

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.2906/M/2017  
Assessment Year: 2009-10**

M/s. SSD Industries, Plot No.109D, Mahendra Industrial Premises, Gala No.4, 1 <sup>st</sup> Floor, Next to VVF Ltd., Sion (E), Mumbai – 400 022 <b>PAN: AATFS3950L</b>	Vs.	ACIT 21(2), C-11, Pratyakshkar Bhavan, Bandra Kurla Complex, Bandra (E) Mumbai – 400051
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Paresh Shapaira, C.A.  
Revenue by : Shri Chaudhary Arunkumar Singh, D.R.

Date of Hearing : 15.07.2019

Date of Pronouncement : 11.09.2019

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 16.01.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The assessee has taken the following grounds:

"1. The Ld. CIT(A) erred in confirming the addition made to net profit by amount of Rs.88,90,4677- by estimating the net profit @56% as against the net profit declared @26.48% without appreciating that proper explanation and supporting was filed to justify the fall in net profit and without rejecting the same by cogent reasons and without rejecting the books of account of the appellant, the addition made of Rs.88,90,467/- by estimating net profit @56% is without any justification and is liable to be deleted.

2. The Ld. CIT(A) failed to appreciate that the purchase of raw material from sister concern M.K. Traders was at arms-length price i.e. the price at which the sister concern sold the goods to other third parties and without pointing out any

excessive price paid to sister concern and merely on the ground that cost price is inflated as the purchase of goods is from sister concern, the addition made of Rs.88,90,467/- to the declared net profit is without any justification and liable to be deleted.

3. The Ld. CIT(A) failed to appreciate that the sister concern M.K. Traders was carrying out the business since past several years and has been taxed at the maximum marginal rate without any benefit of deduction u/s.80IB of the Act whereas the appellant is entitled to benefit of deduction u/s.80IB of the Act and thus, there is no benefit by purchasing raw material at higher price from the sister concern and hence, the addition made of Rs.88,90,467/- to the declared net profit is without any justification and liable to be deleted.

4. The Appellant craves leave to add, alter, amend all or any of the above grounds of appeal.”

3. The only issue raised in the various grounds of appeal is against the addition of Rs.88,90,467/- by the AO by estimating the Net profit at 56% as against the Net Profit declared by the assessee of 26.48% without appreciating the fact that purchase of raw material from the sister concern was made at an arm length price and also by ignoring the fact that both these entities assessee as well as sister concern have been assessed to tax at maximum rate.

4. The facts in brief are that the present appeal has been filed against the appellate order confirming order passed by the AO under section 143(3) read with section 263 of the Act. The assessee has not challenged the revisionary order passed by the Commissioner under section 263 of the Act. In the revisionary proceedings, the crux of issue was that the Pr. CIT was of the view that the assessee was not carrying on any manufacturing activities. Besides the NP has fallen to 26% during the year under consideration vis-à-vis 56% in the earlier year and also citing some sales difference in the ledger copy of M/s. Parle Biscuits Ltd. vis-à-vis the books of accounts of the assessee.

The AO in the set aside proceedings accepted that the assessee is engaged in manufacturing and trade of food chemical, essential oils, flavours, blends, lactic acid and its derivatives, however, made the addition on account of NP difference between the current year vis-à-vis preceding year. The AO observed that during the preceding three years the NP of the assessee ranged between 50% to 56% whereas in the current year it has dwindled 26.48% and accordingly asked the assessee to justify the fall in NP. The assessee replied to the query of the AO by submitting that the profits have come down due to increase in cost of material which the assessee had to buy from M/s. M.K. Traders a sister concern as compared to earlier M/s. Purac Asia Pacific. The assessee submitted before the AO that the supply of raw material from the manufacturer M/s. Purac Asia Pacific was discontinued due to expiry of MOU entered into with M/s. Purac Asia Pacific. Thus the assessee had to purchase the material at a higher price from M/s. M.K. Traders who is sole authorised stockiest of goods of M/s. Purac Asia Pacific in India. The assessee also submitted that the rates at which the materials were purchased from M/s. M.K. Traders were at an arm length price and therefore there is genuine decrease in the profits of the assessee and has not increased in any way the income of the related party. However, the AO did not accept the contentions and submissions of the assessee and calculated the addition at Rs.88,90,467/- by comparing the net profit in the current year to the immediately preceding year. The AO also noted that M/s. M.K. Traders has not claimed any deduction under chapter VIA of the Income Tax Act whereas the assessee was eligible to claim deduction @ 25% under section 80IB of the Act. The said addition was determined by the AO by calculating the net profit

at Rs.1,79,43,532/- on a gross receipt of Rs.3,20,42,022/- in the current year by taking the NP of 56% and thus added the difference to the net profit of the assessee.

5. The Ld. CIT(A) dismissed the appeal of the assessee by upholding the order of AO by accepting the various reasoning given for making such addition.

6. The Ld. A.R. vehemently submitted before us that the order passed by the AO was grossly wrong. Similarly the Ld. CIT(A) has also erred in upholding the said order by not appreciating the facts correctly. The Ld. A.R. submitted that the findings of the authorities below are conflicting and contradictory and have led to absurd and meaningless conclusion by the authorities below. The Ld. A.R. submitted that in the revisionary order the main focus of the Ld. Pr. CIT was that assessee was not carrying on any manufacturing activity whereas the AO while passing the assessment has accepted the manufacturing activity of the assessee. The Ld. A.R. submitted that assessee duly explained the fall in GP and NP during the year vis-à-vis the preceding years. The Ld. A.R. submitted that the GP and NP of the assessee are falling during the year due to non supply of material from M/s. Purac Asia Pacific as the MOU has expired with that company during the year and consequently the supply of material was taken from M/s. M.K. Traders a sister concern who happens to be sole authorised stockiest of M/s. Purac Asia Pacific in India. The Ld. A.R. submitted before the Bench that the purchases from the sister concern were made at an arm length price and AO has not brought any comparable cases on record while making the addition to prove that the price charged

by the sister concern is unreasonable and excessive as compared to the market prices. The Ld. A.R. drew our attention to page No.1 of the paper book wherein the working in respect of GP and NP and the calculation of addition made by the AO on the basis of NP were given in detail. The Ld. A.R. while referring to the said working submitted before the Bench that the net profit during the year has come down to 28.25% vis-à-vis 56.65% in 2008-09. The Ld. A.R. further analysed the sales into manufacturing sales and trading sales. In the manufacturing sales the GP was 39.04% vis-à-vis 56.16% in A.Y. 2008-09 whereas in the trading sales the GP was 31.28% vis-à-vis nil in the A.Y. 2008-09 as there was no sales. The Ld. A.R. submitted that the AO calculated the GP at 56% and determined the NP at Rs.1,79,43,532/- and after deducting there from the net profit declared by the assessee at Rs.90,53,065/-, the differential amount was added to the income of the assessee of Rs.88,90,467/-. The Ld. A.R. submitted that the AO has grossly ignored the fact that the total amount of purchases from the sister concern were only of Rs.85,60,723/- whereas the disallowance as calculated for suppression of profit by purchasing the material from sister concern was Rs.88,90,467/-. The Ld. A.R. also took us through the page No.2 of the paper book which contained the details of comparative GP on various items. The Ld. A.R. pointed out that the items on which the assessee was making higher GP in the earlier years were not there in the current year. The Ld. A.R. also brought before the Bench the instances of sales by M/s. M.K. Traders to the assessee and to third parties and demonstrated that the prices of the material sold to the assessee vis-à-vis third party were competitive and comparable. The copy

of said details are filed at page No.68 of the paper book. Similarly, the Ld. A.R. also drew our attention to page No.67 and 68 wherein the details of supplies by M/s. M.K. Traders to the assessee were given and submitted that these were made at a very competitive and comparable prices. The Ld. A.R. therefore submitted that the conclusion of the AO that the profit has been suppressed by the assessee by making purchases from the sister concern was without any basis and devoid of merit. The second argument taken up by the Ld. A.R. is that the books of accounts have not been rejected by the AO and therefore the addition made by applying GP rate to estimate the income is bad in law and can not be sustained. Even on the principle of consistency, the order of the CIT is bad in law as both the parties were assessed to tax at maximum marginal rate and there is no loss of revenue to the revenue. In defence of his argument the Ld. A.R. relied on a series of decisions. Finally the ld.AR prayed before the bench that the appeal of the assessee may kindly be allowed by setting aside the order of CIT(A).

7. The ld Dr on the other hand relied on the order authorities below and submitted that the assessee has done transactions at unreasonable high prices and thus the profits of the assessee came down substantially. The ld DR prayed before the bench to affirm of the order of CIT(A).

8. We have heard the rival contentions and perused the materials on records. We observe that the fall in GP and NP was because of expiry of MOU with supplier M/s. Purac Asia Pacific a foreign entity during the year. We find that the assessee then bought the materials from its sister concern who was the sole

authorized stockiest in India of the foreign supplier. We also observe that the prices charged by the sister concern are competitive and comparable as is apparent from the records and the AO has not brought any materials on records to substantiate the allegation of high prices. The assessee has also proved before us that the items on which GP was high were only in the earlier years and not in the current years. We therefore considering the facts of the case, are of the opinion that the order of Id. CIT(A) is incorrect and can not be sustained. Accordingly we set aside the order of Id CIT(A) and direct the AO to delete the addition.

9. In result the appeal of the assessee is allowed.

**Order pronounced in the open court on 11.09.2019.**

**Sd/-  
(Amarjit Singh)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 11.09.2019.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.