

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.550/Bang/2018
Assessment Year :2013-14

M/s. Tile Art, No. 70 (Old No. F-53), 4 th Floor, 4 th Main, KSSIDC Industrial Estate, Rajajinagar, Bangalore – 560 044. PAN: AADFT7698C	Vs.	The Assistant Commissioner of Income Tax, Circle 3 (2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri B.T. Shetty, CA
Respondent by	:	Smt. Padma Meenakshi, JCIT (DR)

Date of hearing	:	07.05.2018
Date of Pronouncement	:	11.05.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee which is directed against the order of Id. CIT(A)-3, Bangalore dated 25.01.2018 for Assessment Year 2013-14.

2. The grounds raised by the assessee are as under.

“1. The order of the learned Commissioner of Income Tax (Appeals-3) (FAA) is against to the facts and the circumstances of the case, against to the law, and prejudicial to the interest of the appellant.

2. The Learned Commissioner of Income Tax Appeals failed to consider the fact, that the payment of commission of Rs. 19,78,911/- paid during the Financial Year 2012 - 2013 (Assessment Year 2013 - 2014) were genuine and detailed working were produced in the course of scrutiny proceedings. Further the learned commissioner of income totally ignored that the explanation offered that the recipients are regular Income Tax assesses and they have disclosed such commission income in their returns.

3. The Learned Commissioner of Income Tax Appeals and learned assessing officer failed to consider and cross verify the commission

payments made before disallowance. The learned Assessing officer failed to gather any evidence from external sources against the appellant's claim. Further the learned Assessing officer unilaterally and at fancy held that there is no nexus between the sales carried out and commission paid. The appellant strongly objected such adverse conclusion without giving opportunity for cross examination. Disallowance based on doubts, is against to the established principles of law and natural justice. The Commissioner of Income Tax Appeals also failed to appreciate the facts and upheld the disallowance made by the Learned Assessing Officer.

4. For these and such other grounds that may be urged at the time of hearing, it is prayed that the additions of Rs. 19,78,911/- made by the learned Assessing Officer may kindly be deleted and the appellant pray for justices.”

3. It was submitted by Id. AR of assessee that although assessee has raised four grounds but the issue involved is only one i.e. disallowance of Rs. 19,78,911/- which is claimed by the assessee as payment of commission. The Id. AR of assessee made same contentions which were raised before CIT(A). He also submitted that copies of agreement with sales agents are available on pages 1 to 3 of paper book. At this juncture, the bench wanted to know the scope of service rendered by commission agents as per these agreements. In reply, it was submitted by Id. AR of assessee that the scope of service is not mentioned in the agreements but as per the letter dated 10.03.2016 submitted before the AO, copy available on pages 42 to 43 of paper book, it was explained that services of commission agents are utilised to keep close contact with important and valued customers. It was also pointed out that it was also submitted in that letter that unlike paid staff, commission agents work on close personal interaction with the owners, managers and the field staff of the customers to push the sales and it was also submitted that there is fourfold purpose of such personnel being :
- a) To retain existing customers and to appraise them at latest products and value addition thereon.
 - b) To win over new customers by offering good services after sales like attending complaints and redress of such complaints
 - c) To increase sales and to get new order from all customers.
 - d) To gather market information and intelligence on other competitors pricing patterns and product positioning.

4. At this juncture, the bench wanted to know as to whether any such services were in fact rendered by the agents and evidence in this regard has been produced before authorities below. In reply, it was submitted that no such evidence is available on record. The bench also pointed out that as per para 2 of the agreements, the agent is not entitled for commission on sales to any other customer other than allocated to the concerned agent then how the scope of services can include to win over other new customers by offering good services such as after sales service like attending complaints and redress of such complains. In reply, Id. AR of the assessee had nothing to say. He simply submitted that commission was paid on quarterly basis and TDS was also deducted and therefore, deduction should be allowed. The Id. DR of revenue supported the order of CIT(A).

5. I have considered the rival submissions. I find that as per the assessment order, a categorical finding has been given by the AO in Para 4(c) of the assessment order that there was actually no nexus between the business and payment of commission. It is also seen that as per copy of agreement entered with so called agents, the scope of service has not been provided and it is merely stated that the agents will engage with the customers on the basis of customers allotted to the concerned agent and the agent is not supposed to engage with other customers including the other customers allotted to some other agents. Without specifying the nature of services to be rendered by the so called commission agents, payment of commission cannot be accepted as business expenditure. Apart from this, this is also not shown before lower authorities or before the Tribunal that in fact any actual service was rendered by these agents by producing the correspondence of the assessee with the agents or between the agents and the customers which are allotted to the respective agent. Under these facts, I find no reason to interfere in the order of CIT(A).

6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 11th May, 2018.
/MS/

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| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.