

आयकर अपीलिय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.166/Vizag/2013

(निर्धारण वर्ष / Assessment Year: 2009-10)

ACIT, Circle-1,
Rajahmundry

(अपीलार्थी / Appellant)

M/s. Sampat Kumar Bang,
Rajahmundry

[PAN No.AAIFS1217M]

(प्रत्यार्थी / Respondent)

C.O. No.80/Vizag/2013

(Arising out of I.T.A.No.166/Vizag/2013)

(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Sampat Kumar Bang,
Rajahmundry

(अपीलार्थी / Appellant)

ACIT, Circle-1,
Rajahmundry

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri Shri D.J.P. Anand, DR

प्रत्यार्थी की ओर से / Respondent by

: Shri G.V.N. Hari, AR

सुनवाई की तारीख / Date of hearing

: 24.01.2018

घोषणा की तारीख / Date of Pronouncement

: 25.01.2018

आदेश / ORDER

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the revenue is directed against order of the Commissioner of Income Tax (Appeals)-11 {CIT(A)}, Mumbai, Camp at Visakhapatnam vide ITA Nos.518/11-12/ACIT,C-1/RJY/12-13 dated 8.1.2013 for the assessment year 2009-10.

2. Ground Nos.1, 3 & 5 are general in nature which does not require specific adjudication.

3. Ground No.2 is related to Rule 46A of the Income Tax Rules with regard to additional evidence. During the appeal hearing, the Ld. D.R. did not establish that the CIT(A) has considered the fresh evidence without giving opportunity to the A.O. The Ld. A.R., on the other hand, submitted that with regard to the addition of ₹ 53,39,842/-, the Ld. CIT(A) has called for the remand report, and after considering the remand report, the Ld. CIT(A) has passed the appeal order, hence, argued that there is no case of violation of Rule 46A of IT Rules, hence requested to dismiss the ground.

4. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. As per the record, there is no case of violation of Rule 46A and the CIT(A) has

called for the remand report and after considering the remand report, the Ld. CIT(A) has passed the order. Therefore, the ground raised by the A.O. is infructuous and accordingly dismissed.

5. Ground No.4 is related to the addition of ₹ 48,77,011/- in respect of payments made to persons specified in section 40A(2)(b) of the Act. The Ld. D.R. during the appeal hearing has submitted that ground No.4 is related to the addition of ₹ 53,39,842/- pertaining to commission and brokerage. The Ld. D.R. submitted that the A.O. has made the addition of ₹ 53,39,942/- on account of difference in commission and brokerage as per the TDS certificate and admitted in P&L account. These are payments in respect of the person specified in section 40A(2)(b) of the Act but neither the CIT(A) nor the assessing officer has examined the genuineness of payments as well as the payments specified u/s 40A(2)(b) of the Act. The A.O. even in remand report has not examined the genuineness of payments and payments made in respect of specified persons u/s 40A(2)(b) of the Act, hence, requested to set aside the matter to the file of the A.O. for fresh consideration.

6. On the other hand, the Ld. A.R. argued that the case of the A.O. is not the payments made to the specified persons u/s 40A(2)(b) of the Act. The case of the A.O. was not accounting the receipts as per the TDS certificates. The assessee has submitted all the evidences before

the CIT(A) and filed reconciliation statement which was scrutinized and verified by the A.O. and satisfied with regard to the genuineness as well as the correctness of the expenditure and submitted the remand report. After verifying the entire material, the A.O. has submitted the remand report accepting the income admitted by the assessee is in order. Hence argued that there is no case for setting aside the issue to the file of A.O. and requested to uphold the order of the CIT(A).

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. On verification of the assessment order, we find that the A.O. has not made out any case for addition u/s 40A(2)(b) of the Act with regard to the payments made to specified persons. For ready reference, we extract the relevant para of the assessment order, which reads as under:

"On verification of TDS certificates enclosed to the return of income, it is found that the assessee is received Rs.54,72,747/- as commission and brokerage on which tax was deducted at source and credit allowed. Verification of the P&L account, an amount of Rs.1,32,885/- was only offered as income by crediting the P&L account; thus leaving a difference of Rs.53,39,842/-. Hence, the same is added back to the income returned."

8. Therefore, ground raised by the revenue is infructuous accordingly dismissed.

9. The CIT(A) has referred the entire issue along with the evidences and reconciliation/statement filed by the assessee to the A.O. for

submission of remand report. The A.O. has verified the evidences and the reconciliation filed by the assessee and submitted the report accepting the correctness. The Ld. CIT(A) relying the remand report of the A.O. has deleted the addition. For ready reference, we extract the relevant paragraphs of the order of the CIT(A), which reads as under:

5. Ground No.1. Addition on account of Commission and Brokerage Rs.53,39,842/-.

The first ground of the appeal is against the addition of Rs.53,39,842/- on account of commission and brokerage from AP Paper Mills due to non reconciliation. The AO during the assessment proceedings noted that the commission received from AP)Paper Mills is Rs.54,72,727/- as per TDS certificates (wrongly taken as Rs.54,72,747/- by AO) whereas in the P&L account only a sum of Rs.1,32,885/- has been shown as commission income. During the course of hearing the assessee filed reconciliation statement of all receipts as per TDS certificates and income credited in its books of accounts. By way of this reconciliation, the Ld. AR has explained that the commission and brokerage income received as per the TDS certificates Rs.54,72,727/- is credited in the books in three different heads (Viz., commission Rs.1,72,793/-, discount Rs.52,78,576/- and service tax Rs.21,358/-). These are the gross receipts which have been credited in the books of account in the respective ledgers and expenses have also been debited. Net income under the head discount and commission Rs.14,86,434/- and Rs.1,32,885/- respectively totaling to Rs.16,19,319/- had been credited to the P&L account. Service Tax is an expense and treated accordingly. This matter was sent for remand to the AO for verification.

5.1 In the remand report dtd.22.02.2012, the AO has mentioned that a sum of Rs.1,32,885/- is debited in the commission account on 31.03.2009 as transfer and the Ld. AR explained that the identical amount has been credited in the P&L account by way of transfer as commission. So there is no anomaly regarding the commission amount.

5.2 Regarding the discount, the Ld. AR furnished a copy of ledger account of discount wherein total discount credited is Rs.52,78,576/- whereas discount income transferred to P&L account by way of journal entry dtd.31.03.2009 is Rs.14,65,486/-. The AO in his remand report has mentioned that discount paid/allowed to various customers is Rs.14,65,486/-. The matter was further sent for remand vide letter dtd.23.08.2012 and the AO was requested to examine the copy of the

ledger accounts of commission, discount, volume discount and service tax and in his remand report dtd.19.11.2012 AO has stated as under:

- (vi) *Regarding Commission assessee, who had already submitted account copy and confirmation letter from party that commission was paid, told that there is nothing left unaccounted to be taken on accrual basis for F. Y 2008-09. AO verified the amount of commission, confirmation letter and TDS made on that and found in order.*
- (vi,) *Regarding Discount, four parties are there, and nothing is left unaccounted to be taken on accrual basis for F. Y. 2008-09. AO verified the amount of discount, confirmation letter and TDS made on that and found in order.*
- (viii) *Regarding Volume Discount, there are four parties and AR/Assessee confirmed that there is nothing left unaccounted to be taken on accrual basis for F. V. 2008-09. AO has verified the volume discount, individual party ledger account and confirmation letter. AO has found them in order.*
- (ix) *Regarding Service Tax Account, assessee paid four amount Rs. 6,979/-, Rs. 3,854/-, Rs.5,400/-, Rs.2,002/- in F V.2008-09, and balance amount of Rs.2,156/- paid on 04.07.2009. Nothing is left unaccounted in accounting year 2008-09.*

5.3 In the above paragraphs, AO has categorically recorded the finding that commission, discount, volume discount, are found in order whereas the service tax is paid for the year till 04.07.2009 and nothing is left unaccounted in the accounting year 2008-09. The Ld. AR has further filed written submission on 07.01.2013 regarding the above additions as under:

5.4 Considering the facts of the case, submissions made by the Ld. AR and the reports of the AO in remand, it is hereby held that the commission income as per TDS certificates has been fully reconciled by the appellant before the AO and hence the addition made on this count is directed to be deleted.

10. Since the CIT(A) has deleted the addition relying on the remand report and after reconciling the entire difference, we do not find any reason to interfere with the order of the CIT(A) and the same is upheld.

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

Cross objection No.80/Vizag/2013: (ITA 166/Vizag/2013)

12. The C.O. is supportive of Ld. CIT(A) order. All the grounds of cross objections are adjudicated in revenue's appeal, hence, no separate adjudication is considered necessary and the cross objections raised by the assessee are allowed.

The above order was pronounced in the open court on 25th Jan'18.

Sd/-

(वी. दुर्गाराव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 25.01.2018

VG/SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The ACIT, Circle-1, Rajahmundry
2. प्रत्यार्थी / The Respondent – M/s. Sampat Kumar Bang, 9-25-63, Gunduvari Street, Rajahmundry
3. आयकर आयुक्त / The CIT, Rajahmundry
4. आयकर आयुक्त (अपील) / The CIT (A)-11, Mumbai, Camp At Visakhapatnam
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM