



ITA.No.5760/Mum/2015
Peacefort Chem India Private Limited
Assessment Year-2011-12

आयकर अपीलीय अधिकरण “सी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.5760/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2011-12)

Peacefort Chem India Private Limited (CIN : U74999MH1971PTC015360) 104, Sumerkendra Pandurang Budhkar Marg Worli, Mumbai-400 018	बनाम/ Vs.	Deputy Commissioner Of Income Tax 10(3) Aaykar Bhawan Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCP-7161-P		
(आपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Mandar Vaidya, Ld. AR
Revenue by	:	Rajat Mittal, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	10/10/2017
घोषणा की तारीख / Date of Pronouncement	:	08/11 /2017

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2011-12 assails the order of the Ld. Commissioner of Income-Tax (Appeals)-24 [CIT(A)], Mumbai, *Appeal No.CIT(A)-22/DCIT-10(3)/IT-343/2013-14* dated 16/02/2015. The assessment for impugned AY was



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framed by *Ld. Deputy Commissioner of Income Tax-10(3), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961 on 19/02/2014*. The solitary issue involved in the appeal is addition of commission expenditure for Rs.27,16,364/-.

2. The registry has noted that the appeal has been filed with a delay of 237 days and the assessee vide condonation petition dated 29/09/2017 along with affidavit of the director of the assessee company has pleaded for condonation of delay. The delay has been attributed to the ongoing litigation being faced by the concerned director of the assessee company who was handling tax matters on behalf of the company. Upon perusal of the same, *prima facie*, we find strength in the same and therefore, in terms of ratio of decision of Hon'ble Apex Court rendered in *Mst. Katiji 167 ITR 471*, we condone the delay and take up the appeal on merits.

3. The assessee has raised the following effective grounds of appeal:-

1. *The Ld. CIT(Appeals) erred in holding that commission expenditure of an amount of Rs.27,16,364/- is not allowable as deduction on the ground that the Appellant/assessee failed to prove the exact nature of the services rendered by the recipients.*
2. *The Ld. CIT(A) failed to appreciate that the Appellant/assessee had deducted tax at source while making the payment of commission and confirmations were given by the recipients.*
3. *The Ld. CIT(A) erred in not considering the facts that the recipients had filed their respective returns and offered for tax, the amounts of commission received from the Appellant/assessee.*

4.1 Facts leading to the same are that the assessee being *resident corporate assessee* engaged in the business of *trading of iron plates* was assessed for impugned AY u/s 143(3) on 19/02/2014 at Rs.2,84,91,370/- as against returned income of Rs.2,30,16,040/- *e-filed* by the assessee on 23/09/2011. The assessee has suffered disallowance



of *brokerage & commission* for Rs.37,72,164/- and the same is the sole subject matter of this appeal.

4.2 During assessment proceedings, it was noted that the assessee debited an amount of Rs.42,14,118/- as *brokerage & commission* expenses in the *Profit & Loss Account*. The Ld. AO noted that the assessee failed to provide the requisite details in the prescribed format. Further, commission payments aggregating to Rs.27,16,364/- were accounted towards the end of the year and few commissions were paid in round figures which aggregated to Rs.10,55,800/-. The Ld. AO also noted that the assessee failed to provide the sales details on which brokerage was paid. Finally, the commission aggregating to Rs.37,72,164/- was disallowed which comprised of commission of Rs.27,16,364/- paid towards year end and an amount of Rs.10,55,800/- being commission paid in round figures.

5. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 16/02/2015 where the assessee contended that due Tax at source was deducted from the commission payments and also drew attention to the fact that the commission figures of Rs.10,55,800/- has been added twice erroneously by Ld. AO. The Ld. CIT(A) noted that the assessee could file only *debit notes* raised against the commission payment and could not point out the nature of services being rendered by the agents and therefore, failed to discharge the burden of proving the genuineness of the commission payments. However, the Ld. CIT(A) agreed with the computational error being made by Ld. AO and restricted the impugned additions to Rs.27,16,364/-. Aggrieved, the assessee is in further appeal before us.



6. The Ld. Counsel for Assessee [AR], while drawing our attention to the *paper-book*, contended that the assessee procured orders from customers through agents and paid commission to them. Further, the assessee has deducted due Tax at source against impugned payments and the same are duly reflected by the respective payees in their return of income and hence, disallowance was not justified. Per *Contra*, Ld. Departmental Representative [DR] drew attention to the fact that the assessee could not prove *factum* of receipt of any services from the payees since no confirmation in this regard could ever be filed by the assessee and therefore, the impugned disallowance was justified.

7. We have carefully heard the rival contentions and perused relevant material on record. We find that the prime condition of claiming an expenditure as per Section 37 is that the expenditure has been incurred wholly and exclusively for the purpose of assessee's business. The onus to prove the receipt of services from the commission agent was squarely on the assessee.

8. On going through documents placed in the *paper-book*, we find that as evident from Page No. 69, the assessee has paid impugned commission to seven parties. The commission has been paid at uniform rate of 2%. *Prima facie*, due tax has been deducted from the said payments as evident from details and copies of Form 16 placed on record. The assessee has also placed details of commission paid to an entity namely *Vichara Enterprises* on page Nos. 83 to 88 of the *paper-book* which *inter-alia*, contains details of bills against which commission has been paid but no such details are available on record in respect of other parties. As rightly pointed out by lower authorities, the onus to



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prove the *factum* of receipt of services has not been discharged by the assessee which was the primary condition to claim deduction u/s 37. Hence, on the facts of the case, we deem it fit to provide another opportunity to the assessee and hence, restore the matter back to the file of Ld. AO for the limited purpose of verifying assessee's claim in this regard and decide as per law. The assessee, in turn, is directed to demonstrate fulfillment of conditions as enumerated in Section 37 towards his claim.

9. Resultantly, the assessee's appeal stands allowed for statistical purposes.

Order pronounced in the open court on 08th November, 2017.

Sd/-
(Mahavir Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 08.11 .2017

Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि □ ग्रेषित/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,

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