

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member  
And Shri Waseem Ahmed, Accountant Member**

**ITA No. 305/Ahd/2023  
Assessment Year 2008-09**

The Deputy Commissioner of Income Tax, Central Circle-3, 603, 6 <sup>th</sup> Floor, Aaykar Bhavan, Race Course Circle, Vadodara-390007 (Appellant)	Vs	Aroma De France, Block No. 1441, Village-Dabhasa, Tal. Padra, Dist: Vaodadara-391440 PAN: AALFA6998C (Respondent)
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**Assessee by: Shri Hemant Suthar, A.R.  
Revenue by: Shri Karun K. Ojha, CIT-D.R.**

Date of hearing : 06-03-2024  
Date of pronouncement : 13-03-2024

**आदेश/ORDER**

**PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-**

This is an appeal filed against the order dated 14-02-2023 passed by Id. CIT(A)-12, Ahmedabad for assessment year 2008-09.

2. The grounds of appeal are as under:-

*“1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.1,80,97,857/- made by the AO by disallowance u/s 40(a)(ia) of the Act relying upon the decision of the Hon'ble ITAT in assessee's own case for the AY 2012-13 despite the fact that, in the year under consideration no such documentary evidences/record has been produced by the assessee during the course of assessment proceedings to prove that the purchases was based on the contract for "sale" and not a contract for "work"*

*2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in allowing the appeal of the assessee on the issue that the export turnover for calculation of eligible claim u/s 10B of the I.T. Act is Rs.9,61,61,218/- as against Rs.8,20,89,368/- considered by the AO in the assessment order despite the fact that the figure of export turnover was taken on the basis of the ledger accounts of purchases and sale impounded during the course of survey in the case of the assessee.*

*3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A)-12, Ahmedabad ought to have upheld the order of the Assessing Officer.*

*4. It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that the AO may be restored to the above extent.”*

3. The assessee filed return of income on 23-09-2008 declaring total income of Rs. 5,26,684/- which was revised on 15-06-2009 declaring total income of Rs. 5,64,224/-. The same was processed u/s. 143(1) of the Act on 29-03-2010 and the assessment was completed u/s. 143(3) of the Act on 23-12-2010 on a total income of Rs. 5,64,224/-. The case was reopened after recording the reasons and accordingly notice u/s. 148 was issued on 30-03-2015 which was duly served upon the assessee. The assessee was provided reasons by reopening upon which the assessee raised objection and the speaking order on the same was passed on 30-06-2015. The assessee vide letter dated 02-07-2015 submitted that the original return of income filed be

treated as return of income filed in response to notice u/s. 148. After issuing statutory notices, the assessee filed relevant details before the Assessing Officer. The assessee is engaged in the business of manufacturing and trading of Does, Perform after Shave Lotion, Attar etc. relating to some products in the name of Arono De France. In addition to the income from business or profession, the assessee also derived income from other sources. During the year under consideration, the assessee declared gross profit of Rs. 2,57,10,796/- at 25.07% on total turnover of Rs. 10,24,80,961/- as against gross profit of Rs. 1,45,27,281/- at 28.32% on total sales of Rs. 5,12,87,801/- declared in the immediately preceding year. During the course of survey u/s. 133A conducted at the business premises of the assessee on 19-02-2025, the Assessing Officer observed that the assessee claimed an expenditure of Rs. 7,14,49,182/- on account of packing material which as per the bifurcation submitted by the assessee included expenditure amounting to Rs. 1,80,97,857/- on account of printing packing material. After taking cognizance of all the documents, the Assessing Officer observed that the assessee at the last month submitted bifurcation of packing material on the basis of printed and non-printed packing material. The Assessing Officer made addition of Rs. 1,80,97,897/- to the total income of the assessee u/s. 40(a)(ia) r.w.s. 194C of the Act. The Assessing Officer also made disallowance u/s. 10B of the Act thereby observing that since the assessee has not provided the details of interest and remuneration to the partners, the assessee firm made more profits than reasonable profits which have accrued to the firm and consequently resulted into higher claim of deduction u/s. 10B of the Act. Thus, the Assessing Officer made addition

of Rs. 32,06,561/- thereby making disallowance of excess claim of deduction u/s. 10B of the Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards ground no. 1, the ld. D.R. submitted that the CIT(A) erred in deleting the addition of Rs. 1,80,97,857/- made by the Assessing Officer by disallowance u/s. 40(a)(ia) of the Act relying upon the decision of the Tribunal in assessee's own case for assessment year 2012-13 despite the fact that in the year under consideration no such documentary evidence/record has been produced by the assessee during the course of assessment proceedings to prove that the purchases was based on contract for sale and not contract for work.

6. The ld. A.R. relied upon the order of the CIT(A) and the order of the Tribunal.

7. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the Assessing Officer has rightly pointed out that assessee has given only the bifurcation of packing material on the basis of printed and non-printed packing material but the details were not submitted before the Assessing Officer as well as CIT(A) which was relevant such as documents of VAT, excise duty, CST which paid by the assessee during the year. The Tribunal in the order of the assessment year 2012-13 has taken cognizance of the same and has decided

the issue. But in the present assessment year, those records were not mentioned by the Assessing Officer as well as by the CIT(A) and not mentioned in the submissions of the assessee before the CIT(A). These aspects and the evidences required to be examined and therefore the issue is remanded back to the file of Assessing Officer for verifying the same details and adjudicate the issue accordingly. Needless to say the assessee be given opportunity of hearing by following the principles of natural justice. Ground no. 1 is partly allowed for statistical purposes.

8. As regards ground no. 2, the Id. D.R. submitted that the CIT(A) was not right in deleting the addition related to disallowance of excess claim of deduction u/s. 10B in respect of export turnover calculation as the figure of the export turnover was taken on the basis of ledger account of purchases and sales impounded during the course of survey in the case of the assessee.

9. The Id. A.R. submitted that the CIT(A) has observed that the reports as well as the records sent to the jurisdictional Assessing Officer has no such material to justify the claim that export and domestic figures 3%. Impounding material on laptop/computer was normally printed out and impounded and no such material available in assessee's case. The CIT(A) in fact has partly allowed and rejected the assessee's contention and upheld the action of the Assessing Officer to recalculate the net eligible profit by reducing the claim figure from the notional interest arising on the partner's capital at rates mentioned in the partnership deed were justifiable.

10. We have heard both the parties and perused all the relevant materials available on record. The Id. CIT(A) has given a categorical finding that the re-calculation of deduction claimed by the assessee was as per figures related to export and domestic turnover and there was no eligible and cogent material for recalculation the same and the assessee has not altered domestic and export turnover which is backed by proper evidence. Thus, the CIT(A) has rightly deleted the said addition. Ground no. 2 is dismissed.

11. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 13-03-2024

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 13/03/2024**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद