

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

**ITA No.1784/Kol/2011 &
ITA No.162/Kol/2012**
Assessment Year:2004-05

M/s. Sarad Industrial Products, 26, Amharst Street, Kolkata-700009 [PAN No.AAKFS 3984 K]	बनाम / V/s.	Income Tax Officer, Ward-37(2), 18, Rabindra Sarani, Podder Court, Kolkata-001
Income Tax Officer, Ward-37(2), 18, Rabindra Sarani, Podder Court, Kolkata-001	बनाम / V/s.	M/s Sarad Industrial Products, 26, Amherst Street, Kolkata-009
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	Shri S.M. Surana, Advocate & Shri V.N. Purohit, FCA
राजस्व की ओर से/By Revenue	Shri Arindam Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	29-01-2018
घोषणा की तारीख/Date of Pronouncement	21-03-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

The assessee as well as Revenue are in cross-appeal against the common order of Commissioner of Income Tax (Appeals)-XXIV, Kolkata dated 31.10.2011. Assessment was framed by ITO Ward-37(2), Kolkata u/s 143(3)/147 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his common order dated 30.12.2009 for assessment year 2004-05. The cross-appeals are heard together and disposed of by this common order.

Shri S.M. Surana and Shri V.N. Purohit, Ld. Authorized Representatives appeared on behalf of assessee and Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue.

First we take up Revenue's appeal in ITA No.162/Kol/2012 for A.Y. 04-05.

2. At the outset, it is observed that there is a delay of 19 days on the part of Revenue in filing this appeal before the Tribunal. In this regard, the Revenue has filed an application seeking condonation of the delay and keeping in view the reasons given therein, which is duly supported by an affidavit filed by the Revenue, we are of the view that there is a sufficient cause for the delay on the part of Revenue in filing this appeal. Hence, we condone the said delay and proceed to dispose of this appeal of Revenue on merit.

3. Sole revised issue raised by Revenue in this appeal is that Ld. CIT(A) erred in deleting the addition of ₹28,61,101/- which was added by the Assessing Officer on account of suppression of sales.

4. Briefly stated facts are that assessee, a partnership firm, deals in the business as general merchant and Commission agent. The AO during the course of assessment proceedings observed that there is a mismatch in the amount of sales declared by assessee in its return of income vis-a-vis details of sales filed by assessee amounting to ₹28,61,101/-only. As such the assessee has shown less amount of sales. On confrontation, assessee submitted that details of sales filed before AO during assessment proceedings is inclusive of sales-tax / Central Sales tax and freight. As such, there was no under reporting sales declared in the audited financial statement. However, the AO disregarded the contention of assessee and treated the difference of amount of ₹28,61,101/- as suppressed sale. Accordingly, AO added the same to the total income of assessee.

5. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) filed reconciliation statement as detailed under:-

<i>"Sales as per profit & loss a/c</i>	<i>Rs.2,46,48,435/-</i>
<i>Add: Sales Tax</i>	<i>Rs. 32,10,933/-</i>
<i>Add: Central Sales tax</i>	<i>Rs. 7,169/-</i>
<i>Add: Freight</i>	<i>Rs. 16,150/-</i>
	<i>Rs.2,78,82,687/-</i>
<i>Less: discount on sales</i>	<i>Rs. 2,34,105/-</i>

	Rs.2,76,48,582/-
Less: sales on consignment a/c	<u>Rs. 52,653/-</u>
Gross turnover as per ST return filed	Rs.2,75,95,929/- “

The assessee also submitted that the amount of sales tax was not added in the turnover and the same was shown as liability under the head “current liability” in the balance-sheet. The assessee has been following this practice consistently which was duly accepted by the Revenue in earlier years. Ld. CIT(A) after considering the submission of assessee deleted the addition made by the AO by observing as under:-

*“3.4 I have considered the above submissions. In my view, the Assessing Officer has not appreciated the method of accounting in the instant case. The appellant firm has accounted for sales tax as current account. It has been explained that the sales tax collected against sales has been directly credited to sales tax payable account and only net sales is credited in Trading and Profit & Loss Account. The appellant firm paid the sales tax to the credit of Government as and when it became due. I have also considered the reconciliation of sales as discussed above. In this connection, it is observed that the Assessing Officer has passed two orders u/s. 143(3)/147 on 30.12.2009. He has made reference to another order passed u/s.154/143(3)/147. However, the Ld. A/R has informed that no such order u/s. 154 was ever served on the appellant. In these circumstances, I would like to state that the Assessing Officer should not pass multiple orders u/s. 143(3)/147 on the same day in the same case without any reason. In the remand, the Assessing Officer has informed that **“the gross sales should be taken at R.2,75,95,929/- instead of Rs.2,75,09,536/- and in the process the computation of assessed income should be enhanced by Rs.86,393/-**“. As regards the suggestion of the Assessing Officer for enhancement of income by Rs.86,393/-, it is explained that the Ld. Dy. Commissioner, Commercial Tax, Dharamtala Circle, Kolkata has deleted the enhancement as made by the ACCI/SL Charge & the Gross Turnover has been fixed at Rs.2,75,95,929/- vide his order dated 06.07.2007 in Appeal Case No. A/DCCT/DH/SL/34/06-07. In view of its, the request of the Assessing Officer for enhancement of income by Rs.86,393/- is rejected. From the reconciliation statement of sales as given at para 3.2, it is evident that there is no under-statement of sales. The Assessing Officer has wrongly made the addition of Rs.31,35,402/- on incorrect facts as he has failed to appreciate the method of accounting followed by the appellant-firm. The Assessing Officer is directed to delete the addition of Rs.31,35,402/- after verifying the proof for payment of sales tax. Thus, the appellant gets a relief of Rs.31,35,402/-. This ground of appeal is allowed.”*

The Revenue, being aggrieved, by this order of Ld. CIT(A) is in appeal before the Tribunal.

6. Ld. DR for the Revenue vehemently relied on the order of AO and left the issue to the discretion of the Bench. On the other hand, Ld. AR for the assessee filed paper book which is running from pages 1 to 60 and stated that the issue may be decided on merit.

7. We have heard the contentions of the rival parties and perused the material available on record. At the outset, it was observed that similar addition on account of suppression of sale was made by AO in assessment year 2006-07 which was subsequently deleted by Ld. CIT(A). Subsequently the matter was carried to Tribunal by the Revenue. However the Tribunal was pleased to uphold the order of Ld. CIT(A) in ITA No.1917/Kol/2012 in assessee's own case, the relevant extract of the order is reproduced below:-

“21. Heard rival submissions and perused the material available on record. We find that the assessee has current account for sales tax and sales tax collected amount against sales has been directly credited to Sales Tax payable account. From the reconciliation statement of sales, it is evident that there is no under-statement of sales as alleged by the AO. We further find that the AO has failed to appreciate the method of accounting followed by the assessee. In view of above, we are of the view that the CIT(A) was justified in directing the AO to delete the addition of Rs.29,90,664/- by verifying the original challans for payment of sales. We find no infirmity in the impugned order of the CIT and uphold the same. Ground no. 3 raised by the revenue is dismissed.”

Respectfully following the same, we confirm the order of Ld. CIT(A). Hence, this ground of Revenue is dismissed.

8. In the result, Revenue's appeal is dismissed.

Coming to assessee's appeal in ITA No.1784/Kol/2011 for A.Y. 04-05.

9. In this appeal four grounds have been raised out of which Ground No.3 was not pressed and therefore same is dismissed as not pressed and ground No.1 & 4 are general in nature and do not require separate adjudication.

10. Sole issue raised by assessee in ground No.2 is that Ld. CIT(A) erred in confirming the addition of ₹1,72,296/- on account of under-statement of commission income made by AO.

11. During the course of assessment proceedings, AO observed that assessee has received commission income of ₹11,90,285/- from the parties in pursuance to TDS

certificate issued by them. The necessary details of the parties from whom the commission were received by assessee stand as under:-

i) M/s Balarampur Chini Mills Ltd.	Rs.316645/-
ii) M/s Finolex Cable Ltd.	Rs.789907/-
iii) M/s Parrys Confectionery Ltd.	Rs. 41600/-
iv) M/s Huntsman Advanced Materials (I) Ltd.	Rs. 23000/-
v) J 4F Nutri plus (as stated in the statement)	<u>Rs. 19080/-</u>
	Rs.1190285/-

However, assessee has shown commission income of ₹9,22,994/- in its financial statement. Therefore, a difference of ₹2,67,291/- was observed by the AO. On question, the assessee failed to provide any satisfactory reply, therefore AO disallowed the same and added to the total income of assessee.

12. Aggrieved, assessee preferred an appeal before Ld. CIT(A) and filed reconciliation statement depicting the amount of commission which is reproduced as under:-

Name of the party	Commission	Service tax	Reimbursement of exp.	Total	TDS
Finolex Cables Ltd.	731415.00	58512.00		*789927.00	43446.00
Balrampur Chinni Mills Ltd.	172500.00	13350.00	139796.00	***316646.00	6490.00
JF Nutriplus Ltd.	19080.00			****19080.00	
Parry Confectinery Madras			18500.00	**18500.00	407.00
Huntsman Advanced Meterial			23000.00	23000.00	460.00
	922994.00			1167153.00	

The assessee further submitted that there was some mistake in the amount of commission recorded by the AO while passing assessment order. It was also submitted that AO has added the amount of service tax and reimbursement of expenses in the gross amount of commission as discussed above. The assessee has not been showing the amount of service tax and reimbursement of expense in the profit and loss account. The amount of service tax and reimbursement of expense has been shown in the balance-sheet and in view of above assessee submitted that no addition as observed by Assessing Officer can be called for. However, Ld. CIT(A) after

considering the submissions of assessee deleted addition in part made by AO. The Id. CIT-A also observed the fact that the amount of service tax as well as reimbursement of expenses was wrongly recorded by AO during the assessment proceedings. However, Ld. CIT(A) was not convinced with the amount of reimbursement of expense claimed by assessee and accordingly the order of AO was partly confirmed by observing as under:-

*“3.10 I have considered the submission of Ld. A/R of the appellant. The Ld. A/R has clarified that the appellant-firm is crediting the commission to the profit & loss account and the service tax and reimbursement of expenses is treated as current account. It has been further clarified that the whole amount collected as a service tax was paid to the credit of Service Tax Department and it did not pass through P&L A/c. As per the explanations of the Ld. A/R, the appellant-firm has received the total commissions of Rs.11,67,153/-, out of which it has claimed service tax of Rs.71,862/- and reimbursement of expenses of Rs.1,72,296/-. Thus, the appellant has shown the income of Rs.9,22,994/- under the head commission”. In the remand report, the Assessing Officer has stated that the appellant has failed to produce the copies of agreement for commission before him. The Ld. A/R has submitted para-wise comments on the said remand report vide his letter dated 14.10.2011. However, he has failed to furnish any evidence such as copies of agreements for commission in support of reimbursement of expenses. The Assessing Officer has also observed that the appellant has shown sales of Rs.2,46,48,435/-, misc income of Rs.10,96,535/- including commission and interest of Rs.1,03,883/-. However, the appellant has disclosed net profit of Rs.24,510/- only during the year. In normal circumstances, all the expenses should have been routed through P&L A/c. In the instant case, the appellant has directly adjusted a sum of Rs.1,72,296/-. Against commission as reimbursement of expenses with a purpose to camouflage its accounts and reduce the taxable income. The Ld. A/R has failed to submit any evidence to prove the genuineness of the expenses for Rs.1,72,296/- which has been camouflaged as “**reimbursement of expenses.**”. In my opinion, the expenditure of Rs.1,72,296/- which have been directly adjusted against commission is not genuine. Accordingly, the addition of R.1,72,296/- on account of commission is upheld. The appellant has also reduced service tax of R.71,862/- from commissions. The Assessing Officer is directed to allow the payment of service tax for Rs.71,862/- out of commission after verifying the proof of service taxes. **(The Ld. A/R has also pointed that there are a few arithmetic errors in the assessment order)**. Thus the addition of Rs.2,48,158/- on account of ‘**excess commission received not shown**’ is restricted to Rs.1,72,296/-. Thus the appellant gets a relief o Rs.75,862/-.This ground of appeal is partly allowed.”*

The assessee, being aggrieved by this order of Ld. CIT(A) has come up an appeal before us.

13. Ld. AR for the assessee before us submitted that the amount of reimbursement of expense was claimed from the parties. Therefore same was reduced from the amount of gross commission. Ld. AR in support assessee's claim drew our attention on the confirmation filed by M/sBalrampr Chinni Mills Ltd. which is placed at page 11 of the paper book. Similarly, Ld. AR drew our attention on the debit note issued by assessee to M/s Parry Confectionery Madras and Hunstman Advanced Meterial which are placed on pages 30 and 31 of the paper book. The Ld. AR accordingly, submitted that the amount of debit note issued to the above parties represent the reimbursement of expense. In view of above, Ld. AR for the assessee pleaded before us that the amount of reimbursement of expense cannot be liable to be taxed under the provision of Act.

The ld. AR also submitted that the AO has passed two different assessment order for the same year thus no cognizance should be given to such assessment orders.

On the other hand, Ld. DR submitted that the necessary evidence suggesting that no expense against the reimbursement of expenses has been claimed by the assessee was furnished before the Authorities Below. Therefore, Ld. DR relied on the order of Authorities Below.

14. We have heard the rival contentions of both the parties and perused the material available on record. From the aforesaid discussion, we note that the limited issue requires adjudication with regard to the amount of reimbursement expense adjusted against the commission income. The assessee claimed to have received reimbursement of expense which was adjusted against the commission income from the following parties:-

Sl.No.	Name of party	Amount
1	Balrampur Chinni Mills Ltd	130796
2	Parry Confectionery Madras	18500
3	Huntsman Advanced Meterial	23,000

We note that there is confirmation from Balrampura Chinni Mills Ltd. depicting the amount of commission paid to the assessee as well as the amount of reimbursement of expense paid to the assessee which is placed on page 11 of the paper book. From the

aforesaid confirmation we note that the assessee has received reimbursement of expense of ₹1,30,796/- only.

Similarly, we note that the debit note issued by assessee to the balance two parties for adjusting reimbursement of expense against the commission income placed on page 30 and 31 of the paper book. It was also observed by us that the necessary details with regard to parties which paid reimbursement to assessee were available to the AO. Thus an inference can be drawn the amount of ₹1,72,296/- represent the reimbursement of expense.

14.1 Now the issue arises how this reimbursement of expenses were adjusted in its books of accounts of the assessee whether these were adjusted in the individual ledger of the parties and without routing through the profit and loss account.

However, after considering the facts in totality the issue remains unanswered whether the assessee reduced its expenses claimed in the profit & loss account by the amount of reimbursement of expense. In our considered view, it was the duty of assessee to demonstrate before Authorities Below that no expense against the reimbursement of expense was claimed by assessee in its profit and loss account. Therefore we find difficult to believe the version of assessee that the amount of reimbursement of expense has been adjusted against the commission income and corresponding expenses were not claimed in the profit and loss account in the absence of documentary evidence. Thus we apprehend that assessee has adjusted the reimbursement of expense against the commission income and at the same time it has not reduced the corresponding expense claimed in the profit and loss account. We also note that Ld. CIT(A) has given very clear finding in its appellate order as detailed under:-

“The Ld. A/R has failed to submit any evidence to prove the genuineness of the expenses for Rs.1,72,296/- which has been camouflaged as “reimbursement of expenses”.

Even before us, Ld. AR has not produced the documentary evidence suggesting that the expense against reimbursement was not claimed in its profit and loss account. In this view of the above matter, we hold that there remains no ambiguity that the amount representing the reimbursement of expense remains to be verified whether the

assessee has claimed expense in its profit and loss account against the reimbursement of expense or not. For this limited purpose, we are inclined to restore this issue back to the file of AO for fresh adjudication in accordance with law and in the light of above stated discussion. This ground of assessee's appeal is allowed for statistical purpose as indicated above.

We have decided the issue of the assessee on merit therefore we are inclined not to adjudicate the issue raised by the assessee on the validity of assessment. Moreover we note that the issue on the validity of the assessment has not been raised by the assessee in the grounds of appeal.

15. In the result, assessee's appeal is partly allowed for statistical purpose.

16. **In combine result, Revenue's appeal is dismissed and that of assessee's appeal is treated partly allowed for statistical purpose.**

Order pronounced in open court on 21/03/2018

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
Accountant Member

*Dkp, Sr.P.S

दिनांक:- 21/03/2018 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-M/s Sarad Industrial Products,26, Amharst St. Kolkata-009
2. राजस्व/Revenue-Income Tax Officer, Ward-37(2), Poddar Court, Kolkata-001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता