

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : E : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.3986/Del/2015
Assessment Year : 2011-12

ACIT,
Circle-54(1),
New Delhi.

Vs. New Delhi Tyre House,
31-32, Jangpura Extn. Market,
New Delhi.

PAN: AAAFN2881J

ITA No.2421/Del/2015
Assessment Year : 2011-12

New Delhi Tyre House,
31-32, Jangpura Extn.
Market,
New Delhi.

Vs. JCIT,
Range-32,
New Delhi

PAN: AAAFN2881J

(Appellant)

(Respondent)

Assessee By : Shri KVSR Krishnan, CA
Department By : Shri S.R. Senapati, Sr. DR

Date of Hearing : 04.10.2018
Date of Pronouncement : 04.10.2018

ORDER

PER R.S. SYAL, VP:

These two cross appeals – one by the assessee and the other by the Revenue are directed against the order passed by the CIT(A) on 30.03.2015 in relation to the assessment year 2011-12.

2. The only issue raised by the Revenue in its appeal is against the deletion of addition of Rs.62,03,670/- made by the Assessing Officer.

3. Briefly stated, the facts of the case are that the assessee is engaged in trading of auto parts, accessories and lubricants. On perusal of the return filed by the assessee, it was observed by the Assessing Officer that the assessee showed to have received a sum of Rs.1,91,65,000/- from M/s Exxonmobil Lubricants Pvt. Ltd., on which tax of Rs.3,83,300/- was deducted at source. This receipt was not included in the Profit & Loss Account of the assessee. On being called upon to explain the reasons for non-inclusion of this amount, the assessee stated that the sum of Rs.1.91 crore and odd was taken as liability which was included in creditors list because the amount received was a contractual receipt under Marketing Assistance Programme (MAP) as per Agreement executed between it and

Exxonmobil Lubricants Pvt. Ltd. The assessee submitted that this amount was to be passed on to the customers (sub-distributors) as incentive. It was further explained with reference to the MAP Agreement that the assessee was receiving financial assistance as 'upfront payment' on the condition that the same was to be passed on to the customers and no part was to remain with it as income. The assessee still further explained that out of Rs.1.91 crore and odd, it paid a sum of Rs.1,29,61,330/- under the MAP Agreement to its sub-distributors after due deduction of tax at source. It was stated that neither the amount received from Exxonmobil Lubricants Pvt. Ltd. was offered for taxation nor the amount paid to the sub-distributors was separately claimed as deduction. The Assessing Officer held the differential amount of Rs.62,03,670/- (Rs.1,91,65,000/- minus Rs.1,29,61,330/-) as income of the assessee and, hence, included the same in the total income. The ld. CIT(A) got convinced with the argument of the assessee on this issue and ordered to delete the addition, against which the Revenue has come up in appeal before the Tribunal.

4. Having heard both the sides and gone through the relevant material on record, we find from running account of the assessee with M/s Exxonmobil

Lubricants Pvt. Ltd. that it received a sum of Rs.1,91,65,000/- vide four cheques dated 17.05.2010, 23.07,2010, 16.09.2010 and 30.12.2010. These four amounts were awarded to the assessee under four different distribution MAP Agreements. Copy of the first agreement for a sum of Rs.10.60 lac is available in the paper book, which provides that Exxonmobil Lubricants Pvt. Ltd. wanted to provide the assessee with funds to assist it in marketing of MOBIL and/or ESSO products. Clause 4 of the Agreement provides that: “Distributor (the assessee) shall amortize or repay MAP payment in accordance with the Second Schedule.” Clause 6 of the Agreement, which is relevant for our purpose, reads as under:-

“6. Right to demand immediate payment

EMLPL may at its option demand immediate payment of an amount equal to the Unamortized Balance multiplied by the Amortization Rate, upon the happening of one or more of the following events:

- (a) If Distributor ceases to trade;
- (b) EMLPL terminates the Distributor Agreement for any reason;
- (c) If EMLPL decides in its sole and unfettered discretion not to renew the Distributor Agreement for any reason;
- (d) If Distributor breaches this Agreement or the Distributor Agreement, and in respect of a breach capable of being remedied, fails to remedy such breach within 7 days of written notice from EMLPL;

- (e) If Distributor becomes bankrupt or insolvent, or is unable to pay its debts as they fall due, or enters into any arrangement or composition with its creditors, or has a winding up petition presented against it, or a receiver, receiver/manager or liquidator is appointed, either voluntarily or compulsorily, other than for the purposes of reconstruction; or
- (f) If Distributor does not purchase the Annual Target Volume during a Contract year.”

5. As per the above clause, Exxonmobil Lubricants Pvt. Ltd., has a right to demand immediate payment if the conditions given hereinabove are violated. First Schedule to the Agreement provides that the effective date of MAP Agreement is 01.06.2010 and the maturity date is 31.05.2011. Similarly, there is next Agreement for Rs.21.25 lac, whose effective date is 1st July, 2010 and maturity date is 30th June, 2011. Similar is the position in so far as the effective and maturity dates of other two Agreements are concerned. Total amount under these four Agreements comes to Rs.1,91,65,000/-, which pertains to part of the year under consideration and the remaining part to the subsequent year. The assessee, in turn, is passing over the amount of incentive given under the MAP Agreement to the sub-distributors at the time of their lifting the goods, which payment, during the year, totaled at Rs.1.29 crore and odd. The remaining amount of Rs.62.03

lac will be adjusted against payment to be made in the subsequent year by the sub-distributors at the time of their further purchase. It is relevant to note that the MAP payment received by the assessee comes with certain conditionalities, such as, the assessee has to provide bank guarantee and there is an obligation to lift the stocks. In case the assessee does not succeed in lifting the stock etc., the proportionate part would not be available to it for onward payment to sub-contractors. The assessee has been consistently following this practice of accounting the amounts under MAP Agreement and the same has been accepted in the assessments completed u/s 143(3) for the two immediately preceding assessment years, namely, 2009-10 and 2010-11. The Id. CIT(A) has recorded a categorical finding to this effect in para 1.6 of the impugned order, which has not been controverted by the Id. DR. In the absence of any factual difference in the manner of receipt, disbursement or accounting of the marketing assistance payment received under the MAP Agreements in the preceding year *vis-à-vis* the year under consideration, we are satisfied that the Id. CIT(A) rightly appreciated the facts and was justified in deciding this issue in favour of the assessee. We, therefore, uphold the same.

6. Ground No.1 of the assessee's appeal is against the disallowance of a sum of Rs.8 lac paid as commission to Smt. Inderjeet Kaur and Smt. Parvinder Kaur. The assessee claimed to have paid a sum of Rs.4 lac each as commission to two ladies, namely, Smt. Inderjeet Kaur and Smt. Parvinder Kaur, which was debited to the Profit & Loss Account. On being called upon to produce the recipients of the commission, the assessee failed to produce them, which resulted in the disallowance of Rs.8 lac. The Id. CIT(A) upheld the assessment order on this issue.

7. Having heard both the sides and gone through the relevant material on record, it is found that the assessee failed to lead any evidence about the genuineness of transactions of payment to these two ladies. The Id. AR explained the nature of such payments by explaining that some sub-distributors insisted on making payment to these two ladies as a part of their incentive under the MAP Agreement. It, therefore, becomes manifest that such commission is simply a part of the payment made to the distributors which was received by the assessee under the MAP Agreements from Exxonmobil Lubricants Pvt. Ltd. for onward payment to customers. Since the assessee is neither offering the receipt of incentive

from Exxonmobil Lubricants Pvt. Ltd., as income, nor payments made to sub-distributors as expense, a part of such payment, termed as commission, to these two ladies cannot, therefore, cannot have a different shade from the angle of deductibility. It is further observed that the assessee failed to adduce any evidence of rendering of services by these two ladies, which necessitated it to make such payments. We, therefore, uphold the impugned order on this score.

8. The other two grounds were not pressed by the ld. AR which, therefore, stand dismissed.

9. In the result, the appeals of the assessee as well as the Revenue are dismissed.

The order pronounced in the open court on 04.10.2018.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 04th October, 2018.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.