

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No. 396/Mum/2018**

**(A.Y.2011-12)**

ACIT-12(3)(2) Room No. 147B, 1 <sup>st</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400020	Vs.	M/s Manohar Packagings Private Limited, 301, 3 <sup>rd</sup> Floor, Fortune Classic, Above Madhuban Toyoto Showroom, Khar (W) Mumbai – 400 052
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCM4748G		
Appellant	..	Respondent

Appellant by :	Anil Sant
Respondent by :	M. Subramaniam

Date of Hearing	15.12.2022
Date of Pronouncement	30.01.2023

**आदेश / O R D E R**

**Per Amarjit Singh (AM):**

The present appeal filed by the revenue is directed against the order passed by the Id. CIT(A)-2, Panaji, dated 16.10.2017 for A.Y. 2011-12. The revenue has raised the following grounds before us:

- “1. Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance of Rs.4,02,45,865/- made by the AO in respect of Corporate turnover discount given by the assessee at the end of the relevant previous year to M/s. United Spirits Ltd.
2. The appellant prays that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.
3. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

2. The solitary issue in the ground of appeal is pertained to deleting the disallowance of Rs.402,45,865/- made by the assessing officer in respect of corporate turnover discount given by the assessee at the end of the relevant previous year to M/s United Spirits Ltd.

3. The fact in brief is that return of income declaring total loss of Rs.298,92,977/- was filed on 28.09.2011. The case was subject to scrutiny assessment. The assessee is a private limited company engaged in the business of manufacturing and sale of labels, cartons and corrugated boxes. During the course of assessment the A.O noticed that assessee has reduced sum of Rs. 402,45,865/- towards amount due to M/s United Spirits Ltd. on account of credit note and declared the balance of debtors at Rs.560,80,400/- in the balance sheet as on 31.03.2011. The assessee supply the material mainly to M/s United Spirit Ltd. which constituted approximately 90 to 95% of the turnover. The assessee explained that it was completely dependent on the said buyer which was evident from the fact that about 90 to 95% of the sale was made to the single buyer M/s United Spirit Ltd. Almost at the end of the financial year that customer informed the assessee that because of financial difficulty they wanted to renegotiate rate approved for the assessee. Thereafter, after discussion they forced the assessee to offer discount based on the total sale at 12% of the total sale made by the assessee. Therefore, the discount amount @ of 12% on the total sale of Rs.33,53,81,708/- was worked to Rs.402,45,865/-. The assessee also submitted that to survive in the industry it had provided the aforesaid discount since most of the goods was supplied to M/s United Spirits Ltd. The assessee further submitted that because of offering discount its future turnover was increased from Rs.40 crores to Rs.63 crores in the year 2012 and further to Rs.80 crores in the year 2013. However, the A.O has not agreed with the submission of the assessee and he was of the view that the assessee had taken the shelter of loss incurred by M/s

United Spirit Ltd. to reduce its tax liability by entering into such arrangement so that both can avoid paying taxes. The A.O has further stated that assessee company has not maintained any minutes of meeting held on the important issue of providing discount of turnover to the such customer. The assessee has also recorded the statement of the director of the assessee company questioning how the discount was negotiated. The A.O stated that there was an inconsistency in the explanation offered by the director regarding allowing such discount to M/s United Spirit Ltd. Therefore, the A.O had disallowed the discount and added to the total income of the assessee.

4. Aggrieved the assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. The relevant operating part of the Id. CIT(A) is reproduced as under:

*“3.3 I have gone through the assessment order and the submissions made by the AR of the appellant. I have also gone through the credit note and the correspondence of the appellant with USL with reference to the corporate turnover discount. It is a fact which is accepted by the AO that USL is the major customer of the appellant buying about 90% of the products manufactured by the appellant Therefore, it is quite possible and prudent on the part of the appellant not to displease the major customer like USL When USL has expressed the financial difficulties it is facing and wanted to re-stabilize the rates it was quite apparent that the appellant obliged USL by giving corporate turnover discount for the purchases made in the entire financial year 2010-11. The appellant has offered the corporate turnover discount by raising a credit note in favour of USL and USL in turn accounted the said credit note in their books of accounts in financial year 2010-11. This proves that corporate turnover discount was really offered by the appellant and that helped USL in showing higher profits or reduce its losses Though this decision of giving corporate turnover discount improved the profitability of USL at the cost of profitability of the appellant, the appellant perhaps felt it prudent to do so to improve its business prospects in future. In this context, it is wrong on the part of the AO to hold that the said claim of discount was outside the course of business of the appellant The appellant has also been able to establish that USL helped the appellant in giving more business in subsequent financial years which improved its profitability substantially it was submitted by the appellant that in financial year 2011-12 (immediate subsequent year) the turnover of the appellant increased from Rs.40 crore to Rs.63 crore and in FY 2012-13 further to Rs.80 crore and the appellant paid substantial taxes on the enhanced turnover.*

*3.4 The AR of the appellant is right in relying on the decision of CIT Vs Dhanraj Girji Raja Nursing Girji (supra) wherein, the Hon'ble Supreme Court has held that it is not open to the Department to prescribe what expenditure an*

*assessee should incur and in what circumstances he should incur such expenditure as the businessman knows his best. Hence, the decision of corporate turnover discount can be held to be in the interest of business of the appellant. The AO has accepted that credit notes were exchanged between the appellant and USL What AO has questioned is the timing of raising the credit note being on the last day of the previous year If the decision to give the turnover corporate discount is taken in principle by the appellant, the entry has to be passed on the last day only as the turnover for the entire year needs to be considered for giving the discount of the determined rate of 12%.*

*3.5 In view of all the facts and circumstances of the appellant's case, I am of the considered opinion that the corporate turnover discount given by the appellant was in the interest of its business and is an allowable deduction u/s. 37(1) of the Act The appellant has also proved through sales information in subsequent 2 financial years that it reaped the benefits of the corporate turnover discount given in the impugned assessment year Accordingly, the AO is directed to allow the said claim of discount of Rs.4,02,45,865/- to the appellant. The addition made by the AO is deleted Ground no 1 is allowed.*

5. During the course of appellate proceedings before us the ld. D.R. submitted that assessee has failed to furnish the basis for providing turnover discount to M/s United Spirits Ltd. and he relied on the order of assessing officer.

6. On the other hand the ld. Counsel referred different pages of the paper book. He referred page 11 of the paper book pertaining to letter dated 06.02.2014 given by the M/s United Spirit Ltd. wherein it was confirmed that discount of Rs.402,45,865/- was arrived at after mutual negotiations as corporate volume discount @ 12% of net sales by the assessee to M/s United Spirit Ltd. He also referred page no. 10 pertaining to debit note issued by the said customers and page no. 14 of the paper book pertaining to note of corporate volume discount showing the turnover of the assessee company. The ld. Counsel also submitted that assessee company was solely dependent upon the M/s United Spirit Ltd for its business activities, therefore to protect business interest and because of large business volume depending upon purchases made by that company the assessee had responded positively for extending the said discount.

7. Heard both the sides and perused the material on record. Without reiterating the fact as discussed supra in this order the assessee had paid discount @ 12% of the turnover to M/s United Spirit Ltd. The assessing officer had disallowed the claim of discount mainly on the reason that discount was paid on the last day of the financial year. The assessee had explained the circumstances and reasons behind payment of the impugned discount on the last day of financial year. It is undisputed fact that assessee had supplied 90 to 95% of its manufactured product i.e lable, cartons, etc. to the single customer M/s United Spirit Ltd. Out of total turnover of Rs.40.61 crores the assessee had made sale at Rs.33.54 crores to the M/s United Spirit Ltd. It shows that almost whole part of supply of the assessee's goods depends upon the purchases made by M/s United Spirit Ltd. The assessee was asked to revise the prevailing rate by the said client because of financial difficulties. Since almost the whole sale of the assessee was made to that client, therefore, after a lot of negotiations the assessee agreed to provide discount @ 12% of the turnover made during the year. The assessee agreed to corporate turnover discount at the cost of the profitability during the year but on the expectation that it would help its prospectus and grow its business in the future.

8. During the course of appellate proceedings before us the ld. D.R referred the case of Hon'ble Supreme Court in the case of Southern Motors Vs. State of Karnataka & Others civil appeal no. 10955-71 of 2016 with Nos. 10972-78 of 2016. We find that the fact of this case are distinguishable from the case of the assessee as in that case it was held that there was need to prove that such discounts were actually given whereas in the case of the assessee, the A.O had not disproved the genuineness of the discount provided by the assessee. It was explained with relevant supporting evidences that above 90 to 95% of the goods were supplied to the above referred customer who was having

permanent position and by providing discount assessee has been benefitted in its business.

On the other hand, the ld. A.R has placed reliance on the decision of M/s Sai Krishna Agencies Medak Vs. ACIT, Circle 17(1) vide ITA No. 264/Hyd/2018 & in the case of Hon'ble Bombay High Court in the case of H.M. Kashiparekh & Co. Ltd. Vs. CIT, Bombay AIR 1961 Bombay 84 dated 02.04.1960. The assessing officer had also not made any inquiry from M/s United Spirit Ltd. to disprove the genuineness of the discount provided by the assessee. These facts were also not contrary proved that because of the domination position of the M/s United Spirit Ltd. the assessee agreed to provide the aforesaid discount on turnover. The assessee had also demonstrated that in the subsequent financial year its profitability and turnover has been increased tremendously. Since F.Y. 2011-12 its turnover increased from 40 crores to 63 crores and in F.Y. 2012-13 the turnover increased to 80 crores, and, the assessee has reaped the benefit of corporate discount in the subsequent assessment year. These facts were not contrary disproved by the revenue, therefore, we don't find any reason to interfere in the decision of ld. CIT(A), accordingly, the appeal of the revenue stand dismissed.

9. In the result, the appeal of the revenue stand dismissed.

Order pronounced in the open court on 30.01.2023

Sd/-

(Kavitha Rajagopal)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 30.01.2023

Rohit: PS

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

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

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार** (Dy./Asstt. Registrar)  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**