

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'B' BENCH : Hyderabad**

(Through Video Conference)

**Before Shri S.S. GODARA, Judicial Member
and
Shri L.P. SAHU, Accountant Member**

**ITA Nos. 1502 to 1504/Hyd./2016
Assessment Years : 2010-11 to 2012-13**

**ITA No. 1496/Hyd./2017
Assessment Year : 2013-14**

**ITA No. 549/Hyd./2018
Assessment Year : 2014-15**

M/s Yeturu Bio Tech Limited
Hyderabad

vs. Dy.CIT, Circle 3(3)
[Presently ITO, Ward 17(4)]
Hyderabad.

[PAN: AAACY0850F]

(Appellant)

(Respondent)

For Appellant: Sri A.V Raghu Ram, Adv.
For Respondent : Shri Rohit Mujumdar, DR
Smt. M. Narmada, DR [in ITA 549/Hyd/2018]

Date of Hearing : 17/06/2021
21/06/2021 [ITA 549/Hyd/2018]

Date of Pronouncement : 12/07/2021

ORDER

PER S.S. GODARA, J.M.

These assessee's five appeals arise against the CIT(A)-5 Hyderabad's common order dated 31.8.2016 passed in case nos.384/2014-15, 635/2014-15 and 665/2014-15 [for AYs 2010-11, 2011-12 & 2012-13] and order dated 20.6.2017 in case nos.39/2016-17 , 0335/2016-17 [for A.Y. 2013-14

and 2014-15] respectively; involving proceedings u/s 143(3) of the Income Tax Act, 1961 [in short 'the Act'].

Heard both the parties. Case files perused.

2. We notice at the outset that the assessee's identical sole substantive ground raised in all these appeals challenges correctness of both the lower authorities' action invoking sec.40A(2) disallowance(s) of Rs.64,99,316/-, 98,94,950/-, 1,77,94,075/- and 71,05,647/- and 53,23,184/-; Assessment year wise respectively pertaining to its purchase price(s) paid to the related parties/directors involving "aloe vera leaves" for the purpose of manufacturing aloe vera products in various segments.

3. We have given our thoughtful consideration to rival contentions against and in support of the impugned disallowance. A perusal of these case file suggests that the assessee had claimed the corresponding purchase price(s) @ Rs.10/- per kg whereas the learned lower authorities; and more particularly the CIT(A), has taken it @ Rs.5/- per kg in the former common order and @ Rs.6/- in the latter ones (supra); respectively.

4. Ld.DR invited our attention to CIT(A)'s order in para 6.7 page 10 that the Assessing Officer had duly found a comparable case i.e. M/s Biomax Life Sciences Ltd. having purchased aloe vera leaves at an average price of Rs. 3.50 paise per kg in Ongole, Ananthapur, Chotuppall and Vinukonda of Guntur district (in the undivided state of Andhra Pradesh). His case therefore is that the assessee has already been granted sufficient relief in estimating aloe vera rates (supra) respectively.

5. We have given our thoughtful consideration to rival contentions and find no reason to express our concurrence with either parties stand in entirety. There is hardly any dispute that sec. 40A(2) is applicable in case of a revenue expenditure claim involving payments made to related parties; if it is found that the same is either excessive as compared to market rate or is unreasonable; as the case may be. The CBDT's Circular issued way back on 6.7.1968 issued directions to the field authorities long back that the impugned statutory provision does not come into play if both the payer as well as the payee are assessed at the same rate. This is followed by various judicial precedents Pr.CIT vs Gujarat Gas Finance Services Ltd. (2015) 233 taxmann.com 532 (Guj.) and also CIT vs Sarjan Realities Ltd. (2014) 50 taxmann.com 52 (Guj) holding that just because the assessee has paid a particular price to a third party does not itself form the market rate of the corresponding goods or services; as the case may be.

5.1. We keep in mind the foregoing legal and factual position to advert to the facts of the instant case once again. It has come on record that the learned lower authorities have adopted M/s Biomax Life Sciences Ltd. as the comparable in the very segment of aloe vera leaves purchases. There is no indication as to whether the said entity had in fact purchased this very produce at the correct market rate or not since it is found that aloe vera leaves is product falls outside the goods covered under the "minimum support price/MSP" regime. All these makes it rather clear that we are dealing with a highly perishable commodity not having any specified market or market price anywhere in the country which could be treated as a benchmark as per the comparable rates u/s 40A(2)(a) of the Act. And also that the possibility of distress sales as well as purchases of aloe vera leaves; from both sides, could not be altogether ruled out.

5.2. The fact also remains that the assessee has not been able to justify its aloe vera purchase prices paid @ Rs.10/- per kg involving its related parties.

Faced with this situation, we deem it proper that aloe vera purchase price estimation of Rs.7/- per kg in all these AYs 2010-11 to 2014-15 would be just and proper with a rider that the same shall not be treated as a precedent in any other case or assessment year; as the case may be. We order accordingly. Necessary computation shall follow as per law.

5.3. No other argument has been raised before us.

These assessee's five appeals are partly allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in Open Court on 12/07/2021.

Sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-

(S.S. GODARA)
JUDICIAL MEMBER

Dated: 12th July, 2021

*gmv

Copy of Order forwarded to:

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2. Dy.CIT, Circle 3(3) [Presently ITO, Ward 17(4)] Hyderabad
3. ACIT, Range 17, Hyderabad
4. CIT (A) - 5, Hyderabad
5. Pr.CIT-5, Hyderabad .
6. D.R. ITAT Hyderabad
7. Guard File