

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA Nos.5512 & 5513/Del/2015
Assessment Years : 2010-11 & 2011-12

Addagio Overseas,
1/18B, Asaf Ali Road,
New Delhi.

Vs. DCIT,
Central Circle-2,
New Delhi.

PAN: AAFFA4164Q

(Appellant)

(Respondent)

Assessee By : Shri S.K. Chaturvedi, CA
Department By : Shri T. Vasanthan, Sr. DR

Date of Hearing : 14.09.2017
Date of Pronouncement : 15.09.2017

ORDER

These two appeals by the assessee arise out of the separate orders passed by the Id. CIT(A) on 14.7.2015 in relation to the Assessment years 2010-11 & 2011-12. Since both the appeals are based on similar facts, I am proceeding to dispose them off by this consolidated order for the sake of convenience.

2. These are recalled matters inasmuch as the earlier ex parte order passed by the Tribunal for both the years was subsequently recalled vide its order dated 28.07.2017 in MA Nos.09 & 10/Del/2017

3. The only issue raised in these appeals is against the confirmation of disallowance of commission payment.

4. Briefly stated, the facts for the assessment year 2010-11 are that the assessee debited a sum of Rs.16,83,734/- as brokerage paid on sales and Rs.1,25,000/- by way of debit in Profit & Loss Account as brokerage. Similarly, a sum of Rs.10,47,592/- was also debited in the trading account on account of brokerage paid on purchases. The assessee was called upon to furnish complete details about the particulars of the persons to whom brokerage was paid and the nature of services rendered. On going through the details consisting of the particulars of the recipients only *de hors* the nature of services, the Assessing Officer observed that 66% of sale and purchases effected during the year were claimed to be made with the help of one family only. Out of the total payment made as commission/brokerage, the

Assessing Officer found that a sum of Rs.16,72,241/- was paid to four female members of the family, namely, Astha Gupta, Anupama Gupta, Suman Gupta and Shailja Gupta. Summons were issued u/s 131 of the Act to these four female members requiring them to produce the books of account and vouchers along with their annual accounts for the last three years. None of the four persons appeared on the given date. On 22.10.2012, the Assessing Officer called upon the assessee to produce the above referred four persons. Instead of producing these four persons, written submissions were filed in 'Dak' along with confirmations and copy of ITRs. The Assessing Officer required the assessee to produce these persons for showing the services rendered by them for which the said commission was paid. Once again, summons were issued u/s 131, but, of no avail. The Assessing Officer made disallowance of Rs.16,72,241/-, being the payment made to these four female members of the same family. Under similar circumstances and proceedings in which no evidence of services was produced by the assessee for which commission/brokerage was paid to the female members, the Assessing Officer made an addition of Rs.10 lac in his order for the assessment

year 2011-12. The assessee remained unsuccessful in the first appeal. Now the assessee is aggrieved before the tribunal.

5. Having heard both the sides and perused the relevant material on record, it is observed that despite giving several opportunities and issuing summons u/s 131 of the Act twice, the assessee failed to produce female members from one family to whom the commission was paid. There is a complete absence of any proof of their having rendering any services to the assessee. The position continued to remain the same before the Id. CIT(A) and the tribunal as well. Under these circumstances, it becomes apparent that the assessee could not lead any evidence to establish that the services were rendered by these persons. As such, there cannot be any question of allowing such commission as deduction. The mere fact that the commission was recorded by the recipients in their returns cannot absolve the assessee from establishing the factum of them having rendered services as a *quid pro quo* for the payment of brokerage. Since the assessee miserably failed to produce an iota of evidence of the female members of a family rendering any

services for effecting sales for which commission was paid, I am satisfied that the authorities below were fully justified in making and sustaining the disallowance for both the years under consideration.

6. In the result, both the appeals are dismissed.

The order pronounced in the open court on 15.09.2017.

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 15th September, 2017.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.