

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No. 156/DEL/2021 [A.Y 2011-12]

ITA No. 1437/DEL/2020 [A.Y 2012-13]

ITA No. 1438/DEL/2020 [A.Y 2013-14]

The Dy .C.I.T.
Circle - 1(1)
New Delhi

Vs.

AIS Distribution Services Ltd
Unit - 232, Tribhuwan Complex
Ishwar Nagar, Mathura Road
New Delhi

PAN: AADCA 8251 F

(Applicant)

(Respondent)

Assessee By : Shri Sandeep Sapra, Adv
Department By : Shri Kanv Bali, Sr. DR

Date of Hearing : 23.05.2023

Date of Pronouncement : 25.05.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned three separate appeals by the Revenue are preferred against three separate orders of the CIT(A) - 32, New Delhi pertaining to A.Ys 2011-12, 2012-13 and 2013-14 respectively.

2. Since common issues are involved in these three appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity, though the quantum may differ.

3. The first grievance in A.Ys 2011-12 and 2012-13 relates to the deletion of addition made by the Assessing Officer on account of difference in Gross Profit Rate.

4. The underlying facts in the issue are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed expenses on account of 'trade discount' under the head "Selling and Distribution Expenses". The Assessing Officer was of the opinion that the trade discount claimed by the assessee is directly connected to the sales. Therefore, as per the principles of accountancy, this item of expense should have been claimed in the trading account and not in the profit and loss account.

5. The Assessing Officer found that the trade discount is being directly deducted from the sale value of the item and VAT has been calculated on the amount of sales as reduced by the amount of trade discount and,

therefore, the assessee company is receiving sales price as reduced by the amount of trade discount and increased by the amount of VAT.

6. The Assessing Officer further noticed that the assessee company, in its trading account, is showing gross sales including trade discount as total sales which are, in fact, not being credited into its books of accounts. Trade discount is not being debited in the trading account though it has direct link to the amount of sales, instead the trade discount has been debited to the profit and loss account.

7. The Assessing Officer concluded that trade discount is clearly a part of trading account and not of profit and loss account and, accordingly, recasted the trading account as under:

Particular	A.Y. 2012-13	A.Y. 2011-12	A.Y. 2010-11	A.Y. 2009-10
Sale	783610819	749764306	554166162	534348527
Closing Stock	20881291	61098195	50596253	50669762
	834492110	810862501	604762415	585018289
Opening Stock	91098195	50596253	50669762	51420259
Purchase	520506229	489211392	395665255	365635255
Trade Discount	115530063	148241553	53113284	81142810
Direct Expense	544129	3625597	2065623	869403
	697134487	691674595	501513933	499067997
Gross Profit	131916494	119187706	103242482	85950292
G.P.	16.83%	15.89%	18.66%	16.08%

8. And as per the method adopted by the assessee, trading account is recast as under:

Trading Account

Particular	A.Y. 2012-13	A.Y. 2011-12	A.Y. 2010-11	A.Y. 2009-10
Sale	783610819	749764306	554166162	534348527
Closing Stock	20881291	61098195	50596253	50669762
	834492110	810862501	604762415	585018289
Opening Stock	61098195	50596253	50669762	51420259
Purchase	520506229	489211392	395665255	365635255
Direct Expense	5441129	3625597	2065623	869403
	587045553	543433424	448400640	417925187
Gross Profit	247446557	2674292	56361776	167093102
G.P.	31.57	35.62%	28.22	31.27%

9. Comparative chart finally determined by the Assessing Officer is as under:

A.Y	Trade Discount	G.P. rate	N.P. rate
2012-13	14.74%	31.57%	.93%
2011-12	19.77%	35.67%	1.36%
2010-11	9.58%	28.22%	1.70%
2009-10	15.18%	31.27%	1.95%

10. Accordingly, the GP rate declared by the assessee was not accepted and applying G.P rate of 18.66% for A.Y 2010-11, the Assessing Officer computed the GP for the A.Ys 2011-12 and 2012-13 and made addition of Rs. 2,07,68,470/- and Rs. 1,43,40,078/- respectively.

11. The assessee carried the matter before the ld. CIT(A) and explained that during the year under consideration, there was change in the billing method and invoices raised at Dealer List Price [DLP] which is calculated at MRP less rebate with nominal trade discount on DLP. Therefore, comparing the GP rate of A.Y 2010-11 with GP rate of the year under consideration would not give comparable results.

12. It was explained that if the GP rate is adjusted as per the now followed method, there would be negligible decrease in the GP margin and which is very normal in this line of trade. Following chart was submitted for comparing the GP rate as per two methods:

Comparative Chart of G.P Rate on MRP Sales less Trade Discount

(Amount Rs.)

S, No.	Assessment Year	2009-10	2010-11	2010-11	2011-12	2012-13	2013-14
		MRP*	DLP#	MRP*	MRP*	MRP*	MRP*
1	Sale	534,348,527	554,166,162	585,281,000	749,764,306	783,610,819	901,154,821
2	Closing stock	50,669,762	50,596,253	50,596,253	61,098,195	50,881,291	56,437,817
3	Total (A)	585,018,289	604,762,415	635,877,253	810,862,501	834,492,110	957,592,638
4	Opening stock	51,420,529	50,669,762	50,669,762	50,596,253	61,098,195	50,881,291
5	Purchase	365,635,255	395,665,255	395,665,255	489,211,392	520,506,229	579,095,482
6	Direct Expenses	869,403	2,065,623	2,065,623	3,625,597	5,441,129	-
7	Trade discount	81,142,810	53,113,284	87,713,000	148,241,553	115,530,063	181,000,361
8	Total (B)	499,067,997	501,513,924	536,113,640	691,674,795	702,575,616	810,977,134
9	Gross profit (A-B)	85,950,292	103,248,492	99,763,613	119,187,706	131,916,494	146,615,504
10	Sales less trade discount	453,205,717	501,052,878	497,568,000	601,522,753	668,080,756	720,154,460
11	G.P Rate on Sales less trade discount	18.96%	20.61%	20.05%	19.81%	19.75%	20.36%
12	Treatment by AO	GP rate accepted. No addition	NA	Addition of Rs.1,69,25,984 on account of GP rate	Addition of Rs.2,07,68,470 on account of GP rate	Addition of Rs.1,43,40,078 on account of GP rate	Addition of Rs.2,79,82,288 on account of GP rate
13	Treatment by CIT(A)	NA	NA	Addition of Rs.1,69,25,984 deleted by accepting GP rate of 20.05%	Addition of Rs.2,07,68,470 deleted by accepting GP rate of 19.81%	Addition of Rs.1,43,40,078 deleted by accepting GP rate of 19.75%	Addition of Rs.2,79,82,288 deleted by accepting GP rate of 20.36%
14	Treatment by ITAT	NA	NA	Revenue not in appeal	Revenue in appeal (under consideration)	Revenue in appeal (under consideration)	Revenue in appeal (under consideration)

*Sales shown on MRP (Maximum Retail Price)

#Sales shown on DLP (Dealer List Price)

13. The Id. CIT(A) was convinced with the chart mentioned hereinabove and was also convinced that the GP rate adopted by the Assessing Officer is not comparable. The Id. CIT(A) further found that in A.Y 2010-11 in the remand report, the DCIT, after due verification, has clarified that the GP margin calculation adopted by the Assessing Officer is not correct.

14. Considering the fact that the GP ratio of A.Y 2010-11 is not comparable to the GP ratio of the preceding A.Y 2009-10, in similar line the sale is accounted in financials at MRP during the A.Y 2011-12 is not comparable with the sale accounted in financials at DLP during A.Y 2010-

11. The Id. CIT(A), accordingly, directed the Assessing Officer to delete the impugned additions.

15. Before us, the Id. DR though strongly supported the findings of the Assessing Officer but could not point out any factual error in the findings of the Id. CIT(A) nor could point out any factual error in the comparable chart mentioned hereinabove.

16. Per contra, the Id. counsel for the assessee reiterated what has been stated before the Id. CIT(A).

17. After giving thoughtful consideration to the comparative chart, we are of the considered view that the GP rate adopted by the Assessing Officer for A.Y 2010-11 is not comparable with the GP rate of A.Y 2011-12 and 2012-13 under the consideration because the sales is a predominant determinative factor and the same is not comparable as the assessee has

accounted the sale at DLP during the A.Y 2010-11 as against the accounting of turnover at MRP during the year under consideration.

18. In our considered opinion, sale is prime component to determine the GP ratio and if the sale factor is not comparable, resulting GP cannot be considered comparable. On totality of facts, we do not find any reason to interfere with the findings of the Id. CIT(A). The common grounds relating to GP addition in A.Y 2011-12 and 2012-13 are dismissed.

19. The next common grievance in all the three appeals relates to the deletion of addition made by the Assessing Officer on account of Scheme Expenses, though the quantum may differ.

20. While scrutinizing the return of income, the Assessing Officer noticed that the assessee has claimed expenses under the head "Scheme Expenses". The assessee was asked to furnish details regarding the scheme with supporting documentary evidences and justification for payment of scheme expenses alongwith list of beneficiaries.

21. In its reply, the assessee stated that the items of the scheme were purchases and expenses booked under the scheme expenses. No party wise details have been maintained as the purchase items do not form part of stock. The assessee furnished copy of various schemes framed on quarterly basis. The Assessing Officer observed that though the assessee has given details of scheme, but has not furnished details of beneficiaries to whom these gift items were distributed.

22. The Assessing Officer further observed that the assessee is also giving huge trade discount and cash discount and overriding commission. Therefore, there was no justification in further giving gifts under the head Scheme Expenses and disallowed the scheme expense in all the three years under consideration.

23. When the matter was agitated before the Id. CIT(A), the Id. CIT(A) was of the opinion that u/s 37 of the Act, the assessee has to justify the claim of expenses as revenue expense incurred for business purposes. The Id. CIT(A) was of the opinion that once it is established that there was nexus between the expenditure and the purpose of the business, the revenue cannot justifiably claim to put itself in the armchair of the

businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case and directed the Assessing Officer to delete the addition on account of Scheme Expenses in all the three years under consideration.

24. Before us, the ld. DR reiterated what has been observed by the Assessing Officer vehemently stating that during the course of assessment proceedings, the assessee neither produced books of account for verification nor furnished any details supporting the claim of expenses.

25. We have given thoughtful consideration to the orders of the authorities below. It is true that during the assessment proceedings, the assessee did not produce the books of accounts for verification. It is equally true that the revenue cannot question the justification/need of the expenses. All that has to be seen is that whether the expenses have been incurred for the purpose of the business and is not of capital in nature.

26. As there is no dispute that the expenses were incurred for the purpose of business and were not of capital expenditure, the same has to be allowed. But, at the same time, the quantum can be questioned for want of supporting evidences as the same were not justified by production of books of account. Therefore, in the interest of justice and fair play, we deem it fit to restrict the disallowance to 10% of the expenditure claimed under this head. We, accordingly, direct the Assessing Officer to restrict the disallowance to 14.92 lakhs in A.Y 2011-12, Rs. 27.23 lakhs in A.Y 2012-13 and Rs. 30.34 lakhs in A.Y 2013-14. Thus, this common ground is partly allowed.

27. The third issue in A.Y 2011-12 relates to the deletion of addition made by the Assessing Officer on account of overriding commission amounting to Rs. 1,11,16,495/-.

28. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed an amount of Rs. 1,11,16,495/- on account of overriding commission as against an amount of Rs. 63,78,711/- claimed in the immediately preceding year. The assessee was asked to justify the claim of expenditure and explain the basis of payment.

29. The assessee filed detailed reply dated 29.01.2013. It was explained that the commission has been paid to few persons who helped the company in selling its products. It was explained that the commission has been paid to MAP Auto Ltd. for marketing and technical support given to it.

30. After going through the reply of the assessee, the Assessing Officer was of the opinion that the justification for payment given by the assessee is too general and no specific information has been given justifying payment to M/s MAP Auto Ltd. Drawing support from the findings given by the Assessing Officer in A.Y 2010-11, the Assessing Officer disallowed Rs. 1,11,16,495/-.

31. The assessee agitated the matter before the ld. CIT(A) and pointed out that similar disallowance made in A.Y 2010-11 was deleted. Strong reliance was placed on the decision of the Hon'ble Delhi High Court in the case of Hind Nihon Proteins {P} Ltd 91 Taxmann.com 43.

32. After considering the facts and submissions and drawing support from the decision of the Hon'ble Delhi High Court [supra], the ld. CIT(A) directed the Assessing Officer to delete the addition of Rs. 1,11,16,495/- on account of overriding commission.

33. Before us, the ld. DR supported the findings of the Assessing Officer.

34. Per contra, the ld. counsel for the assessee drew our attention to a chart and pointed out that similar disallowance was deleted in A.Y 2010-11. Though the revenue was in appeal against the deletion of GP addition, but was not in appeal for deletion of this amount. Therefore, following the Rule of Consistency, the same should also be deleted during the year under consideration.

35. We have carefully perused the orders of the authorities below. Comparative chart is as under:

AIS Distribution Services Pvt. Ltd.

**Comparative Chart of Commission paid @2% by the Assessee Co. to M/s MAP Auto Ltd.
on total replacement market sale as per Agreement dt. 28/01/2010**

Assessment year	(Rs.)	Disallowance made by AO (Rs.)	Treatment by CIT(A)	Appeal in ITAT
2010-11	63,78,711 <i>(for about 2 months i.e for period 28/01/2010 to 31/03/2010)</i> <i>11/1/11</i>	63,78,711	Deleted addition of Rs.63,78,711	No appeal filed by the Revenue
2011-12	1,11,16,495 <i>(for 12 months i.e 01/04/2011 to 31/03/2012)</i>	1,11,16,495	Deleted addition of Rs.1,11,16,495	Revenue in appeal

36. It is true that in A.Y 2010-11 also, similar disallowance has been made and it is equally true that while making the disallowance for A.Y 2011-12, the Assessing Officer has simply followed the findings given in A.Y 201-11. Since in A.Y 2010-11 addition was deleted by the Id. CIT(A) and though the revenue was in appeal before this Tribunal but deletion of this addition was not challenged. Therefore, the same has attained finality. Finding parity of facts, we do not find any error or infirmity in the deletion made by the Id. CIT(A). Deletion stands confirmed. Ground No. 2 in A.Y 2011-12 is dismissed.

37. In the result, all the three appeals of the Revenue in ITA No. 156/DEL/2021, 1437/DEL/2020 and 1438/DEL/2020 are partly allowed.

The order is pronounced in the open court on 25.05.2023.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 25th May, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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