

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'H' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)  
and Ram Lal Negi (Judicial Member)]**

ITA No. 4452/Mum/2017  
Assessment year: 2007-08

**Deputy Commissioner of Income Tax  
Circle 15(2)(1), Mumbai**

.....Appellant

*Vs*

**Kellogg India Pvt Ltd**  
*501, Delphi, B Wing, Hiranandani Business Park  
Powai, Mumbai 400 076 [PAN: AAAACK1748A]*

.....Respondent

**Appearances by**

**Pankaj Kumar** *for the appellant*  
**Dhanesh Bafna and Hirali Desai** *for the respondent*

Date of concluding the hearing: : December 4, 2019  
Date of pronouncement : March 02, 2020

**ORDER**

**Per Pramod Kumar, VP:**

1. This appeal, filed by the Assessing Officer, is directed against the learned CIT(A)'s order dated 14<sup>th</sup> March 2017 in the matter of assessment under section 143(3) r.w.s.263 of the Income Tax Act, 1961, for the assessment year 2007-08.

2. Grievances of the appellant-Assessing Officer, which are raised in the grounds of appeal as questions requiring our adjudication, are as follows:

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating the 'Provision of advertisement expenses' and Provision of Reimbursement of expenses to distributors as ascertained in nature while adjudicating their addition to book profit u/s. 115JB of the Income Tax Act, when the Ld. CIT(A) in his earlier order had treated them as unascertained while deciding on their addition to the total income under normal provisions of the Act."

2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating the 'Provision of advertisement expenses' and Provision for Reimbursement of expenses to distributor as ascertained in nature while adjudicating their addition to book profit u/s.115JB of the Income Tax Act, when

**assessee had created the provision without any reasonable basis and correlation with the total expenditure incurred during the year.”**

3. To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us, as is noted by the Assessing Officer, is engaged in the business of manufacturing, packaging and marketing of ready to eat cereal products. During the course of scrutiny assessment proceedings in this case, the Assessing Officer noticed that the advertising expenses of Rs 28,86,62,551, as claimed as deduction by the assessee, include provision of Rs 12,76,68,537 which was not actually spent during the relevant previous year. When the assessee was put to notice, by the Assessing Officer, as to why the said expenses not be disallowed, and the matter was probed further, it was explained by the assessee that the provision was in respect of the ascertained liabilities and was wholly allowable, subject to, of course, disallowance under section 40(a)(ia) wherever applicable. It was further explained that that out of this amount of Rs 12,76,68,537, tax was deducted in respect of the provisions aggregating to Rs 1,86,37,586, and no tax was deductible in respect of the provisions aggregating to Rs 2,12,68,815 as it pertained the reimbursement to distributors. The aggregate of these amounts was claimed as deduction. As for the remaining amount of Rs 8,77,62,136, being for advertisement expenses, it was clarified that the assessee has not claimed deduction in respect of the same- in view of the provisions of Section 40(a)(ia). The claim for Rs 8,77,62,136 will thus, according to the assessee, come up for consideration in the succeeding assessment year. However, the Assessing Officer was not satisfied with respect to the claim of deduction of Rs 2,12,68,815 pertaining to provision for reimbursement to distributors. He was of the view that this is only a provision, and as such not an allowable deduction. Aggrieved, assessee carried the matter in appeal before the CIT(A). It was, inter alia, contended that the provision aggregating to Rs 2,12,68,815 represented actual reimbursements due to the distributor and the entire amount has been paid in the succeeding year. Upholding the contentions of the assessee, learned CIT(A) deleted the said disallowance of Rs 2,12,68,815 as well. In the meantime, however, the assessment was subjected to revision proceedings on the ground that “the assessee company has debited an amount of Rs 10,90,30,951 as provisions, which are actually unexplained and unidentified provisions” and “since the said provisions towards advertising expense is an unascertained liability charged to the profit and loss account, the said liability is required to be added to the book profits under section 115JB of the Income Tax Act, 1961”. This amount of Rs 10,90,30,951 represents total of (a) provision for reimbursement of expenses to distributors amounting to Rs 2,12,68,815; and (b) provision for advertisement expenses, which was not claimed deduction as applicable tax at source was not deducted in this year, amounting to Rs 8,77,62,136. These amounts were sought to be treated as unascertained liabilities. When the matter was thus remitted to the file of the Assessing Officer for examination on this point, the assessee submitted all the details of provision. The Assessing Officer was, however, not ready that a provision can be an ascertained liability and he was of the view that it is only when actual bills are received, and liability crystallizes, that it can be said to be an ascertained liability. He concluded as follows:

7. The contention of the assessee and details/ justification have been carefully considered, but the same are not tenable. The submissions have been verified from the party-wise details of payments to advertising agencies and reimbursement of expenses to distributors. The estimates received from advertising agencies have also been considered. However, the contention of the assessee that the provision of Rs. 10,90,30,951/- is an ascertained liability is not acceptable. This provision will crystallize and can be allowed for deduction only when the actual invoices are received and taxes have been deducted on such invoices. Therefore, the amount of Rs. 10,90,30,951/- being an unascertained liability for AY 2007-08 is disallowed and added back in computing book profit under section 115JB of the Act.

4. When the matter was carried in appeal before the CIT(A), he reversed the action of the Assessing Officer, on this point, and deleted the addition to book profit by observing as follows:

4.3 I have considered the facts the case and the appellant's submissions. The issue at hand is whether the provision of Rs. 10,90,30,951/- towards advertising expenses and reimbursement of expenses to distributors can be added back to the book profit u/s. 115JB as provision of unascertained liability. The appellant follows mercantile system of accounting and therefore, is required to accrue liabilities in respect of advertising services that have been rendered but have not been paid, invoiced or formally agreed with the advertising agencies. Accordingly, the appellant accrued advertising expenses of Rs. 8,77,62,136/- pertaining to services rendered upto 31 March 2007 and created a provision for the same. The provision was created based on the estimates provided by advertising agencies. The details of party-wise accrued advertising expenses alongwith sample copies of the estimates received from advertising agencies were submitted before the Assessing Officer. Likewise, based on the information received from Regional Sales Offices and past experience, the appellant created a provision of Rs. 2,12,68,815/- in the books for all such expenses to be reimbursed to distributors for promotional activities done on behalf of the appellant. The party-wise details of provision for reimbursement of expenses to distributors were also submitted before the Assessing Officer. Perusal of all these details on record shows that the liability had accrued to the appellant as services had already been rendered during the year under consideration. However, due to non-receipt of invoices, the exact amount could not be quantified on account of which the appellant had created a provision towards these expenses bases on estimated provided by advertising agencies and information received from Regional Sales Offices and past experience. It is also seen that out of this

**provision of Rs. 10,90,30,951/-, payments of Rs. 9,34,22,920/- have been made in the subsequent months and the balance amount of Rs. 1,56,08,031/- has been reversed. The excess of provision over the actual expenditure comes to 14.31% which is not unreasonable or excessive. Considering all these facts, the provision made cannot be said to be on account of unascertained liability. In the case of Rotork Controls India (P) Ltd. v. CIT [2009] 314 ITR 62/180 Taxman 422 (SC), the Hon'ble Supreme Court in the context of an assessee making provision for estimated expenditure towards warranty observed that provision is a liability which can be measured only by using substantial degree of estimation. Such provision is recognized when a assessee had a present obligation as a result of past events, and it is possible that any outflow of resources will be required to settle the obligation and further a reliable estimate can be made of the amount of obligation. Considering this decision of the Hon'ble Supreme Court and the facts on hand, I am of the considered view that the provision made by the appellant was not on account of unascertained liability and the same cannot be added back to the book profit u/s. 115JB of the Act.**

5. The Assessing Officer is aggrieved of the relief so granted by the CIT(A) and is in appeal before us.

6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

7. We find that the Assessing Officer has really confused himself with the crystallization of liability being equated with the provision for ascertained liability. When the liability can be reasonably quantified, it becomes an ascertained liability, even though the actual liability to pay this ascertained liability will incur only when the liability crystallises as on receipt of related invoices etc. The ascertainment of liability is not the same thing as crystallization of liability, and so far the question before the Assessing Officer was concerned, all that he had to see was whether it is an ascertained liability or not. Once all the details of the basis on which provisions are made are on record, and have also been produced before the authorities below, it cannot be said that the liability was not an ascertained liability. Accordingly, no adjustment was warranted in the book profits. Learned CIT(A) has also discussed this aspect of the matter in great detail and his reasoning is correct. In the ground of appeal, it is stated that in the earlier order, the CIT(A) has treated the same provisions as provisions for unascertained liabilities. That allegation seems to be factually incorrect inasmuch as we find that in the quantum proceedings, the CIT(A) has deleted the disallowance in respect of provision for reimbursements to distributors by holding that the same was in respect of the ascertained liability, and as the assessee himself had not claimed deduction for the advertising

expenses of Rs 877,62,136, and, as such, the CIT(A) had no occasion to deal with the same. In any case, learned Departmental Representative has not brought any material on record to dislodge the impugned findings of the learned CIT(A).

8. In the light of these discussions, as also bearing in mind entirety of the case, we approve the well reasoned conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

9. In the result, the appeal is dismissed. Pronounced in the open court today on the 2<sup>nd</sup> day of March, 2020.

Sd/-

**Ram Lal Negi**  
(Judicial Member)  
**Mumbai, dated the 2<sup>nd</sup> day of March, 2020**

Sd/-

**Pramod Kumar**  
(Vice President)

*Copies to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Mumbai benches, Mumbai*