

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

श्री डी. करुणाकरा राव , लेखा सदस्य  
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SRI D.KARUNAKARA RAO, AM  
AND SRI VIKAS AWASTHY, JM**

आयकर अपील सं. / ITA Nos.1061 to 1064/PUN/2015  
निर्धारण वर्ष / Assessment Years : 2007-08 and 2008-09

J.M. Industries,  
I-195, MIDC,  
Ahmednagar,  
Dist. Ahmednagar  
PAN : AACFJ4581F

.... अपीलार्थी/Appellant

Vs.

ACIT, Ahmednagar Range,  
Ahmednagar

.... प्रत्यर्थी / Respondent

Assessee by : Sri S.N. Puranik  
Respondent by : Sri Mukesh Jha, JCIT

सुनवाई की तारीख / <b>Date of Hearing : 28.02.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 28.02.2018</b>
--	--

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

There are 4 appeals filed by the assessee under consideration involving two Assessment Years, i.e., 2007-08 and 2008-09. ITA Nos. 1061 and 1062/PUN/2015 relate to the disallowance of commission payment made in the assessment orders passed u/s.143(3) of the Act; whereas the appeals ITA Nos. 1063 and 1064/PUN/2015 relate to the penalty levied u/s.271(1)(c) of the Act on the said disallowance of claim of commission payment.

2. It is an admitted position that the penalties becomes unsustainable in law if the quantum addition issue relating to the

commission payments is decided in favour of the assessee. Therefore, we shall take up the quantum appeals first.

**ITA Nos. 1061 and 1062/PUN/2015**  
**(A.Yrs. 2007-08 and 2008-09)**

3. The only ground commonly raised by the assessee in A.Yrs. 2007-08 and 2008-09 read as under :

*“Hon. Commissioner (Appeals) erred in confirming the additions of sales commission paid to related parties at Rs.9,18,000/- which may please be allowed.”*

4. Briefly stated relevant facts culled out from the appeal ITA No.1061/PUN/2015 are include that the assessee is a firm engaged in the business of aluminum related activities. During the assessment year under consideration, AO noticed that the assessee paid an amount of Rs.10,37,499/- as commission and discount to Sri Pritesh P. Lodha, a person specified u/s.40A(2)(b) of the Act. Assessee was to justify the fact of payment of commission to Sri Pritesh P. Lodha and the services rendered by Sri Pritesh Lodha. Assessee produced a sale bill which conveys that Sri Pritesh P. Lodha sold goods worth Rs.4,58,99,997/- for the assessee and raised the invoice for a sum of Rs.9,18,000/-. It works out to 2% of the total sale. Assessee was therefore asked to produce the account extract showing the commission. On perusal, AO noted certain discrepancies in the said extract. Considering the same that assessee did not file evidences in support of the services rendered by him to the assessee, the AO invoked the provisions of section 40A(2)(b) of the Act and held the payment as fictitious/bogus expenditure and added the same to the total income of the assessee. Further, the AO also (1) disallowed an amount of Rs. 5,20,000/- being salary paid to Smt.

Manisha Lodha and Smt. Samata Lodha as inflated expenditure, (2) disallowed an amount of Rs.7,75,026/- towards burning loss restricting the burning loss to 1% as against 3.5% claimed by the assessee. Eventually, AO assessed the total income of the assessee at Rs.1,07,20,416/-.

5. During the First Appellate proceedings, CIT(A) confirmed the disallowance of Rs.9,18,000/- made by the AO. While doing so, he held that assessee failed to discharge his onus with cogent evidences that payee has rendered any services to the assessee. Therefore, the commission so paid by the assessee to Pritesh P. Lodha is held to be not incurred wholly and exclusively for the purpose of business. Contents of Para Nos. 2.4.1 to 2.4.5 of the order of CIT(A) are relevant. CIT(A) granted relief in respect of other additions.

6. Aggrieved with the order of CIT(A), the assessee filed the above appeals before the Tribunal with the ground referred above.

7. Before us, Ld. Counsel for the assessee filed a copy of order of Tribunal in the assessee's own case in ITA No.1085/PN/2009 order dated 27-04-2012 and submitted that the Tribunal in the assessee's own case in the A.Y. 2006-07 has deleted similar claim of payment of commission disallowed by the AO. In that year too, Sri Pritesh P. Lodha is the recipient of commission and he is assessed to tax. Ld. Counsel for the assessee submitted that there is no loss caused to the Department as the commission is subjected to tax in the hands of Sri Pritesh P. Lodha too. Therefore, he submitted that since the Tribunal has granted relief on the similar facts in the immediate preceding year, the said order of the Tribunal becomes a binding precedent and in favour of the assessee.

8. Ld. DR for the Revenue relied heavily on the order of the AO/CIT(A) dutifully.

9. We heard both the sides and perused the written submissions filed by the Ld. Counsel for the assessee. We perused the order of the Tribunal on this issue and find it relevant to extract the finding given by the Tribunal in assessee's own case for A.Y. 2006-07. The same is extracted as under:

*"11. Considering the above submissions, we find that it is not the case of the Department that assessee has paid more commission to the above commission agents for similar work as prevailing in the market. The revenue has doubted the payment of commission only because the above stated two agents fall in the category of persons specified in 40A(2)(b) of the Act. It is now an admitted fact that due to competitiveness in the market, the manufacturer has to engage commission agents to market their products and for recovery of the payments in time. This material submission of the assessee that they have not employed any persons in their staff for marketing their products but they have engaged the above stated two persons for this job and due to their effort, turnover has also been increased from Rs. 7 Crores showing during the last year to Rs. 10 Crores during the year. Considering all these material facts in totality, we are of the view that there was no reason with the A.O to M/s. J.M. Industries, A.Y. 2006-07 Page of 8 doubt the claimed payment of commission to the above stated two commission agents. We thus while setting aside orders of the authorities below direct the A.O to delete the addition of Rs. 9,24,634/- (made by invoking the provision of Sec. 40A(2)(b) of the Act). We also observed that in view of the turnover of the assessee, the payment of commission claimed does not appear to be on higher side or excessive. The ground No. 2 is accordingly allowed."*

10. Considering the above stated position on the issue, we are of the opinion that the commission paid to Sri Pritesh P. Lodha is an allowable deduction. The payment to one person in the year under consideration does not disentitle the assessee from making the claim so long as business of the assessee is benefited by his services. The arguments made by the Ld. DR are not allowed. Therefore, we are of the opinion that the issue now stands covered in favour of the assessee by the order of Tribunal in the immediate preceding assessment year. Accordingly, the ground raised by the assessee is allowed.

11. The grounds and the facts for the A.Y. 2008-09 are *para-materia* to that of the A.Y. 2007-08. The arguments and counter arguments are having equal force. On hearing the parties, we find the said decision of Tribunal covers the issue in this assessment year too.

Consequently, the ground raised for the assessment year is allowed.

12. In the result, both appeals of the assessee are allowed.

13. Now we shall take up the appeals pertaining to penalty u/s.271(1)(c) of the Act.

**ITA Nos. 1063 and 1064/PUN/2015**  
**(A.Yrs. 2007-08 and 2008-09)**

14. Assessee filed the present appeals under consideration in connection with the penalty levied by the AO u/s.271(1)(c) of the I.T. Act vide his order dated 28-03-2013. AO levied the penalty of Rs.4,84,008/- for the A.Y. 2007-08 and Rs.10,74,171/- for the A.Y. 2008-09. These penalties were levied on the issue of commission and salary payments made by the assessee.

15. After going through the facts of the case, we find the entire penalty levied by the AO need to be deleted, in principle. Since the quantum addition in respect of commission payment has been deleted by us relying on the decision of the Tribunal (*supra*) and the quantum addition in respect of salary paid to Ms. Manisha Lodha and Ms. Samata Lodha was deleted by the CIT(A) vide order dated 27-02-2015, the penalty levied by the AO in both the assessment years does not survive. Accordingly, the appeals raised by the assessee in these two appeals becomes infructuous and therefore, the same are dismissed as such.

16. In the result, both appeals of the assessee are dismissed.

17. To sum up, ITA Nos. 1061 and 1062/PUN/2015 filed by the assessee are allowed and ITA Nos. 1063 and 1064/PUN/2015 filed by the assessee are dismissed.

Order pronounced in the open court on this 28<sup>th</sup> day of February, 2018.

Sd/-

Sd/-

**(VIKAS AWASTHY)**

**(D. KARUNAKARA RAO)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 28<sup>th</sup> February, 2018  
सतीश

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-2, Pune
4. CIT-2 Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B Bench"  
Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune