

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.3294/Del/2023, A.Y. 2016-17

Deputy Commissioner of income Tax, Circle-4(2), Central Revenue Building, I.P. Estate, New Delhi	Vs.	Bureau Veritas Consumer Products Services (India) Pvt. Ltd., Lajpat Nagar, New Delhi PAN: AAACM6792J
(Appellant)		(Respondent)

Appellant by	Sh. Ajay Kumar Arora, Sr. DR
Respondent by	Sh. K. M. Gupta, Advocate Sh. Jaskaran Singh, CA

Date of Hearing	12/08/2025
Date of Pronouncement	10/11/2025

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2016-17 filed by the Revenue is directed against the order dated 25.09.2023 of the Ld. Commissioner of Income Tax (Appeals), NFAC, New Delhi (hereinafter 'Ld. CIT(A)')

2. The grounds of appeal raised by the Revenue are as under: -

- “1. Whether the Ld. CIT(A) has erred in deleting the addition of Rs. 4,90,69,253/being expenses on Rebate and Discount, when such Rebates and Discounts are no verifiable from the bills to the customers and not proved to have incurred wholly and exclusively for the purpose of its business.

2. *Whether the Ld. CIT(A) has erred in deleting the addition of Rs. 33,18,161/-under the head 'Advances and Deposits Written Off' which is an excess payment of royalty to its holdings company which is only a transfer of profit.*
3. *Whether the Ld. CIT(A) has erred in deleting the addition of Rs. 8,00,000/-which is an expense of capital in nature.*
4. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

3. The relevant facts giving rise to this appeal are that the assessee, a wholly owned subsidiary of Bureau Veritas SA., France, provides testing, inspection and audit services to Indian affiliates of MNCs. Firstly, the services rendered by the assessee were billed to the customers. Thereafter, the rebate & discount is given to the customer through the holding company AE as per the master agreement entered between customers and its AEs. During the assessment proceedings, the assessee admitted that it had provided complete details of discount paid to its AEs vis a vis details of services rendered to its customers alongwith percentage of discount offered/given to them during the relevant year. The sum of such rebate & discount was paid, in aggregate, to the holding company AE for making payment of the same to the customers. The Ld. Assessing Officer ('AO') was not satisfied with the explanation of the assessee as there was no tripartite agreement in this regard to demonstrate that the rebate & discount paid to the AE had passed to the foreign customers. Further, the assessee did not bring any material on the record before the Ld. AO to demonstrate the live nexus between the customers and holding company AE to justify the said

claim. The Ld. AO therefore, inferred that the said rebate & discount claimed to have been paid, in aggregate, to the AE was not actually passed to the customers and thus, he disallowed the same on the reasoning that the same had not been incurred wholly and exclusively for the business purposes of the assessee. The Ld. AO further opined that the payment of rebate & discount through the holding company AE was nothing but a mechanism to transfer the profit in the garb of rebate & discount to the holding company AE. Besides, the Ld. AO also made disallowance/ addition of Rs.41,18,161/- as under:

“Assessee has debited advances and deposits written off to the P&L account. Vide letter dated 18.12.2018, assessee was asked the following:

"Show cause why the expense of 'advances and deposits written off should not be added back."

Assessee vide reply date 20.12.2018 as submitted that:

"During the year under consideration the Assessee has charged an amount of INR 41,18,161 under the head 'Advances and Deposits Written Off. The breakup of the same is as under:

- 1. Written of excess Taxes at Source ("TDS") deposited into the credit of the Central Government amounting to INR 33.1 8,161.*
- 2. Written off of security deposits of INR 8,00,000*

With regard to the allowability of the aforesaid expenditure, we provide our submission."

Assessee submitted reply which has been considered but not found satisfactory since no proof of payment, reason for advances has been submitted. Assessee has not submitted any proof of when and the excess TDS deposited into the credit of the Central Government has to be written off. Further no proof has been submitted as to which and how security deposits have been written off. Hence in the absence of documentary

proof Hence addition of Rs.41,18,161/- has been made to the returned income under Section 37 of the Act. Penalty proceedings is initiated under Section 271(1)(c) separately.”

Aggrieved, the assessee filed appeal before the Ld. CIT(A) and succeeded.

4. The Ld. Sr. DR, placing reliance on the AO's finding, submitted that the assessee had failed to demonstrate, with the help of any corroboratory evidence, that such rebate & discount had actually passed on to its customers through its AE. The agreement/MOU entered between holding company AE and the assessee, being self-serving document, did not demonstrate that the said rebate & discount had been actually passed on to the customers through the AE. Thus, the assessee could not establish that the said rebate & discount had been incurred wholly and exclusively for the business purposes. The Ld. Sr. DR placed reliance on the decision of the Tribunal in the case of the assessee in ITA No.3158/Del/2023. Further, it was also submitted that there was no tripartite agreement or third-party document justifying the assessee's claim that the said rebate & discount had been passed on to the customers of the assessee. The Ld. Sr. DR drew our attention to the finding of the Ld. CIT(A) to emphasize that the Ld. CIT(A) did not pass any speaking order justifying his finding. The impugned order did not mention any reasoning for deleting the said disallowance. The finding of the Ld. CIT(A) was contradictory in itself as evident from the relevant para of the impugned order as under:

“5.3 Respectfully following the decision of the ITAT bench Delhi mentioned supra, I am of the opinion that in the preceding AY similar

issues were raised and in AY 2014-15 also thorough deliberations was required on the part of the AO. The AO should have examined the facts in the light of 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.4,90,69,253/- being expenses on rebate and discount.”

5. The Ld. Sr. DR drew our attention to the finding of the Ld. CIT(A) to emphasize that the Ld. CIT(A), on one hand, placed reliance on the decision of the Tribunal in the assessee's own case in the ITA No. 5582/Del/2019; however, he did not elaborate the details/documents based on which he deleted the said disallowance. In the interest of justice, the Ld. Sr. DR prayed for remitting this issue back to the Ld. CIT(A) as the present case was squarely covered by the decision of the Tribunal in the assessee's own case (supra).

6. On the other hand, the Ld. AR submitted that the said rebate & discount had been paid as per the agreement between the assessee and its AE, which, later on, passed on to the foreign customers through MOUs between the AE and customers. The Ld. AR drew our attention to the said agreement/MOU. The Ld. AR drew our attention to the categorical finding of the Ld. CIT(A) that *'this year case was different than the preceding year and the documentary evidences on record also favour the contentions of the appellant. I find force in the evidences provided by the appellant.'* However, the Ld. AR did not place any documentary evidence before us to buttress the finding of the Ld. CIT(A).

7. We have heard both parties at length and have perused the material available on the record. We find merit in the arguments/contentions/submissions of the Ld. Sr. DR that the Ld. CIT(A) has not given detailed justification for relief. We are therefore, of the considered view that this issue is squarely covered by the decision of the Tribunal in the assessee's own case in the ITA No. 5582/Del/2019. Therefore, respectfully following the decision of the Tribunal in the assessee's own case, we deem it fit to restore this issue to the file of the Ld. AO. The assessee is directed to demonstrate that discounts/rebates have ultimately been passed on to customers. The Ld. AO is directed to verify the same in light of Agreements/MOUs. Needless to mention that the Ld. AO shall give reasonable and sufficient opportunity of being heard to the assessee. The impugned order is thus, on this issue is set aside and the issue of rebate & discount is remitted to the Ld. AO as above. Thus, the ground No. 1 of the Revenue is allowed for statistical purpose as above.

8. The last issue is in respect of the disallowance of advances of Rs.41,18,161/- written off. The Ld. AO disallowance, as evident from the above, is not found well-reasoned. The said sum has been paid in past. We have heard both parties and have perused the material available on record. The Ld. Sr. DR has not brought any material on the record to contradict the finding of the Ld. CIT(A). We find that the advances have been given in the normal course of business, which became unrecoverable. We find merit in

the finding of the Ld. CIT(A) that this loss is in the nature of business loss and is thus allowable. Therefore, keeping in view on the decision of the Hon'ble Supreme Court in the case of Mysore Sugar Co. Ltd. 46 ITR 649 and the decision of the Hon'ble Bombay Court in the case of Harsad J Choksi 25 taxmann.com 567 and Badri Das Daga 34 ITR 10, we are of the considered view that the said amount written off is nothing but a business loss and is thus allowable. Therefore, we do not find any infirmity in the finding of Ld. CIT(A) as far as the disallowance of advances of Rs.41,18,161/- written off is concerned. Hence, we decline to interfere with the impugned finding of the Ld. CIT(A). Thus, the grounds Nos. 2 and 3 of the Revenue is dismissed.

9. In the result the appeal of the Revenue stands partly allowed for statistical purpose.

Order pronounced in open Court on 10th November, 2025

Sd/-

(C.N.PRASAD)
JUDICIAL MEMBER

Dated: 10/11/2025

Binita, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. Sr. DR-ITAT

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI