

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "जी" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

**श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष**  
**BEFORE SHRI C.N. PRASAD, JM AND SHRI RAJESH KUMAR, AM**

ITA NO.2447 and 2446/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2010-11 & 2011-12)

Dy. Commissioner of Income Tax 5(3)(1), Room No.573, 5 <sup>th</sup> floor, Aayakar Bhavan, M K Road, Mumbai-400020	<b>बनाम/ Vs.</b>	M/s Allied Blenders and Distillers Pvt Ltd,, 394/C/Ground floor, Lamington Chambers, Lamington road, Opera house, Mumbai-400004
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ITA NO.2573 & 2574/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2010-11& 2011-12)

M/s Allied Blenders and Distillers Pvt Ltd, Mumbai-400004	<b>बनाम/ Vs.</b>	Dy. Commissioner of Income Tax 5(3), Mumbai-400020
स्थायी लेखा सं./PAN : AAACY3846K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Revenue by	:	Shri H M Wanare
प्रत्यर्थी की ओर से/Assessee by	:	Shri K P Dewan

सुनवाई की तारीख /Date of Hearing	:	9.1.2017
घोषणा की तारीख /Date of Pronouncement	:	21.2.2017

**आदेश / ORDER**

**PER RAJESH KUMAR, A. M:**

These are the cross-appeals filed by the respective parties against the common order dated 26.2.2015 passed by the Id.CIT(A), Mumbai for the assessment years-2010-11 and 2011-12. For the sake of convenience, these appeals are being decided by this common order.

**ITA NO.2573/Mum/2015 (by assessee)**

2. The grounds of appeal taken by the assessee in this appeal read as under :

*"1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the addition made by A.O. at Rs.4,92,43,370/- on account of purchases.*

*2. The addition made at Rs.4,92,43,370/- in the assessment Framed on account of purchases is unjustified, unwarranted and excessive.*

*3. On the facts and in the circumstances of the case the learned Lower Authorities erred in holding on assumption and presumptions that purchases for Rs.4,92,43,370/-from three parties are bogus.*

*4. The assessee denies liability to be assessed to interest u/s 234B and 234C of I.T. Act 1961. Without prejudice levy of interest u/s 234B and 234C of I.T. Act 1961 is unjustified, unwarranted and excessive.*

3. The issue raised in the grounds of appeal no.1,2 and 3 is against the confirmation of addition of Rs.4,92,43,370/- by the Id.CIT(A) as made by the AO on account of bogus purchases.

4. The facts of the case are that the assessee filed return of income on 27.09.2010 declaring total income of Rs.8,39,89,526/-which was processed under section 143(1) of the Income Tax Act, 1961. Subsequently, the case of the assessee was selected for scrutiny and the statutory notices under section 143(2) and 142(1) were issued and served

upon the assessee. The assessee was engaged in the business of manufacturing, marketing and sale of Indian made foreign liquor and other allied products. The AO during the course of assessment proceedings received an information from DGIT(Investigation), Mumbai that the assessee has entered into bogus transactions amounting to Rs.4,92,43,370/- from three hawala parties without taking actual delivery of goods the details whereof are given as under (pg.4 of AO):

Party Name	amount
RCL Trading Pvt.Ltd	Rs.29,83,250/-
Kotsons Impex Pvt.Ltd	Rs.2,79,74,170/-
Hermitage Trading Pvt.Ltd	Rs.1,82,85,950/-
Total	Rs.4,92,43,370/-

5. Accordingly to the Assessing Officer, the notification issued by the Sales Tax Department, Government of Maharashtra all these parties were involved in hawala operations of issuing bogus bills on commission basis without supplying actual material which was affirmed by these parties in an affidavit –cum-declaration filed before the Sales Tax Department, GOM that they were engaged in issuing invoices only. The AO also observed that these hawala parties were issuing bogus bills on receipt of cheques and latter on cash used to be withdrawn and after deduction of commission the balance amount used to be returned to the persons who

took hawala entries. According to the Assessing Officer, the statement as referred to above of the alleged hawala operators was available on the website of the GOM and the same was treated as evidence to justify the disallowance of bogus purchases by the assessee. Accordingly, a show cause notice dated 19.3.2013 was given to the assessee informing that notices under section 133(6) of the Act issued to the said suppliers/hawala parties could not be served as these parties were not available on their given addresses and in view of the non-service of notice, the assessee was called upon to show cause as to why the purchases amounting to Rs.4,92,43,370/- should not be treated as undisclosed income and be added to the total income of the assessee. The assessee replied before the AO vide letter dated 20.3.2013 stating therein that the assessee has purchased from these parties various gift articles for promoting its sales and a few Xerox copies of photographs taken during the promotional activity were also filed. The assessee also filed a copy of stock register, evidencing the receipt and issue of gift articles besides copies of confirmations from shopkeepers etc which as per the AO were self made without PAN and without any descriptions of items or goods and quantity distributed to the customers. Ultimately, the assessment was completed under section 143(3) vide assessment order

dated 28.3.2013 assessing the income at Rs.14,20,47,620/- by making various additions inter alia of bogus purchase of Rs.4,92,43,370/-.

6. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id.CIT(A) who, after considering the submissions of the assessee as has been incorporated at pages 9 and 10 of the appeal order concerning the issue of purchases, decided the issue of bogus purchases against the assessee by observing and holding as under :

*"5.4. Ground Nos.6 to 8 are regarding the addition on account of bogus purchases from three parties amounting to Rs.4,92,43,370/- which has been proved a hawala entry provider by the enquiries of the Sales Tax Authorities, the investigation wing of Income Tax Department and the inquiry of the AO. It is noted that the appellant during the assessment proceedings could not provide any documentary evidence of actual delivery of material allegedly purchased from said party. During the appeal proceedings also the appellant could not file any documentary evidence at all regarding the allegedly bogus invoices, which could show that it has actually purchased any material from the said party. Under these circumstances, prime facie such purchases does not appear genuine.*

*Though the appellant has tried to take shelter of the fact that payments to these parties was made through cheque, it is wroth nothing that in the case of Sumati Dayal (214 ITR 801), the Hon'ble Apex Court has also held that one has to consider all surrounding circumstances for accepting the genuineness of a transaction. Further, in the case of P Mohankala 291 ITR 278, also after considering the entirety of surrounding circumstances the Hon'ble Supreme Court has not accepted the genuineness of cash credits even though the same were received through banking channels.*

*In the instant case, it is an undisputed fact that detailed inquiries by Sales Tax Department and LT. Department revealed that the three*

*parties in question, from whom the appellant has claimed purchase worth Rs.4,92,43,370j- does not appears in position to actually supply the material to the assessee as they do not have any infrastructure and capacity and only exist on paper. Under these circumstances, it is quite clear that neither there is any evidence which could prove the capacity of the said party for supplying huge material to the assessee nor the assessee has filed any convincing documentary evidence of actual receipt of material from these parties, as there has been no mention of mode of delivery (transport) on the bills of the party in question, whereas in respect of genuine purchases, the concerned parties mention the details of mode of transport. When the A.O has clinching evidence to show that there have not been any actual purchases from such parties, under these circumstances, the assessee is required to prove otherwise. Neither at the time of assessment stage nor at the appeal proceedings, the appellant could produce any of the party nor was any evidence in support of actual purchase put forward by the appellant. Under these circumstances, it is clear that the appellant has inflated the expenses on account of the above referred bogus purchases shown from the three hawala entry providers. Such purchase has resulted in reduction of actual income of appellant; accordingly, the addition made by the AO is upheld.*

7. The Id. AR of the assessee vehemently submitted before us that the order passed by the AO and confirmed by the Id.CIT(A) were made without considering the facts on record as produced before them. The Id AR argued before us that the primary reasons for treating the purchases as bogus and fictitious were on the ground that non service of notice under section 133(6) of the Act to the suppliers/parties. While drawing our attention to the copies of the written submissions made before the assessing officer dated 20.3.2013 filed at pages no.79 to 81 of the paper book, the Id. Counsel argued that bills and vouchers pertaining to the

purchases made from three parties who were alleged to be hawala operators were furnished with the further details that the assessee purchased gift items from these parties which were used for promotional activities of its brand of Indian made foreign liquor which was corroborated by the photographs taken during the promotional activities. The Id. Counsel argued that stock register showing various gifts purchased from these parties and issued for promotional activities were duly maintained and were also produced before the authorities below. Further, the Id. AR in support of the contentions brought to the notice of the bench the delivery challans filed before the AO at page 2 of the written submissions which was forming part of paper book at page 80. The Id. AR drew our attention to the gift articles purchased for the sales promotion as per details below:-

- 1.OCW glasses*
- 2.OCW Steel jar*
- 3.OCW T-Shirts*
- 4.OCW Key chain*
- 5.Ice Box with Company Logo.*
- 6.Crystal glass & bowls.*
- 7.Plastic jars with Company logo.*
- 8.Wall Clock.*
- 9. Wrist Watches.*
- 10. Pen sets*
- 11. Key chains*
- 12. OCW plates*

*The promotional scheme offered by the assessee are as under:-*

*- On pack offer in retail shops*

*- On purchase of 750 ml bottle get 3 crystal Glasses Free*

*- On purchase of 375 ml bottle get 2 Glasses Free.*

*- On purchase of 180 ml bottle get 1 Glass Free.”*

The Id. Counsel further submitted that in order to prove the promotional activities undertaken by the assessee, the confirmation given by the retailers /wine shop owners and the bills whereof given at pages 81 of the paper book who have carried out consumer promotional activities. During the course of hearing the learned counsel brought to our attention the copies of confirmations and various photographs taken during the promotional activities as attached to the paper book at page 83 onwards up to 134. Copies of the stock register were also produced and placed before the Bench as filed at of pages 56 to 87 of the paper book. The Id.Counsel for the assessee submitted that the allegations and the observations of the AO that the items purchased were not identifiable was wrong and devoid of truth as all these supporting documents were produced and placed before the authorities below. The Id. Counsel submitted that with regard to the receipt of gift materials and consumption thereof in the promotional activities, the AO noted that PANs of the retailers /permit holder/wine shop owner were not mentioned on the confirmations and therefore the confirmations were absurd and



meaningless. The Id. Counsel for the assessee drew our attention to bank statements filed at page 32 to 51 evidencing the payments to these suppliers by account payee cheques from the current account of the assessee maintained with Punjab National Bank and Axis Bank which were directly remitted to the accounts of various suppliers and there was no allegation either by the AO or by the FAA that the assessee received money back. The Id. Counsel for the assessee stated before us that since primary onus on the assessee has been discharged by the assessee and thereafter the onus shifted to the revenue to prove the illegality of bogus purchases. In defence of his arguments the Id.AR relied upon the decision of Mumbai Bench of the Tribunal in the case of M/s MPIL Steel Structures Ltd V/s DCIT in ITA No.6602/Mum/2014 (AY-2011-012) dated 28.7.2016 (wherein Accountant Member and Author is one of the party) and the decision of Tribunal in the case of CIT v/s Tarla R Shah (2016) 46 CCH 0080 MumTrib. In the first decision the Id. Counsel submitted that one of the parties M/s Kotsons Impex P Ltd from whom the purchases were made of Rs.13,77,050/- by the assessee also supplied material to M/s MPIL Steel Structures Ltd as appeared at sr.no.4 at page 3 of the said decision. The Id. Counsel further submitted that the statement recorded by the Sales Tax Department were neither available before the AO nor did the revenue make any independent inquiry to know

the factual position. No opportunity to cross examine the deponents who gave affidavit before the Sales Tax Department was given which was in gross violation of the principle of natural justice. The assessee could have offered explanation or controverted the contents of the materials as provided by the Sales Tax Department and used against it only when the said material was supplied to the assessee. In support of his contention, the Id.AR relied in the case of M/s Andman Timber Industries V/s Commissioner of Central Excise, Kolkata-II in Civil Appeal no.4228 of 2006 order dated 2.9.2015. It was also argued before us that the alleged hawala dealers did not name the assessee specifically and therefore the conclusion drawn by the revenue authorities that the assessee has made purchases from hawala dealers was bad in law and without substance by relying on the decision of the Hon'ble Supreme Court in the case of ITO V/s Lakhmani Mewal Das reported in (1976) CTR 0220 (SC) = (1976) 103 ITR 0437. The Id. Counsel finally submitted that the AO has totally failed to consider facts of the assessee qua purchases having been made which were supported with bills and entries in books of account and stock register, payments appearing in bank statements and other photographs of promotional activities and documents evidencing that all these gifts items were actually purchased, received, issued and finally used in sales promotion and the payments were also made through

banking channels. The AO has relied on the information received from the third party i.e. sales tax department on the basis of statements of suppliers which were neither supplied to the assessee nor cross-examination was ever allowed. Finally the Id. AR requested the Bench to set aside the order of the FAA and direct the AO to delete the addition.

8. Per contra, the Id. DR relied heavily on the orders of the authorities below and submitted that since the action of the AO was based upon the evidences which were in the form of statements recorded before the sales tax authorities in which the said parties have made candid and clear admission of having engaged in hawala operations of issuing bills and invoices without actually supplying the material. Ld DR further submitted that the assessee was found to be beneficiaries of these hawala transactions. The Id DR submitted before the bench that the statements of hawala dealers before VAT authorities were sufficient materials to disallow the bogus purchases and prayed that the order of FAA be upheld and confirmed.

9. We have carefully considered the rival contentions, perused the material placed before us during the course of hearing including the orders of the authorities below as also the decisions relied upon by the parties. The assessee was engaged in the business of manufacturing of

Indian made foreign liquor primarily Officers Choice Whisky. During the year the assessee purchased various gift items such as *OCW glasses,OCW Steel jar,OCW T-Shirts,OCW Key chain,Ice Box with Company Logo,Crystal glass & bowls,Plastic jars with Company logo,Wall Clock, Wrist Watches, Pen sets,Key chains and OCW plates which used in the promotional scheme offered by the assessee such as on purchase of 750 ml bottle get 3 crystal Glasses Free,on purchase of 375 ml bottle get 2 Glasses Free and on purchase of 180 ml bottle get 1 Glass Free etc.* The materials were purchased from three suppliers to the tune of Rs.4,92,43,370/- as per the details given above. The AO, on the basis of information from DGIT (Inv), Mumbai and on the basis of notification issued by the sales tax department GOM declaring that these suppliers as hawala operators, made the addition of the total purchases from these parties by treating the same as bogus for the reasons that notices sent under section 133(6) to these hawala parties were returned un-served. The assessee filed before the AO complete books of accounts, items wise stock register evidencing the receipts of gift materials and issue thereof as attached in the paper book page 56 to 78. In order to prove the use of gift items in the promotional activities, photographs of the functions and promotional activities and also confirmations from the shop keepers were also produced before the AO which were disbelieved by the AO on the

ground that the confirmations were not bearing the PAN of the persons confirming the consumptions of gift materials. The assessee has also produced copies of bank statements of Punjab National Bank and Axis Bank evidencing the payments through banking channels by account payee cheques to the suppliers filed at pages no. 32 to 51 of the paper book. Having considered all these facts which were before the AO as well as FAA, we find that the assessee has discharged its onus by producing the books of accounts, stock register, stock tally and also filing various documentary evidences such as statements of banks etc, confirmations and photographs of the promotional events before us. In our opinion the assessee has discharged the onus cast upon it. Once the assessee filed all the documents and evidences corroborating the purchases and consumption thereof, the onus of further verification shifts to the AO who has not conducted any independent inquiry or further verification of the records produced before him and proceeded to disallow the purchases merely on the basis of information DG(IT), Mumbai and information published on the website of the Sales Tax Department of Maharashtra Government. In our opinion, the purchase made by the assessee could not be disbelieved merely on the basis of information received from the third party without carrying out any meaningful enquiry and further verification on the various records and information filed during the course

of assessment proceedings. We are not in agreement with conclusion drawn by the FAA upholding the action of the AO. The case of the assessee is also supported by M/s MPIL Steel Structures Ltd (supra), wherein the AO on the basis of information received from the Sales Tax Department on the website disallowed the purchases made from eight parties and the co-ordinate bench of the tribunal deleted the addition reversing the order of FAA by holding as under :

*"7. We have carefully considered the rival submissions and perused the record placed before us including the orders of authorities below and case law relied upon by the parties. We find that the AO made the addition of Rs.7,48,31,548/- which was reduced to Rs.63,29,735/- by the Id. CIT(A) on the basis of remand report called for during the appellate proceedings which was furnished by the AO vide letter dated 31.7.2014. We find that the assessee submitted the copies of ledger account, copies of bank statements, copies of purchase bills, material delivery challans in order to substantiate the purchases made from those parties. Besides the assessee also produced stock register in which the entries of material received and consumed for production in order to prove the case of assessee and ultimately sold all the finished goods for which no doubts were raised by the tax authority. We also note that the books of account were not rejected by the AO and only the purchases were doubted which were reduced by the Id. CIT(A) substantially. Now, the question before us is whether the purchases as made by the assessee were bogus despite the facts that the material was received with supporting bills and vouchers and payments were made through banking channels and all the material received was also consumed as shown in the stock register and ultimately sold by the assessee which were not doubted at all. The remand report reveals that the purchases were doubted primarily for the reasons such as non services of notices u/s 133(6), non production of supplies before the tax authorities, non-filing of the confirmation letters from the suppliers, non furnishing of bank statements, return of income, financial*

*statements in support of claim of the assessee and lastly in respect of four parties, it was alleged that the parties were put on the website of Maharashtra Sales Tax department declaring them as suspicious hawala dealer. Looking to the facts and circumstances of case in totality, we are of the considered opinion that when material were purchased and payment were made through banking channel and the material consumed in the manufacturing process which was not at all in doubt then the tax authorities are not justified in treating the purchase as bogus. The books of accounts were rejected by the AO. The case of the assessee also finds supports from the following decisions:*

*In the case of YFC Projects (P) Ltd (supra), it has been held as under :*

*"The assessee had achieved a turnover of Rs. 884.81 lakhs. It had shown net profit of Rs. 79.11 lakhs. Its net profit in terms of percentage was almost double than the previous year. The Assessing Officer was unable to point out a single defect in its books of account. Merely due to non-filing of confirmation from the supplier, it could not be held that the assessee had not received the goods from 'S' and that the credit balance in the shape of sundry credit appearing in the books of account was unaccounted money of the assessee. The assessee had filed a certificate from the bank indicating the fact that cheque issued by it were cleared. The Assessing Officer was harping upon only one aspect that the notice issued to 'S' had returned back with a remark 'not known', thereafter, he did not take any steps to procure the presence of this person. According to the assessee, notice did not contain the father's name of 'S', that might have been the reason for the return of the notice, otherwise on the bills raised by 'S' his mobile number was available. He could have been contacted on this mobile number. [Para 10]*

*In view of the above, it was to be held that the Assessing Officer was not justified in making the disallowance of purchases made by the assessee. [Para 11]*

*In the result, the appeal filed by the assessee was to be allowed. [Para 12]"*

*In the case of Rajeev G Kalathial (supra), it has been held as under :*

*"The Assessing Officer had made the addition as one of the supplier was declared a hawala dealer by the VAT Department. It was a good starting point for making further investigation and take it to logical end. But, he left the job at initial point itself. Suspicion of highest degree cannot take place of evidence. He could have called for the details of the bank accounts of the suppliers to find out as whether there was any immediate cash withdrawal from their account. There is no such exercise was done. Transportation of goods to the site is one of the deciding factor to be considered for resolving the issue. The First Appellate Authority has given a finding of fact that part of the goods received by the assessee was forming part of closing stock. There is nothing, in the order of the Assessing Officer, about the cash withdrawal. Secondly, proof of movement of goods is not in doubt. Therefore, considering the peculiar facts and circumstances of the case under appeal, that the order of the FAA does not suffer from any legal infirmity and there are not sufficient evidence on file to endorse the view taken by the Assessing Officer. So, confirming the order of the FAA, the issue is decided against the Assessing Officer. [Para 2.4]"*

*In the case of JAGDISHCHANDRA VISHWAKARMA 59 DTR 415 (Indore Bench, the Bench held as under :*

*"Income from undisclosed sources-Addition-Alleged bogus purchases(CIT)(A) and the Tribunal have recorded categorical findings of fact that the satisfactorily explained the details and modes of payments for purchased from two concerns and that the AO is not correct in doubting the purchases made from the said concerns"*

*8. In our opinion, the assessee has discharged the onus cast upon it in proving these purchases. We, respectfully following the ratio laid down in the above decisions, delete the addition sustained by the Id.CIT(A) and direct AO accordingly.*

In the case of Tarla R Shah (supra), the co-ordinate bench has held that the addition made merely on the basis of observations by Sales Tax



Department and without conducting any independent inquiry specially when the assessee has discharged his primary onus by showing the books of account and payment by way of account payee cheques and producing bills and vouchers for sales of goods, the addition could not be sustained. The assessee was also not given a copy of the statements recorded from the hawala operators and therefore no cross-examination could be asked by the assessee which is also against the equity and the principle of natural justice as has been held by the Hon'ble Apex Court in the case of M/s Andman Timber Industries (supra). Moreover, the assessee was not named principle beneficiary by any of the suppliers of goods to be purchased from hawala entries and therefore it would be unreasonable to infer that the assessee might have availed the benefit of hawala transactions.

In the case of Lakhmani Mewal Das (supra), the hon'ble Apex Court has observed and held (para 10):

*"10. We may now deal with the first ground mentioned in the report of the Income-tax Officer to the Commissioner of Income-tax. This ground relates to Mohansingh Kanayalal, against whose name there was an entry about the payment of Rs.74, annas 3 as interest in the books of the assessee, having made a confession that he was doing only name-lending. There is nothing to show that the above confession related to a loan to the assessee and not to someone else, much less to the loan of Rs. 2,500 which was shown to have been advanced by that person to the assessee-respondent. There is also no indication as to when that confession was made and whether it relates to the period from April 1, 1957, to March*

*31,1958, which is the subject-matter of the assessment sought to be reopened. The report was made on February 13, 1967. In the absence of the date of the alleged confession, it would not be unreasonable to assume that the confession was made a few weeks or months before the report. To infer from that confession that it relates to the period from April 1, 1957, to March 31, 1958, and that it pertains to the loan shown to have been advanced to the assessee, in our opinion, would be rather farfetched."*

After going through the facts in the assessee's case in the light of ratio laid down by the Hon'ble Apex Court and the decisions of the Tribunal, we are of the considered opinion that the order passed by the FAA is not correct and cannot be sustained. We, therefore, following the ratio laid down in the decisions referred to above are inclined to set aside the order of Id.CIT(A) and direct the AO to delete the addition.

**ITA No.2574/Mum/2015: ( AY-2011-12)**

10. The issue raised by the assessee is against the sustenance and upholding the addition on account of bogus purchases from hawala dealers. Since we have already decided the identical issue raised in ITA No 2573/Mum/2015 assessment year 2010-11 in favour of the assessee. The facts and issue in this appeal are identical, therefore our decision in ITA No 2573/Mum/2015 would, mutatis mutandis, apply to this appeal as well and accordingly we set aside the order of CIT(A) on this issue and

direct the AO to delete the addition. In result the appeal of the assessee is allowed.

**ITA No.2447/Mum/2015 (AY-2010-11)**

11. The grounds of appeal taken by the revenue in this appeal read as under :

*"i. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the disallowance made by the AO without appreciating the fact that the provisions for auditors fees and legal and profession expenses are contingent in nature and therefore no allowable under section 37 of the Income Tax Act, 1961?*

*(ii) On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the proportionate disallowance of interest made by the AO without appreciating the fact that assessee has failed to substantiate that the interest free advances was given from its surplus fund and in connection with any business expediency?*

12. The first issue raised by the revenue in this appeal pertains to deletion of addition on account of professional fees and legal fees as made by the AO by holding that the same were of contingent in nature and not allowable under section 37 of the Act. During the course of assessment proceedings, the AO found that the assessee has debited an amount of Rs.12,45,410/- as provision for internal audit fees and tax audit with its address No.38, Bombay Mutual Building, 2<sup>nd</sup> floor, Mumbai, which the AO observed that the provision of such expenses were not

admissible and accordingly disallowed the same. The AO noted another item of audit fees and legal charges which was payable to "Actuarial valuation for determining gratuity and leave encashment provision for staff" payable to Mr.K A Pandit which according to the AO was not allowable as contingent liability. In all the AO disallowed an amount of Rs.13,04,410/- on account of provision for expenses during the year.

13. The Id. CIT(A) allowed the appeal of the assessee on this ground after considering the contention and submissions as made by the Id.AR during the course of appellate proceedings by observing and holding as under:-

*: The AO has disallowed an expenditure of Rs.13,05,410/- in respect of provisions for Auditors fees under the head "Legal & Profession expenses which is payable to two parties of Mumbai for tax audit report and valuation of gratuity and leave encashment. The AO has disallowed the said sums on the ground that it is a contingent liability which is not allowable u/s 37(1) of the IT. Act. On the other hand, it was the plea of the appellant before the AO as well as during the appeal that such expenses are regular routine expenditure year after year and since the expenditure in question is in respect of the current financial year, therefore, in the mercantile system of accounting followed by the appellant it is an allowable deduction. After considering the rival submissions, I agree with the contention of the appellant that in mercantile system the appellant has to debit all expenses pertaining to the current year in its P&L account. Further, the provision is made on the basis of similar expenditure incurred in earlier year, therefore, it cannot be said to be , mere guess work or adhoc in nature as it is based on a figure of similar expenses in earlier year, therefore, under these circumstances, it becomes an ascertained liability which is a*

*deductible expenditure during the year under consideration. The AO is accordingly directed to delete the disallowance."*

14. We have carefully considered the rival contentions, perused the material placed before us during the course of hearing including the decisions of authorities below as also the decisions relied upon by the parties. We find that the assessee has debited a sum of Rs.12,45,410/- on account of yearly provisions for internal audit and tax audit fee and Rs.60,000/- as legal and professional charges payable to Mr.K A Pandit for "Actuarial valuation for determining gratuity and leave encashment provision for staff" . The said expenses are in the nature of routine and regular expenses which are incurred and provided at the end of each year and were accordingly accounted for by the assessee on the basis of mercantile system of accounting. Further, the FAA has rightly come to the conclusion that the assessee has rightly accounted for these expenses by following the mercantile system of accounting and the same could not be disallowed by treating as provision for expenses and in the nature of contingent expenses. The FAA also noted that the said expenses are not based upon the guess work or adhoc and were provided in the same manner as in the earlier years on the basis of mercantile system of accounting. Moreover, the liability was very much ascertained and foreseeable due to regular nature of expenses. We are, therefore,

inclined not to interfere with the reasoned order of the Id.CIT(A) on this issue and accordingly uphold the same by dismissing the ground raised by the revenue.

15. The second issue raised in this appeal is disallowance of proportionate interest by the Id.CIT(A) as made by the AO qua interest free advances given. During the course of assessment proceedings, the AO found that the assessee has incurred a sum of Rs.11,38,16,694/- on account of interest and banking charges. The AO noted that the assessee was paying interest at the rate of 15% on unsecured loans whereas, on the other hand, the assessee also advanced money to Tracstar Investment Pvt.Ltd amounting to Rs.5,00,62,122/- without charging any interest. The AO by notice dated 18.2.2013 called upon the assessee as to why the proportionate interest on the said advances should not be disallowed which was replied by the assessee vide letter dated 19.2.2013 stating that advances to Tracstar Investment Pvt. Ltd was business advances as the said company was providing bottling services to the assessee of Indian Made foreign Liquor (IMFL) manufactured by the assessee and therefore given out of business consideration and commercial expediency. The AO did not find the submissions of the assessee as substantive and convincing and accordingly disallowed a sum

of Rs.75,09,918/-. During the course of appellate proceedings, the Id. CIT(A) deleted the addition by observing and holding as under :

*"5.3 Ground Nos.4 & 5 are regarding' the disallowance of proportionate interest of Rs.75,09,318/- on interest free advance to M/s Trackstar Investment Pvt Ltd. It is presumed by the AO that the advance may out of borrowed funds. However, it is claimed by the appellant that it is old advance which is in respect of business deals in the said party, which varied from year to year. It is also undisputed fact that in the earlier years no disallowance of proportionate interest was made by the A.O, therefore it can safely be assumed that in earlier year the A.O was satisfied with the nature of advance Otherwise, also it is another undisputed fact that the appellant has own fund of more than 124 crores, therefore under these circumstances it cannot be said that a part of borrowed funds has been utilized for investment in the said property. The decision of Hon'ble Bombay High Court in the case of Reliance Utilities Ltd. (Supra) relied upon by the appellant is also squarely applicable to the facts of the case. After considering the rival submission, I agree with the plea of appellant that considering the nature of advance, availability of huge own funds with appellant and the past history of case in the light of decision of Bombay High Court in case of M/s Reliance Utility Ltd., the advance is covered from the huge own funds. The disallowance made by the AO is, therefore, on wrong assumptions, the same is directed to be deleted"*

16. We have carefully considered the rival contentions, perused the material placed before us during the course of hearing including the decision of authorities below. We find that the assessee has advanced money to M/s Tracstar Investment Pvt Ltd during the year to the tune of Rs.5,00,62,122/- which accordingly to the assessee was a business advances wholly given out of commercial expediency and business considerations as the said company bottled the liquor manufactured by

the assessee and was given in that connection. The FAA also recorded the findings of facts in his appellate order that no disallowance of proportionate interest was made by the AO in the earlier years. Moreover, the assessee's own funds were more than Rs.124 crores and the Id. CIT(A) further recorded the finding of facts that the said advances was not given out of borrowed funds. In our opinion, the order passed by the Id. CIT(A) ,after considering the contention and submissions that the advances were given out of business consideration and commercial expediency as M/s Tracstar Investment Pvt.Ltd was providing bottling services to the assessee, does not contain any infirmities and conclusion drawn by the Id. CIT(A) is supported by the decision of the jurisdictional High Court in the case of Reliance Utilities (supra) in which it has been held that the assessee's own funds are more than the borrowed funds then no disallowance on account of interest is called for. After considering the facts and the ratio laid down we are inclined to uphold the order of Id CIT(A) by dismissing the ground raised by the revenue.

**ITA No.2446/Mum/2015: ( AY-2011-12)**

17. Since we have decided the identical issue ITA No 2447/Mum/2015 in the assessment year 2010-11 in favour of the assessee. The facts and issue in this appeal are identical, therefore our decision in ITA No



2447/Mum/2015 would , mutatis mutandis, apply to this appeal as well.  
Accordingly, the appeal of the revenue is dismissed.

18. In the result, the appeal of the assessee stands allowed and that of  
revenue are dismissed.

Order pronounced in the open court on 21st Feb, 2017.

Sd

sd

**(C.N. Prasad)**

**न्यायिक सदस्य / Judicial Member**

**(Rajesh Kumar)**

**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21.2.2017  
SRL,Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai