

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1036/CHD/2013 &

ITA 754/CHD/2017

निर्धारण वर्ष / Assessment Year: 2010-11

M/s Tara Health Foods Ltd., Village Jitwal Kalan, Tehsil – Malerkotla.	Vs	The DCIT, Central Circle-1, Ludhiana.
स्थायी लेखा सं./PAN NO: AACCT3940R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Assessee by : Shri Ashwani Kumar, CA and Ms. Deepali Aggarwal, CA
Revenue by : Smt. Kusum Bansal, CIT DR

Date of Hearing : 09.04.2025

Date of Pronouncement : 18.06.2025

HYBRID HEARING

O R D E R

PER RAJ PAL YADAV, VP

Both these appeals are directed at the instance of the assessee against the separate orders of ld. CIT (Appeals) dated 26.08.2013 and 20.01.2017 passed in assessment year 2010-11.

2. As far as ITA No.754/Chandigarh/2017 is concerned, this is an appeal arising out of a penalty order dated

30.05.2015 passed u/s 271AAA of the Income Tax Act which has been upheld by the CIT (Appeals) on 20.01.2017. The other appeal is a quantum appeal arising out of an assessment order passed u/s 143(3) read with Section 153A of the Act.

3. First, we take the quantum appeal i.e. ITA No.1036/CHD/2013. The assessee has taken seven grounds of appeal, however, its grievance revolves around three fold of issues. In the first ground of appeal, assessee has pleaded that ld. CIT (Appeals) has erred in confirming the determination of income at Rs.31,77,60,505/- as against returned income of Rs.24,32,43,801/-. The first addition disputed in the income of the assessee is of a sum of Rs.7 Crores.

4. The brief facts of the case are that a search u/s 132 of the Income Tax Act was conducted at the business premises of M/s Tara Health Foods Ltd. On 12.10.2010. Accordingly, a notice u/s 153A was issued and served upon the assessee. In response to the notice, assessee has filed its return of income on 21.09.2012 declaring total income of Rs.24,32,43,800/-.

The ld. AO has issued notices u/s 143(2) and 142(1) of the Income Tax Act. On scrutiny of the accounts, ld. AO has observed that during the course of search, at the factory at Jitwal Kalan, a loose paper inventorized as page No.3 of the Annexure A-2 was found. The contents of this page are reproduced by the AO on page No. 3 of the assessment order. In brief, the contents exhibit that assessee has advanced a sum of Rs.2 Crore, Rs.2 Crore and Rs.3 Crore on 20.12.2009, 22.12.2009 and 24.12.2009 in cash to M/s Muez Hest Process Tech (P) Ltd. This amount was received back in cash in two instalments of Rs.3.5 Cr each on 22.02.2010 and 23.02.2010. The AO has asked the assessee to explain the purpose of the same and to how the same is accounted for in the books of accounts of the assessee. In response to notice of AO, assessee contended that it is a loose paper, it does not relate to any transaction of its business. The DDIT (Investigation) Ludhiana called for information from this company u/s 133(6) of the Act. The company had informed that it has neither received any cash from the assessee nor repaid the same. It has no connection with this sum of Rs.7 crores. Further, it

was submitted by the company that it has sold machinery of Rs.1,07,88,565/- to the assessee in financial year 2007-08, 2008-09, 2009-10 and 2011-12. The value of this machinery was (Rs.20 lacs + Rs.86,45,000/-+ Rs.29,325/-+ Rs.1,14,240/-) = Rs.1.07 Cr. These machineries were sold in a period of four accounting years i.e. financial year 2007-08 to 2011-12. The assessee has produced Shri S.M.Jafar Hussain, Executive (Marketing) of M/s Muez Hest India Pvt. Ltd., Mumbai before the AO who has denied any connection with this paper.

4.1 The ld. AO did not accept the contention of the assessee and made an addition of Rs.7 Crore to the total income of the assessee.

5. Appeal to the CIT (Appeals), did not bring any relief to the assessee.

6. The ld. counsel for the assessee submitted that there is no corroborative material recovered by the Revenue inspite of the search which could exhibit that it is an unaccounted transaction of the assessee. In other words, it is not

demonstrable by the Revenue whether assessee has acquired any machinery or asset for which the cash was paid or it was received by the assessee back. This was a loose computerized sheet lying in the papers, must be explored for some reason. The ld. counsel for the assessee further contended that the Department has initiated penalty proceedings u/s 271D and 271E against M/s Muez Hest India Pvt. Ltd. on the ground that this concern has accepted the loan in cash and returned the loan in cash. Those penalties have been deleted by the CIT (Appeals) and ITAT has upheld the order of the CIT (Appeals) in ITA No.6889 and 6890/Mumbai/2016. He has placed on page No. 50 of the Paper Book judgement of the ITAT dated 01.10.2018. He submitted that on the basis of mere loose paper, which does not have any nexus with the business of the assessee, addition ought to have not been made upon the assessee.

7. On the other hand, ld. DR contended that loose paper was found from the premises of the assessee, therefore, it is to be assumed that assessee has paid sum of Rs.7 Cr to the entity of Mumbai and received back the amount. It is unable

to explain the source of such payment. In support of his contention, he relied upon judgement of Hon'ble Supreme Court in the case of S. Rudramuniyappa vs Commissioner of Income Tax reported in 75 taxmann.com 241.

8. We have duly considered the rival contentions and gone through the record. A perusal of the record would indicate that except a loose paper, no other corroborative material was found by the Revenue at the time of search. No doubt, it is a computerized sheet which does not have any signature of any person, but it has not been demonstrated by the assessee that narrations available on this page have actually been acted upon by the parties. The other connected party is M/s Meuz Hest India Pvt. Ltd. from whom assessee has been purchasing the machinery and it has made purchases of machinery having value of Rs.1.07 Cr in last four years. Thus, company has categorically denied any such transaction with it. It is not discernable whether it was a loan or it was some payment in connection with some transaction. The Department has carried out a search & seizure operation upon the assessee, therefore, it could easily discover the connection of this loose


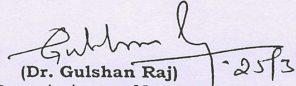
paper with any transaction, either unexplained investment in the machinery or anything else, but it could not collect any corroborative material from the assessee. The DDIT (Investigation) has called for the information from M/s Muez Hest Process Tech (P) Ltd. But that concern has specifically denied of any such transaction with it. It is also pertinent to note that Department presume existence of loan and repayment of loan in cash in the hands of M/s Muez Hest Process Tech (P) Ltd. but CIT (Appeals) has deleted levy of penalty u/s 271D and 271E of the Income Tax Act. The orders of the CIT (Appeals) have been upheld by the ITAT Mumbai Bench, whose copies are available on page No. 50 of the case-law Paper Book. Therefore, we are of the view that in the absence of any corroborative material, it is difficult to draw an inference that any cash was transmitted by the assessee to alleged M/s Muez Hest Process Tech (P) Ltd. and it has received back the cash. Therefore, we are of the view that this addition is not sustainable. Accordingly, we delete the addition.

9. In the next fold of grievance, assessee has raised an additional ground of appeal vide which it has been pleaded that approval granted u/s 153D by the Addl.CIT is not in accordance with law, hence assessment order is not sustainable. In support of his contention, he has relied upon following decisions :

<i>S No</i>	<i>Particulars</i>
1.	Judgement passed by Hon'ble Supreme Court in the case of Additional Commissioner of Income-tax v. Serajuddin and Co. [2024] 163 taxmann.com 118 (SC)
2.	Judgement passed by Hon'ble High Court of Orrisa in the case of Additional Commissioner of Income-tax vs. Serajuddin and Co. [2023] 454 ITR 312 (Orrisa)
3.	Judgement passed by Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax v. Anuj Bansal [2024] 466 ITR 254 (SC)
4.	Judgement passed by Hon'ble High Court of Delhi in the case of Principal Commissioner of Income Tax (Central)-2 v. Anuj Bansal [2024] 466 ITR 251 (Delhi)
5.	Judgement passed by Hon'ble High Court of Delhi in the case of Principal Commissioner of Income v. MDLR Hotels (P.) Ltd [2024] 166 taxmann.com 327 (Delhi)
6.	Judgement passed by Hon'ble High Court of Delhi in the case of Principal Commissioner of Income-tax v. Shiv Kumar Nayyar [2024] 163 taxmann.com 9 (Delhi)
7.	Judgement passed by Hon'ble High Court of Allahabad in the case of Principal Commissioner of Income-tax v. Sapna Gupta [2023] 147 taxmann.com 288 (Allahabad)
8.	Judgement passed by the Hon'ble High Court of Allahabad in the case of Principal Commissioner of Income-tax Vs. Siddarth Gupta [2023] 450 ITR 534 (Allahabad)
9.	Judgement passed by the Hon'ble High Court of Allahabad in the case of Principal Commissioner of Income-tax Vs. Subodh Agarwal [2023] 149 taxmann.com 373
10.	Decision of ITAT Chandigarh Bench in ITA Nos. 140 to 145/CHD/2024 dated 17.01.2025

10. The ld. CIT DR, on the other hand, relied upon the orders of Revenue Authorities and he submitted that proper approval was granted to the assessee.

11. We have duly considered the rival contentions and gone through the record. The copy of the approval dated 25.03.2013 has been placed on record, which reads as under :

 भारत सरकार / GOVERNMENT OF INDIA वित्त मंत्रालय/Ministry of Finance			
कार्यालय आयकर अपर आयुक्त, केन्द्रीय मंडल, लुधियाना		Office of the Addl. Commissioner of Income Tax, Central Range, LUDHIANA.	
C.R. Building, Dandi Swami Chowk, Civil Lines, Ludhiana-141001 दूरभाष/Telephone: 0161-2413581, फैक्स/Fax: 0161 - 2443683			
F.No. Addl.CIT(C)/Ldh./12-13/1483		Dated: 25.03.2013	
To			
The Dy. Commissioner of Income Tax, Central Circle-I, Ludhiana.			
Sub: - Approval u/s 153D of the IT Act, 1961 in Tara Group of cases -reg.- *****			
Please refer to your office letter No. DCIT/CC-I/LDH/2012-13/1622 dated 22.03.2013 thereby submitting draft assessment orders in the following case for approval.			
S.No	Name of the assesses	PAN	Assessment Year
1	M/s Tara Health Foods Ltd.	AACCT3940R	2010-11 & 2011-12
Necessary statutory approval u/s 153D is accordingly given to pass these assessment orders as such.			
 (Dr. Gulshan Raj) Addl. Commissioner of Income-tax, Central Range, Ludhiana.			

11.1 No doubt, the above communication does not disclose the mind of Addl. CIT, but he has observed that necessary approval is being granted. In the cases relied upon by the assessee, it was demonstrated that large number of orders were forwarded to the Competent Authority for consideration whether approval u/s 153D is to be granted or not ? No such material has been placed before us. The Hon'ble Courts are unanimous in their approach that if it is not humanly possible to go through the number of pages transmitted by the AO and thereafter to decide whether approval is to be granted or not, then such an approval would be construed as a mechanical one. This detail is missing in our case. A single assessment order running into six and a half pages was transmitted to the Addl. CIT on 22.03.2013 and after perusal of that assessment order, approval was granted on 25.03.2013. Thus, no benefit can be drawn from these judgements and in the absence of complete details, it is difficult for us to record any finding which will be based on setting of facts and circumstances. Since we have already deleted the additions on merit, therefore, we do not deem it necessary to remit this issue for

further examination and recording of factual backgrounds. Hence, this ground is rejected without adjudicating on merit.

12. In the next fold of grievance, assessee has pleaded that Id. CIT (Appeals) has erred in confirming the disallowance of Rs.32,41,705/- out of deduction claimed by the assessee u/s 80IC. This issue has been discussed by the AO in paragraph No.2.1 which reads as under :

2.1 The reply of assessee has been considered and has no merit in it. The plea of assessee cannot be accepted that there are no common expenses. The expenses of salary of director & business promotion are directly related with the business of undertaking. So the proportionate expenses are to be considered for calculation of 80IC. Accordingly, these expenses are divided in the ratio of turnover of units. And the amount of deduction to be disallowed comes to Rs. 32,41,705/-. The calculation of the same is as under:

Director's Remuneration	42,00,000/-
Audit Fees	1,40,000/-
Charity and Donation	60,500/-
Director's Travelling	15,208/-
IPO expenses	54,56,500/-
Gratuity	2,52,043/-
Bonus	6,53,401/-
Leave with wages	3,85,807/-
Professional charges	<u>8,74,063/-</u>
Total	Rs. 1,20,37,522/-

% of turnover of Sitarganj Unit in proportion to total turnover = 26.93%

The expenses relating to Sitarganj Unit = 12037522 x 26.93 % = 32,41,705/-

Therefore, the deduction u/s 80IC is reduced by Rs. 32,41,705/-. Penalty proceedings u/s 271 AAA for furnishing inaccurate particulars of income thereby resulting in concealment of income are initiated.

13. The appeal to the CIT (Appeals), did not bring any relief to the assessee.

14. With the assistance of ld. Representative, we have gone through the record carefully. We find that AO has not elaborated the issue whether assessee was maintaining separate accounts for the unit eligible for 80IC or not ? If yes, then how much expenses assessee has itself allocated. On a perusal of these details, we find that issue regarding Professional Charges, Gratuity, Charity and Donations, IPO Expenses has nothing to do for apportionment. These are fundamental expenses at the Head Office level. How they have impacted the overall working of a unit eligible for 80IC. The AO has nowhere discussed the reply of the assessee. It is pertinent to note that assessee has declared an income of Rs.24.32 Cr. This small apportionment would not affect the assessee very materially but without specifying as to how this expenditure deserves to be allocated to 80IC unit, the AO should not have allocated in a sweeping manner. Some of the

expenses considered by him has no relevancy with that unit, because these expenses are to be incurred at the Head Office, namely, Charity and Donations, Gratuity, Professional Charges. Therefore, we are of the view that Id. CIT (Appeals) ought to have not uphold this apportionment of expenditure for the purpose of 80IC deduction unless specifically pointed out as to how these expenses are relatable to that unit, which ought to have been excluded while computing eligible profit for grant of deduction u/s 80IC. Therefore, we allow this fold of grievance and delete the disallowance made by the AO and confirmed by the Id. CIT (Appeals).

15. Now we take penalty appeal i.e. ITA No.754/CHD/2017. The penalty has been imposed qua the addition of Rs.7 Crores and disallowance of proportionate expenses of Rs.32,41,705/- . Since we have deleted both the additions and therefore, there is no foundation to visit the assessee with penalty. The penalty is required to be computed on the quantum additions made to the total income of the assessee and such additions have been deleted by us. Consequently, no

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penalty is imposable on the assessee. Accordingly, we allow this appeal and delete the penalty.

16. In the result, ITA No.1036/CHD/2013 is partly allowed, whereas ITA No. 754/CHD/2017 is allowed.

Order pronounced on 18.06.2025.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

“Poonam”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar