

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 631/Ahd/2016
(Assessment Year: 2010-11)

Vora Ravjibhai Rasikbhai Vora Ravjibhai Adesing & co., Nr. Panchayat Office, Sarkhej Gam, Sarkhej, Ahmedabad-382210	Vs.	ITO Ward-7(1), Ahmedabad
[PAN No.ABLPB7890H]		
(Appellant)	..	(Respondent)

Assessee by :	Shri Rajendra K. Shah, AR
Revenue by :	Shri Nilabhra Dasgupta, Sr. DR

Date of Hearing	21.02.2022
Date of Pronouncement	10.03.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 05.01.2016 passed by the Commissioner of Income Tax (Appeals)-13, Ahmedabad arising out of the order dated 25.03.2013 passed by the ITO, Ward-7(1), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2010-11.

2. We have heard the respective parties and also perused the relevant materials available on record.

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3. Addition of Rs. 1,01,49,926/- considering the purchase cost paid over the spot rate in respect of deliveries of Palmoline Oil taken after the expiry of the delivery period of the contract is a subject matter before us.

4. The assessee having income from business of profession and commission agent filed its return of income on 28.09.2010 declaring total income at Rs. 7,25,230/- which was processed under Section 143(1) of the Act. Under scrutiny assessment notice under Section 143(2) of the Act was issued on 27.09.2011 and duly served upon the assessee followed by detailed questionnaire on 24.0.2012.

5. The brief facts leading to the case is this that upon examination of the books of accounts it is found that there is a drop in the Gross Profit Ratio due to huge loss incurred by the assessee in the trading of Palmoline Oil. The assessee entered into contract with broker to purchase specified quantity of Palmoline Oil at a specified rate and the delivery to be taken to within a specified time period too. Accordingly, whenever the assessee failed to purchase the product within the specific period the assessee had to purchase Palmoline Oil from broker at the rate prevailing on the date of entering into contract. The Ld. AO observed that the appellant has deviated from the written contract and has paid prices higher than the prevailing spot rate for Palmoline Oil for the sake of mutually extended period. Therefore, the Ld. AO disallowed the purchase cost paid over and above the spot rate of Palmoline Oil after the expiry of the contract in such cases which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

6. Thus, the short point involved in this particular case is this as to whether payment on the basis of the purchase rate specified under the contract which is higher than rate prevailing on the date of delivery is genuine or not.

In this particular case the Ld. AO has adopted the spot rate when as the appellant had made contracts in forward market as per his business model. It is also relevant to mention that the appellant is bound to execute the contract entered into with the broker for taking delivery of the Palmoline Oil within the specified period and in the event he fails to do the same the rate specified in the contract would be payable by the assessee though fulfillment of the said terms of the contract may result loss to the assessee.

7. It is the further case of the Revenue that by way of purchasing more than the available contract rate, the assessee have inflated the purchase to the extent of Rs. 1,22,64,640/- as evident from Annexure-A submitted by the assessee while explaining the purchase made at higher rate prevailing on the date of contracts and not at the rate prevailing on the date of purchase.

8. It is a fact that it is a commitment of the appellant to purchase specified quantity for the assessee, at specified rates and delivery to be taken within a specified time period. As per accounting principle when the actual liability takes place it is to be accounted on the date of actual purchase/sales and the same is constantly done by the appellant.

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Therefore, it is a rate of delivery as per the contract price which is applicable and not the spot rate on the date of delivery; as the letter ignores the fundamentals of future contracts as prevalent to the impugned trade of the appellant.

9. It appears that the Ld. AO has made the addition holding the transaction as non-genuine whereas we find that in the subsequent year that is A.Y. 2011-12 no addition has been made on this count. Furthermore, in the A.Y. 2012-13 the assessment was finalized under Section 143(3) holding the business transaction of Palmoline Oil are genuine one and no addition has been made on account of trading transaction of Palmoline Oil. It is relevant to mention that in the A.Y. 2013-14 though in assessee's case the addition was made on the same issue of an amount of Rs. 39,89,762/- taking the base of A.Y. 2010-11 which under consideration before us the Ld. CIT(A) in that A.Y. 2013-14 by and under the order dated 25.01.2017 has accepted the said Palmoline Oil business as a genuine one and only confirmed an addition of Rs. 2,00,000/- on ad-hoc basis.

10. Considering the entire aspect of the matter we do not justify the observation made by the Ld. AO in holding the transaction ingenuine and further holding that the loss incurred by the appellant is not a genuine loss and thereby making addition of Rs. 1,01,49,926/- considering the purchase cost paid over spot rate in respect of deliveries of Palmoline Oil. Therefore, the addition in our considered opinion is not in terms of

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the prescribe method of accounting as discussed hereinabove and hence,
the same is hereby deleted.

11. In the result, the appeal preferred by the assessee is allowed.

This Order pronounced in Open Court on	10/03/2022
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 10/03/2022

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad