

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No.3927/Del/2019
(ASSESSMENT YEAR 2010-11)**

Mr. Ashok Kumar Chitlangia (Prop. Ashok Bearing Enterprises) 43, G.B. Road Delhi-110 006 PAN-AAEPC 0279M	Vs.	Asst. CIT Circle-28(1), New Delhi
(Appellant)		(Respondent)

ITA No.3928/Del/2019
(ASSESSMENT YEAR 2011-12)

Mr. Ashok Kumar Chitlangia (Prop. Ashok Bearing Enterprises) 43, G.B. Road Delhi-110 006 PAN-AAEPC 0279M	Vs.	Income Tax Officer Ward-28(1), New Delhi
(Appellant)		(Respondent)

Assessee by	Mr. M.P. Rastogi, Adv. & Mr. S.M. Gulati, CA
Department by	Mr. Kanv Bali, Sr. DR

Date of Hearing	31/07/2023
Date of Pronouncement	30/08/2023

ORDER

PER M. BALAGANESH, AM:

Both the appeals filed by Assessee arises out of the separate orders of the Learned Commissioner of Income Tax (Appeals)-16, New Delhi, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal Nos.10288/2013-14 & 10296/2014-15 dated 15/02/2019 & 18/02/2019 against the assessment orders passed by Assistant Commissioner of Income Tax, Circle-28(1), New Delhi (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 22/03/2013 and Income Tax Officer, Ward-28(1), New Delhi on 31/03/2014.

2. As identical issues are involved in both these appeals, hence, they are taken up together and disposed of by this common order for the sake of convenience.
3. Let us take up the appeal for AY 2010-11.
4. The first issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in confirming the disallowance made on account of bogus purchases in sum of Rs.7,20,790/- in the facts and circumstances of the instant case.

5. We have heard the rival submissions and perused the materials available on record. The assessee is an individual and the proprietor of M/s Ashok Bearing Enterprises, deriving income from business thereon and also deriving income from other sources. The assessee is engaged in the business of trading of business of bearings and is authorized stockists of SKF made bearings having branches at Mumbai, Goa, Rudrapur and Haridwar with Head Office at Delhi. The scrutiny assessments were framed assessment years 2008-09, 2009-10 & 2010-11 u/s 143(3) of the Income Tax Act, 1961 for the assessee. The Ld. AO observed that assessee had made purchases from 11 different parties listed in page-2 of his assessment order totaling to Rs.7,20,790/- and observed that these parties were categorized as tainted dealers as per the website of Maharashtra Sales Tax Department. The Ld. AO, accordingly, sought to examine the veracity of the purchases made from these parties and sought for complete details from the assessee with documentary evidences. The assessee submitted only ledger accounts and did not produce any proof for delivery of goods made by those parties to the assessee. The Ld. AO issued notices u/s 133(6) of the Income Tax Act, 1961 of the Act to few purchase

parties of the assessee and some of the notices returned unserved. Even, where the notices that were served, no response was received from the parties. Accordingly, the Ld. AO concluded that the purchases made by the assessee are not verifiable and proceeded to make disallowance of 100% value of purchases in the sum of Rs.7,20,790/- in the assessment. This action was upheld by the Ld. CIT(A).

6. We find from page 6 of the PB that assessee had given the details at page 6 & 7 of the PB. We find from the details available in the PB, the assessee had given the party wise details of purchases together with corresponding sales made thereon before the Ld. AO. We find that the assessee had also furnished the stock statement item wise, date wise and party wise duly mentioning the quantity that has been bought together with the prices thereon and matching the same with the corresponding sales made by the assessee with corresponding reduction in the stock. These details are available in pages 186 to 188 of the PB. Further, we find that the VAT portion on purchases were again paid by the assessee to the Sales Tax Department on behalf of the supplier to avoid dispute and protected

litigation. The payments to the suppliers were made by account payee cheques by the assessee. However, it is a fact that assessee could not prove the veracity of the purchases made from the 11 parties beyond reasonable doubt. This evident from the fact that the notices issued u/s 133(6) of the Act had been returned unserved for some of the parties and for some parties, it was served, but the parties had not responded. At the same time, the sales made out of disputed purchases are not doubted by the Revenue in the instant case. Hence, it could be reasonably presumed that the assessee had made purchases in the grey market in order to have saving in indirect taxes and incidental profit element thereon. Hence, it would be just and fair to bring to tax only the profit element embedded in the value of such disputed purchases, which in our considered opinion, could be reasonably estimated at 5% of the disputed purchases. This would meet the ends of justice. Accordingly, the ground Nos.1.1 and 1.2. raised by the assessee for AY 2010-11 are partly allowed.

7. Ground No.2 raised by the assessee for AY 2010-11 is challenging the disallowance of commission in the sum of Rs.5,00,000/- made u/s 40A(2) of the Act.

8. We have heard the rival submissions and perused the materials available on record. The assessee is an individual and the proprietor of M/s Ashoka Bearing Enterprises for the last three decades. His son Mr. Himanshu Chitlangia is employed with the assessee for the last 15 years as stated by the Ld. AR. The main business of the assessee is being carried out in Delhi. It was submitted that once the assessee's son has understood the trade, he was posted at Mumbai to manage the business affairs of Mumbai Branch. It was further submitted that once the Mumbai Branch was reasonably settled, yet another branch at Goa was opened to be looked after under the control of the assessee's son. Accordingly, it was submitted that during the year under consideration, both Mumbai as well as Goa branches were looked after by assessee's son. The assessee's son is paid salary of Rs.3.5 lacs per annum by the assessee. It would be pertinent to record the turnover at Mumbai as well as Goa for AY 2009-10, 2010-11 and 2011-12 as under:

PARTICULARS	AY 2009-10 (Rs.)	AY 2010-11 (Rs.)	AY 2011-12 (Rs.)
a) Turnover-Mumbai	114,695,058	130,451,173	155,014,552
b) Turnover-Goa	23,093,708	29,201,760	33,503,370
c) Turnover-West (a+b)	137,788,766	159,652,933	188,517,922
d) Turnover-North	72,163,738	76,406,495	96,905,852
e) Total Turnover (c+d)	209,952,504	236,059,428	285,423,774
f) Ratio-% of West Turnover to Total Turnover (c x 100/e)	65.63%	67.63%	66.05%
g) Ratio-% of North Turnover-to Total Turnover (dx100/e)	34.37%	32.37%	33.95%

The assessee paid a commission of Rs.5,00,000/- to his son. The AO disallowed the same u/s 37(1) of the Act on the ground that genuineness of the expenses were not established by the assessee. The Ld. CIT(A) observed that disallowance of expenses need not be made u/s 37(1) of the Act, however, since, the payment is made to related party, the same would be liable for disallowance u/s 40A(2)(b) of the Act as excessive and reasonable commission payment. Aggrieved, the assessee is in appeal before us.

9. At the outset, the Ld. CIT(A) had treated the commission paid by the assessee to his son as excessive and unreasonable and for this purpose, the Ld. CIT(A) had not even bothered to bring on record any comparable instances to justify as to how the commission payment of Rs.5,00,000/- is excessive or unreasonable. But on the contrary, we find that the assessee's son is looking after the business affairs of Mumbai and Goa branches. The turnover at Mumbai and Goa branches had practically contributed 67.63% in AY 2010-11, 66.05% in AY 2011-12 and 65.63% in AY 2009-10, as evident from the aforesaid table. We find that for contribution of almost 2/3rd of the business from branches managed by the assessee's son, he is paid only a salary of Rs.3.50 lacs which is very nominal and when compared with the turnover of the assessee. Hence, the payment of Rs.5,00,000/- as commission to assessee's son would be very much justifiable and reasonable. In any case, there is no dispute that the assessee's son had indeed rendered services to the assessee by looking after Mumbai and Goa Branches. Moreover, the assessee had included the commission component as part of the salary paid to his son by including the

same in Form No.16 of the son which fact is evident from pages 240 to 241 of the PB. Moreover, the assessee's son had also included this commission component of Rs.5,00,000/- as his income in the return filed on 31.03.2011 for AY 2010-11. This fact is evident from page 238 of the PB. Hence, the payment of commission of Rs.5,00,000/- would be a genuine business expenditure incurred by the assessee and would be allowable u/s 37(1) of the Act. Since, no comparable instances were brought on record by the Ld. CIT(A), there is no scope for invoking the provisions of section 40A(2)(b) of the Act and hence, the disallowance is to be deleted on that account also. Accordingly, the ground No.2 raised by the assessee for AY 2010-11 is allowed.

10. The grounds no.3 & 4 raised by the assessee are general in nature and does not require any specific adjudication.

11. In the result, the appeal of the assessee for AY 2010-11 is partly allowed.

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12. Ground No.1.1 and 1.2 raised by the assessee for AY 2011-12 are identical to grounds No.1.1 and 1.2 raised in AY.2010-11. Hence, the decision rendered by us hereinabove for AY 2010-11 on this issue would apply with equal force for AY 2011-12 also, except with variance in figures.

13. The ground No.2 raised by the assessee for AY 2011-12 is identical with ground No.2 raised for AY 2010-11. Hence, the decision rendered by us for AY 2010-11 shall apply with equal force for AY 2011-12 also, except with variance in figures.

14. The grounds No.3.1 and 3.2 raised by the assessee are challenging the disallowance made u/s 14A of the Act. The assessee earned exempt income in the form of dividend of Rs.15,120/- and PPF interest of Rs.13,740/-. No suo moto disallowance of expenses were made by the assessee u/s 14A of the Act in the return of income. The Ld. AO disallowed the expenses u/s 14A of the Act by applying 2nd and 3rd limb of Rule-8D(2) of the Income Tax Rules (hereinafter referred to as the 'Rules') and arrived at the disallowance of Rs.98,049/-. The assessee pleaded that all the investments were made out of his own funds and that no borrowed

funds were used for making the said investments. The assessee gave the data that is has sufficient interest free funds of Rs.1,76,86,938/- as 31.03.2011, as against this, the total investments were only Rs.13,77,159/-. The Ld. CIT(A), however, did not agree to the contention of the assessee and directed the Ld. AO to re-compute the disallowance by considering only those investments which had actually yielded exempt income.

15. At the outset, we find that the assessee had got sufficient funds in his kitty, hence, there cannot be any disallowance of interest under second limb of Rule 8D(2) of the Rules. Hence, the disallowance of interest thereon is hereby directed to be deleted. With regard to 3rd limb of Rule 8D of Rules, we find that the Ld. CIT(A) had rightly directed only those investments which had actually yielded exempt income during the year are to be considered, on which, we do not find any infirmity. Accordingly, the grounds no.3, 3.1 and 3.2 raised by the assessee are partly allowed.

16. Ground No.4 raised by the assessee is challenging the disallowance of interest of Rs.51,457/- on the ground that borrowed funds have been diverted for non- business purposes.

17. We have heard the rival submissions and perused the material available on record. The Ld. AO observed that assessee had given interest free loans to his three relatives totaling to Rs.4,94,616/- On one hand, the assessee is paying interest on his borrowing, but on the other hand, he is giving interest free loans to his relatives. Hence, the Ld. AO worked out the proportionate disallowance of interest @ 12% and arrived at disallowance of interest at Rs.51,447/-. This action of the Ld. AO was upheld by the Ld. CIT(A). The Ld. AR before us submitted that these amounts were given to the relatives as imprest balance in the normal course of business. We do not deem it appropriate to get into this aspect in view of the fact that as stated in previous ground, interest free funds available with the assessee is Rs.1,76,86,938/-, whereas the interest free loans given is only to the extent of Rs.4,94,616/-. Hence, it could be reasonably presumed that the interest free loans were given only out of own funds of the assessee. Reliance in this regard is placed on the decision of Hon'ble Bombay High Court in the case of *CIT vs. Reliance Utilities & Power Ltd. reported in 313 ITR*

340 (Bom) and CIT vs. HDFC Bank Ltd. reported in 366 ITR 505.

Accordingly, the ground No.4 raised by the assessee is allowed.

18. The ground Nos.5 & 6 raised by the assessee are general in nature and does not require any specific adjudication.

19. In the result, the appeal of the assessee for AY 2011-12 is partly allowed.

20. To sum up both the appeals are partly allowed.

Order pronounced in the open court on 30th August, 2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:30/08/2023

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI