

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES : BENCH "A" HYDERABAD**

**(Through Video Conference)**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A. No. 589 and 632/Hyd./2017  
Assessment Year : 2010-11**

Dy.CIT, Circle 1(2)  
Hyderabad

**vs.** M/s Crown Beers India Pvt.Ltd.  
Hyderabad  
[PAN: AACCC9946Q]

(Respondent/ Cross Appellant)

And

**I.T.A. No. 633/Hyd./2017  
Assessment Year : 2011-12**

M/s Crown Beers India Pvt. Ltd.  
Hyderabad

**Vs.** Dy.CIT, Circle 1(2)  
Hyderabad

(Appellant)

(Respondent)

For Assessee: Shri Krishna Kulkarni, AR  
For Revenue: Shri Sunil Kumar Pandey, D.R.

Date of Hearing : 24/03/2021  
Date of Pronouncement : 28/05/2021

**ORDER**

**PER S.S. GODARA, J.M.**

The instant batch of three appeals pertains to single assessee M/s Crown Beers India Pvt. Ltd. Former AY 2010-11 involves Revenue's and assessee's cross appeals ITA 589 & 632/Hyd/2017 arising against the CIT(A)-1, Hyderabad's order dated 27/12/2016 passed in case no.116/2016-17. Latter A.Y. 2011-12 contains assessee's appeal ITA 633/Hyd/17 preferred against the very CIT(A)'s order dated 27122016 passed in case

no.100/2016-17. Relevant proceedings in both these cases are u/s 143(3) of the Income Tax Act, 1961 [for short 'the Act'].

Heard both parties. Case files perused.

2. We advert to revenue's appeal ITA 589/Hyd/17 for AY 2010-11 raising following sole substantive ground.

*"1. Ld.CIT(A) erred on facts and in law in deleting the disallowance made out of marketing, sales and distribution expenses without appreciating that approval issued in assessee's case under proviso to sub section (1) of section 297 of the Companies Act, 1956 by the Regional Director, South East Region, Ministry of Corporate Affairs in ref.no.10/297/AP/103/2011/SRN A88081831 dt. 04.01.2012 does not pertain to AAY 2010-11 and therefore 'technical fault' is not rectified."*

2.1. Mr. Pandey next took us to the CIT(A)'s detailed discussion on the issue reading as under.

*"5. Ground No.1 (Grounds Nos. 1 to 2(a)):*

*Regarding Disallowance of. Selling, Marketing & Distribution expenses of Rs.17,35,51,214/- :*

*During the assessment proceedings, the Assessing Officer noticed from the Schedule 15 under sub-head 'Other costs', the assessee incurred an amount of Rs.17,35,51,214/- towards 'Selling & Distribution expenses' paid to its sister concern "Inbev India International Pvt. Ltd". As per Company Act Rule, prior approval is required to make such payment to the Law Board, which was not done by the applicant.*

*The assessee submitted a note under the head "Significant Accounting Policies and Notes to Accounts" as under:*

*"Approval from the Central Government in respect of Company's application in connection with an arrangement with Inbev India International Pvt. Ltd (IIPL) for providing Marketing Sales and Distribution services is currently awaited.*

*Pursuant to such agreement, a sum of Rs.17,43,91,299/- paid/payable to IIIPL has been charged off under the head Selling and Distribution expenses in Schedule 15."*

*It was seen, in pursuant to such agreement with IIIPL, the assessee company has been charged off an amount of Rs.17,43,91,299/paid/payable basis, and paid an amount of Rs.17,35,51,214/- towards Marketing, Sales and Distribution Services'. The assessee submitted that the expenses incurred by the company only Rs.58,21,760/- was expended as remuneration to M/s Inbev International India Pvt. LTD (IIIPL), a sister company, for Marketing; sales and Distribution Services. As the assessee failed to get approval from the Central Government, which is required and mandatory as per the Company law board rules, hence the Assessing Officer disallowed the expenditure of Rs.17,35,51,214/-.*

*5.1 During the appeal proceedings, the appellant submitted the following*

- The company had entered into an agreement for obtaining rv1arketing, Sales and Distribution services from Inbev International India Pvt. Ltd (IIIPL), a company with which It shared common directors for the AY 2010-11. According to the provisions of Section 297 of the Companies Act, 1956, prior approval of the Central Government is required for transactions involving sale, purchase or supply of any goods, /materials of services in which the directors of the company receiving such services are interested. This approval was applied but not received.*

- In this regard, the appellant submitted the relevant extract of section 297 of the Companies Act, as under:*

*"297. Board's sanction to be required for certain contracts in which particular directors are interested.*

*(5) Except with the consent of the Board of directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company-*

*(5) for the sale, purchase or supply of any goods, material or services; or*

*(b) after the commencement of this Act, for underwriting the subscription of any shares in, or debentures of, the company:*

*Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.*

(2) . . . . .

(3) . . . . .

(4) . . . . .

*(5) If consent is not accorded to any contract under this section, anything done in pursuance of the contract shall be voidable at the option of the Board.*

*Subsection (5) of Section 297 of the Companies Act, which provides that if the consent is not accorded to any contract under the section, then, anything done in pursuance of the contract shall be voidable at the option of the Board. Clause (i) of Section 2 of the Indian Contract Act, 1872 states that:*

*"An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.*

*The essence of sub-section (5) is that when there is a violation of subsection (1) of section 297 of the Companies Act, the contract does not automatically become void ab initio, but voidable at the option of the Board. The expression 'voidable at the option of the Board' postulates that if the Board, despite no prior sanction, agrees to go ahead with the contract referred to in sub-section (1) of Section 297 of the Companies Act, such contract would be valid. It is only when the Board exercises its option against validating the contract as per sub-section (1) that the contract becomes void ab initio. In this regard, the Appellant submitted that the Board has not objected to the contracts between the Appellant and IIIPL, thus making such contract for receiving marketing, selling and distribution services valid.*

•• *The Explanation to Section 37( 1) of the Act reads as under:*

*"Explanation. -For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred (or the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure."*

*The appellant submitted that from the above, it could be understood that any expenditure incurred by the assessee, for any purpose which is offence or, is prohibited by law, shall not be deemed to have been incurred for the purpose of business and no deduction shall be allowed.*

*In the present case, the Assessing Officer disallowed the expenditure by observing that since the payment of marketing, selling and distribution expenses was made without prior approval of the Central Government, it amounted to payment in contravention of the Companies Act. In this regard, the appellant submitted that the Company made the payment for obtaining marketing, selling and distribution services, which is neither an offence nor prohibited by law. The appellant submitted that the industry in which the Company operates, demands the necessity to incur expenses towards Marketing, Sales and Distribution expenses. Accordingly, to promote the sales of the Company's products, it is necessary for the Company to engage IIIPL towards such Marketing, Sales and Distribution services. Had the Company not entered into agreement with IIIPL, it might have to enter into a similar agreement with another company towards the same services.*

*In this regard, the quantum of selling and distribution expenses incurred in the previous years and the proportion of such expenses to the total sales are as under:*

<i>Financial Year</i>	<i>Total sales (In INR)</i>	<i>Selling &amp; Distribution expenses (in INR)</i>	<i>% of selling &amp; distribution expenses to sales</i>
<i>F.Y. 2007-08 (year of incorporation)</i>	<i>34,98,44,360</i>	<i>17,92,66,614</i>	<i>48%</i>
<i>FY 2008-09</i>	<i>69,50,27,641</i>	<i>18,77,23,109</i>	<i>23%</i>
<i>FY 2009-10</i>	<i>79,32,55,129</i>	<i>1735,51,214</i>	<i>22%</i>

*From the above table, it could be seen that the Company had incurred similar quantum of expenditure towards selling and distribution. Hence, this entire expenditure which was incurred during the course of business should be allowed as deductible expenditure.*

*5.3 The appellant relied upon the following case laws which conclude that noncompliance with legal procedural provisions is not a reasonable basis for holding a payment to be disallowed:*

*(i) Cossul & Co (P) Ltd. -vs- Commissioner of Income tax (2000) 245 ITR 312 (All), Allahabad High Court.*

*(ii) Nilgiri Finance & Hire Purchase Pvt. Ltd -vs- CIT (1995) 213 ITR 384 (Mad), Madras High Court.*

*(iii) CIT -vs- SreeRajendra Mills Ltd (1974) 93 ITR 122 (Mad), Madras High Court.*

*5.4 The appellant submitted with regard to the Ground No.2(a) that the disallowance should be restricted to Rs.58,21,760/- i.e. the remuneration paid to IIIPL in relation to the Marketing, Sales and Distribution Services as against the entire amount of Rs.17,35,51,214/-. The breakup of the expenditure is submitted as under:*

Period	Selling, marketing and distribution expenses (Rs)	Breakup	
		Remuneration paid towards marketing, sales and distribution services ( Rs.)	Reimbursement of expenses (Rs.)
01.04.2009 to 31.03.2010	17,35,51,214	58,21,760	16,77,29,454

From above, it could be seen that out of the total selling and distribution expenses, Rs. 16,77,29,454 pertain to reimbursement of expenses of IIIPL and charged to Crown at cost. The appellant submitted that the provisions of Section 297 of the Companies Act, 1956 are applicable only for transactions involving the sale, purchase or supply of any goods, materials or services. However, in the instant case, the payments are towards reimbursement of expenses of Crown, paid by IIIPL and recharged to CBIL at cost. Accordingly, as such expenses are not for the purchase / sale / supply of goods or services, the same would not be subjected to the provisions of Section 297 of the Companies Act and the same should not be disallowed.

5.5. As above, I find, that the reason for disallowance by the Assessing Officer is , the non-approval of the Central Government as per the Companies Act. To take approval while payments, to its related subsidiaries/sister concerns IS purely technical issue. However the appellant has received approval on 04.01.2012 vide the approval issued by the Regional Director, % the Regional Director, South East Region, Hyderabad, Ministry of Corporate Affairs, Government of India in Ref:10/297/AP/103/2011/SRN A88081831, dated 04.01.2012. Since the technical fault has been rectified, I find no reason to disallow the contention of the appellant. I also take support of tile Delhi ITAT's ruling in the case of Jain Surgicals Ltd. Vs. ACIT (ITA No.844/Del/2013), wherein it held that -

*"If the expenditure is otherwise lawful and neither amounts to offence nor is prohibited by law! but the procedural provisions attached for incurring it are not complied with! no doubt irregularity will creep in, but such irregularity will not make the expenditure itself as unlawful so as to be brought within the scope of the Explanation to Section 37(1)."*

Hence, the addition made by the Assessing Officer is deleted."

2.2. The Revenue vehemently contended during the course of hearing that the CIT(A) has erred in law and on facts in deleting the impugned disallowance/addition of Rs.17,35,51,214/- involving selling, marketing and distribution expenses paid by the assessee to its sister concern M/s Inbev India International Pvt. Ltd. in violation of sec.297 of Companies Act (supra)without getting prior approval of the central government. The assessee's case on the other hand is that the CIT(A) has rightly considered the

post facto approval coming from Ministry of Corporate Affairs, Govt. of India dated 4.1.2012 qua the impugned issue.

3. We have given our thoughtful consideration to the foregoing rival pleadings against and in support of the CIT(A)'s lower appellate findings deleting the impugned marketing, selling and distribution expenses/disallowance. There is no dispute about the basic fact that the assessee had indeed paid the impugned sum to its sister concern and that too, without even applying for the relevant sanction as it is evident from page 98 of the paper book containing the approval dated 4.1.2012 qua to the period of 4 years from 7.7.2010 to 31.3.2014 only whereas we are in FY 2009-10 having accounting period up to 31.3.2010. The CIT(A)'s impugned reasoning is not found to be sustainable therefore. Coupled with this, there is also no material as to whether the assessee had in fact applied for the necessary approval regarding its transactions/payments to its sister concern executed between 1.4.2009 to 31.3.2010. We thus find no reason to uphold the CIT(A)'s impugned reasoning to this effect. This Revenue's argument is accepted in principle.

4. Next comes yet another equally important aspect of interplay of section 292/ 297 of the Companies Act vis-à-vis sec.40A(2)(b) of the Act dealing with expenses or payments made to the interested parties. It is not in dispute that this issue has nowhere been examined. The same is restored to the CIT(A) therefore to be adjudicated afresh within three effective opportunities of hearing.

This Revenue's appeal ITA no. 589/Hyd/2017 is accepted for statistical purposes.

5. Next comes assessee's cross appeal ITA 632/Hyd/17. Its sole substantive grievance raised herein seeks to reverse the CIT(A)'s action upholding the disallowance of Rs.64,09,908/- relevant to the current year and Rs.4,226/- not related to FY 2009-10 on account of its failure in filing the corresponding details in remand proceedings. Suffice to say the Assessing officer had disallowed an amount of Rs.21,45,440/- @ 20% of Rs.1,07,27,201/- claimed at assessee's behest. The CIT(A)'s lower appellate order under challenge has resulted in enhancement thereof in above terms; and that too, without even issuing corresponding notice stipulated in sec.251 (1)(a) of the Act. We thus reverse the CIT(A)'s impugned directions and restrict the impugned disallowance to the extent of Rs.21,45,440/- only in these facts and circumstances. Assessee's cross appeal ITA 632/Hyd/2017 is partly accepted.

6. Coming to assessee's latter appeal ITA 633/Hyd/17, we find that the CIT(A)'s verification exercise has resulted in enhancement of the impugned disallowance made by the Assessing Officer to the tune of Rs. 9,37,270/- to that amounting to Rs. 44,24,555/- out of the total amount of Rs.2,26,42,910/-. We direct the Assessing Officer to restrict the impugned disallowance to Rs. 9,37,270/- in foregoing terms.

To sum up, Revenue's appeal ITA 589/Hyd/2017 is allowed for statistical purposes and assessee's appeals ITA Nos. 632 and 633/Hyd/2017 are partly allowed in above terms. A copy of this common order be placed in respective files.

Pronounced in Open Court on 28<sup>th</sup> May, 2021.

**Sd/-**  
**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

Dated: the 28<sup>th</sup> May, 2021.

\* gmv

Copy of the Order forwarded to:

1. M/s Crown Beers India Pvt. Ltd. 510/511, Minera House, S.D.Road, Secunderabad 500 003, Telangana.
2. Dy.CIT, Circle 1(2), Hyderabad./ ACIT, Range 1, Hyderabad
3. CIT(A)-1, Hyderabad.
5. Pr.CIT-1, Hyderabad
- 6.DR, ITAT, Hyderabad.
7. Guard File.