

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

यकर अपील सं./I.T.A.Nos.788, 778 & 779/Chny/2018
(निर्धारण वर्ष / Assessment Years: 2012-13, 2013-14 & 2014-15)

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| Smt. Sarika Jain, 30/1, Green Avenue, Flowers Road, Chennai – 600 010. | Vs | The Deputy Commissioner of Income Tax, Non Corporate Circle – 10(1), Chennai -34. |
| PAN: AKSPS5624E | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| अपीलार्थी की ओर से/ Appellant by | : | Shri S. Sridhar, Advocate |
| प्रत्यर्थी की ओर से/Respondent by | : | Shri AR.V. Sreenivasan, JCIT |

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| सुनवाई की तारीख/Date of hearing | : | 14.06.2018 |
| घोषणा की तारीख/Date of Pronouncement | : | 21.06.2018 |

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

These appeals by the assessee are directed against the orders passed by the learned Commissioner of Income Tax(Appeals)-12, Chennai, dated 30.01.2018 in ITA No.37/CIT(A)/15-16 for the assessment year 2012-13 and dated 31.01.2018 in ITA Nos. 142/CIT(A)/15-16 & 129/CIT(A)/16-17 for

the assessment years 2013-14 & 2014-15 respectively, all passed U/s. 250(6) r.w.s. 143(3) of the Act.

2. The assessee has raised several identical grounds in her appeals however the cruxes of the issue are that

- (i) The Ld.CIT(A) has erred in confirming the addition made by the Ld.AO amounting to Rs.1,00,23,609/-, Rs.1,93,77,593/- & Rs. 30,15,948/- for the assessment years 2012-13, 2013-14 & 2014-15 respectively, with respect to the disallowance of commission paid to M/s. Sapra Limited towards export orders U/s. 37 of the Act.
- (ii) The Ld.CIT(A) has erred in confirming the addition made by the Ld.AO amounting to Rs.13,61,354/- towards disallowance of deduction claimed as discount U/s.40A(2)(b) of the Act for the assessment year 2014-15.

3. The brief facts of the case are that the assessee is an individual engaged in the business of leather chemicals, dyes and pigments as dealer, filed her return of income for the assessment years 2012-13, 2013-14 & 2014-15 on 03.10.2013, 28.09.2013 & 11.12.2014 admitting total income of Rs.38,59,260/-,

Rs.56,42,920/- & 73,18,8740/- respectively. The case was selected for scrutiny and finally assessment order was passed U/s.143(3) of the Act on 16.03.2015, 29.02.2016 & 29.12.2016 for the assessment years 2012-13, 2013-14 & 2014-15 respectively wherein the Ld.AO made several additions.

4. **Ground No. 2(i) : Disallowance of commission paid to M/s. Sapra Limited towards export orders (Assessment years 2012-13, 2013-14 & 2014-15):-**

During the course of scrutiny assessment proceedings, it was observed by the Ld.AO that the assessee has paid a sum of Rs.1,00,23,609/-, Rs.1,93,77,593/- & Rs. 30,15,948/- to M/s. Sapra Limited, Dubai, towards commission for procuring export orders. It was further noticed that Shri D. Nanda Kishore was the Director in M/s. Sapra Limited. Moreover many of the export orders were dated after the date of sale. There were also lack of correspondence between the assessee and the export agent from which it was inferred that there were no services rendered by the export agent to the assessee. Based on the above finding and observations, the Ld.AO doubting the genuineness of the commission expenditure incurred towards export orders,

disallowed the same as allowable deduction for all the three assessment years. Agreeing with the view of the Ld.AO, the Ld.CIT(A) upheld the orders of the Ld.AO.

4.1 Before us the Ld.AR submitted that the observation made by the Ld.AO that the export orders were dated subsequent to the date of sales are erroneous. He further pleaded that one more opportunity may be provided before the Ld.AO in order to establish the genuineness of the claim of expenditure incurred towards export commission. The Ld.AR has also filed three voluminous paper-books in order to establish the findings of the Ld.Revenue Authorities to be erroneous. The Ld.DR on the other hand vehemently opposed to the submission of the Ld.AR.

4.2 We have heard the rival submissions and carefully perused the materials on record. The assessee has filed three voluminous paper-books containing commission agreement between assessee and M/s. Sapra Limited, ledger accounts, statement of export sales commission, export shipping bill, payment advice and copy of the sales register with respect to the relevant assessment years to establish the genuineness of the claim of the assessee.

Since the Ld.AR has claimed before us that the basic facts observed by the Ld.AO are incorrect and also has filed voluminous paper-book to prove the erroneous findings of the Ld.Revenue Authorities, we are of the considered view that the entire issue is required to be examined afresh. Moreover the Ld.AR has also pleaded before us that the matter may be remitted back to the file of Ld.AO for fresh consideration. Therefore in the interest of justice, we hereby remit the matter back to the file of Ld.AO for de-nova consideration with directions to admit any evidence produced. We also hereby direct the assessee to promptly co-operate before the Ld.Revenue Authorities in their proceedings failing which the Ld.Revenue Authorities shall be at liberty to pass appropriate orders in accordance with merit and law based on the materials on record.

5. **Ground No.2(ii) : Disallowance of deduction claimed as discount U/s.40A(2)(b) of the Act for the assessment year 2014-15:-**

On examining the statement of accounts, it was observed by the Ld.AO that the assessee had claimed deduction under the head discount to the tune of Rs.28,01,551/-, out of which an

amount of Rs.27,22,709/- pertains to discount given to M/s. Chenitan Color Chem Pvt. Ltd., being 4% of the turnover of Rs.6.81 crore. No such discount was given in the earlier assessment years by the assessee. Since the assessee could not explain the reason for granting such discounts during the relevant assessment year, the Ld.AO disallowed an amount of Rs.13,61,354/- being 2% on the turnover of Rs.6.81 crores. On appeal, the Ld.CIT(A) upheld the order of the Ld.AO by agreeing with his view.

5.1 At the outset, we do not find the orders of the Ld.Revenue Authorities appropriate on this issue. It is the prerogative of the assessee to extend discount to their clients. Further 4% discount on the turnover is not an exorbitant amount for doubting the genuineness of the transaction. Therefore we hereby direct the Ld.AO to delete the addition made by disallowing the discount granted on the turnover to the assessee's clients by the assessee.

6. In the result, the appeals filed by the assessee for the assessment years 2012-13 & 2013-14 are allowed for statistical

purposes and appeal for the assessment year 2014-15 is partly allowed for statistical purposes.

Order pronounced on the 21st June, 2018 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 21st June, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |