

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : I : DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.7595/Del/2019  
Assessment Year: 2013-14

DCIT,  
Central Circle-7,  
New Delhi.

Vs Farm2Plate Dairy Produce Pvt. Ltd.,  
F-2/7, Okhla Indl. Area Phase I,  
New Delhi – 110 020.

(Applicant)

(Respondent)

Assessee by : Shri Rajat Jain & Shri Akshat Jain, FCA  
Revenue by : Shri Rajesh Kumar, CIT-DR

Date of Hearing : 04.07.2023  
Date of Pronouncement : 17.07.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.7595/Del/2019 for AY 2013-14 arises out of the order of the Commissioner of Income-tax (Appeal)-44, New Delhi, in Appeal No.32/2018-19/CIT(A)-44 dated 28.06.2019 [hereinafter referred to as 'Id. CIT(A)', in short] against the order of assessment passed u/s 143(3) r.w.s. 144C of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 11.01.2017 by the Id. Income-tax Officer, Circle 9(1), New Delhi (hereinafter referred to as 'Id. AO').

2. The only issue to be decided in this appeal is as to whether the Id.CIT(A) was justified in excluding the selling expenses from the ambit of AMP expenses in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the material available on record. At the outset, the Id. AR submitted that the adjustment on account of AMP was made based on transfer pricing order passed u/s 92CA(3) of the Act wherein the Id. TPO had adopted 'Intensity approach' on substantive basis and 'Bright Line Test' on protective basis to justify the transfer pricing adjustment on account of AMP expenses. The Id.CIT(A), by placing reliance on the decision of the Hon'ble Delhi High Court in the case of Sony Ericson Mobile Communications India Pvt. Ltd. vs. CIT, reported in 55 taxman.com 240, directed the Id. TPO not to include marketing or selling expenses like trade discounts, volume discounts, etc., offered to sub-distributors or retailers and gave relief to the assessee. Aggrieved by this order, the Revenue is in appeal before us.

4. We find that the issue in dispute is covered by the coordinate Bench decision of this Tribunal in assessee's own case for AY 2014-15 in ITA No.8325/Del/2019 dated 11.04.2022. For the sake of convenience, the entire order is reproduced hereunder:-

*"Aforesaid appeal has been filed by the assessee against the impugned order dated 31.07.2019 passed by the Id. CIT(A)-44, New Delhi for the quantum of assessment passed under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2014-15.*

*2. At the outset, before us, Id. counsel for the assessee had submitted that here, in this case, addition was made on account of AMP expenditure where*

*AO has made both substantive and protective adjustment on account of AMP adjustment. Protective adjustment was made on the basis of BLT method and substantive addition was made of Rs.3,47,78,337/- which was made on account of intensity approach. The assessee had gone for the "Vivad Se Vishwas Scheme, 2020" (VSVS) on account of substantive addition. The Id. CIT( A) has mainly directed the Assessing Officer not to include marketing or selling expenses from such adjustments and also held that protective adjustment is not enforceable.*

*3. Before us, Id. CIT DR firstly had objected that it is a transfer pricing issue and as such the matter may be moved to Transfer Pricing Bench. First of all, we find that it is not a case where any argument on behalf of the TP issue is required by the Id. CIT DR, albeit the issue here is whether the impugned appeal is covered by VSVS or not.*

*4. It is an undisputed fact that AO has made both substantive and protective addition wherein substantive addition was made of Rs.3,47,78,337/- by using Intensity Method and protective addition was made for Rs.24,73,81,255/- by using BLT method. Now, once the matter has been settled in VSVS on substantive addition then any addition made on protective addition cannot be sustained. This has been clarified by the **CBDT vide Circular No.IT/A/1/2020-TPL dated 04.03.2022 vide Question No.35** wherein CBDT has clarified that substantive addition is covered under VSVS then on settlement of dispute related to substantive addition AO shall pass rectification order deleting the protective addition relating to the same issue in the case of assessee. Thus, the present appeal of the Department is not maintainable in view of the issue being settled under VSVS and required Form-5 has already been issued and filed before us. Accordingly, the appeal filed by the Revenue is dismissed."*

5. We also find that the assessee had availed *Vivad Se Vishwas Scheme* to settle the dispute arising out of substantial adjustment made by the Id. AO on account of AMP expenses and paid the taxes for AY 2013-14. The certificate in Form No.5 issued by the competent authority in this regard is placed on record. Hence, we deem it fit to follow the aforesaid decision of this Tribunal in assessee's own case as it is directly applicable for the year under consideration. Accordingly, the grounds raised by the Revenue is dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 17.07.2023.

Sd/-

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)  
ACCOUNTANT MEMBER

Dated: 17<sup>th</sup> July, 2023.

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

Asstt. Registrar, ITAT, New Delhi