

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 201/Ahd/2021
Assessment Year 2014-15**

The ACIT, Anand Circle, Anand (Appellant)	Vs	M/s. Chhotabhai Jethabhai Patel & Co., C.J. House, Mota Pore, Nadiad, Kheda-387001 PAN: AADFP1222A (Respondent)
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**Assessee by: Shri Bandish Soparkar, A.R.
Revenue by: Shri Ashesh R. Rewar, Sr. D.R.**

Date of hearing : 25-07-2024
Date of pronouncement : 12-09-2024

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

This is an appeal filed by the Revenue against the order of the Id. Commissioner of Income Tax, CIT(A)-13, Ahmedabad, in proceeding u/s. 143(3) r.w.s. 144C(1) r.w.s. 92CA(3) vide order dated 05/03/2021 passed for the assessment year 2014-15.

2. The grounds of appeal are as under:-

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the adjustment/addition of Rs. 1,62,27,135/- on account of purchase of Tendu Leaves?

2. Whether on the facts and in the circumstances of the case and in laws, the Ld. CIT(A) erred in allowing the assessee to take yearly average price of the transactions for comparing the same to comparable transaction in CUP method without appreciating the fact that each transaction is treated and benchmarked separately while applying CUP method?

3. Whether on the facts and in the circumstances of the case and in laws, the Ld. CIT(A) erred in allowing the assessee to take yearly average price of the transactions for comparing the same to comparable transaction in CUP method which is contrary to the provisions of the Rule 10B of Income Tax Rules?

4. Whether on the facts and in the circumstances of the case and in laws, the Ld CIT(A) erred in holding that all the entities are paying taxes at the highest rate and there is no question of tax evasion by ignoring the fact that the transfer pricing is concerned with the determination of Arm's Length Price of the specified domestic transactions carried out by the assessee?

5. The appellant craves leave to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal.

Relief claimed in appeal

It is prayed that the Hon'ble ITAT, Ahmedabad may kindly set aside the order of the Commissioner of Income Tax (Appeal) and restore the order of the Assessing Officer.”

3. The assessee filed return of income on 25-09-2014 declaring total income at Rs. 8,73,47,514/-. The case was selected for scrutiny and notice u/s. 143(2) and notice u/s. 143(2) of the Act was issued on 03-09-2015 which was served upon the assessee on 04-09-2015. As per the Assessing

Officer, the aggregate value of specified domestic transactions as per the books of account of the assessee is involved to the tune of Rs. 120,53,72,948/-. After taking approval from the Pr. CIT, the case was referred to Additional CIT(TP) u/s. 92CA of the Act in view of CBDT's Instruction No. 3/2016 dated 10-03-2016 for the determination of Arms Length Price. The Additional CIT(TPO) vide order dated 15-09-2017 passed u/s. 92CA(3) of the Act made upward adjustments to the tune of Rs. 1,62,27,135/-. On receipt of the order u/s. 92CA(3) dated 15-09-2017 passed by the TPO, draft assessment order dated 03-10-2017 was served upon the assessee on 03-10-2017 as per the provisions section 144(c)(1) of the Act proposing the following additions:-

i) Addition of Rs. 1,62,27,135/- on account of upward adjustments made u/s 92CA(3) by the Addl.CIT(TPO) vide his order dt. 15.09.2017.

(ii) Addition of Rs.4,58,54,017/- on account of disallowance of claim of deduction u/s.80IA(4)(iv)(a) of the Act.

(iii) Addition of Rs.7,28,500/- u/s 50C of the Act.

(iv) Addition of Rs.7,08,242/ on account of disallowance of Penal expenses

3.1 The assessee is a partnership firm engaged into business of manufacturing and sale of Bidis. Manufacturing of Bidis is given on job work basis to M/s. Ceejay Tobacco Ltd. to whom raw material is supplied by the assessee. The raw material required for manufacturing Bidis is by purchase of raw tobacco, tendu leaves, lebel and packing material which the

assessee produces from various sources. The Bidis are sold to their sole selling distributor, Chhotabhai Jethabhai Patel. The Assessing Officer observed that the assessee has shown total gross turnover of Rs. 22,71,22,168/- for the year under consideration and has declared a net profit of Rs. 14,06,84,238/- (before tax). For the year under consideration, the net income from wind mill power generation business is shown at Rs. 4,58,54,017 and same was claimed as deduction u/s. 80IA(4)(iv)(a) of the Act. The assessee has also shown agricultural income at Rs. 8,07,509/-. As regards computation of Arms Length Price in specified domestic transaction, the Assessing Officer made addition to Rs. 1,62,27,135/- to the total income of the assessee in conformity with ALP determined by the TPO. The Assessing Officer also made disallowance claim u/s. 80IA(iv)(a) amounting to Rs. 4,58,54,017/-. The assessment order also made addition on account of 50C long term capital gain amounting to Rs. 7,28,500/- and also disallowance of penal expenses u/s. 37(1) of the Act amounting to Rs. 7,08,242/-.

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. The Id. Departmental Representative submitted that the CIT(A) was not justified in deleting the adjustment/addition of Rs. 1,62,27,135/- on account of purchase of tendu leaves. The Id. D.R. submitted that the CIT(A) erred in allowing the assessee to take yearly average price of the transactions for comparing the same to the comparable transaction in CUP method without appreciating the fact that each transaction is treated as

benchmark separately while applying CUP method. The Id. Departmental Representative further submitted that the CIT(A) ignored the very basis while allowing the assessee to take early average price of the transaction for comparing the same to the comparable transaction in CUP method which is contrary to the provisions of Rule 10B of Income Tax Rules. The Id. Departmental Representative further submitted that the CIT(A) was not right in holding right that all the entities are paying taxes at the highest level and there is no question of tax evasion by ignoring the fact that the transfer pricing is concerned with determination of Arms Length Price of the specified domestic transaction carried out by the assessee.

6. The Id. Authorized Representative submitted that the specified domestic transaction was omitted from the statute w.e.f. 01-04-2017 and therefore the CIT(A) has rightly deleted the said addition towards upward adjustment referred by the TPO. The Id. Authorized Representative further submitted that the reference to the TPO related to specified domestic transaction was on 03-10-2017/15-09-2017 which was much more after the omission of the specified domestic transactions from the statute.

7. We have heard both the parties and perused all the relevant materials available on records. There is a delay of 79 days in filing the appeal which was primarily explained by the Revenue as the same is during covid period and hence the delay is condoned. The Id. Authorized Representative at the time of hearing more specifically submitted under Rule 27 of Income Tax Appellate Tribunal Rules, 1963 which allows the respondent to support the order appealed against as to the ground of the revenue's appeal decided

against for which the Id. Authorized Representative submitted that the CIT(A) has dismissed the additional ground with respect to applicability of section 92BA(i) of the Act as the said transaction is not specified domestic transaction. The Id. Authorized Representative submitted that as regards the specified domestic transaction, the clause (1) of section 92BA was omitted from the statute by Finance Act, 2017 w.e.f. 01-04-2017, the same could not be made applicable to pending proceedings under specified domestic transaction. The Id. Authorized Representative relied upon the decision of the Tribunal in case of *Laxmi Hydrocolloids vs. ITO* (2022) 139 taxmann.com 154 (Ahmedabad-Trib). The Id. Authorized Representative also relied upon the decision of the Tribunal in case of *DCIT vs. Abhilasha Pharma Pvt. Ltd.* ITA No. 337/Ahd/2020 order dated 10-05-2024 wherein the said principle has taken into account and also envisaged the decision taken by the Hon'ble Karnatka High Court in case of *PCIT vs. Texport Overseas Pvt. Ltd.* (2020) 114 taxman.com 568. Thus, we are of the view that under the present circumstances, the reference to the TPO was made on 15-09-2017 u/s. 92CA(3) which was after the omission date of clause 1 of section 92BA which was effective from 01-04-2017 as per the Finance Act, 2017. Once, the particular clause is not expressed in the statute, the reference becomes bad in law and void ab-initio, as from the inception it does not merge therefore invocation of omitted clause or any provision of this particular statute will amount the entire proceedings or the exercise not justifiable and void ab-initio. Thus, in the present case, the application filed by the Id. Authorized Representative on behalf of the assessee under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 is allowed and in fact the very basis of the order which was passed by the CIT(A) which emerges from

the TPO order is void ab-initio, hence the appeal of the Revenue also does not survive. Thus, the appeal of the Revenue is dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 12-09-2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 12/09/2024

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