

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT
MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 6072, 6073, 6074/MUM/2025
Assessment Year: 2012-13 to 2014-15**

Nest Childcare Services Private
Limited.
1st Floor, C Wing Shah Industrial
Estate, Sakivihar Road,
Sakinaka, Andheri (East),
Mumbai – 400072.

**PAN – AADCN3297Q
Appellant**

DCIT 15(1)(2)
Aayakar Bhawan, New Marine
Lines, Churchgate, Mumbai –
400020.

Vs.

Respondent

**I.T.A. No. 6215/MUM/2025
Assessment Year: 2014-15**

ACIT – 15(1)(2),
126 B, 1st Floor, Aaykar Bhavan,
M.K. Road, Mumbai - 400020.

Appellant

Nest Childcare Services Private Limited.
1st Floor, C Wing Shah Industrial Estate,
Sakivihar Road, Sakinaka, Andheri (East),
Mumbai – 400072.

Vs.

**PAN – AADCN3297Q
Respondent**

Assessee by
Revenue by

: Ms. Namrata R. Dedhia
: Ms. Beena Santosh, CIT DR. & Shri
Leyaqt Ali Aafaqui, Sr. DR.

Date of Hearing : 27/11/2025
Date of pronouncement : 03/12/2025



ORDER

Per Bench

The captioned appeals by the assessee for Assessment Years (AYs) 2012-13 to 2014-15 and the cross-appeal by the Revenue for AY 2014-15, arise from separate orders of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [“Ld. CIT(A)”]. Since common issues pervade these matters, they were heard together and are being disposed of by this consolidated order for convenience and avoid repetition of facts.

2. We first take up the appeal of the assessee for AY 2012-13 as the lead case. Both parties fairly submitted that the decision therein may be applied *mutatis mutandis* to the remaining matters.
3. The grounds of the appeal for assessment year 2012-13 reproduced as under:
 - “1. *The learned Commissioner has erred in not considering the jurisprudence in the case of Flipkart India v Assistant Commissioner of Income tax mentioned in the submissions made wherein it is clearly stated that the AO was not right in ignoring the book results of the assessee and resorting*



to a process of estimating the total income of the assessee in the manner which was inappropriate.

2. *The learned commissioner has erred in not considering the income actually earned OR arisen and assuming that income which could have been earned should be taxed.*
3. *The learned commissioner has erred in concluding that the business loss is not genuine merely because the assessee adopted a penetration pricing model with heavy discounts. Further, the learned commissioner assumed that the market practice is to earn a minimum profit, while ignoring the numerous documents, emails and published articles in support of market practice.*
4. *The learned Commissioner has erred in upholding the disallowance of loss made by the learned AO without rejecting the books of the accounts of the assessee.*
5. *The learned Commissioner has erred in upholding an addition of net profit margin at 10% of sale on ad hoc basis, relying upon theoretical explanation of factors affecting net profit margin and profitability and by referring to research papers and published data, even though no details of any such research papers OR published data have been provided to the assessee during the course of the appellate proceedings OR in the appellate order.”*

4. The material facts, briefly stated, are that the assessee is engaged in the business of online retailing of baby-care and mother-care products through its web portal.



For the year under consideration, the assessee filed its return of income on 30th September 2012 declaring a total loss of ₹7,90,94,532/-. The return was selected for scrutiny and statutory notices under section 143(2) of the Income-tax Act, 1961 (“the Act”) were duly issued and complied with.

4.1 During assessment, the Assessing Officer (“AO”) noted that the assessee had incurred an operational loss of ₹1,18,450/- and had disclosed consumption/purchase of goods at ₹5,50,73,952/- against sales of ₹5,49,55,550/-. The assessee explained that its pricing model was dictated by market competition and that, being an e-commerce retailer, it adopted a discount-driven penetration strategy in the early years. The AO, however, rejected this explanation on the premise that no prudent business entity would sell at prices lower than the purchase cost and held the pricing policy to be commercially unjustifiable. Consequently, he disallowed the entire loss and estimated profit at 20% of turnover. The Assessing officer mainly concluded that (i) products were sold below purchase cost;(ii) discounts were claimed to be excessive and commercially inexpedient;(iii) pricing allegedly failed to consider fixed, variable and incidental



costs; and(iv) no “futuristic” business plan was demonstrated. The relevant finding of the Assessing Officer is reproduced here under :-

“4. Perusal of the details filed by the assessee company shows that during the year under consideration, the assessee company has incurred net loss of Rs.7,90,94,532/Further, it is also seen that the consumption of materials/goods were shown Rs.55073952/-against which there is a sale consideration of Rs. 54955502/-, thus, incurring a loss of Rs.118450/ Further, it is also seen that assessee company has incurred Rs.76940322/-being other expenses spent for the purpose of business. In the background of this, the assessee company was asked to justify its pricing policy. The assessee company was also asked to furnish complete details of its fixed cost, overheads and variable costs applicable to the costing and pricing of a particular product. The assessee company vide its letter dated 03.03.2015 and 10.03.2015 has submitted a detailed reply justifying the claim of loss incurred by the assessee. For the sake of brevity, the submission of the assessee company are placed on record.

4.1 The submissions are carefully perused. However, the same are not acceptable. The assessee company in its reply has suggested that the assessee is engaged in retail sale of child care and baby products through its website www.babyove.com. The business module of the assessee



company is that it buys and sells its products through websites. There is another module being operated in the market wherein an online platform for other retailers is made available for selling of the products of retailers. The assessee company buys almost entire product from Moms Childcare. The pricing policy of the assessee as well as the industry is decided by the competitors prices in the market and the company offers huge discount to beat the acute competition which is unheard of in traditional business. These discounts are often offered by the e-tailers from their own pockets thereby effecting sales at prices lower than the prices of the products. Thus, the penetration pricing strategy allows the product to be priced as low as possible and attract customers and generate trade volume. Even if this resulted in gross loss, the long term strategy behind this policy is to penetrate the market fully and develop a good base for loyal customers. Once this is done, the discounts offered would gradually be reduced and the company would eventually start making profits.

4.2 The assessee company in its reply is trying to harp upon the fact that this is a new business and heavy discounts make it mandatory to price the product below the cost of acquisition of such products. There is no denying the fact that a particular item which is available at a retailer shop is priced higher than the same product which is available on e-tailers platform. However, the fact can also not be denied that in a e-tailers platform, the distributor the wholesaler and the retailers are not in picture and the



product is directly delivered by the manufacturer to the end use customer. Hence, the margins available to the distributor/wholesaler/retailer do not form the part of price of the product and hence a particular product is much cheaper on the e-tailer platform in comparison to a retailer shop. Therefore, the submission of the assessee that the product is much cheaper due to heavy discount offered by the manufacturers does not hold good. On the contrary, the margin available to a manufacturer is much higher on a e-platform as competitively, the prices are much lower in comparison to a retailer shop.

4.3 Further, nothing has been brought on record by the assessee company to suggest as to why it was compulsory for it to sell its products below the cost price even when the margins of the distributor, wholesaler and the retailer were not included in the cost of the product. Even if, the profit margins charged by a e-tailer is higher in comparison to the product when it is sold to the distributor, the end user or the customer still gets the same commodity at much cheaper prices since the highest margin in any assemble chain from manufacturer to consumer are availed by the retailers, then the wholesalers and to some extent the distributors. Further, the entire product which is sold on e-platform have a cash on delivery system wherein there is no credit period available to the end user and the manufacturer gets the price of the product instantly which in turn helps it to control its cost further as the borrowings are less. In the case of the distribution chain network The



distributor, wholesaler and the retailer generally takes good credit period for making payment and the manufacturer in turn has to do the deficit financing by external borrowings which further adds to its cost.

4.4 *Further, while fixing the price of a particular product, the entire cost including the fixed cost, the overhead cost and the variable cost are accounted for. Also, a profit element is added to the cost to arrive at the selling price. It is pertinent to mention that even notional costs such as incidental cost, unforeseen market forces, competition in the market, competitive edge etc. is also taken into account and forms a part of the cost to arrive at the selling price. In the instant case, the assessee company has sold its price not only below the purchase cost, but also none of the other costs have been taken into account to arrive at the selling price. Therefore, the entire pricing policy of the assessee is neither commensurate with its business nor with the normal pricing policy adopted by any prudent agency. Non-inclusion of all these costs has resulted in huge loss of 7,90,94,532/-which not only makes the business non sustainable but also economically and financially non-viable. Vide its submissions, the assessee company could not substantiate the loss incurred nor any futuristic path/planning has been indicated to overcome the so called market forces hurdle.*

4.5 *Hence, the loss of Rs.7,90,94,532/-claimed by the assessee is disallowed as not justiciable. Further, the*



profit of the assessee is estimated at 20% of its sales being Rs. 109,91,100/-is added to the total income.”

5. On appeal, the Ld. CIT(A) concurred that the pricing policy and resultant loss were commercially unacceptable and sustained the disallowance of the loss, *albeit* reducing the estimated profit rate from 20% to 10% by relying on unspecified “research papers”. The relevant part of decision disallowing the business loss is as under :-

“6.1 In Grounds No. 1 to 4 of the Appeal, the appellant has contented that the AO has not appreciated the business model of e-commerce in India and in comparing the business dynamics of the appellant who is an e commerce retailer with those of a manufacturer and holding that in e-retailer platforms, product is directly delivered by manufacturer to the end user customer, when in fact, majority of entities in the e commerce business are retailers and market places. It is also submitted by the appellant that the AO has erred in stating that the products have been sold below cost and observing that the appellant has brought nothing on record to suggest why it was compulsory for it to sell its products below cost price, when in fact, it has made detailed submissions with supporting evidences to demonstrate how its pricing was determined in order to be competitive. It is further submitted by the appellant that the AO has erred in



concluding that the pricing policy adopted by the appellant was not justifiable on the basis that it does not include all other fixed, variable and overhead costs. In doing so, he has ignored the fact that pricing of the appellant was driven by market forces and not on a cost plus model and thus, the AO was wrong in disallowing the entire loss by considering the pricing policy as not justifiable and the business as not sustainable economically and financially.

6.1.1 From the facts of the case, observations made by the AO, submissions made by the appellant and documents on records, it is observed that appellant company is engaged in business of online selling of baby products and baby care and mother care products on wholesale basis through its website www.Babyoye.com after purchasing its products from suppliers and advertised its products through online platforms to the target market by listing products on website with claimed substantial discount to the MRP. During the year under consideration, the appellant has shown cost of consumption of material/goods at Rs. 25,52,68,464/- and had claimed to have incurred business expenses amounting to Rs. 16,00,34,150/-. Thus, total effective cost of products sold including expenses was claimed by the appellant at Rs. 41,53,02,614/- against which sale realization has been shown only at Rs. 29,81,56,703/- thus, claiming net loss of Rs. 11,71,45,911/-. These quantum of cost of consumption, expenses and sales shown by the appellant show that appellant has declared loss at 39.29% of total



sale and the sale price realized by the appellant was just 71.29% of the effective cost price, leave aside a reasonable profit margin, which is expected to be earned by a business entity in any business which is basic motive, for which a business is established to run. Thus, the sale price fixed by the appellant, based on which, substantial business loss has been declared is clearly unbelievable as no business entity including the appellant would, in any situation including stated reasons of penetration pricing strategy as a long term perspective to attract customers and generate trade volume, fix sale price at such rate that would result sale realization of just 71.29% of total cost including expenses resulting into such a substantial loss to the tune of 39.29% of the sale amount. Even, generally the MRP of any product is fixed taking into account all the cost and direct and indirect expenses (including fixed cost, overhead cost, variable cost and notional costs like incidental cost, unforeseen market forces etc) incurred by the manufacture, expected expenses of distributors, whole-sellers, retailers etc and a handsome reasonable profit margin of all these chain constituents and thereafter, MRP is marked at an amount substantially higher than all the cost plus profit margin of all these persons viz. manufacture, distributors, whole-sellers, retailers etc so that even after giving substantial discount on MRP as is the general practice in the market to attract and lure the customers in the name of heavy discount on MRP, every person in the chain earns a lucrative and reasonable profit



to sustain in the market. Therefore, submission of the appellant that the products were listed on its website with substantial discount to MRP resulting into such a huge claimed loss, does not hold a good and practical logic as the submission made by the appellant do not commensurate with its business nor with the normal pricing policy adopted by any prudent businessman.

6.1.2. The appellant company was asked by the AO to justify its pricing policy and to furnish the complete details of fixed cost, overheads and variable cost applicable to the costing and pricing of particular product. Thereafter, the appellant company submitted its reply, which has already been discussed in earlier paras of this order as well in the assessment order. The submission of the appellant that the pricing policy of the appellant company as well as the industry is decided by the competitor's prices in the market and companies offer huge discount to beat the acute competition unlike traditional business, is correct but even then, the claimed huge discount offered cannot be of such ratio so as to result huge loss of 39.29% as discussed above. At the most, discount is offered by any trader including e-traders so as to earn at least a minimum profit so as to run their business. So, the submission of the appellant that discounts were given from its own pocket thereby effecting sales price even below the cost price of the products which resulted in gross loss cannot be accepted in view of market practice and general principle of running a business.



6.1.3 Further, this fact also cannot be denied that in e retailer platform, the sales are made directly to the end use customers which do not include any middlemen like distributors and retailers etc, hence, more margin is available to the manufacturer and whole seller like appellant, as it does not need to share its margins with the distributor and retailer etc and therefore, margin available to the chain of distributor and retailer do not form part of price of product and therefore, it is clear that the appellant company has failed in the assessment proceedings as well as appeal proceedings, to justify the reason as to why it was necessary to sell its product below the cost price, that too at loss of about 39.29%, even when the margins of distributors and retailers were not included in the cost of the product. Further, the AO is also right in pointing out that one platform, there is cash on delivery system, wherein, there is no credit period available to the end user and the manufacturer/whole seller like appellant, gets the price of product instantly, which helps to control its cost further as the borrowings are less as compared to distribution chain network, where the chain takes good credit period for making payment and the manufacturer/whole-seller in turn has to do the deficit financing by external borrowings which further adds to the cost. Therefore, in my opinion, in view of above facts, the loss declared by the appellant was rightly disallowed by the AO and the same is hereby confirmed.”



6. But, the Ld. CIT (A) however, reduced estimation of net profit from 20% adopted by the AO to 10%, on the basis of the published data of e-commerce landscape in various research papers. The relevant finding of the Ld. CIT (A) is reproduced as under :-

“7.1 From the asstt. order, it is noticed that after disallowing loss declared by the appellant, the AO estimated net profit of the appellant at 20% of its sales without 7.1 From the asstt. order, it is noticed that after disallowing loss declared by the appellant, the AO estimated net profit of the appellant at 20% of its sales without giving any basis or comparable net profit rates of e commerce business industry. Accordingly, this net profit margin taken by the AO without assigning any justification for the same cannot be held to be justified. Hence, the data published in this regard has been examined and as per the published data, in the e-commerce landscape, it is a fact that there may be various factors affecting Net Profit Margin, some of which are as under:

Cost of Goods Sold (COGS): The direct costs associated with producing or acquiring the products sold.

Operating Expenses: Costs such as rent, utilities, marketing, and employee salaries.

Pricing Strategy: How a business sets its prices directly impacts its profit margin.



Sales Volume: Higher sales volume can help offset fixed costs and improve overall profitability.

Industry: Different retail sectors (e.g., apparel, grocery) have different average profit margins.

Market Shifts: Economic conditions and consumer behavior can influence retail profits.

Operational Efficiency: Streamlining processes and optimizing expenses can boost margins.

Inventory Management: Efficient inventory control can minimize losses from spoilage or obsolescence.

Additional factors influencing profitability in India include

Competition: The Indian e-commerce market is highly competitive, requiring businesses to differentiate and manage costs effectively.

Logistics and Infrastructure: Challenges in logistics and supply chain management can impact profitability, especially in remote areas.

Cash on Delivery (COD): The popularity of COD can lead to higher return rates, affecting margins.

Government Initiatives and Regulations: Policies like FDI regulations and ONDC (Open Network for Digital Commerce) can create both opportunities and challenges for e-retailers.



Based on above factors, in India, in the e-commerce landscape, as per various research papers and published data, a net profit margin of 10% is generally considered average, while 20% is considered high indicating strong cost management and profitability and 5% net profit margin is considered low suggesting that the business may need to improve cost control or pricing strategies. However, net profit margins can vary significantly by industry and even by the specific business model within e-commerce. Therefore, based on above research papers/published data, it would be justified if, based on various factors related to the business of the appellant, the net profit margin of the appellant is taken at average i.e.@ 10% in place of 20% taken by the AO. Therefore, AO is directed to take net profit of the appellant company @ 10% of sale i.e. 2,98,15,670/- in place of Rs.5,96,31341/-. Accordingly, this ground of appeal is partly allowed.”

7. Before us the Ld. Counsel for the assessee filed a paper book combining various judicial pronouncements relied upon her.
8. We have heard the rival submission of the parties and perused the relevant material available on record. In the case two issues are involved, firstly, the disallowance of business loss claimed by the Assessee



and secondly, estimation of the profit on the sales of the Assessee.

8.1 As far as the disallowance of business loss is considered, the lower authorities have mainly are of the view that the pricing policy of the Assessee of selling products even lower than their purchase value was not justified as a business model. The crux of the AO's reasoning is that the assessee's pricing of selling products below purchase cost, defies commercial prudence and, therefore, the resultant loss is not allowable.

8.2 In our opinion, the approach of the authorities below cannot be countenanced in law. The Hon'ble Supreme court in **S. A. Builders Ltd. vs Commissioner Of Income Tax (Appeals) 2007 288 ITR 1(SC)** has held as under:

“34. We agree with the view taken by the Delhi High Court in [CIT vs. Dalmia Cement \(Bhart\) Ltd.](#) (2002) 254 ITR 377 that once it is established that there was nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors



and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman. As already stated above, we have to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount was advanced for earning profits.”

- 8.3 The Hon’ble Bombay High Court in the case of **Commissioner Of Income-Tax, Bombay vs M/S. Walchand & Co. (Pvt.) Ltd., Bombay reported in 1967 AIR 1435** held that *in applying the test of commercial expediency for determining whether the expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the Expenditure has to be adjudged from the point of view of the businessman and not of the Revenue.*
- 8.4 The Hon’ble **Gujrat High Court in the case of CIT vs Keshavlal Chandulal reported in (1966) 59 ITR 120 (Gujrat)** held that when a person dispose goods at lesser value than the market value or at a concessional price , there is nothing in income tax law which



compels the him to sell at a price which realizable in market.

- 8.5 Following the aforesaid precedents, we are of the considered view that it is not within the authority of the Assessing Officer to dictate to a businessman the manner in which his business ought to be conducted. The pricing strategy adopted by the assessee was evidently driven by competitive compulsions inherent in the e-commerce market and formed part of its commercial judgment for business survival and expansion. In the present case, neither the Assessing Officer nor the CIT(A) has identified any instance of bogus purchases, sham or suppressed sales, diversion of profits to related parties, inflation of expenses, or adoption of any colourable device. The disallowance rests entirely on the Assessing Officer's subjective disagreement with the assessee's pricing model. Such an approach is contrary to settled principles of law. A genuine business loss cannot be disallowed merely because the pricing policy adopted by the assessee does not conform to the Assessing Officer's perception of what is commercially prudent or desirable. The assessee placed reliance on a compilation of authorities, including **Flipkart India Pvt. Ltd. v. ACIT**



(2022) 441 ITR 618 (Karnataka HC), to contend that online retailers adopting deep-discount penetration strategies cannot be subjected to notional or hypothetical income additions merely because the AO considers the pricing commercially inexpedient. The Hon'ble Karnataka High Court in **Flipkart India Pvt. Ltd. (supra)** has held (a) Deep-discount pricing is a known industry practice; (b) Losses arising from such pricing in a highly competitive e-commerce landscape cannot be disallowed merely because they appear commercially imprudent to the AO and (c) Revenue cannot proceed on the presumption that business must necessarily earn profits in every year. This ratio applies *in pari materia* to the assessee's case. There is no adverse material to show that (a) purchases were fictitious; (b) expenses inflated; (c) sales suppressed, or (d) any transaction was accommodation-like.

- 8.6 In such circumstances, the Revenue cannot disregard book results merely because it considers the business model unprofitable. A business is permitted to take commercial risks, including incurring losses. Accordingly we reject the finding of the lower authorities on the issue of disallowance of the business losses.



9. The second issue is regarding estimation of the profit on the sales of the Assessee. Section 145(3) mandates that profits can be estimated only after rejecting books of account on specific defects.
 - 9.1 Before us, the Ld. Counsel for the Assessee submitted that the Assessing Officer neither invoked Section 145 (3) of the Act for the purpose of rejection of the books of accounts and nor estimated the profit rate on the basis of any comparable data and applied net profit rate of 20%. The learned CIT (A) has further reduced the net profit allowed to 10% on the basis of data published in various research paper. But in the impugned order, he has not cited the name of any research paper regarding profitability of e-commerce platform.
 - 9.2 In our opinion, firstly, the Assessing Officer has not rejected books of accounts invoking Section 145(3) of the Act. Secondly, no defects in the accounts were pointed out. Therefore, he is not justified in rejecting the booked results of the Assessee.
 - 9.3 Further, neither the AO nor the CIT(A) used any comparable cases or industry gross profit data. Both the authorities have applied the net profit rate on the arbitrary manner. The CIT(A)'s reliance on unspecified



“research papers” is wholly unsubstantiated and cannot constitute evidentiary material. Therefore, the estimation of profits @ 20% by the AO and @ 10% by the CIT(A) is wholly arbitrary and legally untenable.

- 9.4 Accordingly, the grounds of the Assessee in relation to issue of disallowance of business losses are allowed.
10. The grounds raised in the Assessment Year 2013-14 are identical to grounds raised in Assessment Year 2012-13, and therefore, all the grounds are accordingly decided in mutatis mutandis.
11. In Assessment Year 2014-15 both the Assessee and the Revenue are in appeal. The Assessee is in appeal in respect of the disallowance of business losses and sustaining of the 10% net profit rate by the CIT (A), whereas the Revenue is in appeal against the reduction in net profit rate from 20%, to 10% ,which was adopted by the Assessing Officer. Since, both the issue of disallowance of business losses and estimation of the net profit have been adjudicated by us in favour of the Assessee, while deciding the appeal for Assessment Year 2012-13 and therefore, the grounds raised in appeals of the Assessee are allowed whereas grounds raised by the Revenue are dismissed.



12. In the result appeals of the assessee for Assessment Years 2012-13 to Assessment Year 2014-15 are allowed whereas the appeal of the Revenue for Assessment Year 2014-15 is dismissed.

Order pronounced in the open Court on 03/12/2025.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT
MEMBER**

Mumbai;
Dated: 03/12/2025

Tarun, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai