

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No. 57/SRT/2020 (AY: 2011-12)  
(Hearing in Physical Court)

D.C.I.T. Circle-2(1)(2), Room No. 205, Aayakar Bhavan, Majura Gate, Surat.	Vs.	M/s Shree Durga Syntex Pvt. Ltd., Block No. 129 & 175, Plot No. Z&E, R.S. No. 120, Tal: Jolva-394305, Dist- Surat. <b>PAN: AABCD 8894 P</b>
APPELLANT		RESPONDEDNT

ITA No. 29/SRT/2020 (AY: 2011-12)

M/s Shree Durga Syntex Pvt. Ltd., Block No. 129 & 175, Plot No. Z&E, Jolva RS No. 120 & 120/1, Surat-394305. <b>PAN: AABCD 8894 P</b>	Vs.	A.C.I.T. Circle-4, Surat.
APPELLANT		RESPONDEDNT

Department by	Shri H.P. Meena, CIT-DR
Assessee by	Shri Rasesh Shah, CA
Date of hearing	12/05/2022
Date of pronouncement	30/06/2022

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This set of cross appeals for the Assessment Year (AY) 2011-12 by the revenue as well as by the assessee, is directed against the order of Id. Commissioner of Income tax (Appeals)-2, Surat [‘Id. CIT(A)’ for short] both dated 03/12/2019.
2. Firstly we are taking the revenue’s appeal for the A.Y. 2011-12 wherein, the Revenue in its appeal has raised the following grounds of appeal:-

- “1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 6,39,69,595/- made on account of disallowance of commission expenses despite of the fact that the non-genuineness of the commission paid to the Paras Petrofils Ltd. and Sonic Biochem Extractions Ltd. was substantiated by the exhaustive inquiries conducted by AO which proved that the requisite services were not rendered.*
- 2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 1,11,25,000/- made on account of unsecured loans received treating as deemed dividend u/s 2(22)(e) of the Act, though the assessee company had received unsecured loans from the group company, which satisfy the stipulation of the provisions of Section 2(22)(e) of the Act.*
- 3. On the facts and in the circumstances of the case and in law, the Id. CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Id. CIT(A)-2, Surat may be set aside and that of the Assessing Officer’s order may be restored.*
- 4. On the facts and circumstances of the case and in law, the appellant craves its right to add, alter, amend, deleted, any of the ground or grounds of appeal.”*
3. The assessee in its appeal has raised following grounds of appeal:

  - “1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in making disallowance of employee’s contribution to ESI and Provident Fund of Rs. 1,29,476/- and Rs. 18,988/- u/s 36(1)(va) of the Act respectively and treating the same as income u/s 2(24)(x) of the Act.*
  - 2. It is therefore prayed that the above addition made by the Assessing Officer may please be deleted.*
  - 3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*
4. Brief facts of the case are that the assessee is a company engaged in the business of manufacturing and job work of FDY Yarn and gray fabrics. The

assessee filed its return of income for the A.Y. 2011-12 on 29/09/2011 declaring income of Rs. 10.667 crores. The case of assessee was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has shown total turnover of Rs. 125.11 crores and has shown gross profit of Rs. 26.30 crores which is 21.2% of turnover. In the immediately preceding year, the assessee has shown gross profit of Rs. 25.38 crores @ 23.15 crores @ 23.14% on turnover of Rs. 109.683 crores. On further perusal of profit & loss account (P&L Account), the Assessing Officer noted that the assessee has paid sales commission of Rs. 3.24 crores and purchase commission of Rs. 3.00 crores. The assessee was asked to furnish complete details of commission paid with name and address of the parties with their PAN and rate of commission and the nature of services rendered by the commission agent. In response to the Assessing officer's queries, the assessee filed his reply dated 18/11/2013 furnished details of ledger account alongwith names and address of the parties, PAN number, nature of services rendered and rate of commission. The assessee further following details:

Sr. No.	Name & address of the parties	PAN	Service rendered	Rate of commission
1	Paras Petrofils Ltd., 301, JeevandeepAppartment, Opp. J.K. Tower, Ring Road, Surat.	AABCP4038P	Comm. On Yarn & Grey Sales	5.00%
2.	Sonic Biochem Extractions Ltd., 38, Patel Nagar, Indore- 452001 (MP)	AABCS5326B	Comm. On Raw Material Purchased	4.00%

5. On perusal of ledger of Sonic Biochem Extractions Ltd. in the books of Assessee Company, the address of Sonic Biochem Extractions Ltd. was mentioned as 7A, Vimal UdhyogBhawan, 3<sup>rd</sup> Floor, Opp. Star Cinema, Sivaji Park, Matunga West, Mumbai. The Assessing Officer further noted that the assessee paid commission to Paras Petrofils Ltd. @ 5% of sales which is higher than the prevailing market rate. The Assessing Officer in order to verify the genuineness of commission paid to Paras Petrofils Ltd., issued summon under Section 131 of the Income Tax Act, 1961 (in short, the Act) on 21/02/2014. In response to summon under Section 131 of the Act, Mr. Mahesh K. Baheti, DGM (Finance) of Paras Petrofils Ltd. attended the office of Assessing Officer and his statement was recorded. The Assessing Officer also gathered certain information like issuing the notice under Section 133(6) of the Act. On collecting certain information and on the basis of statement of DGM(Finance) of Paras Petrofils Ltd., the Assessing Officer issued show cause notice to the assessee on 18/03/2014, the contents of show cause notice is extracted by the Assessing officer in para 4.5 of assessment order. In the show cause notice, the Assessing Officer noted that Mr. Mahesh K. Baheti, DGM (Finance) of Paras Petrofils Ltd. has not produced any document to prove that they rendered any service to the assessee except agreement executed between the assessee and Paras Petrofils Ltd. on 31/12/2008. The Assessing Officer also referred certain clauses of agreement dated 31/12/2008. The Assessing Officer in the show cause notice required the

assessee to furnish name and address of the person in the marketing team of Paras Petrofils Ltd. and Sonic Biochem Extractions Ltd., details of technical persons who offered the services to assessee. The Assessing Officer required the details in the show cause notice on or before 13/3/2014. The assessee filed its pointwise reply on 23/02/2014 and submitted detailed explanation to the Assessing Officer. The reply of assessee is recorded by Assessing Officer in para 4.6 at page Nos. 10 to 18 of the assessment order. In reply, the assessee explained that Sonic Biochem Extractions Ltd. is involved in developing and manufacturing and Paras Petrofils Ltd. is a world class Non-GMO Soya Food and Pharmaceuticals Ingredients for food, processed foods, meats, nutraceuticals, healthcare, feed and nutritional products. Sonic Biochem Extractions Ltd. has acted as a purchase agent for raw material yarn manufacturing. The assessee has agreement with the Sonic Biochem Extractions Ltd. as well as with Paras Petrofils Ltd. The assessee in pointwise reply, submitted that the sales and purchase brokerage is supported by agreement, confirmation of the parties , quarterly bills issued by the parties, service tax payment and TDS was deducted on the commission payment.

6. The reply of the assessee was not accepted by the Assessing Officer. The Assessing Officer held that mere payment of TDS and service tax and payment through bank does not prove that actually any services were rendered by Paras Petrofils Ltd. and Sonic Biochem Extractions Ltd. The assessee tried to justify the payment of commission which is incorrect. The

commission parties have not rendered services, therefore, the expenses cannot be allowed under section 37 of the Act. The Assessing Officer disallowed the entire expenses of sales and purchase commission paid to both the parties whereby making addition of 6.396 crores.

7. The Assessing Officer further noted that the assessee received unsecured loan from Rashmi Polyfab Pvt. Ltd. and Pawan Syntex Pvt. Ltd. wherein the assessee is having more than 10% shareholding. The assessee was asked to show cause as to why it should not be treated as deemed dividend under Section 2(22)(e) of the Act. The assessee filed its reply vide reply dated 28/02/2014 and 26/03/2014. In the reply, the assessee explained that writing off loan entries received from Pawan Syntex Pvt. Ltd. Rashmi Polyfab Pvt. Ltd. are wrong entry made by the Accountant. Actually, it should be included into debtors. The Assessing Officer recorded that in earlier submission made on 18/11/2013, the assessee furnished detail of unsecured loans with copy of ledger and made statement highlighting the transaction. In the said submission, the assessee stated that it has received unsecured loans of Rs. 82.25 lacs from Pawan Syntex Pvt. Ltd. which is also reflected in the bank statement. Similarly in case of Rashmi Polyfab Pvt. Ltd., the assessee accepted unsecured loan of Rs. 29.00 lacs and furnished bank statement and copy of audited accounts. In case of Pawan Syntex Pvt. Ltd., who is having more than 10% shareholding in assessee and granted loan of Rs. 82.25 lacs in the month of February, 2011 and the accumulated profit as on 31/3/2010 was

of Rs. 2.50 crores and as on 31/3/2011 was also Rs. 2.50 crores which is much higher than the loan given by Pawan Syntex Pvt. Ltd. to the assessee. Therefore, the said loan was treated as deemed dividend. In case of Rashmi Polyfab Pvt. Ltd., who is also have more than 10% share in assessee, has granted loan of Rs. 29.00 lacs during the year. The accumulated profit as on 31/3/2010 was Rs. 3.06 corers and as on 31/03/2010 was of Rs. 3.74 crores, which was much higher than granted by Rashmi Polyfab Pvt. Ltd. to assessee, therefore, the said loan was also treated as deemed dividend under Section 2(22)(e) of the Act. Thus, the Assessing officer made addition of Rs. 82.25 lacs plus 29.00 lacs is equal to Rs. 1,11,25,000/- (111.25 lacs).

8. On further verification of audited accounts, the Assessing Officer found that the assessee has made payment of employees contribution towards ESI & PF beyond the due date specified under Section 36(1)(va) of the Act. The Assessing Officer find that the assessee has made delayed payment of following amount:

- (i) Provident Fund

Sr. No.	Due date of payment	Actual date of payment	Amount (Rs.)
1.	20/06/2010	23/06/2010	18,988
	Total		18,988

- (ii) E.S.I. Fund

Sr. No.	Due date of payment	Actual date of payment	Amount (Rs.)
1.	20/06/2010	23/06/2010	36,064
2.	20/01/2011	18/02/2011	47,614
3.	20/02/2011	23/02/2011	45,798
	Total		1,29,476

On the basis of aforesaid observation, the Assessing Officer issued show cause notice as to why Rs. 1,48,464/- (Provident Fund of Rs. 18,988 + ESI of Rs. 1,29,476) should not be added to the total income of assessee. The Assessing Officer recorded that the assessee has not furnished any reply or explanation. The Assessing Officer by following the judgment of Hon'ble Gujarat High Court in the case of CIT Vs Gujarat State Road Transport Corporation dated 13/01/2014 wherein it was held that employee's PF/ESI contribution is not covered by Section 43B and is only allowable as deduction u/s 36(1)(va) if paid by the due date prescribed under those Acts, accordingly disallowed Rs. 1,48,464/-.

9. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee filed detailed written submissions. The submission on all three additions is recorded in para 5 of order of Id. CIT(A). On the addition/disallowance of commission payment, the assessee submitted that the assessee paid commission of Rs. 3.24 crores i.e. @ 5% of sales of finished goods to Paras Petrofils Ltd. and commission @ 4% i.e. Rs. 3.00 crores on purchase of raw material to Sonic Biochem Extractions

Ltd. The commission payments were made by way of written agreement before the parties. In the written agreement, the rate of brokerage commission was mentioned. Besides the agreement, there was oral agreement and mutual understanding regarding services to be rendered by both the parties from time to time. In the agreement with Paras Petrofils Ltd. after December, 2010, the rate of commission was reduced from 5% to 1% as they failed to achieve the target sales of Rs. 150.00 crores till the end of December, 2010. The turnover had reached on Rs. 97.27 crores. The sales commission and purchase commission were supported by this agreement, confirmation of parties, quarterly bills issued by the parties, service tax payment of commission, payment were made through account payee cheques and tax was deducted at source. With details of sales and purchase made on which commission/brokerage was paid and consequent follow up with the parties for technical and marketing guidance by the assessee. While entering into agreement with both the commission parties, the assessee was represented by Shri Bachhraj Begani and the rates of brokerage was mutually agreed. During the course of assessment, the assessee submitted requisite details required by the Assessing Officer. The Assessing Officer asked the assessee to furnish complete details of commission paid with name, address and PAN number of parties. The assessee furnished such complete details. The copy of agreement with both the parties and the details of services rendered were furnished. The Assessing Officer issued summons under

Section 131 on the Principal officer of Paras Petrofils Ltd. on 21/2/2014 to verify the genuineness of commission paid. The Principal officer of Paras Petrofils Ltd. Mr. Mahesh K Baheti (DGM Finance) attended the hearing before the Assessing Officer on 03/03/2014 and explained he modus operandi of transaction and process of making contract. It was explained that marketing team helped the assessee in selling their goods and rendered technical services by setting quality of assessee's product. In case of Sonic Biochem Extractions Ltd., notice under Section 133(6) of the Act was issued and in reply of notice under Section 133(6), they confirmed the payment of brokerage made by assessee. The assessee was also asked to furnish name of broker through whom purchase of polyster chips and the name of broker through whom sales of yarn/grey fabric was made. The assessee vide his reply dated 14/3/2014 submitted that for selling of its product, technical services were also expected to be rendered by the agent who orally agreed for such arrangement. The technical services were incidental for procurement of sales order. The Assessing Officer disregarded the submission of assessee and disallowed the entire commission expenses.

10. The assessee further explained that the commission of Rs. 3.24 crore was paid to Paras Petrofils Ltd. @ 5% of sales. The assessee paid commission on yarn and grey fabric sales in pursuance of agreement with the commission agent. The assessee company made huge investment as per main objective of the company and to increase its sale and profitability sought services of Paras

Petrofils Ltd. The said company established background and wide network in yarn market since long time and was having wide experience in the line of business. The assessee company approached them to exploit their business network and experience to achieve the goal of increase in the turnover. Due to services provided by them, the production of assessee, quality of marketing network was progressed very much compared to earlier years. The assessee claimed that in F.Y. 2008-09, the sale of assessee was Rs. 52.00 crores and the net profit of Rs. 3.06 crores which was 5.89%. In F.Y. 2009-10, the turnover of assessee was increased to Rs. 109 crores and net profit increased to 10.47 crores which is 9.61% and in F.Y. 2011-12, the sales of assessee was increased to Rs. 125 crores and net profit was Rs. 11.00 crores @ 8.79%. By the performance of commission parties, the assessee company had increased about 2.5 times in the current year compared to F.Y. 2008-09 and overall profitability was also increased. The Assessing Officer wrongly rejected the explanation of assessee on the ground that the normal business practice was to give brokerage at 1 or 2 percent of shares made through agent. The assessee not only paid brokerage commission but also sought services to exploit marketing network and expertise of Paras Petrofils Ltd. in the marketing of assessee's product. The Assessing Officer failed to appreciate that there was no need for mentioning the name of Paras Petrofils Ltd. on each sales invoices as much as the commission with the assessee company was on overall arrangement of creating marketing network and providing

guidance for expansion of its turnover and no customer wise services. The commission was paid on overall turnover and therefore, there was no practical need for mentioning the name of agent on sale invoices. The Assessing Officer ignored the fact that the commission agent has received commission and paid tax thereon and also charged service tax for the services rendered by them. The Assessing Officer has not brought any evidence to prove that the claim of assessee was bogus.

11. For commission payment to Sonic Biochem Extractions Ltd., the assessee explained that they entered into agreement with the said party. The copy of agreement was furnished to the Assessing Officer. The assessee company had started a new business of manufacturing of yarn and therefore, suppliers were not known to assessee. For the purpose of uninterrupted supply of raw material for continuous production, the assessee availed services of Sonic Biochem Extractions Ltd. The Assessing Officer made independent inquiry by issuing notice under Section 133(6) of the Act. In response to inquiries, Sonic Biochem Extractions Ltd., confirmed to have received commission. They furnished all the evidence like bank statement, copy of return of income which clearly suggests the genuineness of commission payment. The Assessing Officer merely on assumption and guesswork concluded that the commission paid by assessee was bogus on various illogical grounds. The Assessing Officer alleged that Sonic Biochem Extractions Ltd. was in the business of pharmaceuticals ingredients. However, he failed to appreciate that it was not

the real criteria to judge and determine the exact business of the company from broad projection displayed on any website. The website itself suggesting large area of business operations of said company. The Assessing Officer failed to appreciate the confirmation of the said company about the services rendered by them without leading evidence that the said company was not involved in rendering any services to the assessee company. The Assessing Officer alleged that as the assessee has purchased raw material through Sonic Biochem Extractions Ltd. and purchases were made by Sonic Biochem Extractions Ltd. from M/s JBF Industries, the brokers of JBF Industries would have known Sonic Biochem Extractions Ltd. The assessee explained that broker of JBF Industries had no concern at all with Sonic Biochem Extractions Ltd. The Sonic Biochem Extractions Ltd. were the purchased agent of the assessee and were devising the strategies for procurement of raw materials for the assessee from various suppliers at reasonable rates and it was their duty to arrange for raw material as and when required by assessee. Sonic Biochem Extractions Ltd. supported by agreement executed between the parties, payments were made through cheques. TDS were deducted and thus, the assessee discharged its onus for proving the genuineness of payment. The Assessing Officer has not granted cross examination of Shri Nishant Sharma or Shri Sher Singh Sharma and proceeded to make addition that they were acting as a broker of JBF Industries.

12. On the addition under Section 2(22)(e) of the Act, the assessee submitted that during the year, the assessee sold yarn to Pawan Syntex Pvt. Ltd. and grey fabrics to Rashmi Polyfab Pvt. Ltd., certain payments were made by them, by inadvertent mistake, credited to a separate account viz Pawan Syntex Pvt. Ltd. and Rashmi Polyfab Pvt. Ltd. instead of crediting the account in respect of sales of goods made to them. Thus, erroneously the said amounts were shown as unsecured loans. The assessee sold goods of Rs. 2.14 crores and 1.87 crore and had job work of Rs. 1.36 crore and 2.46 crores of Pawan Syntex Pvt. Ltd. and Rashmi Polyfab Pvt. Ltd. respectively. At the end of year as on 31/3/2011, there was a credit balance of Rs. 1.92 crore in case of Pawan Syntex Pvt. Ltd. and Rs. 2.14 crores in case of Rashmi Polyfab Pvt. Ltd. In fact the amount of Rs. 82.25 lacs and Rs. 29.00 lacs in case of Pawan Syntex Pvt. Ltd. and Rashmi Polyfab Pvt. Ltd. should have been credited towards their respective sales account, then closing balance of both these parties as on 31/3/2011 would have been Rs. 1.10 crore and 1.85 crore respectively. The assessee further explained that the Assessing Officer made addition without appreciating the fact in right perspective, in fact, both the companies were debtor of assessee as the assessee has sold goods to both the companies. Apart from that the assessee other than business relation with the said companies as it had done job work with both the companies. A substantial amount was receivables from both the concerns as the part of business and commercial transaction. The accountant had opened two

separate accounts in respect of both the companies in respect of debit transactions and payment receive from them. It was an inadvertent mistake in keeping separate accounts in respect of different transactions and therefore, payments received from these concern were credited in the separate ledger. As a result of wrong treatment, the amount received from them were reflected under the schedule of "unsecured loans", whereas substantially the higher amount receivable from them were reflected under thehead "sundry debtors." The copy of audit report were furnished. The assessee also furnished the details of debit amount and prayed for deleting the entire addition.

13. On the disallowance of late deposit of ESI and PF contribution, the assessee submitted that the assessee has made payment of ESI and PF after relevant due date. However, the said amount had been deposited before the end of financial year. The assessee has not retained the amount of ESI/PF contribution, but itself had deposited the same as soon as it came to notice of assessee. As no part and it was retained which could be its deemed income and therefore, no disallowance could have been made.

14. The Id. CIT(A) after considering the assessment order, submission of assessee on addition of commission expenses, held that the assessee paid purchase commission @ 4% to Sonic Biochem Extractions Ltd. and sales commission @ 5% to Paras Petrofils Ltd. The Assessing Officer made disallowance for the following reasons:

- “(i) Test check inquiries from customers of the appellant company revealed that in the sale bills, the name of Paras Petrofils Ltd was not reflected and rather either direct or some other agents names were mentioned on the bills.
- (ii) Raw materials suppliers of appellant company - M/s. JBF Industries Ltd., AlokInds Ltd, Garden Silk Mills bills did not indicate names of any commission agent.
- (iii) Mr. Manish K. Baheti, DGM of Paras Petrofils Ltd did not produce any document to support the claim that Paras Petrofils Ltd had provided any services to the appellant.
- (iv) Technicalities of the agreement vis-a-vis statement of Manish Baheti was compared by the AO and it was pointed out that in the agreement, Paras Petrofils Ltd was not supposed to provide technical assistance in quality of goods produced by appellant as claimed by Mr. Baheti. The AO thus, inferred that Mr. Baheti was making cooked story.
- (v) Details of technical staff (K. Radhakrishnan) and marketing staff (Kanubhai Pate) of Paras Petrofils Ltd were not furnished by Mr. Baheti.
- (vi) Website-[www.sonicbiochem.co.in](http://www.sonicbiochem.co.in) of M/s. Sonic Biochem Extractions Ltd indicate business domain which did not include raw materials for yarn manufacturing industry.
- (vii) M/s. Paras Petrofils Ltd was itself yarn manufacturer and AO doubted as to why such costumer details were not used by M/s. Paras for its own sales rather than acting as commission agent.
- (viii) Nowhere in agreement with M/s. Paras Petrofils Ltd, any mention of certain target turnover was there to justify high commission rate of 5%.

- (ix) Mr. Baheti did not produce minutes of board meetings herein the proposal of the appellant for acting as commission agent was discussed.
- (x) The AO observed that if M/s. Paras Petrofils Ltd had great understanding of market, why its own manufacturing activities were closed in F.Y. 2012- 13.
- (xi) Directors of appellant company was well versed in the field of knitting and grey fabrics manufacturing and had sister concerns M/s. Rashmi Polyfab Pvt Ltd and M/s. Pawan Syntex Pvt Ltd who could have helped the appellant rather than outsider company charging huge commission @ 5%.
- (xii) The increase in N.P. of current A.Y. was due to reduced finance charges and depreciation.
- (xiii) The AO rejected the appellant's contention of commission payments proof, TDS deducted on the same by referring to the decision of Hon'ble Supreme Court in the case of Laxminarayan Madanlal Vs CIT 86 ITR 439 wherein it was held that mere existence of an agreement between the assessee and its selling agents or payment of commission does not bind the ITO to hold that the payment was made wholly and exclusively for the purpose of business. It is open to the AO to consider relevant factors and determine whether the commission said to have been paid is properly deductible u/s. 37 of the Act."

Before him, the assessee reiterated the similar submission as made before the Assessing officer that the commission was supported by written agreement formed by the parties, payments were made through cheques on making TDS and service tax on such commission. The turnover of assessee was jumped by 241% compare to F.Y. 2008-09. The net profit of Rs. 11.00

crore was realised as compared to Rs. 3.00 crore in immediately preceding year, when no such commission was paid to those two parties. Thus, the assessee was benefited from the services rendered by them. The Id. CIT(A) held that it is not the case of Assessing officer that the commission agents are better companies and have shown only commission receipt from assessee which was returned back in cash to the assessee. Both the companies have huge turnover in their business and have expertise in the relevant filed cannot be brushed aside without any adverse finding. Both the parties are not related with the assessee. The sales of assessee was jumped drastically i.e. 209% in A.Y. 2010-11 and 241% in A.Y. 2011-12 which could be achieved only when the assessee appointed these agents for sales, purchase and for procurement of raw material. The conclusion by the Assessing officer is based on mere presumption and guess work. On the aforesaid observation, the Id. CIT(A) deleted the entire disallowance of commission expenses.

15. On the addition of deemed dividend under Section 2(22)(e) of the Act, the Id. CIT(A) held that on going through the ledger account of both the concerns i.e. Pawan Syntex Pvt. Ltd. and Rashmi Polyfab Pvt. Ltd., it is apparent that at the beginning of F.Y. 2010-11 i.e. on 01/04/2010, the assessee had amount receivable from both the companies, therefore, lump sum amounts shown in separate accounts cannot be treated as unsecured loans. The net effect of merging of both the accounts of the two companies ultimately indicate balance receivable at the end of the financial year as well. Thus, it can be

accepted that the amount of Rs. 82.25 lacs and Rs. 29.00 lacs received from these two companies were pertaining to business transactions. Accordingly, the provision of Section 2(22)(e) of the Act will not attract and deleted the addition.

16. On the addition of disallowance of ESI and PF, the Id. CIT(A) concluded that the Id. AR of the assessee could not counter the decision of Hon'ble Gujarat High Court in CIT Vs Gujarat State Road Transport Corporation (supra) and confirmed the addition accordingly.

17. Aggrieved by the order of Id. CIT(A), both the parties have filed their respective appeals before this Tribunal. The Revenue has challenged the deletion of addition on account of commission payment as well as deleting the addition under Section 2(22)(e) of the Act. On the other hand, the assessee has challenged the addition/disallowance on account of delay in payment of employees' contribution towards PF and ESI.

18. We have heard the submissions of Id. CIT-DR for the revenue and the learned authorised representative (AR) of the assessee and have gone through the orders of the lower authorities carefully. Ground No. 1 of the revenue's appeal relates to deleting the addition of Rs. 6.39 crores made on account of disallowance of commission expenses. The Id. CIT-DR for the revenue submits that the assessee has paid commission of Rs. 3.24 crores to Paras Petrofils Ltd. and Rs. 3.00 crores to Sonic Biochem Extractions Ltd. The rate of commission was on the higher side. The Assessing Officer made inquiries

under Section 133(6) and issued summons under Section 131 of the Act to Paras Petrofils Ltd. The Assessing officer also made inquiries from third parties and made detailed analysis on the details furnished by assessee. The payment made to the parties were unreasonable, excessive particularly when the assessee failed to prove the services rendered by the parties to whom the commissions were made. In absence of any specific services rendered by those parties, the commission paid to such parties cannot be treated as expenses incurred wholly and exclusively for the purpose of business.

19. On the other hand, the Id. AR of the assessee submits that the assessee paid commission of Rs. 3.24 crores i.e. @ 5% of sales of finished goods to Paras Petrofils Ltd. and commission @ 4% i.e. Rs. 3.00 crores on purchase of raw material to Sonic Biochem Extractions Ltd. The commission payments were made on the basis of written contract / agreement between the parties. In the written agreement, the rate of brokerage commission and various conditions are clearly mentioned. The copies of the written agreements with the commission's parties were filed before the assessing officer. Besides the agreement, there was oral agreement and mutual understanding regarding services to be rendered by both the parties from time to time. As per agreement with Paras Petrofils Ltd. after December, 2010, the rate of commission was reduced from 5% to 1% as they failed to achieve the target sales of Rs. 150.00 crores till the end of December, 2010. The turnover had reached only on Rs. 97.27 crores. The assessee furnished all complete details

and the details of services rendered were furnished. The assessee vide his reply dated 14/3/2014 submitted that for selling of its product, technical services were also expected to be rendered by the agent who orally agreed for such arrangement. The Id. AR submits that the commission of Rs. 3.24 crore was paid to Paras Petrofils Ltd. @ 5%. The assessee paid commission on yarn and grey fabric sales in pursuance of agreement with the commission agent. The Id AR for the assessee submits that in F.Y. 2008-09, the sale of assessee was Rs. 52.00 crores and the net profit of Rs. 3.06 crores which was 5.89%. In F.Y. 2009-10, the turnover of assessee was increased to Rs. 109 crores and net profit increased to 10.47 crores which is 9.61% and in F.Y. 2011-12, the sales of assessee was increased to Rs. 125 crores and net profit was Rs. 11.00 crores @ 8.79%. By the performance of commission parties, the performance of the assessee-company had increased about 2.5 times in the current year compared to F.Y. 2008-09 and overall profitability was also increased. The Assessing Officer wrongly rejected the explanation of assessee on the ground that the normal business practice was to give brokerage at 1 or 2 percent of sales made through agent. The assessee not only paid brokerage commission but also sought services to exploit marketing network and expertise of Paras Petrofils Ltd. in the marketing of assessee's product. The Assessing Officer failed to appreciate that there was no need for mentioning the name of Paras Petrofils Ltd. on each sale invoices as much as the commission with the assessee company was on overall arrangement of

creating marketing network and providing guidance for expansion of its turnover and no customer wise services. For commission payment to Sonic Biochem Extractions Ltd., the Id. AR submits that they entered into agreement with the said party. The agreement was furnished to the Assessing Officer. The assessee company had started a new business of manufacturing of yarn and therefore, suppliers were not known to assessee. For the purpose of uninterrupted supply of ram material for continuous production, the assessee availed services of Sonic Biochem Extractions Ltd.. The Assessing Officer made independent inquiry by issuing notice under Section 133(6) of the Act. The Assessing Officer alleged that Sonic Biochem Extractions Ltd. was in the business of pharmaceuticals ingredients. However, he failed to appreciate that it was not the real criteria to judge and determine the exact business of the company from broad projection displayed on any website. The website itself suggesting large area of business operations of said company. The Assessing Officer failed to appreciate the confirmation of the said company about the services rendered by them without leading evidence that the said company was not involved in rendering any services to the assessee company. The Assessing Officer alleged that as the assessee has purchased raw material through Sonic Biochem Extractions Ltd. and purchases were made by Sonic Biochem Extractions Ltd. from M/s JBF Industries, the brokers of JBF Industries would have known Sonic Biochem Extractions Ltd.. Sonic Biochem Extractions Ltd. supported by agreement executed between the parties,

payments were made through cheques. TDS were deducted and thus, the assessee discharged its onus for proving the genuineness of payment. The Assessing Officer has not granted cross examination of Shri Nishant Sharma or Shri Sher Singh Sharma and proceeded to make addition that they were acting as a broker of JBF Industries. Both the commission parties are tax at maximum rates; therefore, there is no evasion of tax. The assessing officer has accepted the TDS and the service charge paid by the assessee. To support his submissions the Id AR for the assessee relied on the following decisions;

- Swastic Textile Co Vs CIT (1980) 150 IT 155 (Guj),
- CIT Vs Suzlon Energy ( 2013) 33 taxmann.com 151 (Guj),
- CIT Vs Shree Rama Multi Tech Ltd (2013) 33 taxmann.com 13 (Guj),
- CIT Vs Nanglia Fabrics (P) Ltd (2013 40 taxmann.com 206 (Guj),
- Voltmap Transformer (P) Ltd Vs CIT (1981) 5 Taxman 253 (Guj),
- Quantum Advisors (P) Ltd Vs DCIT (2016) 73 taxmann.com 233 (Mum-Tribunal),
- ACIT VS Sajjan Mills Limited (2008) 112 ITD 135 (Ind-Tribunal) and
- DCIT Vs Gangess International (P) Ltd (2021) 127 taxmann.com 63 (Chennai –Tribunal)

20. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. The assessing officer disallowed the commissions payments on purchases made to Sonic Biochem Extractions Ltd. and on sales to Paras Petrofils Ltd by taking view that the details of technical staff (K. Radhakrishnan) and marketing staff (Kanubhai Pate)

of Paras Petrofils Ltd were not furnished by Mr. Baheti, . The Website- [www.Sonicbiochem.co.in](http://www.Sonicbiochem.co.in) of Sonic Biochem Extractions Ltd indicate business domain which did not include raw materials for yarn manufacturing industry. Further Paras Petrofils Ltd was itself in yarn manufacturer and AO doubted as to why such costumer details were not used by Paras for its own sales rather than acting as commission agent. In the agreement with Paras Petrofils Ltd, no reference of certain target turnover was there to justify high commission rate of 5%. Mr Baheti of Paras Petrofils could not produce minutes of board meetings herein the proposal of the appellant for acting as commission agent was discussed. Directors of assessee company was well versed in the field of knitting and grey fabrics manufacturing and had sister concerns M/s. Rashmi Polyfab Pvt Ltd and M/s. Pawan Syntex Pvt Ltd who could have helped the appellant rather than outsider company was paid huge commission @ 5%.

21. We find that the Id CIT(A) deleted the disallowance of commissions payment to both the parties by holding that the conclusion by the Assessing officer is based on mere presumption and guess work. The Id. CIT(A) held that it is not the case of Assessing officer that the commission agents are better companies and have shown only commission receipt from assessee or the commission was returned back in cash to the assessee. Both the companies have huge turnover in their own business and have expertise in the relevant filed, which cannot be brushed aside without any adverse finding. It was also appreciated that both the parties are not related with the assessee. The Id CIT(A) held

that the sales of assessee was jumped drastically i.e. 209% in A.Y. 2010-11 and 241% in A.Y. 2011-12 which could be achieved only when the assessee appointed these agents for sales, purchase and for procurement of raw material. We find that the assessee made TDS on payments of commission, similarly it was also subject to service charges payments. Both the parties are taxed at the maximum rates. The assessing officer has not brought any adverse evidence on record to discard the evidences filed by the assessee to substantiate the genuineness of the commission payment. We find that Hon'ble Gujarat High Court in CIT Vs Sujlon Energy Ltd (supra) held that where there was sufficient evidence regarding authenticity of payment of sales commission to agents, same cannot be disallowed. In CIT Vs Shree Rama Multi Tech Ltd (supra) the Hon'ble Gujarat High Court held that increase in commission expenses as compared to earlier year was no ground to disallow the expenses. In Nangalia Fabrics (P) Ltd (supra) it was held by High Court that commission paid through account payee cheques on account of sales canvasses by party was not bogus payment. In Voltamp Transformers (P) Ltd Vs CIT (supra) it was held that when assessee-company, dealers in transformers, appointed firm consisting wives of its main shareholder as partners, as its sole selling agent at agreed commission ranging from 3% to 5%, the Tribunal was not justified and wrongly concluded that commission was exorbitant and was not justified by the test of commercial expediency. It was also held that the commercial expediency and the business need of

organisation are concerned, it is not the view point of the assessing officer which should count but it should be the viewpoint of the ordinary businessman dealing with a situation faced by the assessee. The Coordinate bench of Mumbai Tribunal in Quantum Advisors (P) Ltd Vs DCIT (supra) also took view that where the group concern had adequate infrastructure and ability to render marketing and distribution in term of agreement with the assessee as a result of which assessee got business, payment could not be rejected on mere hypothetical basis. Thus, in view of the aforesaid factual and legal position, we affirm the order of Id. CIT(A) with above additional observations.

22. In the result, the ground No. 1 of appeal raised by the revenue is dismissed.–

23. In the result, this ground of appeal is dismissed.

24. Grounds No.2 of the revenue's appeal relates to deleting the disallowance under Section 2(22)(e) of the Act. The Id. CIT-DR for the revenue submits that the Id. CIT(A) deleted the addition of Section 2(22)(e) of the Act by simply accepting the submission of assessee. The parties from whom the assessee has received unsecured loans was having more than 10% shareholding with the assessee company. When the assessee was show caused, the assessee took his plea that the accountant has made wrong entry. The stand of assessee was not accepted by the Assessing officer and the amount received from both the concerns were treated as deemed dividend.

25. On the other hand, the Id. AR of the assessee submits that On the addition under Section 2(22)(e) of the Act, the Id. AR of the assessee submitted that

during the year, the assessee sold yarn to Pawan Syntex Pvt. Ltd. and grey fabrics to Rashmi Polyfab Pvt. Ltd., certain payments were made by them, by inadvertent mistake, credited to a separate account viz Pawan Syntex Pvt. Ltd. and Rashmi Polyfab Pvt. Ltd. instead of crediting the account in respect of sales of goods made to them. Thus, erroneously the said amounts were shown as unsecured loans. The assessee sold goods of Rs. 2.14 crores and 1.87 crore and had job work of Rs. 1.36 crore and 2.46 crores of Pawan Syntex Pvt. Ltd. and Rashmi Polyfab Pvt. Ltd. respectively. At the end of year as on 31/3/2011, there was a credit balance of Rs. 1.92 crore in case of Pawan Syntex Pvt. Ltd. and Rs. 2.14 crores in case of Rashmi Polyfab Pvt. Ltd. In fact the amount of Rs. 82.25 lacs and Rs. 29.00 lacs in case of Pawan Syntex Pvt. Ltd. and Rashmi Polyfab Pvt. Ltd. should have been credited towards their respective sales account, then closing balance of both these parties as on 31/3/2011 would have been Rs. 1.10 crore and 1.85 crore respectively. A substantial amount was receivables from both the concerns as the part of business and commercial transaction. The accountant had opened two separate accounts in respect of both the companies in respect of debit transactions and payment receive from them. It was an inadvertent mistake in keeping separate accounts in respect of different transactions and therefore, payments received from these concern were credited in the separate ledger. As a result of wrong treatment, the amount received from them were reflected under the schedule of "unsecured loans", whereas substantially the higher

amount receivable from them were reflected under the head "sundry debtors."

The copy of audit report were furnished. The assessee also furnished the details of debit amount and prayed for deleting the entire addition.

26. We have considered the rival submissions of the parties and have gone through the orders of the lower authorities carefully. The assessing officer made addition under section 2(22)(e) of the Act by taking view that Pawan Syntex Pvt. Ltd., is having more than 10% shareholding in assessee and granted loan of Rs. 82.25 lacs in the month of February, 2011 and the accumulated profit as on 31/3/2010 was of Rs. 2.50 crores and as on 31/3/2011 was also Rs. 2.50 crores which is much higher than the loan given by Pawan Syntex Pvt. Ltd. Rashmi Polyfab Pvt. Ltd., is also having more than 10% share in assessee, and granted loan of Rs. 29.00 lacs during the year. The accumulated profit of Rashmi Polyfab Pvt Ltd as on 31/3/2010 was Rs. 3.06 corers and as on 31/03/2010 was of Rs. 3.74 crores, which was much higher than granted by Rashmi Polyfab Pvt. Ltd., therefore, the said loan was also treated as deemed dividend under Section 2(22)(e) of the Act. The Assessing officer made addition of Rs. 82.25 lacs plus 29.00 lacs is equal to Rs. 1,11,25,000/-. We find that nt only before assessing officer, but even before Id CIT(A) the assessee explained that during the year, the assessee sold yarn to Pawan Syntex Pvt. Ltd. and grey fabrics to Rashmi Polyfab Pvt. Ltd., certain payments were made by them and due to inadvertent mistake, it was credited to a separate account viz Pawan Syntex Pvt. Ltd. and Rashmi

Polyfab Pvt. Ltd. instead of crediting the account in respect of sales of goods made to them. It was urged that erroneously the said amounts were shown as unsecured loans. The assessee sold goods of Rs. 2.14 crores and 1.87 crore and had job work of Rs. 1.36 crore and 2.46 crores of Pawan Syntex Pvt. Ltd. and Rashmi Polyfab Pvt. Ltd. respectively. At the end of year as on 31/3/2011, there was a credit balance of Rs. 1.92 crore in case of Pawan Syntex Pvt. Ltd. and Rs. 2.14 crores in case of Rashmi Polyfab Pvt. Ltd. In fact the amount of Rs. 82.25 lacs and Rs. 29.00 lacs in case of Pawan Syntex Pvt. Ltd. and Rashmi Polyfab Pvt. Ltd. should have been credited towards their respective sales account, then closing balance of both these parties as on 31/3/2011 would have been Rs. 1.10 crore and 1.85 crore respectively. We further noted that the Id CIT(A) after considering the submissions of assessee accepted the contention/ explanation of the assessee held that on going through the ledger account of both the concerns i.e. Pawan Syntex Pvt. Ltd. and Rashmi Polyfab Pvt. Ltd., it is apparent that at the beginning of F.Y. 2010-11 i.e. on 01/04/2010, the assessee had amount receivable from both the companies, therefore, lump sum amounts shown in separate accounts cannot be treated as unsecured loans. The net effect of merging of both the accounts of the two companies ultimately indicates balance receivable at the end of the financial year as well. The Id CIT(A) accepted the submissions of the assessee that the amount of Rs. 82.25 lacs and Rs. 29.00 lacs received from these two companies were pertaining to business transactions. Before us, the Id CIT-DR

has not controverted these findings of the Id CIT(A), except making submissions that the Id CIT(A) accepted the version of assessee. Neither any contrary fact nor any law is brought to our notice to discard the finding of Id CIT(A) that transaction of amount of Rs. 82.25 lacs and Rs. 29.00 lacs received from these two group companies were not pertaining to business transactions. Hence, we do not find any merit in this ground of appeal raised by the assessee.

27. In the result, this ground of appeal is dismissed.

28. In the result, the appeal of the revenue is dismissed.

29. Now advertent to the appeal of **assessee in ITA No. 29/Srt/2020**. The assessee has raised sole ground of appeal against the disallowance on account of delay in depositing the employees' contribution towards PF and ESI. The Id. AR of the assessee submits that the Assessing officer made addition on the basis of decision of Hon'ble Gujarat High Court in the case of CIT Vs Gujarat State Road Transport Corporation (supra). The Id. AR for the assessee fairly admitted that as on today, this ground of appeal is covered again the assessee.

30. The Id AR for the assessee further submits that the Hon'ble Jurisdictional High Court in Salasar Laminates Ltd. vs DCIT in Tax Appeal No.1186 of 2018 dated 01.10.2018 while considering the similar question noted that appeal against the decision of Gujarat High Court in CIT Vs GSRTC is pending before Hon'ble Supreme Court and Special Leave has been granted. The Hon'ble High

Court on the prayer of assessee in the said case held that as and when the decision is rendered by Apex Court and in case judgment of High Court is reversed and in case the said appeal is allowed, the assessee may approach the High Court to claim the benefit of the judgment. The Id. AR for the assessee submits that a direction may be given to the Id. CIT(A) or Assessing Officer in case the decision of GSRTC is reversed by Hon'ble Supreme Court, the assessee may be allowed similar relief. The AR for the assessee further submits that on similar ground of appeal, this bench has set set-aside the matter to the Id.CIT(A) with the direction to grant relief/ decide the appeal as per the outcome of Special Leave Petition of GSRTC by the Hon'ble Apex Court. Further similar direction was given by this bench in case of Puja Chemicals Vs DCIT (ITA No. 161 & 162/SRT/2021 dated 25/02/2022. The AR for the assessee prayed that this appeal may also be decided with similar direction to Lower Authorities.

31. On the other hand, the DR for the Revenue submits that as on today, the issue is covered against the assessee by the decision of jurisdictional High Court in CIT vs. Gujarat State Road Transport Corporation (supra). The combination of this Bench in other cases has already dismissed the similar appeals of different assessee's.

32. We have considered the rival contentions of both the parties and have gone through the orders of the lower authorities. We find that as on today the issue is covered against the assessee by the decision of Hon'ble High Court in CIT

Vs GSRTC (supra). Therefore, the assessee has no merit in its case. However, we noted that on similar issue our predecessor in *Decor Home (India) Pvt. Ltd. Vs. ACIT, Circle-1(1)(2), Surat* dated 24.07.2019, passed the following order:

*“6. We have heard the rival submissions and perused the relevant material on record. We find that the issue is squarely covered against the assessee by the decision of Hon’ble Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation [2014] 366 ITR 170 (Guj) : 223 Taxman 398 : [2014] 41 taxmann.com 100 (2014) (1) TML 502 -Guj-HC, wherein it was held that section 43B does not apply to employees contribution. Only section 2(24)(x) read with section 36(1)(va) is applicable and therefore, employees contribution is disallowed if not paid within due dates prescribed under relevant Provident Fund /ESI Act. We are, therefore, of the considered opinion that there is no mistake in the orders of lower authorities in making disallowance in the light of the ratio laid down by the Hon’ble Gujarat High Court in the above case (supra). However, since the SLP has been admitted by the Hon’ble Supreme Court against the decision of Hon’ble High Court therefore, we set aside this matter to the file of the ld. CIT(A) with the direction that the matter be decide as per outcome of SLP, as and when matter will be decided by the Hon’ble Apex Court. Accordingly, matter will be decided by the ld. CIT(A) as per provisions of law and direction of the Hon’ble Supreme Court of India. Therefore, this ground of appeal is set-aside for statistical purpose.”*

33. We further find that Hon'ble Jurisdiction High Court in subsequent decision in *Salasar Laminates Ltd. vs DCIT (supra)*, though dismiss that appeal. However it was directed that if the decision of *GSRTC VS DCIT (supra)* is

reversed by Hon'ble Apex Court, the assessee is given opportunity to revive his appeal by filing application for seeking similar relief.

34. Considering the fact that the issue is squarely covered against the assessee as noted above. However, instead of keeping the matter alive, the case was restore to Ld.CIT(A) to give effect to the order of the Tribunal in accordance with the decision of Hon'ble Supreme Court in SLP of Gujarat State Road Transport Corporation(supra), In the result, appeal of the assessee is allowed for statistical purpose.

35. In the final result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced on 30/06/2022 in open court and result was placed on notice board.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 30/06/2022

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

By Order

Sr. Private Secretary, ITAT Surat