

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, AHMEDABAD**  
**BEFORE MRS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**MISS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1086/Ahd/2014**  
**Assessment Year :2005-06**

|  |     |                             |
|--|-----|-----------------------------|
| KHS Machinery P.Ltd.<br>53, Madhuban<br>Nr. Madalpur Underbridge<br>Ahmedabad 380 006.<br>PAN : AABCK 2513 Q | Vs. | ACIT, Range-4<br>Ahmedabad. |
|--|-----|-----------------------------|

| अपीलार्थी/ (Appellant) | प्रत्यर्थी/(Respondent)                               |
|------------------------|---|
| Assessee by :          | Shri Bandish Soparkar, AR With<br>Shri Parin Shah, AR |
| Revenue by :           | Shri Atul Pandey, Sr.DR                               |

सुनवाई की तारीख/**Date of Hearing** : **19/07/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **07/10/2022**

**आदेश/O R D E R**

**PER ANNA PURNA GUPTA, ACCOUNTANT MEMBER**

Present appeal has been filed by the assessee against order passed by the Id. Commissioner of Income-Tax(Appeals)-XXI, Ahmedabad [hereinafter referred to as "Ld.CIT(A) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) dated 18.3.2014 pertaining to the Asst.Year 2005-06.

2. The effective grounds raised by the assessee are as under:

*2. The Learned C.I.T. (Appeals)-XXI, Ahmedabad has erred in not allowing Repair & Maintenance Expenses of Rs.1,81,420/- though fully explained. The addition made be deleted.*

*3. The Learned C.I.T. (Appeals)-XXI, Ahmedabad has erred in not allowing Purchase of Components of Rs. 66,72,802/- though fully explained. The Learned Officer has made typographical error in CIT appeal order and showing confirmed addition of Rs. 21,99,689/- in place of Rs. 66,72,802/-*

*towards purchase of component which is mistake apparent from records. The assessee has filled 154 applications for rectification of amount. The addition made be deleted.*

3. Ground no.2 relates to disallowance of claim of repairs & maintenance expenses amounting to Rs.1,81,420/-.

4. Taking us through the facts of the case, ld.counsel for the assessee pointed out that this issue has been dealt with by the Assessing Officer (AO) at page no.6 para 5 of his order wherein noting that the assessee had claimed repairs & maintenance expenses to the tune of Rs.2,25,000/-,the assessee was asked to justify the said claim. The ld.counsel for the assessee pointed out that the assessee had explained the claim as being on account of construction of temporary weather shed in its rented premises and the same not being in the nature of capital expenditure was accordingly claimed by the assessee as revenue expenditure. He drew our attention to para 5.2 of the assessment order, wherein the AO disagreed with the contentions of the assessee stating that as per the assessee's claim the expenditure was for the construction of structure which had enduring benefit to the assessee therefore it could not be treated as revenue expenditure but was capital in nature and needed to be capitalized, and accordingly, the claim of the assessee towards repairs & maintenance to the extent of Rs.2,01,600/- was disallowed; the same was treated as capital in nature and after allowing depreciation at the rate of 10% thereon amounting to Rs.20,160/- the remaining amount of Rs.1,81,420/- was disallowed to the assessee. Our attention was drawn to para 5.1 of the assessment order containing the explanation of the assessee vis-à-vis the claim of repairs & maintenance expenses to the tune of Rs.2,01,600/- as under:

*"5.1 On verification of the details furnished with regard to repairs and maintenance expenditure it was noticed that the amount of Rs.2,01,600/-*

and Rs.2,25,000/- claimed to have been expended and treated as revenue expenditure. The assessee, vide this office letter dated 18.11.2008, was asked to show cause as to why the said sum of Rs.2,01,600/- and Rs.2,25,000/- should not be capitalized being capital expenditure and only depreciation is allowed' on the same. In this regard the assessee vide its reply dated 28.11.2008 submitted as under:-

*"The assessee has incurred repetition maintenance expenditure during the year under consideration as pointed in your letter, the amount of Rs.2,01,600/- is incurred for the purpose of construction temporary weather shed in the rented premises. Same expenditure is expenditure not in nature of capital expenditure and therefore, the assessee has claimed as admissible temporary weather shed is basically a current repair, which is not in the nature of capital expenditure. The assessee does not really create any assets and therefore, the same may be admissible as revenue expenditure.*

*The second item of Rs.2,25,000/- is relating to annual hardware maintenance, since the same is in nature of business expenditure and not in nature of any capital expenditure as claimed such expenditure as revenue expenditure. Again these are of annual maintenance payment related to computer hardware and therefore, the same cannot be considered as capital expenditure and accordingly should be considered as revenue expenditure."*

And thereafter to para 5.2 of the order wherein the AO by rejecting the explanation of the assessee treated the entire expenditure as capital in nature as under:

*"5.2 The reply filed by the assessee have been gone through. The assessee itself stated in its reply that the amount of Rs.2,01,600/- is incurred for the purpose of construction of temporary weather shed. It cannot be considered for repairs but, it is for construction of a structure having enduring benefit to the assessee, therefore, the same cannot be treated as revenue expenditure but capital in nature and requires to be capitalized. Therefore, the claim of the assessee towards repairs and maintenance to the extent of Rs.2,01,600/- is disallowed and added to the total income of the assessee as the same has been capitalized and depreciation of at the rate of 10% on the building and structure being Rs 20,160/- is allowed. So far as the amount of Rs.2,25,000/-, the reply of the assessee is found to be tenable and hence no inference-is drawn."*

5. The ld.counsel for the assessee, thereafter took us through para-7 of the CIT(A)'s order wherein he dealt with the issue in appeal upholding order of the AO stating that construction of weather shed would not tantamount to repairs to the existing structure, but creation of new asset altogether, and therefore, need to be treated as capital in nature. Our attention was drawn to para 7.1 of the

CIT(A)'s order wherein the assessee's submissions before the Id.CIT(A) were reproduced, and thereafter to para 7.2 of the CIT(A)'s order containing finding of the CIT(A) upholding the disallowance as under:

*"7.1 During the course of appellate proceedings, the appellant has made the following submissions:*

*"During the year under consideration, the assessee company was operating from the tented premises. The assessee company has incurred the expenses for the purpose of construction of temporary weather shed in the said rented premises. The assessee company puts a claim u/s. 31 of the Income Tax Act, 1961 since this expense is not in the 'nature of the capital expenditure. The construction of such weather shed is in nature of temporary and not permanent, which has no life. In view of the above, the same may be deleted. Please note after two years of the expenses incurred, the assessee had vacated the said premises.*

*The test laid down to determine whether particular expenditure is capital expenditure or revenue expenditure - Expenditure incurred to secure asset or advantage for enduring benefit of trade - such expenditure is capital expenditure, and expenditure incurred for running business or connected with augmentation of profit - such expenditure is revenue expenditure. The following decisions have explained the above test very categorically. Add. C.I.T. v/s. Rohit Mills Ltd. 104 ITR 132 followed by C.I.T. v/s. Mihir Taxtiled 104 ITR 167 approved by Supreme Court in Arvind Mills Limited v/s. C.I. T. 197 ITR 422 (SC)."*

*7.2 I have considered the assessment order and the submissions made by the appellant. The construction of temporary weather shed has been considered as repair and maintenance. In my opinion, the construction of weather shed is not repair to any existing shed but creation of assets altogether and therefore is to be treated as capital expenditure. Accordingly, the disallowance made by the Assessing Officer is confirmed."*

6. The Id.counsel for the assessee thereafter made his arguments regarding the issue stating that the fact that the expenditure pertained to construction of a temporary shed had not been disputed by either of the Revenue authorities and being a temporary shed there was no question of treating the same as capital expenditure, not even as per the depreciation rates prescribed under Income Tax Rules, 1962, prescribing depreciation @ 100% on temporary building structures. He drew our attention to Appendix-I, Part-I being table of rates at which the depreciation was admissible as per the Rule 5 of the Income Tax Rules, pointing out

therefrom that for temporary erection in the nature of building, the rate of depreciation prescribed was 100%.

7. The ld.DR on the other hand, relied on the orders of the authorities below.

8. We have heard both the parties. The issue before us is vis-à-vis the assessee's claim of treating the entire expenditure incurred on constructing a weather shed as revenue in nature as opposed to the Revenue treating it as capital in nature. The quantum of expenditure in this regard claimed by the assessee amounts to Rs.2,01,600/-. The assessee's claim that it was a temporary weather shed has not been disputed or controverted by the Revenue authorities at any stage. Considering the same, and taking note of the fact that temporary structures are entitled to depreciation at the rate of 100% as per the depreciation rates under Income Tax Rules,1962, as per Rule 5, Appendix-I, as pointed by the ld.counsel for the assessee before us, and not controverted by the Revenue, we see no infirmity in the claim of the assessee to the entire amount of expenditure on construction of temporary weather shed as revenue in nature. Such claim of the assessee, we have noted, is in accordance with provisions of law, as prescribed under the Act read along with Rules made thereunder. The Revenue has been unable to controvert the assessee's claim either on facts or in law. Therefore, finding merit in the contentions of the ld.counsel for the assessee, we allow entire claim of Rs,2,01,600/- incurred on construction of temporary weather shed as revenue in nature, and accordingly direct deletion of addition of Rs.1,81,420/- made by the Revenue by treating the same as capital in nature.

Ground of appeal No.2 raised by the assessee is allowed.

9. Ground No.3, it was stated before us, related to the issue of addition made to the income of the assessee on account of Transfer Pricing adjustment made to the transaction of purchases of components by the assessee entered into with its Associate Enterprise(AE) to the tune of Rs.66,72,802/-.

10. Drawing our attention to the facts of the case, ld.counsel for the assessee pointed out that the assessee had entered into international transactions involving purchases of raw-material (parts/spares) for bottling machine with its AE which was referred to the TPO for determination of arm's length price (ALP) who in turn proposed an adjustment of Rs.66,72,802/- to the same. This proposed adjustment was confronted to the assessee, and after considering the reply of the assessee adjustment to the international transactions of purchases was upheld and addition made to the income of the assessee to the extent of Rs.66,72,802/-.

11. The ld.counsel for the assessee thereafter took us to the order of the Ld.CIT(A) and pointed out that before the ld.CIT(A) the assessee had contended that the ratio of profit before the tax (PBDIT/Sales) of the assessee taken for comparison with that of the comparable cases was incorrect. He stated that it had been explained to the ld.CIT(A) that the profits of the assessee-company had been worked out by taking excess purchases to the tune of Rs.66,72,802/- for which the assessee had created provision during the year since invoices for the same have not been received, but subsequently reversed and offered to tax in the subsequent year of receipt of invoice. The ld.counsel for the assessee contended that since purchases to this extent had been excess booked in the impugned year, the profits were accordingly required to be re-worked by adjusting the excess purchases so considered, and after making such adjustment the profitability ratio of the assessee would be

comparable to that of comparable cases requiring no adjustment to be made to the international transactions of purchases of spare parts. In this regard, the ld.counsel for the assessee drew our attention to the submissions made before the ld.CIT(A) reproduced at page no.2 & 3 of the PB as under:

*“In Continuation of the previous submission, we have to state as under.*

- The assessee Company made purchases from the Associated Enterprise.*
- The assessee company selected Transaction Net Margin Method to determine the profit at the Arms' length Price.*
- The assessee Company made the Profit comparative statement by selecting the financial data of Praj Industries as Comparable.*
- The Profit level indicator of the assessee company worked out at 10 as compare to Profit level indicator of Praj Industries Limited at 12. Accordingly the Assessing officer has made the addition for the difference of the Profit level, which comes to RS 66,72,802/-.*
  
- The assessee company explained the reasons for the deviation in the profit.*
- The assessee company submits herewith the Profit reconciliation statement. (Enclosed)*
- The difference is arisen due to the fact that the assessee company had made the Raw material provision of RS 1,29,88,895/- since the material has been received and the invoices were not received.*
- Subsequent, the invoices were received in the subsequent year i.e. F.Y. 2005-06 pertains to A.Y. 2006-07.*
- On receipt of the actual invoices, it was observed that excess the raw material provision was made by RS 66,92,252/-, which was reversed in the F.Y.2005-06 pertains to A.Y. 2006-07 and shown as the business income for that year. ( Details enclosed)*
- The learned Transfer Pricing officer has not considered such excess provision written back as business income of that year and accordingly not considered the same while determining the Arms' length price, (copy enclosed)*

12. Our attention was drawn to PB Page No.4, containing the reworking of profitability ratio after adjustment of excess purchases in the case of the assessee before the ld.CIT(A) and placed before us at page no.4 as under:

**RECONCILIATION OF PROFIT**  
**KHS MACHINERY PRIVATE LIMITED A.Y. 2005-06**

| PARTICULARS  | Praj Industries | KHS Machinery |
|--|-----------------|---------------|
| Sales  | 2,352,573,390   | 379,578,651   |
| Other Income   | 25,666,582      | 18,480,494    |
| Income   | 2,378,239,972   | 398,059,145   |
| Consumption of raw material  | 1,819,581,953   | 279,671,525   |
| Personal cost  | 114,063,688     | 29,822,070    |
| Other expenses   | 149,118,144     | 50,143,359    |
| Direct Cost  | 2,082,763,785   | 359,636,954   |
| PBDIT  | 295,476,187     | 38,422,191    |
| PBDIT (ADJUSTED WITH ZERO ROYALTY)   | 295,476,187     | 41,001,142    |
| TP Adjustment related to A.Y. 2005-06  |                 |               |
| Excess Provision for raw material which is return back and offered for tax in A.Y.2006-07<br>Please note that the learned TPO has not considered in the same as income in A.Y. 2006-07 | -               | ✓6,692,252    |
| Total  | 295,476,187     | 47,693,394    |
| PBDIT/SALES (%)  | 12.56           | 12.56         |

13. It was pointed out from the above that the profitability ratio of the assessee with the comparable cases came to the same at 12.56% thus showing that transaction of purchases with AE was at arm's length.

Our attention was further invited to the submission made to the TPO in this regard regarding excess provision of purchases made by the assessee to the extent of Rs.66,72,802/- in the impugned year, which was written back and treated as income in the succeeding year i.e. Asst.Year 2006-07 placed at PB page no.5 & 6 as under:

*"Date : 25th May, 2009*

*' Deputy Commissioner of Income Tax  
Transfer Pricing -II  
Ahmedabad.*

*Dear Sir,*

*Re: - KHS Machinery Private Limited - Assessment Year 2006-07*

*With reference to above, under the instruction of the client, in continuation of the earlier submission, we have to state that during the year under consideration, we have the income shown under the head Prior Period income of RS 85.53,770/-.*

*Till the financial year 2004-05, the Raw Material provisions were made of RS 129,88,895/-. During the year under consideration, the excess provision made towards Raw material provision from the past years is written back since no longer payable in view of the rate differences etc. Such excess provision towards raw material provision (towards purchases) of RS 66,92,252/- are shown under the prior period income. In fact, such written back could have been adjusted-from the Raw material consumption since related to material purchases. In view of the Accounting Standard 4, it is mandatory to make a separate disclosure for prior period income and therefore, it is separately shown under the head Prior Period Income.*

The details of CRN -Raw Material provision are enclosed along with a separate list showing the list of excess provision written back is enclosed for your review.

We hope the information will meet with your requirement.”

KHS MACHINERY PVT. LTD.  
ASSESSMENT YEAR : 2006-07

| ITEM NO. - 45  |                               |             |
|--|-------------------------------|-------------|
| Details of Prior Period Income for the year ended 31-03-2005 |                               |             |
| Sr. No.  | Description                   | Amount      |
| 1.   | Excess Provision for Purchase | 6,692,252   |
| 2  | Interest on Fixed Deposits    | 1,716,010   |
| 3  | Service Charges               | 44,625      |
| 4  | Miscellaneous Income          | 100,883     |
|  | Total Rs.                     | 8,553,770/- |

14. The ld.counsel for the assessee thereafter pointed out that the ld.CIT(A) did not even consider this contention of the assessee and upheld the adjustment made by the TPO holding that the issue had been discussed in detail by him. The ld.counsel for the assessee thereafter took us to the order passed by the TPO under section 92CA(3) of the Act making the impugned adjustment, placed before us at page no.29 to 32. He took us to para-6 of the order wherein adjustment made by the TPO on account of international purchases of parts and spare parts was discussed by the TPO and pointed out therefrom that these adjustment pointed out by the assessee before the ld.CIT(A) and the AO of excess purchases booked by the assessee during the year resulted in substantial drop in its PLI, was not even discussed by the TPO, and therefore the finding of the ld.CIT(A) upholding the adjustment on the basis of the order of the TPO was incorrect, and the assessee's claim of no adjustment to be made to the purchases transaction entered into with the AE needed to be upheld.

15. The ld.DR relied on the orders of the authorities below.

16. We have heard both the parties. The issue relates to addition made on account of adjustment to the Arms Length Price (ALP) of international transactions of purchases of parts/spare parts entered into by the assessee with its AE of Rs.66,72,802/- .

We find that the solitary plea of the Ld.Counsel for the assessee against this adjustment is that the assessee's profitability ratio, which was compared with that of comparable case of M/s.Praj Industries for determining whether the transaction had been recorded at ALP, had been incorrectly calculated by considering excess purchases to the extent of Rs.66,72,802/-. The assessee consistently contended that it had booked purchases to the tune of Rs.1,26,00,000/- claimed as provision for purchases in the impugned year since all the invoices had not been received and in the subsequent year when the invoices were received, it was noted that there was excess claim to the extent of Rs.66 lakhs, which was accordingly reversed and to this extent excess purchases reversed were offered to tax as income also in the subsequent year. Evidences to this effect reflecting the provision claimed in the books of the assessee, and its reversal to the extent of Rs.66,72,802/- in subsequent year were all placed before the Revenue authorities. No infirmity has been pointed out by the Revenue authorities in the same - neither before us nor in the orders passed which are impugned before us. Therefore, for all purposes, the assessee's contentions that the actual purchases relating to the impugned year were excess claimed to the extent of Rs.66,72,802/- is correct, and therefore, the claim of the assessee that its profitability ratio should be computed considering the actual expenses incurred on purchases is also, we hold correct. The entire exercise of determining ALP of an

international transaction by comparing profitability ratio of the assessee-company with that of a comparable entity indulging in the same type of transactions, requires the comparison of the correct profits of both the entities, after making all necessary adjustment to arrive at the correct profits. Now since the assessee has clearly demonstrated that it had booked excess purchases in the impugned year to the extent of Rs.66,72,802/-, the same needed to be reduced for the purpose of arriving at the correct profit, and only thereafter profitability ratio of the assessee was required to be calculated. The contentions of the assessee in this regard, we find is correct. The authorities below i.e. both the AO and the CIT(A) have given no reason absolutely for dismissing this contentions of the assessee. We find merit in the contention of the Ld.Counsel for the assessee and noting the working given by the assessee after making this adjustment to the profitability ratio of the assessee, resulting in the same being comparable with the comparable case, we hold that the assessee has fairly demonstrated its international transactions of purchases of parts/spare parts with its AE to be at ALP requiring no adjustment at all to be made to the same under section 92 of the Act.

17. In view of the same, we direct deletion of adjustment made to the international transactions of parts/spare parts to the extent of Rs.66,72,802/- and allow ground no.3 of the appeal.

18. In the result, the appeal of the assessee is allowed.

**Order pronounced in the Court on 7<sup>th</sup> October, 2022 at Ahmedabad.**

*Sd/-*

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

*Sd/-*

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 07/10/2022