

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.219/CTK/2017

(निर्धारण वर्ष / Assessment Year :2013-2014)

| | | |
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| Smt. Purnima Sahoo, Prop-M/s. Radhika Badabazar, Talcher Orissa | Vs. | ITO, Angul Ward, Angul |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGLPS 3658 R | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

निर्धारिती की ओर से /Assessee by : Shri S.N.Sahu, AR

राजस्व की ओर से /Revenue by : Shri D.K.Pradhan, DR

सुनवाई की तारीख / Date of Hearing : **29/11/2017**

घोषणा की तारीख/Date of Pronouncement **30/11/2017**

आदेश / O R D E R

This is an appeal filed by the assessee against the order of the CIT(A)-2, Bhubaneswar, dated 23.02.2017.

2. The sole grievance of the assessee in this appeal is that the CIT(A) erred in confirming the order of the AO disallowing discount & commission paid Rs.15,40,933/- and non-disclosure of credit notes of Rs.15,401/-.

3. At the time of hearing, the AR of the assessee has made no submission on the ground of non-disclosure of the credit notes of Rs.15,401/- which was added to the income of the assessee, hence, the same is dismissed for want of prosecution.

4. With regard to disallowance of discount and commission of Rs.15,40,933/-, it is observed that the AO has stated that cash discount was being allowed by the assessee to the customers on the basis of sale invoice themselves. However, the assessee has further claimed cash

discount separately in the profit and loss account. As the assessee could not produce evidence regarding separate payment of cash discount of Rs.15,40,933/-, the AO disallowed the deduction for the same. On appeal, the CIT(A) confirmed the action of AO.

5. The AR of the assessee submitted that in the year ended on 31st March, 2011, the assessee had claimed discount and commission of Rs.97,854/- by sales of Rs.50,756,930/-, which was allowed to the assessee. He further submitted that in the assessment year 2012-2013, similarly the assessee had claimed deduction for discount and commission in the profit and loss account of Rs.14,34,572/-, which was disallowed by the AO but allowed by the CIT(A) in I.T.Appeal No.0009/2016-17, vide order dated 07.06.2017 and filed a copy of the same in the paper book at pages 10 to 13. He further submitted that no appeal was filed there against by the department and the order has attained finality. Thus, it was his submission that there was no change in facts in the present year under consideration and, therefore, on the very basis of the same facts no disallowance out of discount and commission of Rs.15,40,933/- was warranted. He further argued that in the assessment year 2010-2011, the assessee had shown net profit of 0.66% and in assessment year 2011-2012 the assessee had shown net profit of 0.59%, which was accepted by the department. He submitted that in the year under appeal the assessee has shown net profit at the rate of 0.77% which is higher than what was accepted by the department in the earlier

assessment years. Therefore, he submitted that no disallowance under the head discount and commission of Rs.15,40,933/- was sustainable.

6. Ld. DR, on the other hand, vehemently argued that the CIT(A) was fully justified in confirming the order of the AO as the assessee failed to submit evidence with regard to the payment of discount and commission to the customers.

7. I have heard rival submissions and perused the order of lower authorities and materials available on record. In the instant case, the assessee claimed Rs.37,39,496/- in the profit and loss account under the head discount and commission. The AO observed that the said amount was comprised of Rs.21,98,563/- credit notes and Rs.15,40,933.22 cash discount. The AO observed from the sale bill that the assessee has accounted for net sale i.e. sales after discount only as it sales. Thus, the discount allowed has already been reduced from sales. The AO, therefore, in absence of any evidence of further cash discount given by the assessee disallowed the claim of the assessee of Rs.15,40,933.22.

In appeal before the CIT(A), the CIT(A) required the assessee to file details on discount invoice-wise and before him the assessee expressed its inability to furnish the same. In these circumstances, the CIT(A) confirmed the disallowance made by the AO.

8. Before me, Id. AR of the assessee filed copy of profit and loss account of the preceding assessment year 2012-2013 and pointed out that similar discount and commission claimed at Rs.14,34,572/- was allowed in the assessment of that year. I find that in the immediately

preceding assessment year 2012-2013 5% of discount and commission was disallowed by the AO which was deleted by the CIT(A) on the ground that the disallowance of 5% was without any material or basis. However, I find that in the year under consideration the disallowance was not made on any estimate basis but was made for absence of evidence or details. Therefore, the facts of the instant year is distinguishable from the facts of the preceding years. The assessee submitted before us that after the invoice is raised further discount is allowed to buyers to keep them in good humour and such further discount are debited in the profit and loss account.

9. I find force in the above submission of Id. AR of the assessee. But in absence of full details the entire payment of cash and discount cannot be accepted. Keeping in view the facts and circumstances of the case, in my considered view, it shall be in the interest of justice to estimate such cash discount @1% of the sale. The total sale of the assessee during the year is Rs.6,94,94,474/-, I therefore, allow deduction of Rs.6,94,944.74 as cash discount and confirm the balance disallowance of Rs.8,43,988.48.

10. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 30/11/2017.

Sd/-
(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 30/11/2017

प्र.कु.मि/PKM, Senior Private Secretary

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack