

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

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.7396/Mum/2018
(Assessment Year : 2014-15)**

M/s. Anheuser Busch InBev India Limited (Formerly known as SABMiller India Limited) Unit No.301-302, Third Floor, Dynasty Business Park B-Wing, Andheri Kurla Road Andheri (E), Mumbai – 400 059	Vs.	Assistant / Deputy Commissioner of Income Tax Circle 11(1)(2) Mumbai
PAN/GIR No. AAICS2238R		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajan R. Vora / Shri Hemen Chandariya
Revenue by	Dr. Yogesh Kamat
Date of Hearing	10/02/2022
Date of Pronouncement	24/02/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.7396/Mum/2018 for A.Y.2014-15 preferred by the assessee against the final assessment order passed by the Assessing Officer dated 25/10/2018 u/s.143(3) r.w.s. 144C(13) of the Income Tax Act, hereinafter referred to as Act, pursuant to the directions

of the Id. Dispute Resolution Panel-1 (West Zone) (DRP in short) u/s.144C(1) of the Act dated 18/09/2018 respectively for the A.Y.2014-15.

2. The Ground Nos.2-2.1 and 3 – 3.5 raised by the assessee for A.Y.2014-15 are identical with Ground Nos.3-3.4 raised by the assessee for A.Y. 2012-13 and the decision rendered hereinabove for A.Y.2012-13 shall apply with equal force for this assessment year also except with variance in figures.

3. The Ground Nos.4.1-4.4 raised by the assessee for A.Y.2014-15 are identical to Ground No.4- 4.4 raised for A.Y.2012-13 and the decision rendered for A.Y.2012-13 shall apply with equal force for this assessment year also except with variance in figures.

4. The Ground Nos. 5.1 to 5.4 raised by the assessee for A.Y.2014-15 are identical to Ground Nos. 6- 6.4 raised by the assessee for A.Y.2012-13 and the decision rendered there on would apply with equal force for this assessment year also except with variance in figures.

5. The Ground Nos. 6.1 – 6.4 raised by the assessee are challenging the disallowance of commission expenses of Rs.1,04,44,122/- u/s.40(a)(ia) of the Act for non-deduction of tax at source. During the course of assessment proceedings, the Id. AO asked the assessee to submit details of tax deducted in respect of the commission paid to agents. In this regard, the assessee submitted a party-wise list of commission paid to the agents amounting to Rs 39,02,11,468/- along with copies of TDS certificates and sample Form I6A issued to substantiate that appropriate

taxes have been deducted by the assessee during the year under consideration. Further, the assessee submitted that the total amount of Rs.39,02,11,468/- recorded in the profit and loss account for the year comprises of commission of Rs.37,97,67,346/- for the year and the balance amount comprises of year end accrual of Rs.31,20,024/- on account of commission liability towards unidentified parties and Rs.73,24,098/- on account of disputed commission.

6. Though assessee had filed additional evidences before the Id. DRP by stating that the entire provision amounting to Rs. 1,04,44,122/- has been reversed by the assessee during the F.Y.2016-17 and the provision has been utilized for certain expenses in the nature and distributor leakage claims, sedimentation claims and transit breakage claims. The assessee also submitted that it had duly deducted applicable taxes on the expenditure in the year in which these provisions were actually utilized and had deposited the TDS to the account of the Central Government. These facts were not appreciated by the lower authorities. Hence, we deem it fit to restore this issue to the file of the Id. AO for denovo adjudication in accordance with law and also in the light of additional evidences furnished by the assessee. The Id. AO should ensure that there is no double taxation in this regard. If a particular sum has been already reversed by the assessee in the subsequent assessment year then, disallowing the same sum in the year under consideration would result in double taxation. This aspect has to be looked into by the Id. AO while dealing with this issue in the set aside proceedings. Accordingly, the Ground Nos. 6.1 – 6.4 raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal of the assessee in ITA No.7396/Mum/2018 for A.Y.2014-15 is partly allowed for statistical purposes.

Order pronounced on 24/02/2022 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 24/ 02 /2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai