

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”, NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
ITA No.4096/Del/2017
Assessment Year : 2012-13**

WALAITI RAM ASHOK KUMAR NEW DELHI	Vs.	ITO, Ward-47(1), New Delhi
PAN : ACQPR3314L		
(Appellant)		(Respondent)

Assessee by : None
Revenue by : Sh. Amit Jain, Sr. DR
Date of hearing : 24-10-2017
Date of pronouncement : 24 -10-2017

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 5th April, 2017 of the CIT(A)-16, New Delhi relating to assessment year 2012-13.

2. Despite service of notice non-appeared on behalf of the assessee. Therefore, this appeal is being decided on the basis of material available on record and after hearing the ld. DR.

3. The grounds raised by the assessee are as under :-

“1. That under the facts and circumstances of the case the impugned assessment is illegal and unsustainable in law as well as on merits.

2. The ld. CIT(A) erred in law in dismissing the appeal without discussing the merits of the case and grounds of appeal.

3. That under the fact and circumstances of the case addition of Rs. 30,66,574/- on account of disallowance of commission paid is absolutely unsustainable in law as well as on merits.

4. That under the fact and circumstances of the case addition of Rs. 18,499 being one fifth of total expenditure of Rs. 92,496 incurred on account of expenses incurred on travelling, telephone and car insurance is absolutely unsustainable in law as well as on merits.

5. That both the lower authorities erred in law in not providing reasonable & proper opportunity of being heard.

6. That the interest under section 234B & 234C of the Act are wrongly charged.”

4. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of Trading of Dyes and Chemicals. It filed its return of income on 12th September, 2012 declaring total income of Rs. 8,43,084/-. The AO during the course of assessment proceedings observed that the assessee has made sales of Rs. 16,43,95,492/- and has made gross profit of Rs. 90,37,058/-. In the preceding year such turn over was Rs. 12,68,78,823/- and the gross profit was Rs. 76,12,739/-. The AO further observed that the assessee has paid commission of Rs. 30,66,574/- to 11 parties. The AO asked the assessee to furnish the details and also issued notice u/s 133(6) to all the above parties. According to the AO, the notice issued u/s 133(6) was received back in the case of one Mr. Sahil Aggarwal. Similarly, the reply was not sufficient from one Mr. Ashok Kumar Gupta and M/s. Asian Dyes and Chemicals. Remaining 8 parties did not respond at all. He therefore, confronted the assessee about the same and asked the assessee to explain as to why the commission should not be treated as non- genuine and should not be disallowed. In absence of any proper compliance from the side of the assessee, the AO disallowed the entire commission of Rs. 30,66,574/-. Similarly, out of the various expenses claimed by the assessee such as Travelling Expenses, Telephone Expenses, Motor car insurance and moter car depreciation, the AO disallowed an amount of Rs. 55,225/- being 1/5th of such expenditure on estimate basis.

4.1 Before the CIT(A), the assessee expressed his willingness to produce the parties to whom the commission has been paid. Although the AR was asked to produce 5 parties per day starting from 3rd March, 2017, the Id. CIT(A) observed that there was non-appearance from the side of the assessee from 3rd March, 2017 till passing of the order i.e. on 5th April, 2017. He, therefore, held that the commission paid by the assessee to the so-called commission agents is not genuine and therefore, he confirmed the same. So far as disallowance of expenses is concerned he held that no disallowance out of depreciation on motor car is called for. However, in absence of any proper compliance before him, he sustained the remaining disallowance made by the AO.

5. Aggrieved with such order with CIT(A), the assessee is in appeal before the Tribunal.

6. I have heard the Id. DR and perused the material available on record. Since the assessee before the CIT(A) has expressed his willingness to produce the commission agents to prove the genuineness of such commission and since the assessee did not appear before the CIT(A) thereafter, considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the CIT(A) with a direction to grant one more opportunity to the assessee to substantiate his case. The assessee is also hereby directed to appear before the CIT(A) and produce the so called commission agents as agreed earlier to prove the identity of those persons and the genuineness of the payments failing which the Id. CIT(A) is at liberty to pass appropriate orders as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

5. In the result appeal of the assessee is allowed for statistical purposes.
(Order Pronounced in the Court at the time of hearing itself i.e. on
24.10.2017).

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Dated:24-10-2017

Binita

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The DRP-IV, New Delhi
- 4) The DR, I.T.A.T., New Delhi

By Order

Assistant Registrar
ITAT, New Delhi

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	24.10.2017		Sr. PS/PS
2	Draft placed before author	24.10.2017		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on	.2017		Sr. PS/PS
7	Date of uploading of Order	.2017		Sr. PS/PS
8	File sent to Bench Clerk	.2017		Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			