

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1830/PUN/2014

निर्धारण वर्ष / Assessment Year : 2010-11

The Assistant Commissioner of Income Tax,
Circle – 1, Aurangabad

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Chandra Mats Pvt. Ltd.,
P. No. K-224 & 225, MIDC,
Waluj, Aurangabad

PAN : AABCC5846L

.....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 11-12-2017

घोषणा की तारीख / Date of Pronouncement : 21-02-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), Aurangabad dated 30-07-2014 for the assessment year 2010-11.

2. The brief facts of the case as emanating from records are : The assessee is a private limited company engaged in manufacturing and sale

of polypropylene mats. The assessee filed its return of income for the impugned assessment year on 23-09-2010 declaring total income of Rs.16,52,680/-. The case of the assessee was selected for scrutiny under CASS. Accordingly, statutory notice u/s. 143(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued to the assessee on 25-08-2011. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee has paid commission to the tune of Rs.1,10,43,495/- on export sales. During the period relevant to assessment year under appeal, the total sales of assessee were Rs.8,75,66,509/- out of which export sales were Rs.5,23,63,798/-. On enquiry made by the Assessing Officer, it transpired that the assessee had paid commission on export sales to Mrs. Marjan Vossough Modaress (hereinafter referred to as "Commission Agent"), a Canadian citizen. She was the sole selling agent for sale of assessee's products in Canada and the USA. In fact Mrs. Marjan Vossough Modaress is wife of one of the partners of the firm in Canada to whom assessee was exporting its products. The Assessing Officer after examining the agreement between the assessee and commission agent concluded that the agreement is a sham and colourable device to minimize assessee's tax liability. It is not a genuine business arrangement and thus, disallowed assessee's claim of export commission Rs.1,10,43,495/-.

Aggrieved by assessment order dated 15-03-2013, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The First Appellate Authority allowed the appeal of assessee. Now, the Revenue is in appeal before the Tribunal.

3. The Revenue has raised following grounds of appeal assailing the order of Commissioner of Income Tax (Appeals).

1. *“Whether on the facts & in the circumstances of the case, the Ld. CIT(A), Aurangabad was right in deleting the addition of Rs.1,10,43,495/- made disallowing the export commission, ignoring the fact that the assessee has failed to substantiate its claim that the services were rendered by the commission agent Mrs. Marjan V. Modareess. Who was the wife of the Importer.*
2. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was correct in deleting the addition made by the A.O. equating the commission paid by the assessee as a discount. When in the present case the commission was paid separately.*
3. *Whether on facts and in the circumstances of the case the Ld. CIT(A) was justified in holding that no addition was made on this count in earlier years whereas all the Assessment Proceedings are different from each other as held by various judgements.*
4. *Whether on facts & circumstances of the case the Ld. CIT(A) was correct in not appreciating the discrepancies in commission paid Export bill wise detected by the Assessing Officer.*
5. *On the facts and in the circumstances of the case, the order of the AO be restored and that of the CIT(A)-1 be vacated.*
6. *The appellant craves leave to add, amend or alter all or any of the Grounds of Appeal.”*

4. Shri Achal Sharma representing the Department submitted that the total commission paid by assessee to commission agent is more than 21% of the total export sales. A perusal of the agreement between the assessee and commission agent would show that the agreement has been drafted in very casual manner with contradictory clauses. The bills raised for commission are in fact on account of extra rate charged towards cost of packing. The agreement is nothing but make believe arrangement entered into with an overseas party to minimize assessee's tax liability. The ld. DR submitted that where such make believe arrangement are induced in the transactions, the veil has to be pierced to see the true colour of transactions. The ld. DR pointed that commission agent is wife of one of the partners of M/s. Korhani Distributors, Canada to whom assessee is exporting its products. The assessee has used sales commission agreement as a colourbale device to reduce tax liability. Therefore, the

Assessing Officer has rightly disallowed the sales commission on export sales. To support his submissions, the ld. DR placed reliance on the following decisions :

- i. Lachminarayan Madan Lal Vs. Commissioner of Income Tax, 86 ITR 439 (SC);
- ii. Umakant B. Agrawal Vs. Deputy Commissioner of Income Tax, 369 ITR 220 (Bombay).

5. Per contra, Smt. Deepa Khare appearing on behalf of the assessee vehemently supported the findings of Commissioner of Income Tax (Appeals) in deleting the disallowance. The ld. Counsel for the assessee submitted that after hiring the services of commission agent, the export sales of assessee increased many fold. The assessee started availing services of commission agent in Financial Year 2008-09. Prior to that in Financial Year 2007-08 the export sales of assessee were merely Rs.13,34,800/- which arose to Rs.5,23,63,798/- in Financial Year 2009-10 (relevant to the assessment year 2010-11). Thus, there is multiple fold increase in export sales of assessee. To show comparative analysis of export sales over the period of time, the assessee referred to chart at page 64 of the paper book. The ld. Counsel pointed that the assessee had paid commission to Mrs. Marjan Vossough Modares during assessment year 2009-10 and even in the subsequent assessment years. However, no objection was raised by Assessing Officer either in immediately preceding assessment year or in the subsequent assessment years. The ld. Counsel placed on record a copy of assessment order passed u/s. 143(3) for assessment year 2009-10 at pages 88-89 of the paper book and the copy of assessment order for assessment year 2011-12 passed u/s. 143(3) at pages 84-85 of the paper book. The ld. Counsel contended that it is only in the assessment year under appeal that the Assessing Officer has raised

objection on payment of commission on export sales. The commission paid by the assessee in preceding assessment year, subsequent assessment years and the assessment year under appeal is the same agreement. The ld. Counsel prayed that the rule of consistency demands that the addition made in the intervening assessment year should be deleted. The ld. Counsel further contended that the Assessing Officer has not disputed the payment of commission. The commission was paid by assessee through banking channels. Therefore, there cannot be any element of doubt over the payment of commission. It is not the case of Revenue that any part of commission paid by assessee has flown back to assessee in any manner. The ld. Counsel prayed for upholding the order of Commissioner of Income Tax (Appeals) and dismissing the appeal of Revenue.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also considered the case laws on which the ld. DR has placed reliance. The solitary issue raised by the Revenue in appeal is against deleting the addition of Rs.1,10,43,495/- in respect of commission on export sales paid to Mrs. Marjan Vossough Modareess. It is an undisputed fact that sales commission was paid by the assessee in the earlier assessment year, as well as subsequent assessment years on the basis of same agreement. The Assessing Officer accepted payment of sales commission as allowable expenditure without raising any doubt with respect to genuineness of the agreement or payment of commission. The assessee has drawn our attention to the comparative analysis of the export turnover prior to appointment of commission agent vis-à-vis subsequent period. The comparative analysis of the exports in terms of quantity and sale value for the three financial years starting from Financial Years 2007-08 to 2009-10 is as under :

Sr. No.	Description	2007-08	2008-09	2009-10
1	Sale Value	13,34,800	6,28,86,056	5,23,63,798
2	Commission	0	88,32,757	1,10,43,495
3	No. of Mats in 3ft.X6ft.	42,600	3,95,811	2,89,383

7. A perusal of the assessment order shows that the Assessing Officer has questioned business expediency of payment of commission paid by assessee on export sales. The objections raised by the Assessing Officer are devoid of merit as :

- i. Though principle of res-judicata does not strictly apply on Income Tax proceedings, yet principle of consistency demands that if any expenditure is allowed in the preceding and the succeeding assessment years on same set of facts, the expenditure cannot be disallowed for the intervening period. The Hon'ble Supreme Court of India in the case of Radhasoami Satsang Vs. Commissioner of Income Tax reported as 193 ITR 321 has held :

"We are aware of the fact that, strictly speaking, res judicata does not apply to IT proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but 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."

- ii. A perusal of comparative analysis of export turnover in the past two assessment years show that after appointment of commission agent, the export turnover of the assessee in terms of volume and Revenue has substantially increased. Thus, the benefit of appointment of commission agent to the assessee is apparent from the records itself.

iii. It is prerogative of the assessee to decide, whether to appoint a commission agent or not and the manner in which business is to be conducted. It is a well settled law that the Assessing Officer cannot step into the shoes of assessee and decide business expediency of expenditure.

8. The ld. DR in support of his submissions has placed reliance on the decision rendered in the case of Lachminarayan Madan Lal Vs. Commissioner of Income Tax (supra). In the said case, Hon'ble Apex Court upheld disallowance of payment of commission as the assessee failed to show existence of selling agency. The finding of fact given by the Tribunal in the said case was that selling agency is nothing but another manifestation of assessee's firm. We find that the facts of the aforesaid case are entirely at variance from the facts of the case in hand. In the instant case, existence of overseas commission agent is not in dispute. The Assessing Officer has raised doubt over the reasons and need for entering into agreement with commission agent. Therefore, ratio laid down in the case of Lachminarayan Madan Lal Vs. Commissioner of Income Tax (supra) in our considered opinion does not support the case of Departemnt.

Reliance has also been placed by DR on the case of Umakant B. Agrawal Vs. Deputy Commissioner of Income Tax (supra). In the said case the payment of commission was disallowed as the assessee could not prove the services rendered by brokers with supporting evidence. Again the facts in the present case are distinguishable. The assessee has been able to show from records that due to the services rendered by the commission agent, export turnover of the assessee have substantially increased. Thus, the decision rendered by the Hon'ble Jurisdictional High Court in the case

of Umakant B. Agrawal Vs. Deputy Commissioner of Income Tax (supra) does not support the cause of Department.

9. The impugned order passed by the Commissioner of Income Tax (Appeals) is well reasoned and we concur with the findings of First Appellate Authority. Hence, we find no reason to interfere with the same. Accordingly, the impugned order is upheld and the appeal of the Revenue is dismissed being devoid of any merit.

10. In the result, the appeal by Revenue is dismissed.

Order pronounced on Wednesday, the 21st day of February, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 21st February, 2018

RK

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), Aurangabad
4. आयकर आयुक्त / The CIT, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune