

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" D " BENCH, AHMEDABAD

सुश्री सुचित्राकम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.264/Ahd/2024  
निर्धारण वर्ष /Assessment Year : 2018-19

The ACIT Circle-1 (1)(1) Ahmedabad	<u>बनाम/ v/s.</u>	Adani Enterprises Ltd. Adani Corporate House Shantigram Near Vaishno Devi Circle S.G. Highway Khodiyar Ahmedabad- 382 421 (Gujarat)
स्थायी लेखा सं./PAN: AABCA 2804 L		
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :	Shri Biren Shah, AR	
Revenue by :	Shri Surendra Kumar, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 01/10/2024  
घोषणा की तारीख /Date of Pronouncement: 03/10/2024

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, AM:**

The present appeal is filed by the Revenue, challenging the order passed by the Commissioner of Income Tax (Appeals) [hereinafter referred to as "(CIT(A))"], under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the assessment year 2018-19, arising out of the order of the Assessing Officer [hereinafter referred to as "AO"] passed under Section 143(3) read with Section 144C(3) and Section 144B of the Act.

2. The brief facts of the case are that the assessee, Adani Enterprises Ltd., engaged in the business of trading various commodities, filed its return of income for the relevant assessment year, declaring an income of Rs.23,43,45,310/-. The case was selected for scrutiny, and an assessment order was passed under section 143(3), making two additions, including an addition of Rs.1,12,17,629/- on account of Transfer Pricing (TP) adjustments related to the purchase of coal. Aggrieved by this, the assessee filed an appeal before the CIT(A), which deleted the said adjustment.

3. The Revenue is in appeal before this Tribunal, challenging the order of the CIT(A) on several grounds, primarily related to the deletion of the TP adjustment and the disallowance of Rs.49,11,450/- under section 37 of the Act. The Revenue has raised the following grounds in this appeal:

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. 1,12,17.629/- on account of the purchase of coal by violating provisions of section 92(3) of the Act. 1961?*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing benefit of transactions where assessee has imported coal at a price lower than the market value which is contrary to the provisions of section 92(3) of the Income Tax Act?*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing benefit of transactions where assessee has imported coal at a price lower than the market value for the benchmarking under CUP without appreciating the fact that aggregation of the transactions is not allowed in the 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 law, the Ld. CIT(A) erred in holding that aggregation of the transactions is considered in CUP method without appreciating the fact that each transactions is treated and benchmarked separately?*

5. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying upon the decision of Hon'ble ITAT Pune Bench, in the case of M/s Henkel Adhesive Technologies India (P) Ltd V/s DCIT without appreciating the fact that the facts of the decision of Pune Tribunal is different from the case of assessee as in case of M/s Henkel Adhesive Technologies India (P) Ltd V/s DCIT, Hon'ble Tribunal held that assessee had submitted various factors proving necessity for such transactions at the higher prices and in present case assessee had not submitted /raised any such details/contentions?*

4. Before going to the merit of the cases, the Authorised Representative (AR) for the assessee at the outset submitted that tax effect on the disputed total additions is below Rs.60 lakhs, therefore, by virtue of recent CBDT Circular No. 9 of 2024 dated 17.9.2024, Department has been instructed not to file appeal before the Tribunal where tax effect is below Rs.60 lakhs. This instruction is applicable to the pending cases also. Therefore, the present appeal of the Revenue is liable to be dismissed at the threshold. Per contra, the Departmental Representative (DR) did not dispute applicability of the recent CBDT circular and also tax effect being below Rs.60 lakhs in the assessee case. He, however, left the issue to the Tribunal to pass appropriate order in the matter.

5. After hearing both the sides and after perusal of the above CBDT Instruction, we are of the view that the present appeal of the Revenue falls within the purview of the CBDT Instruction cited (supra). It is not disputed by the Revenue that tax effect on the disputed addition is less than Rs.60 lakhs, and therefore, keeping in view the above CBDT circular and provisions of section 268A of the Income Tax Act, we are of the view that the present appeal of the Revenue deserves to be dismissed. It is accordingly dismissed.

However, it is noted that in case on re-verification at the end of the AO, it can be demonstrated that the tax effect is more, or Revenue's case falls within the ambit of exceptions provided in the Circular, then the Department will be at liberty to approach the Tribunal for recall of this order. Such application should be filed within the time period prescribed in the Act. In view of the above, the appeal of the Revenue is dismissed due to low tax effect.

6. In the result, appeal of the Revenue is dismissed due to low tax effect.

**Order pronounced in the Open Court on 03<sup>rd</sup> October,2024 at Ahmedabad.**

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

**Sd/-  
(MAKARAND V. MAHADEOKAR)  
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 03/10/2024

*टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-13, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad