

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.126/Chny/2021**
(निर्धारण वर्ष / **Assessment Year: 2014-15**)

&

आयकर अपील सं./ **ITA No.127/Chny/2021**
(निर्धारण वर्ष / **Assessment Year: 2015-16**)

&

आयकर अपील सं./ **ITA No.128/Chny/2021**
(निर्धारण वर्ष / **Assessment Year: 2016-17**)

&

आयकर अपील सं./ **ITA No.130/Chny/2021**
(निर्धारण वर्ष / **Assessment Year: 2018-19**)

M/s. Seyad Trading Company Survey No.338/3 House of Seyad North Bye-Pass Road, Vannarpettai, Tirunvelveli – 627 003.	बनाम/ Vs.	ACIT Central Circle-1 Madurai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. ACCFS-3027-M		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./ **ITA No.129/Chny/2021**
(निर्धारण वर्ष / **Assessment Year: 2017-18**)

M/s. Seyad Agro Investment Pvt. Ltd. 110E/20/7, House of Seyad North Bye-Pass Road, Vannarpettai, Tirunvelveli – 627 003.	बनाम/ Vs.	ACIT Central Circle-1 Madurai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAMCS-4443-E		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri B. Ramakrishnan (F.C.A)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri M. Rajan (CIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	06-06-2022
घोषणा की तारीख /Date of Pronouncement	:	13-07-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The grievance of the two assessees in aforesaid appeals for Assessment Years (AY) 2014-15 to 2018-19 is common. The appeal for AY 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] dated 22-03-2021 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s. 153C of the Act on 24-12-2019. The grounds taken by the assessee read as under: -

1. The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.
2. The Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of a portion of the purchase cost amounting to Rs.33,78,780/- u/s 37(1), which was mentioned as 'charity amount' by the seller in its invoice.
3. The Learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the amount mentioned as 'charity amount' is compulsorily payable by the Appellant for purchase of each beedi roll from the seller.
4. The Learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the charity amount-was included by the seller as turnover in their VAT return and the Appellant considered entire purchase cost including the charity amount while paying VAT.

As evident, the assessee is aggrieved by certain disallowance of purchase cost u/s 37(1) of the Act.

2. The Ld. AR advanced arguments supporting the case of the assessee and relied on various judicial pronouncements. The Ld. AR submitted that applicable VAT was charged in gross purchase cost and the charity amount was part of purchase cost only. Without paying the impugned charity, the assessee could not have purchased the goods

from the suppliers. The Ld. CIT-DR controverted the arguments of Ld. AR and submitted that the amount paid as charity could not be allowed as part of purchase cost. The attention was also drawn to the fact that the purchases were made from sister concern and statement u/s 132(4) was recorded during search on supplier which would show that the amount paid was charity only which could not be allowed as purchase cost. Having heard rival submissions and after due consideration of material facts, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident firm is stated to be engaged in trading of beedies. The assessee was assessed for the year u/s 153C r.w.s. 143(3) of the Act on 24-12-2019. This was pursuant to search action u/s 132 in the case of Seyadu group of concerns, Tirunelveli on 28-06-2017. Accordingly, the case of the assessee was covered under the provisions of Sec. 153C of the Act.

3.2 During the course of search proceedings conducted in Head Office of M/s. Seyadu Beedi Company (in short SBC), a ledger was found under the head "Charity". It transpired that SBC received charity amount from its customers for each sale which was computed at Rs.30/- per parcel. The assessee was one of the major customers of SBC. At the time of sale, the invoices would be raised for purchase cost which would include charity of Rs.30/- per parcel. However, Value Added Tax (VAT) would be charged on the amount of charity also. In other words, the charity amount was received by SBC for each and every sale. So far as the SBC is concerned, a statement u/s 132(4) was recorded wherein they agreed that charity was being received for M/s Seyad Welfare Society and fund so collected under the invoices were handed over to

that society which were utilized for welfare activities. However, it was agreed that the funds collected by SBC would be declared as income in the books of account of the concerned financial year. Accordingly, the sister concerns may be permitted to file revised income tax statement by claiming the eligible deduction u/s 80G.

3.3 So far as the assessee is concerned, it has claimed entire amount including charity as part of purchase cost which is the subject matter of dispute before us. The assessee summarized the position as under: -

- a. M/s Seyadu Beedi Company (supplier of the assessee company) was receiving charity amount from its customers for each sale through billing in its invoice. This amount is collected at a fixed rate per parcel or bundle. The charity forms part of the invoice issued by the supplier.
- b. The VAT has been paid as part of the invoice and it is liable to be treated as a part of the transaction cost.
- c. It may also be noted that the charity collected was passed on to an entity having 80G approval.

However, rejecting the same, the Ld. AO added the amount of Rs.33.78 Lacs to the income of the assessee on the allegation that the turnover of SBC was suppressed and the assessee inflated the purchase cost. Though SBC filed an application before Income Tax Settlement Commission, however, the said amount was not admitted as undisclosed income by SBC.

Appellate proceedings

4.1 During appellate proceedings, the assessee, inter-alia, submitted that it paid VAT on gross purchase including the charity amount and therefore, the same was part of purchase cost for the assessee. M/s SBC made compulsory for all the customers to pay charity at fixed amount per parcel and the fact that SBC did not include the said amount as turnover would not affect assessee's claim of purchase cost.

4.2 However, rejecting the same, Ld. CIT(A) observed that the seller did not include the amount of charity as part of turnover and there was no nexus whatsoever between the amount paid by the assessee purportedly for the purpose of charity by the seller and the business of the appellant of buying and selling beedi rolls. The expenditure should be for the purpose of the business of the assessee. The amount was incurred for certain extraneous and altruistic consideration and not for the business as the impugned act was in no way connected to the trading business of the assessee. The assessee may have all the right to donate and to carry on charitable activity, however, the same could not be considered as business expenditure for the assessee. Reliance was placed on the decision of Hon'ble Apex Court in **CIT v. Chandulal Keshavlal (1960; 38 ITR 601)** and **CIT v. Ashok Leyland Ltd. (1972; 86 ITR 549)**. The concept of diversion of income by overriding title would also be applicable. Finally, the stand of Ld. AO was upheld. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. Upon perusal of copy of sample invoice of SBC, as placed on record, we find that the seller has charged charity @30/- per parcel. The seller charges VAT on this amount which would show that this cost is essentially a purchase cost for the assessee. If the same is not considered as purchase cost, the assessee would not be able to reconcile the VAT component of the invoice in the VAT returns. In such a case, what treatment has been given by the seller for charity in its books of accounts would not be much determinative of assessee's claim as purchase cost and the same would have no relevance to assessee's claim. Another undisputed fact is that the seller charges this component

from all customers i.e., sister concerns as well as from general customers. Therefore, the concept of diversion of income by overriding title would have no application to the facts of the case. The lower authorities, in our considered opinion, have fallen in error in applying this concept. Another pertinent fact is that this component was compulsory and the assessee could not purchase trading goods without paying the same. Therefore, the same has to be construed as part and parcel of purchase consideration only. The decision of Hon'ble Supreme Court in **Sri Venkata Satyanarayana Rice Mills Contractors Co. V/s CIT (89 Taxman 92)** support this proposition. In this decision it was held that contribution to welfare fund, though not mandatory on the part of the assessee to pay, would be allowable deduction since the same would ensue benefit for the assessee. In the present case, the assessee is mandatorily required to pay the Charity as part of purchase consideration. The decision of Hon'ble Supreme Court in **CIT V/s Chandulal Keshavlal & Co. (38 ITR 601)** is on the principle of commercial expediency and the same has no application to the facts of the present case. The decision in **CIT V/s Ashok Leyland Ltd. (supra)** addresses the question whether compensation paid to managing agents would be revenue expenditure or not. The same is not the situation here.

6. Considering the facts and circumstances of the case, the impugned disallowance as confirmed by Ld. CIT(A) is not sustainable in law. By deleting the same, we allow the appeal of the assessee.

7. Facts as well as issue in all the other four appeals are identical. Facts being *pari-materia* the same, our adjudication as above shall *mutatis-mutandis* apply to all these appeals. Consequently, all the appeals stand allowed.

8. All the appeals stand allowed in terms of our above order.

Order pronounced on 13th July, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 13-07-2022.
EDN/-

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

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर
आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF