

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR.**

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 11/(Asr)/2017

Assessment Year: 2013-14

[PAN: AABCR 7790L]

M/s. Raga Motors P. Ltd.,
Paragpur, GT Road,
Jalandhar.

(Appellant)

Vs. Deputy CIT, Circle-IV,
Jalandhar.

(Respondent)

Appellant by : Sh. J. S. Bhasin (Adv.)

Respondent by: Sh. Rajeev Gubgotra (D.R.)

Date of Hearing: 12.02.2018

Date of Pronouncement: 16.02.2018

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Assessee directed against the order by the Commissioner of Income Tax (Appeals)-2, Jalandhar ('CIT(A)', for short) dated 05.10.2016, partly allowing the assessee's appeal contesting its assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act', hereinafter) dated 12.10.2015 for Assessment Year (AY) 2013-14.

2. The appeal raises two issues, which we shall take up in seriatim. The first relates to disallowance of commission expenses. Verifying the assessee's claim for commission expenses, claimed at Rs. 15,21,434/-, in verification proceedings under the Act, it found by the Assessing Officer (AO) that the same is in respect of

what may be termed as referral commission, i.e., for referring the customers. The assessee is an authorized dealer for Mahindra and Honda Vehicles, both in the commercial and personal space, and with pan India and, in fact, international presence. The commission was paid in small amounts. One, Mohini Sharma, to whom commission was allowed at Rs. 3.40 lacs, was examined. She confirmed referring customers to the assessee company, as well as having received commission, ranging from Rs. 1,000 to 4,000 on different vehicles. The commission was for reference only, so that it was not conditional on the sale fructifying. She had been working with Kotak Mahindra up to the year 2010, and had developed contacts, who - or persons through them, contacted her, and which were in turn referred by her to the assessee-company. The commission had been duly returned by her to the Revenue, being her only source of income, even as she clarified to be not maintaining any office or business establishment. The same did not find favour with the AO, who made a disallowance for Rs. 5 lacs, which was, while agreeing with him in principle, restricted by the Id. CIT(A) to Rs. 1.50 lacs.

3. We have heard the parties, and perused the material on record.

We find little merit in the assessee's - who has in our view been allowed substantial relief by the Id. CIT(A), claim. The rendering of service, for which commission is allowed, remains completely unproved. That apart, if an ex-employee of a finance company could refer customers, why would not the current employees of the same or even different companies, several of which operate in the market, i.e., in the auto finance segment, do so. The assessee is selling standardized products, with trained staff, well-versed with different models of the vehicles being sold as well as with that in competition, so as to properly educate and engage with the customers and, thus, market the same. The market being a fast changing one, with new models being launched on a regular basis, she may not even be aware of

the models currently in vogue. No wonder, the prices known to her were of the models sold in 2010.

Buying a vehicle, a capital asset, with long term implications, is ordinarily a result of an informed decision. A customer intending to purchase a vehicle would visit an auto dealer directly, and on the basis of discussions, including demonstration, as well as other relevant factors, viz. past experience, reputation of the manufacturer, etc., take a decision, also co-opting the information gathered from other such dealers of the same or different manufacturers, i.e., as per his needs and budget. Why, then, would a person contact another, as Mohini Sharma, or others (to whom commission has been paid), who would in turn only refer him an auto dealer. No personalized; rather, cognizable service is involved, for a customer to approach a third person for a reference. There is no value addition for the customer and, in fact, even from the standpoint of the dealer so as to incur any cost for the same. In fact, the market being fiercely competitive, as admitted by the assessee itself in the context of another issue, it is incomprehensible that commission is paid merely for reference, i.e., even if did not result in any sale. The assessee's claim is completely unsubstantiated and unproved. The disallowance is accordingly confirmed.

We decide accordingly.

4. The second issue relates to the estimation of the assessee's income from its two workshops, also being run by it, i.e., in addition to its' dealership (trading) business, and in respect of which the assessee is not maintaining any separate books of account. The assessee's accounts reflecting a turnover of Rs. 1.72 cr. in respect of the workshop business (out of the total turnover at Rs. 132 cr.), it was required by the AO to inform of the profit of the said (service) business as disclosed per its books of account. The assessee furnished a detail of the expenses,

noting the expenditure which related specifically to the workshop (PB pgs. 38-39). On the basis of the same, the AO worked out the income from the workshop business at a loss, i.e., after including the proportionate share of rent, electricity, repair, etc., i.e., overhead expenses. Further, the assessee's method of accounting for various receipts and expenditure of this business was examined by him to find it as deficient in several respects. The accounts of the said business were therefore in his view neither complete nor correct so as to be considered as reliable for determination of the assessee's correct income arising from the said business. He estimated the income there-from at 8% of the expenditure incurred and, accordingly, made any addition for Rs. 15 lacs. The Id. CIT(A), in appeal, found that while the assessee was able to explain some aspects, it could not satisfactorily explain the balance, so that he allowed relief to the extent of Rs. 10 lacs, confirming the balance Rs. 5 lacs. Aggrieved, the assessee is in second appeal.

5. We have heard the parties, and perused the material on record.

At the very outset, it was observed (and questioned) by the Bench that the Id. CIT(A) having confirmed 1/3 of the addition made by the AO, had affectively assessed the workshop income at less than 3% (2.67%, to be precise) of expenditure. This would work to an even lower figure when reckoned on gross receipt (turnover) basis, i.e., at 2.60% ($2.67/102.67 \times 100$). How could that be regarded as excessive or higher? Does the assessee therefore mean to say that the profitability of its servicing business is lower than 2.6%? The Id. AR would reply by stating that the AO's working is wrong, and that the assessee had in fact earned a profit on the said business, as against a loss, as worked out by the AO. However, neither before the AO nor even before the Id. CIT(A) did the assessee furnish its working of the said business, which it claims before us to disclose a profit as per its books of account. The onus, where so, would then shift to the Revenue to show as

to what infirmity inflicts the said working. Further, if the assessee was not clear about the AO's working, as claimed before us, what prevented it from the requiring the AO, or even the first appellate authority, to furnish the same?

The question, however, as we discern, and as observed by the Bench during hearing, is not the ratio of the profit, but if there are any discrepancies in the assessee's accounts, making them unreliable, which would entitle the AO to make an estimated addition in respect of the under-reporting of income. Toward this, the Id. AR was required to furnish an explanation or exhibit from its records the following areas of accounting found deficient by the Revenue, as gathered from the detailed submissions by the assessee before, as well as the orders by, the Revenue authorities, also reproducing the same, and which were extensively read out during the course of hearing:

a) veracity of the claim of expenditure on paint consumed. The assessee as per the AO had claimed the same at Rs. 59.09 lacs, while it had admittedly received a rebate for Rs. 11.41 lacs, so that the paint consumption could not possibly exceed 47.68 lacs. In this regard, the assessee was asked to furnish the details of the opening and closing stock of paint, along with its valuation.

b) the total salvage value deducted by the Insurance company (National Insurance Co. Ltd.) while settling the insurance claims lodged during the year. As, however, the Id. AR explained that the shortfall on account of salvage was recovered by the assessee from the customers itself, which though did not find mention in the assessee's submission before the Revenue, the assessee was required to exhibit the same.

c) the job work accounting, so that the various spares used for a particular job, are properly charged thereto and, accordingly, billed.

d) sale of used oil/lubricants, which are generally sold to industrial units/furnaces.

The Id. AR would, on the next date of hearing, i.e., 12.02.2018, begin by stating that the impression that the assessee had incurred a loss on workshop account is not based on facts. Taking us through the information furnished during

assessment proceedings (PB pgs. 38,39), he would state that the same was merely indicative, and did not represent a proper working so as to compute the profit of the two business segments. In fact, the turnover of the workshop business is Rs. 712.97 lacs in-as-much as the figure of Rs. 172.58 lacs (the turnover stated earlier) does not include the sale of spare parts, which is at Rs. 542.51 lacs. The assessee has *now* prepared a chart apportioning the overhead expenditure on the basis of turnover, i.e., after allocation of direct expenditure, and which reflects the profit of the workshop segment at Rs. 18.72 lacs, furnishing a new set of papers (marked PB II, at pages 18, 19). Coming to the specific objections which had remained unaddressed, and specifically called for being addressed by the Bench, his submissions were as follows:

a) opening and closing inventory of consumable stores, which includes paint material, was furnished (PB II, pgs. 2-5). Further, the rebate availed on paint material stands credited to the consumables stores account, so that the consumption of the paint material is at Rs. 47.68 lacs (and not Rs. 59.27 lacs), even has clarified by the assessee during assessment proceedings itself vide its letter dated 12.10.2015 (vide para 16(e), at PB page 51).

b) that the salvage value deducted by the insurance company, and made good by recovering the same from the customer (whose vehicle is under repair), was shown to us with reference to a sample bill (INS 18D000124, dated 15.09.2017) for Rs. 90,545, as well as the corresponding ledger account (of the customer) (PB II, pgs. 6-8). The assessee has been following the same accounting procedure from year to year. Further, the passing of the journal entry in respect of the job work (PB II, page 6), crediting the account of the insurance company (with simultaneous debit to the account of the customer), and not directly to the sale account, was with a view to enable the transfer of the GST to the insurance company.

c) the sale bill afore-referred itself shows proper accounting in respect of the spare parts in-as-much as it clearly reflects it's constituents, being sale of spare parts (Rs. 77,544); labour charges (Rs. 3,575); and GST (Rs. 9,426). The spare parts get allocated to a particular job on the basis of a job card (PB II, page 20), and are accordingly billed to the customer on the completion of the job.

d) sale of used oil is collected in drums and sold at intervals of time, i.e., as and when a drum - in which the same is collected, gets filled up, taking us through sale invoices, viz. No. 7, dated 11.08.2012 and No. 2, dated 19.05.2012, at PB pages 70, 71), reflecting sale of used oil drum for Rs. 4778 and Rs. 7985 respectively. The same, upon, query, it was explained, is credited to the sale of spare parts.

We are, on balance, satisfied with the explanations (including the corroborative material) furnished by the assessee (through the Id. AR) in respect of the queries raised *qua* the accounting of the job work segment of the assessee's business. We are, however, unable to appreciate as to how the sale of used oil is, as claimed, credited to the sale of spare parts inasmuch as there is no purchase thereof (used oil). However, where credited to a sale account, the same, irrespective of the account head, gets credited to the profit & loss account, so that the same is in order. The total sale for the relevant year, as appears from the sale bills enclosed in the paper-book (PB pgs. 69-72), is for Rs. 28,444/-. The Revenue has not doubted the sale volume thereof, making an informed estimate of the sale that ought to have materialized. Under the circumstances, therefore, subject to the said amount being credited to the profit and loss account for the year, no interference with the profit (of the workshop business) as disclosed per the assessee's accounts is called for.

We decide accordingly.

6. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on February 16, 2018

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Date: 16.02.2018.

/GP/Sr. Ps.

Copy of the order forwarded to:

(1) The Appellant: Raga Motors P. Ltd.

- (2) The Respondent: Dy. CIT Circle-IV, Jalandhar.
- (3) The CIT(A)-2, Jalandhar.
- (4) The CIT concerned.
- (5) The Sr. DR, I.T.A.T.

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By Order