

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-C” BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER

ITA No.1830/Bang/2016
(Assessment year: 2012-13)

M/s. Alpha Enterprises, KCC & 1 Building, J C Nagar, Hubli. PAN : AAJFA1169M	Vs.	Income Tax Officer Ward-1(1), Hubli.
Appellant		Respondent

Assessee by	:	Ms. Suman Lunkar, CA
Revenue by	:	Ms. S. Praveena, Addl. CIT

Date of hearing	:	1.12.2016
Date of Pronouncement	:	5.12.2016

ORDER

Per George George K, JM :

This appeal at instance of the assessee is directed against CIT(A) order dated 30.8.2016. The relevant assessment year is 2012 – 2013.

2. Brief facts of the case are as follows:

The assessee is a registered partnership firm. It carries on business of trading in switch gears, electrical panels and other electrical goods. The return of income for the AY 2012-13 was filed declaring total income of Rs.13,43,980/-. Assessment was taken up for scrutiny by issuance of notice under section 143(2) of the Act on 28.8.2013. The assessment under section 143(3) of the Act was completed vide order dated 13.3.2015. In the assessment completed u/s 143(3) of the Act, the AO had disallowed the commission paid amounting to Rs.13,89,188/- and also made disallowance of certain personal expenditure amounting to Rs.1,28,944/-.

3. Aggrieved by the disallowance, the assessee preferred appeal to the first appellate authority. The CIT(A) sustained the disallowance to 50% of the commission payment. With regard to disallowance of Rs.1,28,944/- towards personal expenses of the partners, the action of the AO was confirmed.

4. Aggrieved by the order of the CIT(A), the assessee is in appeal before the tribunal. The learned counsel for the submitted both the issues that were considered in assessee's own case for the AY 2010-11 by the tribunal vide order dated 16.9.2016 in ITA No. 549/B/2016. The learned DR present was duly heard.

5. I have heard the rival submission and perused the material on record. The AO had disallowed a sum of Rs.13,89,188/- paid as commission to three persons. The AO had made disallowance for the preceding AY namely AY 2010-11 giving identical reasons. For the preceding AY, the tribunal in assessee's own case (supra) had decided the issue in favour of the assessee and deleted the CIT(A) action for sustaining 50% of the disallowance with regard to the

commission payment. The relevant findings of the tribunal reads as follows:

“I have considered the facts of the case and gone through the orders of the lower authorities. I find force in the submissions of the learned AR of the assessee about the first issue i.e., 50% disallowance out of commission expenses because this is not the case of the revenue that section 40A (2b) is applicable in respect of these payments. Having allowed deduction for 50% of the expenses, Learned CIT(A) has not indicated any valid basis for upholding the balance disallowance. Hence, I delete the balance disallowance out of commission expenses.”

5.1 In view of the coordinate bench's order of the tribunal in assessee's own case for AY 2010-11 (supra), we allow ground No. 3 to 3.5.

5.2. As regards the disallowance of personal expenses, we find the tribunal in assessee's own case in AY 2010-11 (supra) had decided the issue against the assessee. The relevant finding of the tribunal reads as follows:

“Regarding the second issue, I find that the disallowance of Rs.50,000/- was made by the A.O. mainly on account of personal use of vehicles and telephones. This is not shown by the assessee that the partners were having personal vehicles and telephones for personal use. Hence personal use of vehicles and telephones cannot be ruled out. Hence, on this issue, I find no reason to interfere in the order of the CIT(A).

In the result, the appeal of the assessee is partly allowed.”

5.3 In view of the above said finding of the tribunal, we hold the authorities below justified in making disallowance on account of personal expenses.

6. No other issues were argued before us.

7. In the result, the appeal filed by the assessee is partly allowed as indicated above.

Order pronounced in the open court on 5-12-2016.

Sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place : Bangalore
Dated : 05/12/2016
/NS/

Copy to :

1. Appellant
2. Respondent
3. CIT(A)-II Bangalore
4. CIT
5. DR, ITAT, Bangalore
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore