

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI , ACCOUNTANT MEMBER  
AND KULDIP SINGH JUDICIAL MEMBER**

**ITA No.508/CTK/2014**

Assessment Year : 2007-08

ACIT, Circle -2(1), Sambalpur	Vs.	M/s. Hindustan Sales Pvt Ltd., Gandhi Chowk, Koraput By pass Road, PO: Jeypore, Koraput
PAN/GIR No. AABCH 3757 R		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : None

Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 19/04/ 2017**

**Date of Pronouncement : 25 /04/ 2017**

**ORDER**

**Per N.S.Saini, AM**

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 29.10.2014, for the assessment year 2007-08.

2. The sole ground raised by the revenue reads as under:

“Whether in the facts and circumstances of the case, the CIT(A) is correct in deleting the suppressed amount of commission received by the assessee which is evident from TDS certificate and it is not clear on what basis the CIT(A) arrived at a conclusion that it was deducted from purchases as discount.”

3. The notice of hearing dated 23.3.2017 was sent to the assessee by Speed Post fixing the hearing on 19.4.2017, which is served on the

assessee as evidenced by the acknowledgement of Indian Post on 31.3.2017. When the case was called for hearing, nobody was present from the side of the respondent-assessee. We, therefore, proceed to the decide the appeals of the revenue qua the respondent assessee after hearing Id Departmental Representative and materials available on record.

4. The brief facts of the case are that the Assessing Officer observed that the assessee in his return of income has shown commission receipt of Rs.8,14,427/-. From the reconciliation statement furnished by the assessee during the assessment proceedings, the Assessing Officer observed that the assessee had received commission of Rs.85,11,789/- out of which Rs.8,14,427/- has been reflected in the in purchase and expense account as deduction from purchase under schedule-M of the profit and loss account.

5. The assessee explained that the said commission had been deducted from the bills issued by BSNL against the purchase of recharge voucher at different rates which was not assessee's income. The assessee debited net of purchase in its profit and loss account, exclusive of commission allowed. BSNL issued TDS certificate in favour of the assessee crediting the commission amount to the tune of Rs.85,11,789/- deducting TDS of Rs.4,66,308/- and the assessee claimed the credit of TDS of Rs.4,66,308/- in its return of income. The Assessing Officer did

not find the explanation of the assessee as convincing and held that the assessee has taken credit for TDS but failed to offer the receipt of commission of Rs.85,11,789/- as income. He, therefore, added Rs.76,97,362 (Rs.85,11,789 – Rs.8,14,427) as suppressed income from commission.

6. On appeal, the CIT(A) observed that during the course of appeal hearing, the assessee filed the copy of the letter dt.6.12.2012 addressed to the Assessing Officer along with detailed statement of net purchase of Rs.11,28,48,976/- from the BSNL which is included in the total purchase of Rs. 15,91,38,190.06 as reflected in schedule-M of the P&L account. The net purchase of Rs. 11,28,48,976/- was net purchase after deducting discount of Rs.75,21,391/- from the gross purchase of Rs.12,03,70,367/- from the BSNL. A copy of certificate from the BSNL was also filed wherein total commission has been shown at Rs. 85,11,789/- consisting of RCV & C-Topup commission of - Rs.75,21,391/-, SIM commission of Rs.8,14,427/- and SIM activation commission of Rs. 1,75,971/-. Since the purchase from the BSNL net of commission of Rs.75,21,391/- has been taken in the P&L account, therefore, the commission of Rs.75,21,391/- has also been considered while arriving at the net profit.

7. The CIT(A) observed that the schedule-M (purchases & expenses) shows figure of Rs. 15,81,61,229.91 which includes net purchases of Rs.15,71,24,599.62. The said net purchase of Rs.15,71,24,599.62 has

been arrived at after deducting discount and rate difference of Rs.11,99,163.44 and commission received of Rs.8,14,427/- from the total purchases of Rs. 15,91,38,190.06. The figure of Rs.11,99,163.44 includes the BSNL rate difference of Rs.1,75,971/-, which means that said Rs.1,75,971/- was income reflected in the P&L account by virtue of showing less purchases to that extent. The addition by the Assessing Officer of Rs.76,97,362/ consisted of Rs.75,21,391/- and Rs.1,75,971/- . Accordingly, both the addition amounts to double addition since the assessee has already offered the same as income by showing less purchase to that extent. In view of above, Id CIT(A) deleted the addition of Rs.76,97,362/- and allowed the appeal of the assessee.

8. Ld Departmental Representative relied on the order of the Assessing Officer.

9. After considering the submissions of Id D.R. and perusing the materials available on record, we find that Id DR could not point out any specific error in the order of the CIT(A). He could not bring any positive record to show that the purchases shown by the assessee in the profit and loss account is net of commission receipt. Since the purchases are shown by the assessee net of commission receipt, the commission of Rs.76,97,362 is already accounted for by the assessee in P&L account by showing less purchases and thereby showing more profits to that extent, hence, we find no error in the order of the CIT(A), which is hereby confirmed and ground of appeal of revenue is dismissed.

10. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 25 /04/2017 in the presence of parties.

Sd/-

sd/-

(Kuldip Singh)  
**JUDICIAL MEMBER**

(N.S Saini)  
**ACCOUNTANT MEMBER**

Cuttack; Dated 25 /04/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : ACIT, Circle -2(1), Sambalpur
2. The Respondent. M/s. Hindustan Sales Pvt Ltd., Gandhi Chowk, Koraput By pass Road, PO: Jeypore, Koraput
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE  
SECRETARY  
**ITAT, Cuttack**