

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
BEFORE S/SHRI SAKTIJIT DEY, (JM) AND ASHWINI TANEJA (AM)

ITA NO.7213/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2010-11)

Mrs.Ritu Sanjay Toshniwal, 322, Unique Industrial Estate, Bombay Dyeing Compound, Prabhadevi, Dadar (W), Mumbai-400025	<u>बनाम/</u> Vs.	Jt. Commissioner of Income Tax, Range-18(1), Mumbai
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

ITA NO.7725/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2009-10)

Mrs.Ritu Sanjay Toshniwal, 322, Unique Industrial Estate, Bombay Dyeing Compound, Prabhadevi, Dadar (W), Mumbai-400025	<u>बनाम/</u> Vs.	Asstt. Commissioner of Income Tax, Range-18(1), Mumbai
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN : AAAPT6005G

अपीलार्थी की ओर से / Assessee by	:	Shri Vijay Mehta
प्रत्यर्थी की ओर से/Revenue by	:	Purushottam Kumar

सुनवाई की तारीख /Date of Hearing	:	20.4.2017
घोषणा की तारीख /Date of Pronouncement	:	12.5.2017

आदेश / O R D E R**PER SAKTIJIT DEY, JUDICIAL MEMBER,**

These two appeals by the same assessee are directed against separate orders of Id.CIT(A), Mumbai for the assessment years 2009-2010 and 2010-11.

2. Ground No.1 raised by the assessee in ITA No.7725/Mum/2014 is not pressed by the assessee, accordingly, the said ground is dismissed.

3. The only other surviving issue raised in ground no.2 of ITA No.7725/Mum/2014 and the only issue in ITA No.7213/Mum/2014 relates to disallowance of foreign agency commission claimed by the assessee.

4. Briefly the facts which are more or less common in both the assessment years are, the assessee stated to be engaged in export of paper products through proprietary concern M/s Marisa International. As appears from record, for assessment year 2009-10, the assessee filed her return of income on 29.9.2009 declaring a total income of Rs.81,52,650/- and the assessment was completed u/s 143(3) of the Income Tax Act, 1961 accepting the returned income. For the assessment year 2010-11, the assessee filed her return of income on 25.9.2010 by declaring income

of Rs.91,32,450/-. During the assessment proceedings for assessment year 2010-11, the AO noticing that assessee had claimed deduction on account of foreign agency commission amounting to Rs.69,59,993/- called upon the assessee to furnish the details of services availed for which the commission was paid with supporting bills and invoices etc. In response to the query raised by the AO, the assessee furnished some details to show that commission was paid to M/s CPP International 11701, Still Creek Road, Charlotte NC 28273 USA. As alleged by the AO, the assessee neither furnished details of services availed nor the details of parties for which booking was made against which the commission was paid. Though, the assessee justified commission payment relying upon the agreement with the foreign entity, however, the AO was not convinced with the submissions of the assessee. He observed, from the agreement though it appears that assessee has dealt with M/s ShoreChem LLC but commission was shown payable to M/s CPP International. AO further observed, when asked to furnish confirmation of M/s ShoreChem LLC towards outstanding foreign agency commission, the assessee filed a copy of email received from another party. In view of various discrepancies in the statement qua evidences filed by assessee, ultimately, the AO concluded that the foreign agency commission claimed to have been paid

is not genuine as the assessee failed to establish with supporting evidences that services were rendered by the foreign agency. On the basis of information relating to foreign agency commission obtained in assessment year 2010-11, the Assessing Officer reopened the assessment for AY 2009-10. In course of assessment proceedings for assessment year 2009-10, the AO, as it appears, came across the information received under exchange of information Article of Indo-USA DTAA on the genuineness of the foreign agency commission paid by the assessee to M/s ShoreChem LLC. From the information received, the AO found that M/s ShoreChem LLC denied of having received any commission from the assessee. On the basis of information/material available on record, the AO disallowed the assessee's claim of foreign agency commission of Rs.97,31,907/- for assessment year 2009-10 also. Being aggrieved of disallowance of foreign agency commission payment the assessee preferred appeals before the Id.CIT(A), however, the Id. CIT(A) also sustained the disallowance for both the years.

5. The Id.AR reiterating the stand taken before the authorities below submitted that the assessee had ventured into the business of exporting paper product through her proprietary concern M/s Marisa International. It was submitted, to establish itself in foreign market, the assessee has

entered into an agreement with M/s ShoreChem LLC who had promised the assessee to find out buyers for assessee's product. Accordingly, agreement was entered with the said party, as per which the assessee was required to pay commission. However, as per the terms of agreement, for first five years there will be no commission payment but it will accrue in the name of M/s ShoreChem LLC and the commission payment on actual basis would start from 6th years onwards in annual equal installments. The Id. AR submitted, in view of the specific terms of the agreement the assessee started paying commission from the 6th year onwards and has transferred an amount of Rs.1,291,215/- on 24.12.2010 to Lindsay Logue who is a Member of M/s ShoreChem LLC and further amount of Rs.6,93,357.71 on 21.11.2011 to M/s ShoreChem LLC. In this context, the Id. AR drew our attention to the copy of bank statement which was sought to be produced as additional evidence. The Id. AR submitted that since the departmental authorities did not ask for the evidences during the proceedings before them the assessee could not submit earlier. He, therefore requested for admission of additional evidence. He also referred to the ledger copy wherein commission payable from 1.4.2005 to 31.3.2012 appear. The Id.AR submitted, a copy of email was also produced before the AO wherein a Member of M/s ShoreChem LLC has

acknowledged commission payment. Thus, the Id.AR submitted, the matter may be remitted to the AO for verifying assessee's claim on the basis of additional evidences produced.

6. The Id. DR strongly objecting to the admission of additional evidence submitted that the assessee has not shown justifiable reasons which prevented her from furnishing these evidences before the departmental authorities. The DR submitted, the assessee has not produced any evidence to establish the fact that commission was paid to M/s CPP International as claimed by her. He submitted, even relationship of Lindsay Logue with either M/s ShoreChem LLC or M/s CPP International have not been established. Under these circumstances, assessee's claim cannot be accepted.

7. We have considered the submissions of the parties and perused the materials on record. As it appears from record, assessee's claim of commission payment to the foreign agent has been disbelieved primarily on the basis of information received under exchange of information Article of Indo-USA DTAA. It is evident from the information received, which is reproduced in the assessment order passed for the assessment year 2009-10, the certified public accountant of M/s ShoreChem LLC has stated that since M/s ShoreChem LLC did not provide any service to M/s Marisa

International, no income has been received or accrued from M/s Marisa International. However, from the very same reply of the certified public accountant of M/s ShoreChem LLC it is evident that the owner of the said entity did not produce the email dated 6.3.2013. This is the email, the assessee claimed to have received from M/s Lindsay Logue the alleged owner of M/s ShoreChem LLC. It is further evident from the reply of the certified public accountant of M/s ShoreChem LLC that in 2005 and earlier, one of the Principal of M/s ShoreChem LLC introduced M/s Marisa International and its Principal for better business. He has stated that M/s ShoreChem LLC set up the meeting between the assessee and M/s CPP International and other customers in USA for helping M/s Marisa International for understanding market and retailers needs. From the said information of certified public accountant it is also evident that the Principal of M/s ShoreChem LLC did offer help to the Principal of M/s Marisa International for its stationery business in USA. From the aforesaid facts it appears that there was some kind of dealing between the assessee (Proprietor of M/s Marisa International) and M/s ShoreChem LLC and its principal as well as M/s CPP International for export of paper products and stationery items to USA. Therefore, assessee's claim that M/s ShoreChem LLC has acted as an agent cannot be discarded at the threshold without

examining the evidences brought on record. In this context, the additional evidences produced by the assessee assumes importance. On perusal of the ledger copy, we have noticed that commission payment is duly reflected. Similarly, bank statement copies demonstrate remittance of money to M/s ShoreChem LLC and Lindsay Logue. Therefore, in our view, the additional evidences produced by the assessee before us will have a crucial bearing in deciding the issue relating to payment of commission. Therefore, we are inclined to admit the additional evidences submitted before us. However, since these evidences were not before the departmental authorities, to give a fair chance to the department to examine the evidences and verify the authenticity of assessee's claim, we are inclined to restore the matter to the file of the AO for fresh adjudication. We make it clear, heavy burden is cast on the assessee to prove the genuineness of the commission payment with documentary evidences. AO is also required to verify the assessee's claim in the context of evidences brought on record and decide the issue after proper inquiry. Needless to mention, AO must offer reasonable and fair opportunity of being heard to the assessee.

8. In the result, appeal bearing ITA No.7725/Mum/2014 is partly allowed for statistical purposes and the appeal No.7313/Mum/2014 is allowed for statistical purposes.

Order pronounced in the open court on 12th May, 2017.

Sd

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(ASHWINI TANEJA)
लेखा सदस्य / **Accountant Member**

(SAKTIJIT DEY)
न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 12th May.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 cop

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