

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH

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

ITA No. 60/Ahd/2021 Assessment Year 2015-16
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M/s. Asiatic Colour Chem Ind. Ltd., Plot No. 1503- 1504, Phase-I, GIDC, Naroda, Ahmedabad PAN: AABCA6297R (Appellant)	Vs	Jt. CIT, Circle-1(1)(1), Ahmedabad (Respondent)
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**Assessee by: Shri Chetan Agrawal, A.R.
Revenue by: Shri Ashesh R. Rewar, Sr. D.R.**

Date of hearing : 22-07-2024
Date of pronouncement : 11-09-2024

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax, CIT(A)-13, Ahmedabad, in proceeding u/s. 143(3) r.w.s. 144C of the I.T. Act, 1961 vide order dated 15/03/2021 passed for the assessment year 2015-16.

2. The grounds of appeal are as under:-

<i>Grounds of Appeal</i>		<i>Tax effect relating to each Ground of appeal (see note below)</i>
1.	<i>Learned CIT(A) has erred in law as well as on facts in confirming addition of Rs. 22,93,634/- being amount paid to Ahmedabad Municipal Corporation towards impact fees treating it as capital expenditure, which was claimed as revenue expenditure in profit and loss account.</i>	6,88,090
2.	<i>Learned CIT(A) has erred in law as well as on facts in confirming addition of Rs. 38,72,827/- being adjustment made by TPO in Specified Domestic Transaction being payment made to persons specified u/s. 40(A)(2b), which was omitted from Income Tax Act.</i>	11,61,848
<i>Total tax effect (see note below)</i>		18,49,938

3. Reference u/s. 92CA(1), the Income Tax Act, 1961 in assessee's case for assessment year 2015-16 was made for the computation of arms length price in relation to specified domestic transactions recorded in Form 3CEB was received through reference dated 31-07-2017. The assessee company is engaged in manufacturing trading and exporting of dies and dies intermediaries and others. Notice u/s. 92CA(2) of the Act and questionnaire was issued to the assessee on 24-01-2018. The assessee company through its authorized representative attended the proceedings and filed the details. The TPO during the year under consideration observed that the assessee company entered into the following specified domestic transactions:-

SN	Name of AE	Nature of Transaction	Amount	Method
1	Orio Shanghai Colours Pvt. Ltd.	Purchase and job work	22,78,98,449/-	CUP
2	Adorn Speciality Polymers Pvt. Ltd.	Purchase and job work	15,22,29,222/-	CUP
3	Asiatic Composit Ltd.	Purchase and job work	84,83,296/-	CUP

The Assessing Officer further observed that the assessee company purchased chemical products from its AEs and bench mark the same using CUP method. The Assessing Officer observed that certain transactions were price beyond the arm length price. After taking cognizance of the assessee's reply/submissions, the Assessing Officer observed that the assessee accepted the purchases from AE at slightly higher than price of purchase from unrelated parties. Thus, the assessee agreed that the transaction made with AEs are not at ALP. As regards to application of CUP as most appropriate method, the Assessing Officer observed that there is no difference of opinion between the assessee and TPO but the manner in which the CUP is applied, the TPO has not accepted assessee's contention on the ground that the Act gives the assessee option to choose a class of transaction for comparable basis, but provided, it fulfils comparability criteria defined for the purpose of the comparability of an international transaction. Thus, the TPO held that by aggregating the transactions of a production for the whole year, the non arms length the nature of one transaction is most by price on other which is clearly not as per the provisions of Indian law. Thus, in assessee's

case, the ALP is required to be computed on a transaction by transaction based and aggregation is only required when a transaction cannot be evaluated on separate basis. The TPO further held that in the present case, the same added or nearly added transactions with AE and when non-AEs were available for comparison for a better CUP analysis, the aggregating and taking annual average of prices was incorrect approach by the assessee. Thus, the TPO made adjustment of Rs. 38,72,827/- towards upward adjustment in respect of the specific domestic transaction undertaken by the company at arms length. The Assessing Officer vide assessment order dated 05-02-2019 further observed that the assessee debited Rs. 28,70,482/- under the head municipal tax but has not given the details accordingly and in fact this one time payment has enduring benefits since the assessee has not incurred any expenses in recording nature this fee is like more duty or purchase for TDR which are capital in nature. Thus, the Assessing Officer made disallowance at Rs. 22,93,634/- (allowing Rs. 2,54,848/- towards capitalization and depreciation at 10%). the Assessing Officer also made addition as suggested by TPO to the extent of Rs. 38,72,827/- upward adjustment u/s. 92CA(3) of the Act.

4. Being aggrieved by the assessment order as well as the TPO order, the assessee filed appeal before the CIT(A). The Id. CIT(A) dismissed the appeal of the assessee.

5. The Authorized Representative submitted that the CIT(A) erred in law while confirming the addition of Rs. 22,93,634/- being amount paid to the Ahmedabad Municipal Corporation towards impact fee paying it as capital

expenditure which was claimed as revenue expenditure in profit and loss account. The Id. Authorized Representative further submitted that the decision of the Delhi Tribunal in case of Hindustan Motorcycle and Scooter India Ltd. has categorically expressed that to regularize or protect assets so paid has to be termed as a revenue receipt. This is related to the factory premises and the same has to be allowed u/s. 37(1) as held in para 16 of the said decision of the Delhi Tribunal.

6. The Id. D.R. relied upon the assessment order and the order of the Id. CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. In the present case, the assessee has paid a token amount to the municipal corporation against double demand upon the company which was a disputed demand for many years and during the year under consideration the assessee received the judgment by the municipal authority for making the final amount of municipal tax to be paid for each year. The assessee has given the details of break up of expenses and in fact the Assessing Officer categorically observed that the assessee paid Rs. 25,48,482/- for unauthorized development but after paying the final disputed amount which was one time payment. The assessee's title which has a defect in immoveable property was removed and therefore this amount was paid towards impact fee and was in the nature of revenue as the assessee has disputed this very amount and by way of damages and penalty or interest claimed by the assessee is an allowable expenditure u/s. 37(1) of the Income Tax Act as held in the Hon'ble Supreme Court decision in case of Prakash

Cotton Mills Pvt. Ltd. vs. CIT 201 ITR 684 wherein the unauthorized structure has been regulated and was treated as a revenue receipt which has impacted the business of the assessee. Thus, this ground no. 1 of assessee's appeal is allowed.

8 As regards ground no. 2, the ld. Authorized Representative submitted that while confirming the addition of Rs. 38,72,827/- being adjustment made by the TPO in specified domestic transaction being payment made to persons specified u/s. 40(A)(2b) which was omitted from Income Tax Act is not justifiable as by virtue of amendment vide Finance Act, 2017 w.e.f. 01-04-2017 u/s. 92BA, the transaction within the ambit of section 40A(2b) will no more be the specified domestic transactions and where a provision is omitted, it would be deemed to have never been part of statute at any point of time as the same has retrospective effect if it is favourable of the tax payer as held in the decision of Hon'ble Supreme Court in case of General Finance Co. (2022) 124 taxman 432 (SC).

9. The ld. Departmental Representative submitted that section 92BA governs relating to the amendment and the date from which this amendment took place is w.e.f. 01-04-2017 and the assessee's assessment year is that of 2015-16 and therefore this amendment will not be applicable in assessee's case and the strict effective date should be taken into account.

10. We have heard both the parties and perused the relevant materials on record. It is pertinent to note that section 92CA was introduced w.e.f. 01-04-2017 and the ambit of section 40A(2b) of the Act was not available uptil

date of 30th March, 2017 which is governing assessment year 2015-16 but the contention of the assessee in consonance w.e.f. the decision of Hon'ble Supreme Court General Finance Co. (supra) will come into picture as where the provision is omitted it is always treated to be deemed to have never been part of statute and therefore the retrospectivity will be applicable in the present scenario and therefore the upward adjustment of Rs. 38,72,827/- confirmed by the CIT(A) is not justified. Thus, ground no. 2 is allowed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11-09-2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 11/09/2024

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