

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA Nos.164/Del/2024
(A.Y. 2014-15)**

DCIT, Circle -4(2) Room No.384, CR, Building, I.P. Estate, New Delhi-110002	Vs.	Bureau Veritas Consumer Products Services (India) Private Limited, 73, Basement, National Park, Lajpat Nagar, IV, Delhi 110024
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AAACM6792J		
Appellant	..	Respondent

Appellant by :	Sh. Ravi Sharma, Adv . Sh. Jaskaran Singh, CA
Respondent by :	Sh. Om Prakash, Sr. DR
Date of Hearing	08.01.2025
Date of Pronouncement	12.02.2025

ORDER

PER MADHUMITA ROY: (JM):

The instant appeal filed by the revenue is directed against the order dated 30.06.2023 passed by the National Faceless Appeal Centre (NFAC), Delhi, arising out of the assessment order passed by the ACIT, Circle-5(1) dated 27.12.2016 under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year 2014-15 whereby and whereunder the addition to the tune of Rs.2,58,38,722/- on

account of expenses of rebate and discount has been deleted for Assessment Year 2014-15.

2. The appeal is barred by limited by 141 days. The revenue authority has filed an application for condonation of delay explaining the reason in filing the same after 141 days before us, wherein it has been stated that the order passed by the Ld. CIT(A) was received on 30.06.2023 in the office of the PCIT-1, New Delhi on ITBA and the appeal whereof though were supposed to be filed on 28.08.2023 due to time barring work, the said appeal could not be filed in time. Such explanation seems to be genuine and hence, delay is condoned.

3. We have heard the rival submissions made by the respective parties and we have also considered the materials on record including the orders passed by the authorities below and the judgments relied upon by the respective parties.

4. The brief facts leading to the case are that the appellant, engaged in the business of Testing and Analysis services, inspection and social audit which was rendered to the Indian affiliates of various multi-national companies ('MNCs') during the year under consideration. This is in view of the contracts with the appellant and associated enterprises of the appellant i.e. Bureau Veritas Consumer Products Services Inc., United States of America (BVCPS, US) and Bureau Veritas, Hong Kong (BV, Hong Kong) overseas group companies the sample agreements whereof were duly furnished before the authorities below and before us too. In this regard, the percentage of discount to be offered to the clients are decided at global level on the basis of the total worldwide turnover from a particular customer for the years. This agreed discount are recovered by the overseas group entities from where affiliates including

the appellant who renders such service to customer located in their jurisdiction. In fact, upon rendering such services the appellant raised the invoices and realizes the payment against the same from the Indian affiliates of MNCs and then received service fee which is credited to the profit and loss account of the appellant and offered to tax. Further that, for the rebate and discount related to services rendered by the appellant in India, the debit note is raised by the overseas group entities to the appellant in order to recover the discount payable to the MNCs. This form of collecting money for providing discount through the overseas group entities is a way of attaining business by the appellant from MNCs in order to increase its profits in the competitive environment. It is the case of the appellant that without this discount the appellant would have not been able to make sales to these customers. Therefore, in order to earn more business and survive the competitiveness in the market, the overseas group entities have taken conscious business call to offer discount to MNCs by entering into global arrangement with respect to discounts.

5. For the year under consideration, the appellant incurred expenses of Rs. 2,58,38,722/- towards rebate and discount offered to its customers complete details whereof i.e. the discount offered qua the sales attained from various parties along with percentage of discount offered to various parties were duly placed before the authorities below in order to demonstrate the nexus the same having been incurred for the purpose of the business of the appellant. Such case made out by the appellant has not been accepted by the Ld. AO and the addition of Rs.2,58,38,722/- was made in the hands of the appellant disallowing the said expenditure under Section 37(1) of the Act holding that such expenses towards rebate and discount is a device to transfer profit to the

holding company and the same has not been incurred for the purpose of business of the appellant.

6. It is the case of the appellant that the Coordinate Bench in appellant's own case dealt with the similar issue for Assessment Year 2013-14 in ITA 5582/Del/2019 whereby and whereunder the issue was directed to be examined by the AO in the light of the Memorandum of Understanding/Agreements which has been duly taken care of by the Ld. CIT(A). However, as the complete details of documents in relation to discount offered to the companies and sales attained from those various parties along with the percentage of discount offered to such various parties, since, have been duly furnished before the authorities below upon examining the same the Ld. CIT(A) granted relief in the following manner :

“(1) **Ground No. 2** pertains to the disallowance of expenses on Rebate and Discount amounting to Rs. 2,58,38,722/-.

(1.1) have gone through the facts of the case and have the following observations:

The appellant is a domestic company.

The appellant filed its return on 27.11.2014 declaring income of Rs.41,41,08,130/-. The case was then selected for limited scrutiny under CASS. However, after the approval of competent authority it was converted to complete scrutiny.

The appellant has claimed expenses on Rebate and Discount to the tune of Rs. 2,58,38,722/-, the same was disallowed by the AO. Also, penalty proceedings u/s. 271(1)(c) of the IT Act were also initiated.

Aggrieved by the Assessment Order, the appellant preferred an appeal before CIT (A).

(1.2) I have carefully considered the assessment order and the rival submissions. It is pertinent to mention here that the appellant has submitted the order of Hon' ITAT Delhi (ITA No. 5582/DEL/2019) for A. Y. 2013-14 (preceding A.Y.) in its own case. There are similar issues in the A. Y. 2013-14 and A.Y. 2014-15.

The relevant excerpts (para 28 to 33) from the Hon' ITAT, Delhi's Order are reproduced as under:

28. We find that the discounts and rebates have to be provided at a global level and not directly by the company rendering the services. We further find that such rebate/ discount payments are recovered by the BV overseas entities from their affiliates which included the appellant, as per allocated percentages based upon their respective sales proportion on the global sales. We further find that for recovery of such rebate/ discounts, B overseas entities have entered into a Memorandum of Understanding (MOU) with the appellant company which provides that the appellant is required to render testing and inspection services to various affiliates / suppliers / agents of the overseas vendors in India. These MOUs are placed in the paper book.

29. We find that as per the agreement/MOUs, BV overseas entities entered into MSA with overseas customers for provision of testing and inspection services. Simultaneously, BV overseas entities enter into a MOU with the appellant, instructing them to provide testing and inspection services to the overseas customer /agents/ affiliates/supplier. The appellant provides services as required, from time to time and BV overseas entities computes the global sale of services made to the overseas customers and accordingly computed the volume discount payable to them. Such discount percentage is allocated amongst the affiliates of BV overseas entities which also included the appellant company based upon their proportionate sales vis-à-vis global sale and such discounts are recovered from its affiliates which also included the appellant company and finally, rebate is passed upon to third party vendor. Some sample proof of remittances are placed in the paper book.

30. In our humble opinion, these agreements/MOUs were before the lower authorities and nowhere the Assessing Officer has demonstrated that these are sham transactions. Without properly appreciating the agreement, the Assessing Officer has rubbished the same stating that:

"In common parlance, a discount is given by the service provider to a customer against agreed charges to promote business and obtain repeated orders. But the appellant, for reasons best known to him, in place of offering discount to customer has chosen to pass on the discount to the holding company."

31. In our considered opinion, the Assessing Officer should have examined the transactions in light of agreements/MOUs and related documentary evidences before coming to any conclusion. We further find that all the documents were not furnished before the Assessing Officer as the same has been placed before us in the form of Additional Evidences to demonstrate that the discounts/rebates have ultimately been passed on to the customers.

32. In the interest of justice and fair place, we deem it fit to restore this issue to the file of the Assessing Officer. The appellant is directed to demonstrate that discounts/rebates have ultimately been passed on to customers and the Assessing Officer is directed to verify the same in light of Agreements/MOUs. Needless to mention, the Assessing Officer shall give reasonable and sufficient opportunity of being heard to the appellant. This grievance is also set aside and allowed for statistical purposes.

33. In the result, the appeal of the appellant in IT No. 5582/DEL/2019 is treated as allowed for statistical purposes.

(1.3) Honorably following the decision of the ITAT Bench Delhi, I am of the opinion that in the preceding A.Y. similar issues were raised and in A.Y. 2014-15 also thorough deliberation was required on the part of the AO. The AO should have examined the facts in the light of the MOUS/Agreements, which is not the case here. The documentary evidences on record also favour the contentions of the appellant. I find force in the evidences provided by the appellant and hereby direct the AO to delete the addition of Rs.2,58,38,722/- being expenses on Rebate and Discount.

Ground No. 2 of the appeal allowed.”

7. Upon perusal of the entire set of records, it is found that the contention made by the Ld. AR is correct. Further that, it is also reflecting in the order passed by the Ld. CIT(A) that in the year under consideration the issue has been thoroughly examined by the Ld. CIT(A) on the basis of the details of discount paid to its parties and sales attained from those parties along with percentage of discount offered, and the same is found to be favourable to the case made out by the

appellant and therefore, considering the force of those documents in support of the claim of the appellant the AO has been directed to delete the impugned addition by the Ld. CIT(A), which in our considered opinion, is just and proper, so as not to warrant interference, The Revenue's appeal is, therefore, found to be devoid of any merit, hence dismissed.

8. The appeal of the revenue is dismissed.

Order pronounced in the open court on 12.02.2025

Sd/-
(M Balaganesh)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 12.02.2025

PS: Rohit

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI