

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA****Before Shri P.M. Jagtap, Accountant Member****I.T.A. No. 605/KOL./2016
Assessment year: 2010-2011*****Income Tax Officer,.....Appellant
Ward-23(3), Hooghly,
Aayakar Bhawan, Khadinamore,
G.T. Road, Hooghly-712 101******-Vs.-******M/s. Majic Overseas,.....Respondent
57, R.K.M. Bye Lane, Champdani,
Hooghly-712 222
[PAN: AAQFM 0045 D]*****Appearances by:*****Shri Pinaki Mukherjee, Addl. CIT, D.R., for the Department
Shri B.K. Sahoo, FCA, for the assessee***Date of concluding the hearing : October 25, 2017
Date of pronouncing the order : November 30, 2017**O R D E R**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-6, Kolkata dated 04.02.2016 and in the solitary ground raised therein, the Revenue has challenged the action of the Id. CIT(Appeals) in deleting the disallowance of Rs.34,78,933/- made by the Assessing Officer on account of assessee's claim for deduction of commission paid to the various brokers.

2. The assessee in the present case is a partnership firm, which is engaged in the business of purchase and sale of DEPB License. The return of income for the year under consideration was filed by it on 26.09.2010 declaring total income of Rs.1,58,403/-. In the Profit & Loss Account filed along with the said return, a sum of Rs.34,78,933/- was debited by the assessee on account of commission paid to various parties. Although confirmations from some of the parties to whom the commission was paid could be produced by the assessee during the course of assessment

proceedings, other documentary evidence in the form of bills raised by the said parties and other details regarding services rendered could not be produced by the assessee inspite of specific opportunity afforded in this regard. The Assessing Officer, therefore, completed the assessment under section 144/143(3) of the Act vide an order dated 31.03.2013, wherein he disallowed the claim of the assessee for deduction on account of commission paid amounting to Rs.34,78,933/-.

3. Against the order passed by the Assessing Officer under section 144/143(3) of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals) and the following submissions were made on behalf of the assessee before the Id. CIT(Appeals) in support of its claim for deduction on account of commission paid:-

"That our firm, M/s. Majic Overseas is a partnership firm having its registered office at 57, R.K.M. BYE LANE, CHAMPDANI, BAIDYABATI, DIST. HOOGHLY-712222, W.B.

The firm was engaged in the purchase & sales of DEPB License. We normally deal with lots of Exporters, who get DEPB licenses against export performances from Govt. of India as an export incentive and it is used by the Importers in lieu of customs duty while importing various commodities. The DEPB licence is a transferable and tradable instrument, procured from those exporters through various Brokers/agents, who charge commission on the same, which varies from case to case, and we sale those DEPB licences' to the Importers through various Brokers/ Agents, who charge commission on the same, which varies from case to case.

Sir our books of Accounts are audited and we have submitted all the audited Statement of Accounts along with Tax Audit Reports to the AO., during the course of Scrutiny assessment. (Copy enclosed for your perusal) ;

We hereby submit you the detailed statement of party-wise Commission paid, TDS ledger and Bank Statement of HDFC bank showing the particulars of TDS paid through that Bank, Copy enclosed.

Your honour sir, during the course of the scrutiny, for the assessment year 2010-11, the Ld. Assessing Officer has wrongly observed and stated that the commission of Rs.34,78,933/- paid to different parties are not being evidenced at all and based on the same he disallowed the same and computed the total income by disallowing the said commission paid of Rs.34,78,933/-. However we have already submitted the particulars of commission paid to

the different parties and TDS has been deducted thereon, TDS return filed in this regard and the confirmation obtained from all the parties relating to the said commission paid during the assessment year 2010-11. In spite of our submission in this regard, the Ld. Assessing Officer has rejected such evidences of the commission paid during that assessment year and arbitrarily disallowed the same which is highly excessive, arbitrary & unrealistic with regard to the nature of trade being carried on by the Appellant.

The Ld. Assessing Officer was not justified by completing the assessment proceedings under section 144/143(3) of the Income Tax Act, 1961.

The above facts and grounds clearly depict that; the Ld. Assessing Officer has wrongly observed and disallowed the expenses and made addition, as explained above in spite of our adequate explanations, information & evidences. The said additions/disallowance are totally unjustified and bad in Law, based on mere estimations, suspicion and surmises and ought to be deleted.

The above observations of the Id. ACIT clearly proves that the assessment has been completed in haste without giving proper opportunity, rather the Id. ACIT should have relied on the facts, available materials and circumstances of the case rather than merely on wide speculations/ assumptions/ unrealistic estimations.

It has been held by the Hon'ble Calcutta High Court in the case specified below that the AO should be guided by Rules of justice, equity and good conscience, and in making the best judgment the AO does not possess absolute arbitrary authority to assess any figure he likes. We may refer to the decisions of the case law, CIT Vs. Ranicherra Tea Co. Ltd.[1994] 207 ITR (Calcutta High Court)

In view of the above, it is hereby prayed before you Sir, to delete those additions due to the fact that all these additions are erroneous and based on mere assumptions/ biased thoughts and without any material facts and totally unrealistic. The appellant craves leave to make further submission & produce further evidences/ documents during the Appeal proceedings for which it is, requested that adequate opportunity may be kindly be provided to the appellant”.

4. The above submissions made by the assessee were forwarded by the ld. CIT(Appeals) to the Assessing Officer for his verification and comments. As per the direction of the ld. CIT(Appeals), the matter was verified by the Assessing Officer and on such verification, he submitted three remand reports offering his comments as sought by the ld. CIT(Appeals). After considering the remand reports submitted by the

Assessing Officer, the submissions made by the assessee as well as the other material available on record, the Id. CIT(Appeals) held that the disallowance made by the Assessing Officer on account of commission paid by the assessee was not justified and the same was deleted by him for the following reasons given in paragraph no. 10 of his impugned order:-

"10. I have considered the facts of the case, the appellant's submissions and the remand report. The dispute is about the disallowance of commission of Rs.34,78,933/-. The AO carried out inquiries in the remand proceedings in case of six payees and it is clear from the reports that the recipients confirmed having received commission from the appellant. The AO's main objection in respect of some of the recipients is that they have not been able to show that they have accounted for the commission received from the appellant. On the other hand, the appellant has contended that DEPB licenses are purchased from exporters and sold to importers through brokers/commission recipients and commission payments were made after deducting tax at source and could be verified from its books of account. It was also stated that the commission receipts and the fact of having rendered services was confirmed by the payees and payment of commission could be duly verified from its books of account and bank statements. In respect of Shri Vikas Khandelwal and Shri N. Rajesh Jain, HUF it was specifically contended by the appellant vide letter dated 03.11.2015 as under:

"But in case of Sri Vikas Khandelwal, the party has been paid both by cash & Cheque, as per the verification of the AO from the bank statements of the said party, it shows Rs.1,52,280/- (net of TDS) has been credited to his account, instead of Rs.2,79,813/-(net of TDS) paid to the said party by the assessee. It is pertinent to note that Rs. 7, 950/-(net of TDS) & Rs.33,259/-(net of TDS) has been paid by cash to the party, totalling Rs.41,209/- which will not reflect in the bank: statement and moreover other than this all payments has been made through Bank, details already furnished to you. Moreover, we have deducted TDS, which has been paid to Govt. through cheques, reflected in our bank statement, copies already furnished to you.

Further in case of N. Rajesh Jain(HUF), we have paid Rs. 4,25,445/-(net of TDS) and the AO's observation is that, the party has shown Rs.4,06,099/- as income. Sir, you will appreciate the fact that all the payments has been through Bank; details already furnished to you, hence the difference amount should not be our mistake.

It is humbly submitted that maintenance of books of accounts and method thereof by the respondent commission agents are

not the domain of the assessee and it is the prerogative of the respondent commission agents as to maintenance of records”.

The AO was directed to grant the appellant an opportunity of being heard in respect of the discrepancies relating to Shri Vikas Khandelwal and Shri N. Rajesh Jain(HUF) and carry out further necessary inquiries in respect of the recipients. The AO submitted a report vide letter dated 05.01.2016 stating that it is seen from the copies of the bank statements that the assessee had paid commission to Shri Vikas Khandelwal and Shri N. Rajesh Jain, HUF. From the above facts and reports, it is clear that identity of the persons to whom commission was paid and inquired into by the AO has been established and they have confirmed receiving the commission with supporting evidence. Except in the cases of Shri Vikas Khandelwal and Shri N. Rajesh Jain (HUF), the amounts have also matched which have subsequently been verified by the Assessing Officer. As regards the discrepancies, all the payments claimed in N. Rajesh Jain (HUF) are reflected in the appellant's bank statement and in respect of Shri Vikas Khandelwal, some payments were in cash but tax was deducted at source thereon and paid in the Government Account by way of cheques. Thus, the discrepancies have been satisfactorily explained by the appellant. There is, therefore, no material on record to justify the disallowance of the entire commission claimed by the appellant. Hence, the disallowance of commission of Rs.34,78,933/- is deleted”.

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

5. The Id. D.R. submitted that commission was claimed to be paid by the assessee to total 35 parties for purchase and sale of DEPB License. He submitted that the Assessing Officer during the course of remand proceedings made enquiry with some of the said parties and although all of them confirmed of having received the commission amount from the assessee, they could not produce the bills for commission raised on the assessee showing the nature of services rendered by them. He contended that the mere fact that the amount of commission was paid by the assessee to the concerned parties after deducting tax at source and the said amount was offered by them in their returns of income alone could not be sufficient to prove the genuineness of commission and the onus in this regard was on the assessee to establish on evidence the factum of

services rendered by the said parties as well as the nature of such services. He contended that the assessee, however, has failed to discharge its onus and this vital aspect has been completely overlooked by the Id. CIT(Appeals) while allowing the claim of the assessee for commission.

6. The Id. counsel for the assessee, on the other hand, submitted that the business of the assessee is that of dealing in DEPB License and since the purchase and sale of DEPB License is normally done through brokers, expenditure is required to be incurred on payment of commission to them. He submitted that all the parties with whom enquiry was made by the Assessing Officer have confirmed of having received the commission from the assessee and there being nothing adverse brought on record, the disallowance of commission made by the Assessing Officer was totally unjustified which the Id. CIT(Appeals) has rightly deleted. He accordingly relied strongly on the impugned order of the Id. CIT(Appeals) giving relief to the assessee on the issue under consideration.

7. I have considered the rival submissions and also perused the relevant material available on record. It is observed that the Assessing Officer during the course of remand proceedings had made enquiry from some of the parties to whom the commission in question was claimed to be paid by the assessee on purchase and sale of DEPB License. As rightly submitted by the Id. counsel for the assessee, the said parties in reply to enquiry made by the Assessing Officer had confirmed the receipt of commission from the assessee and there was nothing found in the enquiry made by the Assessing Officer to draw adverse inference against the assessee in the matter of allowability of the assessee's claim for deduction on account of commission paid. The Assessing Officer in the remand report initially submitted to the Id. CIT(Appeals) as well as the Id. D.R. at the time of hearing before me have doubted the genuineness of the claim of the assessee for commission payment on the ground that supporting bills raised on the assessee for commission were not produced by the concerned parties. It is, however, observed from the remand

reports submitted by the Assessing Officer to the Id. CIT(Appeals) subsequently, the relevant portion of which is reproduced in the impugned order of the Id. CIT(Appeals), that some of the parties did furnish the copies of bills for commission raised on the assessee, which, in my opinion, was sufficient to establish the services rendered by them to the assessee in order to justify the payment of commission. Having regard to all these facts of the case, I find myself in agreement with the Id. CIT(Appeals) that the disallowance of commission made by the Assessing Officer was not justified and the same was liable to be deleted. I accordingly uphold the impugned order of the Id. CIT(Appeals) giving relief to the assessee on this issue and dismiss the appeal of the Revenue.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30th day of November, 2017.

Sd/-
(P.M. Jagtap)
Accountant Member
Kolkata, the 30th day of November, 2017

Copies to : (1) **Income Tax Officer,**
Ward-23(3), Hooghly,
Aayakar Bhawan, Khadinamore,
G.T. Road, Hooghly-712 101

2) **M/s. Majic Overseas,**
57, R.K.M. Bye Lane, Champdani,
Hooghly-712 222

(3) *CIT(Appeals)-6, Kolkata*
(4) *CIT- , Kolkata*
(5) *The Departmental Representative*
(6) *Guard File*
TRUE COPY

By Order

Senior Private Secretary,
Head of Office/DDO,
Income Tax Appellate Tribunal
Kolkata Benches, Kolkata