

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

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.435/CTK/2014**  
Assessment Year : 2009-2010

M/s. Hari Udyog Pvt Ltd., At/Po: O.T.Road, Dist: Balasore.	Vs.	JCIT, Balasore Range, Balasore.
PAN/GIR No. AABCH 7243 Q		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.K.Mishra, AR  
Revenue by : Shri B.N. Das, DR

**Date of Hearing : 08/06/ 2017**  
**Date of Pronouncement : 12 /06/ 2017**

**ORDER**

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

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 5.5.2014, for the assessment year 2009-2010.

2. Ground Nos.1,2 & 8 of the appeal are general in nature and hence requires no separate adjudication by us.

3. In Ground Nos.3,4, 5 & 6 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance made by the Assessing Officer on commission payment of Rs.8,80,447/-.

4. Brief facts of the case are that the assessee derives income from manufacturing and selling of PVC & HDPE pipes, PVC & JDPE fittings, Tara Hand Pumps and spare parts, etc. The Assessing Officer observed from the profit and loss account that the assessee has debited an amount of Rs.72,24,261/- in the profit and loss account under the head "sales commission". The Assessing Officer added Rs.8,80,447/- as bogus expenses under the head "sales commission" paid to following persons:

<u>Sl.No.</u>	<u>Name of the party</u>	<u>Sales commission (Rs.)</u>
1.	Prakash Kumar Mohanty	6,53,240
2.	Puspalata Parida	1,97,981
3.	Gokul & Co.	19,548
4.	Sumitra Traders	8,500
5.	Binakar Supply Agency	1,178

5. The Assessing Officer observed that the assessee has paid commission of Rs.6,53,240/- to one Prakash Kumar Mohanty, who appeared before the Assessing Officer and was examined on oath u/s.131 of the Act. He submitted before the Assessing Officer that he works as a General Manager in another company and, therefore, the Assessing Officer was of the view that Shri Mohanty could have not have time to promote the goods of the assessee company and, hence the Assessing Officer disallowed the deduction for the same.

6. Regarding commission payment of Rs.1,97,981/- to Smt. Puspalata Parida, the Assessing Officer observed that a letter was issued by RPAD, which was returned unserved with the postal remarks "no such address".

The assessee failed to produce Smt. Parida before the Assessing Officer to prove the identity of the commission agent and genuineness of the payment. Therefore, the Assessing Officer concluded that payment was bogus and disallowed the deduction for the same.

7. In respect of commission payment of Rs.19,548/- to Gokul & Co., and Rs.8,500/- to Sumitra Traders and Rs.1,178 to Binakar Supply Agency, the Assessing Officer observed that detailed particulars were not furnished by the assessee and, therefore, he held that the genuineness of the transaction has not been established and disallowed deduction for the same.

8. On appeal before the CIT(A), the assessee argued that the Director of the assessee company Shri Sangram Kumar Das and Mr Prakash Kumar Mohanty has stated before the Assessing Officer that the services rendered by Shri Prakash Kumar Mohanty to whom commission payment was made comprised of collection of orders of the company, follow up with Government Departments for releasing payment in favour of the assessee, existence of an agreement with the company for the aforesaid work, receipt of commission in terms of the agreement from the company by cheque. It was further submitted that Shri Prakash Kumar Mohanty was an income tax assessee having PAN No.AJWPM 3507 F and the receipt of commission was fully and truly disclosed in his return of income, copy of which was submitted. It was further submitted that applicable amount of TDS was deducted from the commission and duly deposited with the I.T.Authorities.

Further, regarding commission payment to Smt. Puspalata Parida, the assessee submitted that she has procured orders and followed up with various departments for facilitating release of payment. Copy of the agreement and bills submitted with details of invoices for whom she procured the orders and also followed up for payments were filed. It was submitted that Puspalata Parida was an income tax assessee having PAN No.AYGPP 2914 C and has filed the return of income disclosing receipt of commission. Copy of agreement and bills with details of invoices for whom she procured the orders were filed. It was submitted that the applicable amount of TDS was deducted from the commission and duly deposited with the I.T.authorities. Hence, it was submitted that the disallowance should be deleted. Regarding commission payment of Rs.19,548 to Gokul & Co., Rs.8,500/- to Sumitra Traders and Rs.1,178/- to Binakar Supply Agency, it was submitted that payments were small in nature and was not practical to produce the parties to prove their identity.

9. The CIT(A) after considering the submissions of the assessee observed that in view of detailed discussion by the Assessing Officer, it is abundantly clear that commission has been paid in the name of Sri Prakash Kumar Mohanty for no work done and genuineness of the payment has not been established by the assessee. In the case of Smt. Puspalata Parida, both existence of commission agent and genuineness of payment has not been established by the assessee. In the case of commission payment to Gokul & Co., Sumitra Traders and Binakar Supply Agency, the assessee failed to provide vital particulars for which no enquiries could be done and

hence, existence of commission agents and genuineness of payment has not been established. Therefore, he confirmed the disallowance of Rs.8,80,447/-.

10. Before us, Id A.R. of the assessee reiterated the submissions made before the lower authorities and Id D.R. supported the orders of lower authorities.

11. We have heard the rival submissions and perused the orders of lower authorities and materials available on record. We find that payment of commission of Rs.8,80,447/- is not in doubt or debate. Further, the genuineness of payment is proved from the fact that the assessee has deducted TDS from the commission payment made to Mr Prakash Kumar Mohanty and Smt. Pusalata Parida and deposited the same with Government. The assessee during the course of hearing has also filed copies of income tax returns of both the persons. The assessee has filed details such as bills, details of orders procured before the Assessing Officer and also submitted that they have followed up for payment in favour of the assessee for the sales made. The Assessing Officer has not brought any cogent and positive materials on record after verifying the details to show that same are not genuine without bringing any adverse materials on record, in our considered view, the Assessing Officer was not justified in rejecting the details and evidence filed before him in respect of commission payment. Ld A.R. of the assessee filed before us copy of assessment order for the assessment year 2011-2012 in the case of the assessee, wherein,

assessment has been made u/s.143(3)/147 of the Act dated 30.12.2016 and submitted that commission payment made to very same persons has been allowed by the Assessing Officer himself. Hence, in our considered view on the very same set of facts when commission has been accepted by the revenue in one year and in another year, they cannot turn around and say that commission payments made to the very same persons are not genuine and are bogus. Our view finds support from the decision of Hon'ble Supreme Court in the case of RADHASOAMI SATSANG vs. COMMISSIONER OF INCOME TAX, 193 ITR 321 (SC), wherein, it has been held that where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. To the same effect is the decision of Hon'ble Supreme Court in the case of CIT Vs. **Excel Industries** Ltd. 358 ITR 295(SC), wherein, it has been held as under:

"That a consistent view had been taken in favour of the assessee on the questions raised, starting with the assessment year 1992-93, that the benefits under the advance licences or under the duty entitlement pass book did not represent the real income of the assessee. There was no reason for the court to take a different view unless there were very convincing reasons, which there were not.

12. Therefore, respectfully following the above decisions of Hon'ble Supreme Court and keeping in view the fact that no change in facts has been brought on record by the revenue during the year under appeal, we

set aside the orders of lower authorities and direct the Assessing Officer to allow commission payment to Shri Prakash Kumar Mohanty and Smt. Puspalata Parida. However, in respect of commission payment to Gokul & Co., Sumitra Traders and Binakar Supply Agency, we find that the assessee has failed to provide vital particulars regarding commission payment and hence, we confirm the addition to that extent. Hence, this ground of appeal is partly allowed.

13. In Ground No.7 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the disallowance of Rs,1,34,276/- under the head "sales promotion expenses".

14. Brief facts of the case are that the Assessing Officer found that the assessee has claimed deduction of Rs.1,34,276/- under the head "sales promotion expenses" which comprised of providing hotel facilities and refreshment, etc to CIPET Inspectors and, therefore, held that same cannot be treated as business expenditure as CIPET was a Central Government Institution. The assessee submitted that it was incurred in the normal course of business to the extend of courtesy and due to business exigency. The Assessing Officer did not accept the explanation of the assessee and disallowed the same.

15. On appeal, the CIT(A) confirmed the same.

16. Before us, Id A.R.of the assessee reiterated the submissions made before the lower authorities. Ld D.R. supported the orders of lower authorities.

17. After considering the rival submissions and perusing the materials on record, we find that the assessee has claimed expenses of Rs.1,34,276/- as sales promotion expenses. The said expenditure was incurred on refreshment provided to CIPET Inspectors. The Assessing Officer disallowed the deduction on the ground that it was not business expenditure and was spent for providing hospitality to Government servant. The claim of the assessee is that the expenditure has been incurred for normal course of business and is business necessity and hence, the deduction should be allowed for the same. In the above facts and circumstances of the case, we are of the considered view that the amount has been incurred for carrying out the business activities of the assessee and for the business purposes and, therefore, the same is allowable as deduction u/s.37(1) of the Act. Further, we find that it is not the case of the Revenue that the expenditure incurred by the assessee is not genuine or is excessive. Hence, we set aside the order of the CIT(A) on this issue and delete the disallowance of Rs.1,34,276/- and allow the ground of appeal of the assessee.

18. The assessee has also filed an additional ground, which reads as under:

"That the Id Forum below should have allowed the credit of total amount of TDS claimed by the assessee and should not have disallowed TDS to the tune of Rs.31,679/- ignoring the fact of production of TDS certificate."

19. We find that the assessee had raised this ground as Ground No.6 of the appeal before the CIT(A) filed in Form No.35 of appeal memo and the

CIT (A) has not adjudicated the same. Hence, we set aside this issue to the file of the CIT(A) to adjudicate the issue as per law.

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

Order pronounced in the open court on 12 /06/2017 in the presence of parties.

Sd/-

sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

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

Cuttack; Dated 12/06/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : M/s. Hari Udyog Pvt Ltd.,  
At/Po: O.T.Road, Dist: Balasore
2. The Respondent. JCIT, Balasore Range,  
Balasore.
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**