

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक सदस्य” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2538/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2009-10

Mragayani Properties Pvt. Ltd.,  
Director – Shri Laxminiwas V.  
Agrawal, Central Hanuman,  
Latur.

PAN : AAECM8551E

.... अपीलार्थी/Appellant

Vs.

Income-tax Officer,  
Ward-1, Latur

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None  
प्रत्यर्थी की ओर से / Respondent by : Dr. Vivek Aggarwal

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| सुनवाई की तारीख /<br>Date of Hearing : 12.03.2018 | घोषणा की तारीख /<br>Date of Pronouncement: 21.03.2018 |
|---------------------------------------------------|-------------------------------------------------------|

**आदेश / ORDER**

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

This appeal is filed by the assessee against the order of CIT(A)-2, Aurangabad dated 29-08-2016 for the Assessment Year 2009-10.

2. Grounds raised by the assessee read as under :

*“On facts and in law,*

- 1. The learned CIT(A) erred in confirming the disallowance or commission of Rs.15, 11,800/- paid to Shri Laxminiwas V. Agarwal on the ground that the assessee had failed to substantiate any evidence of services rendered by the said person.*
- 2. The learned CIT(A) failed to appreciate that Shri Laxminiwas V, Agarwal was a Director in the assessee company and was rendering various services to the assessee company and accordingly, there was no reason to disallow any commission paid to him.*
- 3. The learned CIT(A) erred in not appreciating the various documentary evidences submitted by the assessee to prove the fact that services were rendered by Shri Laxminiwas V. Agarwal and therefore, there was no reason to confirm the disallowance of commission paid to him.*

4. *The learned CIT(A) erred in confirming the disallowance of commission or Rs.1,92,992/- and Rs.4,57,510/- paid to Ramesh Chandak (HUF) and Ravindra Agarwal (HUF) respectively on the ground that the assessee had failed to prove that any services were rendered by the said two parties.*

5. *The learned CIT(A) failed to appreciate that the services were rendered by the above two parties to the assessee company and accordingly, there was no reason to disallow the commission paid to them.”*

The above grounds give rise to the issues that relate to the correctness of disallowance of commission paid to Shri Laxminiwas V. Agrawal, the (Director) of the company and also to Shri Ramesh Chandak (HUF) and Shri Ravindra Agrawal (HUF), the commission agents. AO disallowed the said commission in the fresh assessment made u/s.143(3) r.w.s. 263 of the Act for failure of the assessee in substantiating with evidences regarding the allowability of the payment of commission. In the First Appellate Proceedings, Ld. CIT(A) confirmed the same.

3. Background facts of this case include that the assessee is a company engaged in the business of investment in land and sale of the same at Latur. Assessee filed the return of income originally declaring total income of Rs.8,64,440/-. Ld. CIT invoked the provisions of section 263 of the Act in this case on the issue of allowability of the claim of commission payments. Ld.CIT passed the revision order dated 27-03-2014 setting aside the order of the AO.

4. Giving effect to the same, AO passed the fresh assessment order u/s.143(3) r.w.s 263 of the Act. From the fresh assessment order, it is evident that the company paid commission of Rs.15,11,800/- to Shri Laxminiwas V. Agrawal, who is the Director of the company and claimed it as an allowable expenditure. The said amount was offered to tax by Shri Laxminiwas V. Agrawal in his return of income. On finding that Shri Laxminiwas V. Agrawal is neither an employee nor there is evidence that services rendered by him for receiving the said commission, AO granted an

opportunity to the assessee for substantiating the claim. Assessee filed a written submission informing the AO that Shri Laxminiwas V. Agrawal is duly authorized to receive the commission by virtue of the resolution passed by the Board of Directors right from the start of the business. In support of this claim and allowability of the said expenditure, assessee relied on various decisions. However, there is no information about the facts on rendering of services to the company. To that extent, there is failure to discharge the onus on part of the assessee before the AO/CIT(A).

Same is the case with regard to the commission payments made to Shri Ramesh Chandak (HUF) and Shri Ravindra Agrawal (HUF), the commission agents. On considering the above submissions of the assessee, AO proceeded to disallow the commission as per the discussion given in Para 6 and 7 of the assessment order. For the sake of completeness of this order, we proceed to extract the said paras as follows :

*“6. The submissions of the assessee has duly been considered. The fact of the case relied upon are distinguishable from the facts of instant case, as in the case refereed above, the payment of commission was made to Managing Director, who was an employee and commission was paid to him towards services rendered by him in respect of the achievement of annual target of sales of Rs.10 Crs and the services rendered by him on a term of employment. However, in the instant case, the assessee is not an employee of the Company and there was no target provided to him and although commission was paid as per Board's resolution, the details of services rendered by the director of the company for which he was obliged commission has neither been provided to the AO during the course of assessment proceedings nor before the undersigned. **No credible evidence has been brought on record** by the assessee to justify the claim of commission paid except Board's Resolution. Hence, the commission paid to Laxminiwas Vishudas Agrawal is disallowed and added to the total income of the assessee at Rs.15,11,800/- . . . . .”*

*7. As regards commission paid to Ramesh Chandak, HUF and Ravindra Agrawal, HUF, the assessee has submitted copy of resolution and extract from AGT and it has been stated that as applied to Company and accepted by the Board of directors and by share holders, commission has been paid to HUF's of the directors. It has also been stated that **HUFs are regularly doing this business of commission agency since many years**. The submission of the assessee have duly been considered. However, the same are not acceptable for the reason that the commission to HUFs is **paid for first time by the assessee company and the nature of services rendered by these HUFs is also not specified**. In the light of above facts, the commission paid to Ramesh Chandak HUF and Ravindra Agrawal HUF is disallowed at Rs.1,92,992/- and 4,57,510/- respectively. . . . .”*

5. Assessee could not improve his case before the First Appellate Authority. Eventually, the CIT(A) confirmed the disallowances and proceeded to dismiss the appeal of the assessee.

6. It is the case of the assessee before the CIT(A) that the commission paid to Shri Laxminiwas V. Agrawal is an allowable expenditure in view of the Board resolution of the company. According to the assessee, the relationship between the assessee and Mr. Laxminiwas V. Agrawal is not that of the employee or employer relationship. Therefore, the commission received by Shri Laxminiwas V. Agrawal should be an allowable claim. Assessee submitted that the commission is duly offered to tax in the return of income filed by Shri Laxminiwas V. Agrawal under the head "income from other sources". The TDS return of the assessee was also relied in support of the genuineness of payment of commission to Shri Laxminiwas V. Agrawal. Assessee submitted that the payment made to Shri Laxminiwas V. Agrawal is a genuine transaction and there is no intention to evade the tax. However, CIT(A) did not appreciate the same. In Para No.13 of his order, CIT(A) reasoned that when there is no employee-employer relationship between the company and Shri Laxminiwas V. Agrawal, the onus is on the assessee to demonstrate with evidences the nature and extent of services rendered by Shri Laxminiwas V. Agrawal to the company. The failure to demonstrate the same attracts the disallowance and accordingly, the CIT(A) confirmed the disallowance made by the AO.

Further, regarding the allowability of the commission payments made to Shri Ramesh Chandak (HUF) and Shri Ravindra Agrawal (HUF), it is the case of the CIT(A) that the same is not an allowable deduction u/s.37 of the

Act as the assessee failed to file the proof in support of rendering of the services by the HUF. Contents of Para 16 of his order are relevant.

7. Before us, there is none to represent the case of the assessee. Despite service of notice on the assessee on 26-02-2018 informing the date of hearing on 12-03-2018, neither there is any letter for adjournment of the case nor the assessee presented himself before us. Considering the facts of the case and with the assistance of Ld. DR for the Revenue, we proceed to adjudicate the appeal in the following manner.

8. During the hearing before us, Ld. DR for the Revenue submitted that this is a case where the disallowance of claims of commission made to the Director/commission agents was made for want of evidences in support of the claim of rendering of services by Shri Laxminiwas V. Agrawal and two others. The onus is on the assessee to prove rendering of services by the Director as well as the commission agents. On considering the same, we find the appeal can be adjudicated with the help of Ld. DR for the Revenue and also based on the papers available on records.

9. Further, Ld. DR for the Revenue submitted that the onus is on the assessee to submit the requisite evidences when a claim of deduction is made u/s.37 of the Act. It is the claim of the assessee that the commission payments were offered to tax by the payees in their respective returns of income and paid the taxes at higher rates. However, there is a requirement of assessee to file the evidences to show disclosing of the commission receipts in their respective returns of income and the applicable rates. Referring to the said failure of the assessee qua the tax rates applicable to the assessee and the payees, Ld. DR for the Revenue submitted that the matters need to revisit the file of the AO for want of data on the applicable

maximum marginal rates and also the applicability of the binding judgment in the case of Indo-Saudi Services (Travel) Pvt. Ltd. 310 ITR 306 (Bom.)

10. After hearing the Ld. DR for the Revenue and after going through the orders of the Revenue available on record, we are of the opinion that the assessee paid commission to Shri Laxminiwas V. Agrawal, Director of the company and the same has the support of the Board's Resolution. In our view this part of the claim is allowable subject to the documentation relating to the filing of computation of income of Shri Laxminiwas V. Agrawal and the applicable higher tax rates. This line of adjudication has the support of binding judgments of Hon'ble Bombay High Court in the case of CIT Vs. Indo-Saudi Services (Travel) Pvt. Ltd. 310 ITR 306 (Bom.). Of course, AO shall note that this judgment is delivered in the context of the invoking of the provisions of section 40A(2) of the Act. In the said case, it is held that the incentive commission need to be allowed in the hands of the payer, when the payee pays tax at higher tax rate. Accordingly, this part of the ground is allowed as above.

11. Regarding the commission payments made to the commission agents, i.e. Shri Ramesh Chandak (HUF) and Shri Ravindra Agrawal (HUF), we find these payments are made to these parties for the first time and the deduction is claimed u/s.37 of the Act. Therefore, there is need for discharge of onus by the assessee with reference to the nature of services rendered by them to the company. Therefore, for want of discharge of onus by the assessee, we find this portion of the issue needs to be remanded to the file of the AO. Assessee shall be granted reasonable opportunity of being heard to the assessee in accordance with the set principles of natural justice.

In the remand proceedings before the AO, the assessee shall discharge the onus with reference to furnishing of the details of the services rendered by the payees and others as mentioned above. Further, we direct the AO to entertain the evidences if any in the interest of administration of justice. With these directions, we remand the aforesaid issues to the file of AO for fresh adjudication. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

12. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 21<sup>st</sup> day of March, 2018.

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(D.KARUNAKARA RAO)**  
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 21<sup>st</sup> March, 2018.  
Satisb

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Aurangabad
4. आयकर आयुक्त / The CIT-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक सदस्य" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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