on facts vide Para 5.9 to 5.11 and the relevant Para 5.11 reads as under: -

*"5.11 In view of the above submission and discussion, the assessing officer has not specified for reasons of rejecting the books of accounts. The AO should recorded clear findings that correct profits cannot be deduced from the method of accounting adopted by the appellant before rejecting the books of accounts. As per the circular dt.11/04 1955, Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regards, the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. It is evident from the comparative gross profit net profit and sales ratio of the firm that appellant has consistently improve in terms of sales and net profit over a period of time. After considering the totality of*

*facts, rival submissions, the applicable law and on the basis of discussion mentioned above. I find force in the argument of the appellant and draw strength from the judicial decision, it is difficult to accept that the books of accounts of the assessee are defective or incomplete from which the correct profit cannot be computed. Therefore, the addition made by AO cannot be justified. The AO is directed to delete the addition of ₹2,62,92,142/-. This ground is allowed."*

9. In view of the above facts of the case, we are of the view that the CIT(A) has rightly deleted the addition and this issue of Revenue's appeal is dismissed.

10. Cross Objection of the assessee is supportive of the order of CIT(A) and hence, became academic and infructuous.

**11. In the result, the appeal of the Revenue is dismissed and CO of the assessee is also dismissed.**

Order pronounced in the open court on 29.11.2019

Sd/-

(वसीम अहमद / WASEEM AHMED)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated:29.11.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL 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 (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai