

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PATNA BENCH 'SMC', PATNA**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 90/Pat./2017 : Asstt. Year : 2012-13**

Sunyna Kumari Gupta, Prop: M/s Sona Drug Agency, Road No. 1, Lohanipur, Rajendra Nagar, Patna-800016	Vs	Deputy Commissioner of Income Tax, Circle-4, Patna
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ADDPG6521C</b>		

**Assessee by : Sh. K. N. Prasad, Adv.**

**Revenue by : Sh. Abhay Kumar, Sr. DR**

<b>Date of Hearing : 13.03.2018</b>	<b>Date of Pronouncement : 16 .03.2018</b>
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**ORDER**

This is an appeal by the assessee against the order dated 09.02.2017 of Id. CIT(A)-2, Patna.

2. Following grounds have been raised by the assessee in this appeal:

*"1. For that the grounds of appeal hereto are without prejudice to each other.*

*2. For that in the facts and circumstances of the case, the learned CIT(A) is not justified in confirming the disallowance of Rs.23,86,950/- as disallowed by the Assessing Officer in respect of the amount remained payable under the head 'Commission & Brokerage Charge'. The case of the assessee has not been considered in proper perspective by the lower authorities. The assessee has furnished all material facts relating to the computation of total income, even then the disallowances has been sustained. It is submitted that since the assessee has already accounted for and credited the entire revenue receipt in the Trading and Profit & Loss A/c and as such it was necessitated for the assessee to make corresponding provisions. The disallowances of Rs.23,86,950/- as sustained under the head 'Commissioner & Brokerage' is arbitrary,*

*unjustified and void ab-initio. In any case, the disallowance as sustained is fit to be deleted.*

*3. For that in the facts and circumstances of the case, the learned CIT(A) is not justified in confirming the disallowance of Rs.11,70,600/- under the head 'Machine Maintenance Charges' disallowed by the Assessing Officer out of the amount remained payable under the head 'Machine Maintenance Charges'. The case of the assessee has not been considered in proper perspective by the lower authorities. The assessee has furnished all material facts relating to the computation of total income, even then the disallowances has been sustained. It is submitted that since the assessee has already accounted for and credited the entire revenue receipt in the Trading and Profit & Loss A/c and as such it was necessitated for the assessee to make corresponding provisions. The disallowances of Rs.11,70,600/- as sustained under the head 'Machine Maintenance Charges' is arbitrary, unjustified and void ab-initio. In any case, the disallowance as sustained is fit to be deleted.*

*4. For that the charge of interest u/s 234A, u/s 234B, u/s 234D and 244A is arbitrary and unjust.*

*5. For that the appellant reserves her right to file detailed submission at the time of hearing.*

*6. For that the appellant craves leave to urge, add or alter any other ground or grounds at the time of hearing."*

3. Ground Nos. 1, 5 & 6 raised by the assessee are general in nature, so do not require any comment on our part. Vide Ground No. 2, the grievance of the assessee relates to the confirmation of disallowance of Rs.23,86,950/- made by the AO on account of Commission & Brokerage Charges and Ground Nos. 3, relates to the confirmation of disallowance of Rs.11,70,600/- under the head 'Machine Maintenance Charges'. These two grounds are adjudicated simultaneously.

4. Facts of the case in brief are that the assessee derived the income from trading of medicine and medical equipment, the return of income was filed on 22.02.2013, declaring an income of Rs.10,86,610/-. Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee had made provision for Commission & Brokerage and Machine Maintenance Charges amounting to Rs.23,86,950/- and Rs.28,80,000/- respectively, the said amount was shown in the balance sheet as payable at the end of 31.03.2012. The AO also noticed that the assessee had claimed Machine Charges of Rs.33,26,000/- and Commission & Brokerage of Rs.27,86,950/- in the profit and loss account. He asked the assessee to explain the following thing:

- “i) When the above payment have been made.*
- ii) What was the mode of payment?*
- iii) Name and full postal address of the person who has received the payment with proper identity proof and technical qualification.*
- iv) What kind of Services they have rendered.*
- v) If the payment for which provision for liability have been made in balance sheet and if the same payment not made in the next coming year, then, why the same amount should not be disallowed being treated as contingent liability.”*

5. In response, the assessee stated in respect of Commission & Brokerage payable that during the year under consideration, a sum of Rs.27,86,950/- was debited in the profit and loss account out of which a sum of Rs.23,86,950/- remained payable. It was explained that the Commission & Brokerage was related to the purchase of goods supplied to the government department and that the revenue receipts had been credited in the Trading & Profit A/c, so it was necessitated for the assessee to make corresponding provisions with regard to the Commission relating to the year under consideration. It was further stated that the assessee had discharged her liability of Rs.23,86,950/- which was payable. The

assessee also filed the balance sheet of the succeeding year. However, the AO did not accept the submissions of the assessee for the following reasons:

*“(i) The assessee has made the provision in the balance sheet of assessment year 2012-13 and shown Rs.23,86,950/- commission and brokerage payable as on 31.03.2012.*

*(ii) On perusal of produced ledger account in respect of commission and brokerage of the next assessment year 2013-14, which reflect the amount has already been paid to different parties such as Ranjit Kumar, Ajay Kumar, Ajay Kumar Pandey, Pappu Pandey, Sanjay Kumar, Ajay Kumar Gupta, Jawahar Lal, Rinku, Sanjay Kumar, Vijay Kumar, Yadvendu Prasad, Pappu Pandey, Rajiv Kumar, Yadunandan Prasad, Rajiv Ranjan, Sudhakar, Ajay Srivastava, Mahadev Yadav but they failed to submit the bank account statement for the F.Y. 2012-13 for the amount of Rs.23,86,950/- paid to above 19 parties.*

*(iii) In the absence of bills and vouchers and creditworthiness and genuineness of transactions, it is difficult to conclude that the assessee has made above payment of Rs.23,86,950/- in respect of commission and brokerage.*

*(iv) Assessee has neither submitted name nor full postal address of the persons who have received commission and brokerage on behalf of assessee nor submitted the identity proof of the persons who have received commission in the next A.Y. 2012-13.*

*(v) Assessee neither submitted the kind of services rendered by the persons who have received commissions nor submitted the proof of technical qualifications of the persons who have received the commissions on behalf of assessee in the next assessment year 2012-13.*

*(vi) The assessee has submitted that during the year under consideration the entire revenue receipts has been credited in the Trading & Profit A/c but assessee has neither submitted the ledger for the differential revenue receipt which was credited in profit and loss account on which commission was paid nor submitted the break up for the differential revenue receipts.*

*(vii) In fact, assessee has not produced the evidence of tax deducted at source for the amount of Rs.23,86,950/- which was payable at the end of 31.03.2012 and paid in the next financial year 2012-13.”*

Accordingly, the addition of Rs.23,86,950/- was made.

6. As regards to the machine maintenance charges, the assessee submitted that the machinery was supplied to the government department and the assessee had to give services for subsequent three consecutive period as free of cost and since assessee had already accounted the revenue receipt in the trading and profit & loss account, it was necessitated to make provisions for the machine maintenance charges, apart from the amount paid during the year under consideration. The aforesaid explanation of the assessee was also not accepted by the AO for the following reasons:

*“(i) The assessee has made the provision in the balance sheet of assessment year 2012-13 and shown Rs.28,80,000/-, machine and maintenance charges payable as on 31.03.2012.*

*(ii) On the perusal of produced ledger account in respect of machine and maintenance charges of the next assessment year 2013-14, which reflect the amount has already been paid to different parties such as Manoj Kumar Gupta, Guddu, Punam, Pappu, but, they have failed to submit the bank account statement for the F.Y. 2012-13 on which amount of Rs.28,80,000/- withdrawn and paid to above named 4 parties.*

*(iii) It is here pertinent mention that on verification of ledger account, vide two cheques, cheque no. 1452143 and Cheque No. 1452144, dated 12.02.2013 and 25.02.2013 respectively, the total amount of Rs. 18,00,000/- has been paid to Manoj Kumar Gupta and Manoj Kumar Gupta is husband of assessee Smt. Sunyna Kumari Gupta but the assessee has failed to produce any technical expertise and qualification certificate in respect of Manoj Kumar Gupta.*

*Further, dated 26.12.2012 a sum of Rs.8,65,000/- and dated 04.02.2013 Rs.9,014/- were paid to Allengers Medical System Ltd. in the F.Y. 2012-*

*13 but assessee has failed to submit the bills and vouchers and confirmations regarding the technical services rendered by the above company, they have also failed to submit TDS deducted on the payment made to Allengers Medical System Ltd. for that machine and maintenance charges.*

*(iii) Assessee has neither submitted full postal address of the persons, who have received machine and maintenance charges on behalf of assessee nor submitted the identity proof of the persons who have received machine and maintenance charges in the next A.Y. 2012-13.*

*(v) Assessee neither submitted the kind of services rendered by the persons who have received machine and maintenance charges nor submitted the proof of technical qualifications of the persons who have done the machine maintenance work on behalf of assessee in the next assessment year 2012-13.*

*(vi) The assessee has submitted that during the year under consideration the entire revenue receipts has been credited in the Trading & Profit A/c but assessee has neither submitted the ledger for the differential revenue receipt which was credited in profit and loss account on which machine and maintenance charges paid, nor submitted the break-up of the differential revenue receipts.*

*(vii) In fact, assessee has not produced the evidence of tax deducted at source for the amount of Rs.28,80,000/- which was payable at the end of 31.03.2012 and paid in the next financial year 2012-13.*

*(viii) As submitted by the assessee that the machinery supplied to government department and assessee had to give services for subsequent three consecutive period as free of cost which is visible contract agreement.”*

7. The AO treated Rs.11,70,600/- as contingent liability by observing as under:

*“On perusal of contract agreement produced by the assessee having contract agreement no. 2720 and 4820 dated 09.07.2012 & 02.07.2011 respectively, it has been noticed that assessee has to give free maintenance services for three years and after three years the buyers of machine will provide maximum 6% of the cost of the machine as a machine maintenance charges. Thus, considering the*

*above facts, on the total turnover of Rs.2,84,89,985.45, @ 6% machine & maintenance charges of Rs.17,09,400/- is allowed and the balance amount of Rs.11,70,600/- (Rs.28,80,000 – Rs.17,09,400) is treated as contingent liability.”*

8. The AO made the addition of the aforesaid amount to the income of the assessee. The reliance was placed on the following case laws:

- *Shree Sajjan Mills Ltd. Vs CIT 156 ITR 585 (SC)*
- *Indian Molasses Co. (P) Ltd. Vs CIT 371 ITR 66 (SC)*
- *Rajasthan State Mines and Minerals Ltd. Vs CIT 208 ITR 1010 (Raj.)*
- *T.N. Small Industries Dev. Corpn. Vs CIT 242 ITR 122 (Mad.)*

9. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submissions which is reproduced verbatim as under:

*“a. That during the course of the assessment proceeding, the assessee has furnished all the material facts relating to the computation of total income even then the Assessing Officer disallowed the aforesaid amount. The case of the assessee has not been considered in proper perspective.*

*b. That it is pertinent to mention here that the nature of business of assessee is supply of various type of medical device, kit, blood bags to the several government hospitals. The commission and brokerage relates to the purchase of goods through intermediary which has been supplied to the government departments. It is submitted that during the year under consideration entire revenue receipt has been accounted for and credited in the Trading and Profit & Loss A/c and as such it was necessitated for the assessee to make corresponding provisions with regard to commission relating to the year under consideration.*

*c. That it is submitted that in the next financial year 2012-13, i.e. Assessment Year 2013-14, the assessee has discharged her liability remained payable at Rs.23,86,950/-. It is pertinent to mention here that during the course of assessment proceeding the assessee has also filed Balance Sheet as on 31.03.13 evidencing that no amount is payable in the credit side of balance sheet under the head commission & Brokerage.*

*d. That it is further submitted that the supply of materials by the assessee to the government departments were in numerous varieties of goods for which it was not possible for the assessee to make purchases of the goods herself in order to make supply to the government departments without the aid and service of the intermediary to whom the commission charges have been paid.*

*e. That further the intermediary persons to whom the commission has been allowed for liaison works it is respectfully submitted that liaison works inter-alia includes smooth supply of goods to government agencies in time, passing of the bills, timely release of payments from government agencies and other connected allied works and various services/jobs. It is submitted that there are other various tasks to get materialization of supply of goods and after supply of goods, there are other various work remain, which cannot be performed without the help and aid of the agents.*

*f. That it is submitted that the case law cited by the Assessing Officer in the Assessment Order is not applicable in the case of the assessee being quite different on the facts of the case.*

*g. That the first case relied upon by the Assessing Officer is of Hon'ble Supreme Court in the case of Shree Sajjan Mills Ltd vs CIT, reported in 156 ITR 585. The case of Shree Sajjan Mills Ltd vs CIT was in respect of claim of deduction towards gratuity. The gratuity is generally paid on death of the employee or on supination of the employee. Shree Sajjan Mills Ltd has made the provisions in the Profit & Loss A/c of the estimated value of the contingent liability and as such on this score the Hon'ble Court has held that the deduction is not allowable on accrual basis as falling on the assessee in the year of the account could be deducted either u/ s 28 or section 37 of the Act.*

*The facts of the case of the assessee is that the assessee has made provisions in the books of account of the commission liability properly ascertained in as much the assessee has already accounted for and credited the entire revenue receipt in the Trading & Profit Loss A/c and as such it was necessitated for the assessee to make corresponding provisions with regard to commission relating to the year under consideration.*

*In view of the above, the case law as relied upon by the Assessing Officer in the case of Shree Sajjan Mills Ltd is not applicable.*

*h. That the next case relied upon by the Assessing Officer is also of the Hon'ble Supreme Court in the case of Indian Molasses Co (P) Ltd vs CIT, reported in 371 ITR 66. Actually this case is reported in 37 ITR Page 66. In the case of Indian Molasses Co (P) Ltd, the issue before Hon'ble Supreme Court was as under:-*

*"Whether on the facts and in the circumstances of the case, and on a true construction of the trust deed, dated 16th September 1948 and the policy dated the 13th January, 1949, the payments made by the assessee company and referred to in paragraph 4 above constitute 'expenditure' within the meaning of that word in section 10(2)(xv) of the Indian Income-tax Act, 1922, in respect of which a claim for deduction can be made, subject to the other conditions mentioned in that clause being satisfied?"*

*The case Indian Molasses Co. (P) Ltd. was the case under the old Income Tax Act, 1922 u/ s 10(2)(xv) on account of claim of deduction with respect to payment to the Insurance companies. On the above issue, the Hon 'ble Supreme Court has observed as under:-*

*"In our opinion, the payment was not merely contingent but the liability itself was also contingent. Expenditure which is deductible for income-tax purposes is one which is towards a liability actually existing at the time, but the putting aside of money which may become expenditure on the happening of the event is not expenditure. In the present case, nothing more was done in the account years. The money was placed in the hands of trustees and/or the insurance company to purchase annuities of different kinds, if required, but to be returned if the annuities were not bought and the setting apart of the money was not a paying out or away of these sums irretrievably."*

*The facts of the case of the assessee is that the assessee has made provisions in the books of account of the commission liability properly ascertained in as much the assessee has already accounted for and credited the entire revenue receipt in the Trading & Profit Loss A/c and as such it was necessitated for the assessee to make corresponding provisions with regard to commission relating to the year under consideration.*

*In view of the above, the case law as relied upon by the Assessing Officer in the case of Indian Molasses Co (P) Ltd is not applicable.*

*i. That the next case relied upon by the Assessing Officer is of the Hon'ble Rajasthan High Court - Jaipur Bench in the case of Rajasthan State Mines and Minerals Ltd vs Commissioner of Income Tax, reported in 208 ITR 101. In the case of Rajasthan State Mines and Minerals Ltd, the issue and facts before Hon'ble Rajasthan High Court was as under:*

*"The assessee-company derived its income from mining and selling gypsum selenite at Bikaner and mining rock phosphate in Udaipur District on behalf of the Government of Rajasthan as a working contractor. The assessee entered into an agreement with the Government for excavation of rock phosphate from certain blocks in Udaipur District. The work included mining, crushing, transportation, loading and unloading of the ore at various stages including loading of the ore into wagons at Udaipur. In the Agreement it was provided that the assessee had to be paid at Rs. 46 per ton of ore dispatched which included mining, crushing, transportation and loading and unloading. The assessee was also liable for removal of the waste and dumping it at a suitable dumping site. The assessee made a provision of Rs. 82 lakhs for removal of overburden in the accounting year relevant to the assessment year 1975-76 and claimed deduction of it. The Tribunal found that the assessee had extracted and removed 6 lakh metric tons of overburden and there was a shortfall of 10 lakh metric tons in removing the overburden. A ratio under contract was agreed upon which it was the liability of the assessee to remove and the assessee failed to remove the overburden in the ratio agreed in accordance with the agreement. The ratio of removal of the overburden was initially 1: 4 but later on it was changed to 1:5. The Tribunal came to the conclusion that there could not be any foolproof formula in respect of tiny extraction of one ton of ore and removal of overburden and the formula which was agreed upon was only on estimation/ expectation and, therefore, would not fall within the definition of expenditure in section 37 of the Income-tax 1961".*

*On the above facts, the Hon'ble Rajasthan High Court has held as under:-*

*"Held, that since a finding had been recorded that the formula was not based on the actual liability and had been changed from time to time and there was a possibility of extraction of ore by removing lesser quantity of overburden it could not be said that the assessee had a legal liability of removing the overburden to 10 lakh metric tons. The Tribunal was justified in coming to the conclusion that there was no actual liability existing for removal of the overburden to the extent of 10 lakh metric tons and, therefore, the liability of Rs. 82 lakhs as claimed by the assessee was not allowable (see pp. 1016E, F, 1017A)".*

*The facts of the case of the assessee is that the assessee has made provisions in the books of account of the commission liability properly ascertained in as much the assessee has already accounted for and credited the entire revenue receipt in the Trading & Profit Loss A/c and as such it was necessitated for the assessee to make corresponding provisions with regard to commission relating to the year under consideration.*

*In view of the above, the case law as relied upon by the Assessing Officer in the case of Rajasthan State Mines and Minerals Lid vs Commissioner of Income Tax is not applicable.*

*j. That the next case relied upon by the Assessing Officer is of the Hon'ble Madras High Court in the case of Tamil Nadu Small Industries Development Corporation Ltd. Vs Commissioner of Income-tax. In the case of Tamil Nadu Small Industries Development Corporation Ltd., the issues before Hon'ble Madras High Court were as under.-*

*"1. Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the accrued interest on hire purchase of machinery on loans and penal interest are liable to be included in the total income, notwithstanding the fact that the due dates of payment fell after 31st March, of the relevant previous year?*

*2. Whether, on the facts and circumstances of the case, the Tribunal was justified in holding that the sum of Rs.91,012/- being estimated interest on the cost of land taken over by the assessee from. The Government was not allowable as an expenditure as it was in the nature of contingent liability only?"*

*The first issue is not applicable in the case of the assessee in as much as the issue was that the interest on hire purchase of machinery on loan and penal interest is includable in total income or not. On that context the Hon'ble Madras High Court has held as under:-*

*"That the interest on hire purchase of machinery and on loans had accrued. The Tribunal noted that the assessee had admitted that the penal interest stood on the same footing. The Tribunal was right in holding that the accrued interest on hire purchase of machinery on loans and penal interest were liable to be included in the total income, notwithstanding the fact that the due dates of payment fell after March 31, of the relevant previous year."*

*The second issue before the Hon'ble Madras High Court is whether the amount estimated by the assessee as interest on land taken over from the government is allowable expenditure or not. On this context the Hon'ble Madras High Court held as under:-*

*"That the amount estimated by the assessee as interest on land taken over from the Government had admittedly not been paid in the relevant year. Such estimation could not be regarded as an item of expenditure when the liability had not accrued, and the amount also had not been paid. The amount was not deductible."*

*The facts of the case of the assessee is that the assessee has made provisions in the books of account of the commission liability properly ascertained in as much the assessee has already accounted for and credited the entire revenue receipt in the Trading & Profit Loss A/c and as such it was necessitated for the assessee to make corresponding provisions with regard to commission relating to the year under consideration.*

*In view of the above, the case law as relied upon by the Assessing Officer in the case of Tamil Nadu Small Industries Development Corporation Ltd vs Commissioner of Income Tax is not applicable.*

*k. That in view of the above) it is submitted that the disallowances of Rs.23,86,950/- as made by the Assessing Officer under the head Commission and Brokerage is arbitrary, unjustified, void ab-initio.*

*In any case, the disallowances as made is not called for and fit to be deleted.*

It was also submitted as under:

*(a) That it is submitted that in respect of machine supplied government departments the assessee has to give main service for subsequent three consecutive periods as free of is submitted that since the assessee has already accounted revenue receipt in the trading and profit loss a/c in respect of supply of machinery and as such it was necessitated for the assessee to make provisions of the machine maintenance charges apart from the amount paid during the year under consideration.*

*(b) That the agreements with the government departments show that the supply of the machineries to the government. departments were subject to free maintenance of three consecutive years.*

*(c) That it is pertinent to mention here that in respect of disallowances as made by the Assessing Officer no opportunity was allowed in respect thereof. Further in respect of certain observation as made in the Assessment Order, no opportunity was allowed.*

*(d) That during the course of the assessment proceeding, the assessee has furnished all the material facts relating to the computation of total income even then the Assessing Officer disallowed the aforesaid amount. The case of the assessee has not been considered in proper perspective.*

*(e) That in view of the above, the disallowance of Rs.11,70,600/- as made by the Assessing Officer under the head 'Machine Maintenance Charges' is arbitrary, unjustified and void ab-initio. In any case, the disallowance as made is not called for and the same is fit to be deleted.”*

10. The Id. CIT(A) after considering the submissions of the assessee observed that the assessee emphasized that the supply of material was to the government department where numerous varieties of goods were involved for which it was not possible for the assessee to make purchases of the goods herself in order to make

supply to the government departments without aid & service of the intermediary to whom the commission charges were paid. The Id. CIT(A) further observed that the assessee made the provisions for commission payments but name and addresses of the commission agents were not furnished and that the assessee could not prove that services were rendered by the commission agents, the amount paid was commensurate to the services rendered and even the claim for payments of outstanding amount could not be proved. He, therefore, confirmed the addition of Rs.23,86,950/-. As regard to the addition made by the AO on account of maintenance charges, the Id. CIT(A) observed that complete identity of all persons could not be established and there was payment of Rs.18,00,000/- to the husband of the assessee for which the assessee could not prove that her husband rendered any services or had any expertise/qualification to do machine maintenance. He, therefore, confirmed the disallowance of Rs.11,70,600/-.

11. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that payments were made for outstanding commission & brokerage, in the succeeding year which has been accepted by the AO, therefore, the disallowance made by the AO and sustained by the Id. CIT(A) was not justified. It was further submitted that there were numerous varieties of the goods supplied by the assessee and it was not possible for the assessee to make purchases of goods herself. Therefore, the services were taken from the other persons and that the assessee had furnished all the material facts before the authorities below.

12. As regards to the disallowance under the head 'Machine Maintenance charges' the Id. Counsel for the assessee submitted that the AO himself admitted that the assessee had to give free maintenance services for three years and after three years the buyers of machine will provide maximum 6% of the cost of the

machine as a machine maintenance charges. It was stated that when the AO was satisfied that the assessee had to give free maintenance services, there was no occasion to make the disallowance and the ld. CIT(A) was not justified in sustaining the same.

13. In his rival submissions, the ld. Sr. DR strongly supported the impugned orders passed by the authorities below and reiterated the observation made in their respective orders.

14. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the assessee was making the supplies of various goods to the government departments, for that purpose the purchases were required to be made. Since, the assessee herself could not make the purchases for the huge turnover, she required the services of the outsiders. This fact that the assessee made the purchases had not been denied by the authorities below. The AO himself although admitted in para 4.1 of the assessment order dated 31.03.2015 that the payments were made to different parties in the next assessment year, however, he made the disallowance only for this reasons that these persons could not submit the bank account statement. In the present case, when the incurring of expenses for the business purposes was not doubted and this facts was not denied that the outstanding payments were made in the succeeding year by the assessee then the addition made, only for this reason that the amount remained payable, was not justified. In that view of the matter, the addition made by the AO and sustained by the ld. CIT(A) on account of commission & brokerage amounting to Rs.23,86,950/- is deleted.

15. As regards to the disallowance on account of machine maintenance charges is concerned, the AO himself admitted at page no. 5 of the assessment order that as

per the contract agreement no. 2720 and 4820 dated 09.07.2012 and 02.07.2011 respectively, the assessee had to give free maintenance services for three years. Since, the said agreement dated 02.07.2011 falls in the period relevant to the assessment year under consideration, therefore, the assessee was required to give free maintenance services. In our opinion, the restriction made by the AO for 6% of the total turnover on this basis that after three years, the buyers of machines will provide maximum 6% of the cost of the machines as a machine maintenance charges, was not justified. In that view of the matter, I am of the view that the ld. CIT(A) without considering the relevant facts of the present case in right perspective was not justified in sustaining the disallowance made by the AO, therefore, the impugned disallowance made by the AO and sustained by the ld. CIT(A) was not justified and accordingly the same is deleted.

16. As regards to the Ground No. 4 relating to charging of interest u/s 234A, 234B, 234D and 244A of the Act. It was the common contention of both the parties that it is consequential in nature, it is ordered accordingly.

17. In the result, the appeal of the assessee is allowed.  
(Order Pronounced in the Court on 16 /03/2018)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 16 /03/2018**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**