

आयकर अपीलीय अधिकरण “D” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI NK PRADHAN, AM

आयकर अपील सं./ ITA No. 4338/Mum/2016

(निर्धारण वर्ष / Assessment Year 2011-12)

Mr. Prakash G. Shetty Prop. M/s Kiran Corporation, Hedvarkarwadi No. 3, Near Jai Gopal Indl Estate, Bhavani, Shankar Road, Dadar (W), Mumbai-400 028	Vs.	The Asst. Commissioner of Income Tax, Range 18(1), Room No. 103, Piramal Chamber, Parel, Mumbai- 400 012
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AAQPS1497P		

Assessee by : Shri Jitendra Singh, AR

Revenue by : Shri Ram Tiwari, DR

Date of hearing: 03-05-2018 Date of pronouncement : 11-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-33, Mumbai [in short CIT(A)], in appeal No. CIT(A)-33/Rg.21/189/14-15 dated 29.03.2016. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-18(1), Mumbai (in short 'ACIT') for the A.Y. 2011-12 vide order dated 29.03.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of commission payment by the assessee against discount received and purchase made amounting to ₹ 62,03,200/- out of the total commission payment of ₹ 1,22,92,685/-. For this assessee has raised the following four grounds: -

“1. The learned Commissioner of Income Tax (Appeals) committed a gross error of law and fact in confirming the disallowance of Rs. 62,03,200/- made by the assessing officer being the commission paid by the appellant against the discount received on purchases made by the appellant.

2. The learned Commissioner of Income Tax (Appeals) failed to appreciate in proper perspective the facts of the case in as much as the appellant had made the impugned payment of commission out of the discount of Rs. 1,22,92,685/- received from its purchasers.

3. The learned Commissioner of Income Tax (Appeals) grossly erred in ignoring the relevant evidences and materials filed by the appellant in support of its claim and relied merely upon the finding given by the assessing officer.

4. The conclusion of the learned Commissioner of Income Tax (Appeals) is bad in law and required to be set aside in as much as the same is arrived at ignoring the relevant facts of the earlier and later assessment years wherein identical claims made by the appellant were allowed by the assessing officer after due verification.”



3. Briefly stated facts are that the AO during the course of assessment proceedings observed from the profit and loss account of M/s Kiran Corporation, the propriety concern of the assessee that it has debited the commission amount of ₹ 62,03,200/- on sales in this assessment year whereas the assessee has not debited any expenses under this head in the previous assessment year. The AO required the assessee to explain with evidences the commission expenses like bills, ledger accounts, services availed in detail, payment in detail and comparison with previous year percentage of commission and copy of agreement or contract if any. The assessee before the AO filed details of commission paid for earlier years and further years. It was claimed by the assessee that the commission paid for services rendered to liaisons for purchase of material with base rates and to earn discount and commission from the purchase party. It was also explained that this commission was also paid to procure orders for sale orders and to get new customers. There was no agreement prepared for payment of commission but it was paid as per vouchers. The AO doubted only commission payment for purchase of items and accordingly, summons were issued to parties namely Shri Ganesh Enterprises and RR Enterprises under section 131 of the Act. There was no compliance for RR Enterprises. Whereas, Shri Ganesh enterprises appeared through proprietor Shri Ramchander T Pavekar, who admitted providing services regarding purchase made by the assessee of chemicals, which was ultimately supply to BMC (Bombay Municipal Corporation). The assessee claimed before the AO that the commission was paid after deduction TDS and paid by account payee cheques. The assessee submitted complete name Address, PAN No and name of the bank vide letter dated 24.03.2014 but the AO was not convinced and he disallowed the claim of commission expenses to the extent of ₹ 62,03,200/- for the reason that the assessee has failed to produce any written contract or agreement



with the parties. He further, recorded that the previous year no such commission was paid on purchases. Proprietor of Shri Ganesh Enterprises, Shri Ramchander T Pavekar is not able to explain how he has able to get assessee and discount of 15% on purchase made from Sumito Chemicals India Private Ltd. Even the summons issued to M/s RR Enterprises was served but not compiled with and further assessee is unable to produce party. Accordingly, the commission claimed by assessee was disallowed as bogus expenses and added to the total income of the assessee amounting to ₹ 62,03,200/-. Aggrieved assessee preferred the appeal before CIT(A), who confirmed the action of the AO by observing in Para 11 to 15 as under: -

“11. From the details submitted by the appellant, it is observed that the purchases are made from only two concerns, Sumitomo Chemicals (P) Ltd of Rs. 4,45,62 404/- & M/S Harihar Fertilizers & Chemicals of Rs 3,97,80,000/- while almost entire sales is to Municipal Corporation of Greater Bombay In earlier years too, a major portion of purchases was from Sumitomo Chemicals (P) Ltd, while total sales was to Municipal Corporation of Greater Bombay Under these circumstances, there appears to be no justification for paying such a huge commission expense for procurement of sates and purchase orders when the sales and purchase parties are almost fixed for over me years

12. The Assessing Officer has disallowed the commissions paid to the parties in question after making independent investigation and by calling and recording their statement u/s 131 Perusal of the statement recorded u/s 131 of Shri Rameshchandra T. Pavekar, proprietor of Shri Ganesh Enterprise



clearly shows that he does not know the appellant personally Further, he was neither aware of the goods supplied by him nor aware of the kind of services rendered by him to the appellant The only fact he knew about this commissions payments was the cheques received by him on account of some references made by him to the appellant for supply of goods The references was also not known to him and what goods were supplied in respect of those references were also not known to the receiver of the commission. It is also observed that the summon issued to the another concern was not complied with

13. *It is further highlighted oy the AO that no written contract or agreement for agency commission exists that can throw light on the genuineness of the payment or commercial expediency there exists no bill or voucher related to payment of commission in the earlier course of assessment proceedings and as admitted by Shri Ramchander T Pavekar, proprietor of Shree Ganesh Enterprise who was a dealer in footwear, totally unconnected with chemical industry. It is only at the far end of the assessment proceedings that the bills were produced whose genuineness were in doubt. Shri Ramchander T. Pavekar could not explain before the AO, the methodology of getting discount of 15% on purchase from Sumi Tomo Chemicals India Pvt. Ltd. amounting to ₹ 38,75,178/-*

14. *All the above stated facts clearly prove that the claim of the commission payments to the all the above parties as not genuine. The only contention of*



the AR of the appellant is that the payment to these parties is through cheque but that does not prove the genuineness of the claim of the commission payment to these parties for the purposes of the business of the appellant Mere payment through banking channels does not establish that the expenditure incurred by the appellant for payment of commission to these parties, is a genuine business expenditure The parties receiving the commission payments have categorically stated that they have not rendered any specific services to the appellant and further there is no agreement entered into with them and the appellant for rendering such services.

15 *The appellant has also not been able to prove that the payments made to the parties in question are for rendering any services by them These parties do not know what services they have rendered to the appellant. In such circumstances, it can only be concluded that the payments to above parties were made to inflate the expenditure under the garb of payment of commission. The contention of the appellant that these parties had shown the commission payments in their returns of income filed, does not prove that the payments of commission to these parties are for the business of the appellant and on account of rendering actual services. The appellant has failed to establish the basic test for the payment of commission to these parties in the absence of any agreement of agency commission. Further the three parties, in question. themselves do not know on which business transaction of the appellant they had received the*



commission and what goods were supplied which made them eligible to earn such commission”

Aggrieved, now assessee is second appeal before us.

4. Before us, the learned Counsel for the assessee filed paper book consisting the details of commission payments. The learned Counsel for the assessee drew our attention to assessee paper book at pages 39 and 40, wherein the details of commission paid in AY 2010-11 and 2011-12 and 2012-13 is enclosed. Further, the learned Counsel for the assessee stated that the same commission paid in AY 2010-11 and 2012-13 was accepted by the AO as it is and non disallowance was made. He filed the following details: -

AY	Turnover	Discount & Commission Income	Commission & Other exp.	NP declared	NP Ratio
09-10	3,23,36,504	6,81,074	Nil	12,38,578	3.73
10-11	10,49,30,957	67,59,560	78,00,000	57,71,355	5.50
11-12	7,29,41,939	1,22,92,685	62,03,200	44,14,039	6.05
12-13	4,70,31,001	Nil	24,07,000	23,63,751	5.03

AY	Order under section	Amount of Disallowance	Nature of disallowance
09-10	143(3)	1,13,679	Conveyance and other expenses adhoc disallowance
10-11	143(3)	3,98,923	Travelling expenses and other disallowance
11-12	143(3)	62,03,200	Commission expenses
12-13	143(3)	8,72,752	Non deduction of TDS on interest paid to NBFC of ₹ 5,42,794/- & Treated as personal expenses of interest & other expensed of car of ₹ 3,29,958.

5. Further, the learned Counsel for the assessee also drew our attention to page 41 and 42, where detail commission paid for AY 2010-11, 2011-12 and 2012-13 is enclosed which reads as under:-



AY	Commission and other expenses	Name of the party to whom paid	Purpose of payment
10-11	78,00,000	Pansoft India Ltd.	During the year we paid liasoning, gift, & meeting expenses ₹ 78,00,000/- to Pansoft Inidia Ltd. for their liasoning Work for making best rate purchase & Discount from Mirah Deokar Ltd. of ₹ 3,24,35,289/- & Sumitomo Chemicals (I) Ltd. of ₹ 5,27,49,783 & also for sales with Telesto Coment (P) Ltd. of ₹ 2,79,49,783/-
11-12	50,000/- 5,75,100 5,75,100 38,75,178 11,24,822 3,000 62,03,200	Rajesh Shinde Mirzan Shakeel Imtiaz Ashok Shetty Shree Ganesh Enterprise RR Enterprise Otehrs Total	This commission was paid instead of liasoning, gift & meeting expenses as paid in last year. This year directly paid to party as commission to get best rate of purchase & Discount from Sumitomo Chemicals (P) Ltd. of ₹ 4,45,62,404/- & Harihar Fertilizers & Chemicals of ₹ 3,97,80,000/-.
12.13	23,92,000 15,000 24,07,000	Kiran Trading Co. Others Total	This commission was paid to make best rate of purchase from Kedia Organic Chemicals pvt. Ltd of ₹ 46,48,474/- & Siddhiraj Industries of ₹ 25,39,605 & Ricky Chemicals Corporation of ₹ 75,69,217/-

6. The learned Counsel for the assessee also drew our attention to confirmation filed by RR Enterprises and Shri Ganesh Enterprises confirming the commission received amounting to ₹ 11,24,822/- and 38,75,178/- were filed before us which are enclosed at pages 32 to 36 of assessee's paper book. It was explained by the learned Counsel for the assessee that the complete details were filed before the AO as well as before CIT(A) and both the authorities below have decided the issue on wrong premises that in earlier years and in future years in such commission was paid by the assessee. He explained that the entire



commission paid in earlier years and future years has been accepted by the department while completing assessment under section 143(3) of the Act. In this year the commission is paid by account payee cheques and this parties have confirmed the received of commission and TDS is also deducted on the commission as and when the commission was paid. Compete details were available before us, these details are filed in assessee's paper book. The learned Counsel for the assessee filed copy of assessment order for AY 2010-11 and AY 2012-13 passed under section 143(3) of the Act vide order dated 19-03-2013 and 31.03.2015. In view of these facts and circumstances the learned Counsel for the assessee stated that the commission paid is a genuine commission and the same should be allowed as business expenditure.

7. On the other hand, the learned Sr. Departmental Representative heavily relied on the assessment order of CIT(A) and he particularly referred to the statement of the proprietor of Shri Ganesh Enterprises Shri Ramchander T Pavekar has categorically admitted that they have not raised any bill for commission.

8. We have heard the rival contentions and gone through the facts and circumstances of the case. We find from the facts of the case that the assessee has made this payment as commission by account payee cheque to these parties on account of purchase is made by assessee from Sumito Chemicals India Private Ltd. and the details like name, address, Pan number, cheque number, name of the bank was submitted before the AO as well as before CIT(A) and even now before us. The assessee has incurred expenses of demanding and commission at ₹ 1,22,92,685/- and out of this 62,03,200/- was on account of discounts from purchase with Sumito Chemicals India Private Ltd. this commission was paid to procure orders of purchase. The assessee has confirmed that liaisioning done by M/s RR Enterprises and M/s Shri Ganesh



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Enterprises with this party i.e. Sumito Chemicals India Private Ltd. The assessee had made purchase in earlier years and future years and the same commission was allowed by the AO while framing the assessment under section 143(3) of the Act and the details are available in the assessee's paper book i.e. assessment order for this two assessment years. The complete detail of above is clearly reveals that Revenue is unable to confront the parties and being on record that this is not actually paid or paid without rendering any services. The assessee has given the name and address of Sumito Chemicals India Private Ltd. In view of this facts and circumstances and for the sake of consistency that in earlier years for AY 2010-11 and in future year i.e. AY 2012-13, the similar commission was allowed, in this year also, we allow the commission. The appeal of assessee is allowed.

9. In the result, the appeal assessee is allowed.

Order pronounced in the open court on 11-05-2018.

आदेश की घोषणा खुले मे दिनांक 11.05.2018 को की गई ।

Sd/-
(NK PRADHAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 11-05-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
 2. The Respondent.
 3. The CIT (A), Mumbai.
 4. CIT
 5. DR, ITAT, Mumbai
 6. Guard file.
- //True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI