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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 13.11.2017

+ **ITA 474/2017**

PRINCIPAL COMMISSIONER OF INCOME-TAX

(CENTRAL)-1

..... Appellant

versus

PEPSI FOODS PRIVATE LIMITED

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Zoheb Hossain for Revenue

For the Respondent : Mr Deepak Chopra and Ms Rashi Khanna

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

ITA 474/2017 & CM No.22508/2017 (delay in filing for 100 days)

1. The Revenue's Appeal, under Section 260A of the Income Tax Act, 1961, complains that the Income Tax Appellate Tribunal (ITAT) fell into error in directing that the sum of Rs.12,04,92,210/- brought to tax, on the ground of excessive price support paid by the assessee, is erroneous.

2. The business model, which the Assessee adopts, is premised upon sales of its product i.e. bottlers, its various parts and other

articles to its distributors in various parts of the country.

3. For Assessment Year 2006-2007, the Assessee claims deduction for Rs.50.95 crores on account of price support expenses; its profit and loss account reflected sale turnover of Rs.358.05 crores. The price support was provided to 21 parties – 18 of them concededly were unrelated. The other three were related parties, of which the transaction in question is concerned with two parties. The Assessing Officer was of the opinion that on analysis of the inter-price support on record – provided to whole all the purchasers – the average expenditure that could be reasonably claimed was 11.79%. In this, the A.O. concededly adopted a method of averaging out the entire expenditure after taking into account the total sum.

4. The Assessee attempted to have this determination rectified before the DRP – against the TPO's determination – but was unsuccessful and the amount was added back in assessment. It, therefore, approached the ITAT, which after considering the submissions of the parties, directed that the sum should be reversed.

5. The Revenue's counsel urges that the Tribunal fell into error in interfering with the Assessing Officer's reasoned determination. He relied upon the observations in the Assessing Officer's order and the TPO's order as well as the DRP to suggest that when the Assessee did not furnish the requisite information and the *rationale given*, high rate of price support even upto 49% in one case disclosed, was completely lacking and in these circumstances, the averaging exercise carried out

was a reasonable and legitimate.

6. The ITAT, in its impugned order, took into account all the facts including the parties that were afforded the price support, the extent thereof and also the so-called transactions which according to the Assessing Officer, involved “excess price support”. The Tribunal thereafter recorded its findings in the following terms:-

11. We have heard the rival submissions and perused the relevant material on record. It is observed that the assessee gave incentive to its related and non-related bottlers in terms of volume discount. Such amount of price support to the tune of Rs.50.95 crore was claimed as deduction. From a perusal of the first chart drawn above, it can be seen that the Price support has been allowed to three related parties mentioned at Sl.nos.1,10 and 16 and the percentage of such price support to sales is 12.42% in the case of party at Sl.no.16. Apart from these three related parties, the assessee also paid price support to 18 non-related parties and the percentage of such volume discount ranges from 0% to 32.90%. The ld. AR contended that the magnitude of price support, being volume discount, depends on numerous factors, such as, the location of the party, its terms of payment, the competitiveness in that particular area, etc., etc. It is apparent from the calculation of percentage of price support to sales that out of 21 parties, the assessee did not pay any price support to 8 parties varied from 3.72% to 32.90%. We fail to appreciate the view point of the AO in picking up only those 12 parties to whom price support was allowed and, then, averaging the percentage of price support to total sales as a benchmark for the purposes of disallowance. This course of action has no legal sanctity and is unfounded. If the AO was not satisfied with the explanation given by the assessee for allowing of discount at varying rates, it was open to him

to specifically examine each and every party to whom volume discount was allowed for ascertaining whether it was genuinely paid or not and further whether it was commensurate with the business requirements and trade practices. Nothing of this sort has been done by the AO, who went by a mathematical exercise in making disallowance of Rs.12.04 crore. Such a mechanism for making disallowance in our considered opinion cannot be sustained. WE, ergo, overturn the impugned order on this score and order for the deletion of this addition.

12. The next part is disallowance of Rs.10.67 crore, which again has been made by the AO on an improper understanding of the facts. Whereas the assessee paid total price support amounting to Rs.50.95 crore, the AO picked up certain items of debits and credits from the same price support account which were categorized by the assessee as provision. The difference between two such totals of debits and credits was disallowed. This disallowance was made on the premise that the provision for price support could not be allowed as deduction. On the contrary, the assessee is paying price support in two ways. While, to some of the parties, the amount is straight away paid and directly debited to this account to others, a monthly provision is made on the sales made on the sales made to them during the respective month. Subsequently, such provision is reduced or enhanced with the actual amount of discount. To illustrate, if the sales made during a month to a bottler is Rs.100/-, on which discount allowable is Rs.15/- and debit this amount to the price support account with a parallel credit to the account of the concerned party. Subsequently, when the actual amount is paid, respective account of the party is credited without routing it through the price support account. Sometimes, the actual amount of price support is enhanced or reduced from the amount of provision made at the end of the respective month, depending upon the negotiations

between the parties and the market conditions. If in the above illustration, the assessee actually pays price support of Rs.14/-, it will reverse the provision of price support with Re.1 by crediting this account. If on the other hand, volume discount is actually paid at Rs.16, the assessee will further debit Re.1 to the price support account. Thus, it is manifest that the debit and credit of provision in the price support account is not a provision in the real sense, but an actual expenditure or its adjustment. The amount of provision of Rs.15 created at the end of each month is credited to the respective bottler's account and the payment made does not enter into the price support account to the extent of the provision already debited. The AO has misunderstood the provision debited and credited to the price support account as a mere provision and not as an actual expense. When this provision is a part and parcel of the total price support expense, such part of provision, which actually represents the expenditure incurred, cannot be disallowed."

7. This Court is of the opinion that the reasoning of the ITAT, cannot be faulted. The Assessing Officer concededly adopted the same characteristic to all parties related and unrelated as to the prevailing and local market conditions. There may be several reasons why an Assessee or a commercial venture might be compelled to provide discounts/price support etc. for ensuring the marketability of its product at the price that they proposes.

8. Having regard to these, the method of averaging, to say the least, is illegal, this Court, therefore, is of the opinion that no question of law arises on this aspect.

9. As far as the other question, with regard to the disallowance under Section 40(a)(ia) of the Act of Rs.15,41,815.78 is concerned, the Court notices that the Tribunal consistently followed its order in directing the inspection of such addition on the basis of its previous orders in Assessment Years 2002-2003, 2003-2004, 2004-05. No question of law, therefore, arises.

10. For the above reasons, the Appeal is dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA
(JUDGE)**

November 13, 2017

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