

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Vice-President (KZ)

**I.T.A. No. 706/KOL/2018
Assessment Year: 2014-2015**

Sri Dinabandhu Biswas,.....Appellant
Vill. Malipota,
P.O. Fulia Boyra, Santipur,
Nadia-741 402
[PAN: AKVPB 1853 B]

-Vs.-

Income Tax Officer,.....Respondent
Ward-41(2), Nadia,
Anant Hari Mitra Road, Nediara Para,
Krishnanagar, Nadia-741101

Appearances by:

Shri S. Bhattacharya, Advocate, for the Appellant
Shri Sital Chandra Das, Addl. CIT, Sr. D.R., for the Respondent

Date of concluding the hearing : October 22, 2018

Date of pronouncing the order : October 22, 2018

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-12, Kolkata dated 22.12.2017, whereby he confirmed the addition of Rs.4,10,570/- made by the Assessing Officer on account of disallowance of commission.

2. The assessee in the present case is an individual, who is engaged in the business of trading of goods of Parley Products Pvt. Limited and also acts as a commission agent for different Telecom products. The return of income for the year under consideration was filed by him on 22.03.2015 declaring a total income of Rs.5,21,560/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee during the year under consideration had received commission of Rs.41,05,700/- from Reliance Telecom Limited and the same was entirely

passed over by him to the sub-agents. He, therefore, required the assessee to offer his explanation in this matter. The assessee, however, could not offer any explanation to the satisfaction of the Assessing Officer on this issue and consequently the commission claimed to be paid by the assessee was disallowed by the Assessing Officer to the extent of Rs.4,10,570/- being 10% of the total commission paid amounting to Rs.41,05,700/- in the assessment completed under section 143(3) vide an order dated 20.12.2016.

3. Against the order passed by the Assessing Officer under section 143(3), an appeal was preferred by the assessee before the Id. CIT(Appeals) challenging the disallowance of Rs.4,10,570/- made by the Assessing Officer on account of commission and since there was no proper compliance on the part of the assessee to the notices issued by him fixing the said appeal for hearing from time to time, the Id. CIT(Appeals) dismissed the appeal of the assessee vide his appellate order dated 22.12.2017 passed *ex-parte*. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. Besides explaining the non-compliance on the part of the assessee during the course of appellate proceedings before the Id. CIT(Appeals), the Id. Counsel for the assessee has contended that the entire commission income earned by the assessee was required to be passed over to the sub-agents as per the modus operandi followed in the business and the same was duly explained by M/s. Reliance Telecom Limited vide its letter dated 10.10.2016 directly written to the Assessing Officer in response to the notice issued under section 133(6) of the Act. He has also filed a copy of the said letter placed at pages no. 2 & 3 of his paper book along with the relevant Annexure. As pointed out by the Id. D.R. in this regard, the said letter, however, was received by the Assessing Officer on 26.12.2016, i.e. only after passing the assessment order under section 133(6) on 20.12.2016. It is thus clear

that the Assessing Officer could not verify the claim of the assessee as regards the payment of entire commission to the sub-agents on the basis of the letter dated 10.10.2016 sent directly by M/s. Reliance Telecom Limited in response to notice issued by the Assessing Officer under section 133(6). Keeping in view this position manifest from the material placed on record, I consider it fair and proper and in the interest of justice to set aside the impugned order of the Id. CIT(Appeals) on the issue under consideration and remit the matter back to the Assessing Officer for deciding the same afresh after verifying the claim of the assessee of having paid the entire commission income to the sub-agents from the letter dated 10.10.2016 received from M/s. Reliance Telecom Limited as well as other details annexed to the said letter.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on October 22, 2018.

**Sd/-
(P.M. Jagtap)
Vice-President (KZ)**

Kolkata, the 22nd day of October, 2018

- Copies to :*
- (1) ***Sri Dinabandhu Biswas,
Vill. Malipota,
P.O. Fulia Boyra, Santipur,
Nadia-741 402***
 - (2) ***Income Tax Officer,
Ward-41(2), Nadia,
Anant Hari Mitra Road, Nediara Para,
Krishnanagar, Nadia-741101***
 - (3) ***Commissioner of Income Tax (Appeals)-12, Kolkata,***
 - (4) ***Commissioner of Income Tax- ,***
 - (5) ***The Departmental Representative***
 - (6) ***Guard File***

By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.