

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.16/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Vandana Arun Sarawgi
Vinayan Tubes, 32/505,
Office No.309B, City Tower,
17 Boat Club Road,
Pune – 411001

.... अपीलार्थी/Appellant

PAN: ADXPS3272L

Vs.

The Addl. Commissioner of Income Tax,
Range 5, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri M.K. Kulkarni
प्रत्यर्थी की ओर से / Respondent by : Shri Sanjeev Ghei

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| सुनवाई की तारीख / Date of Hearing : 23.10.2018 | घोषणा की तारीख / Date of Pronouncement: 14.11.2018 |
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A), Pune-10, dated 06.12.2016 relating to assessment year 2011-12 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following ground of appeal:-

- 1) *On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the addition of Rs.75,18,667/- made by the A.O. disallowing the commission paid by the assessee. The Ld. CIT(A) confirmed the addition without appreciating the submissions made before him. The addition is unwarranted and it be deleted.*
- 2) *On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the addition made by the A.O. of Rs.75,18,667/- though such claim was accepted by A.O. in A.Yrs. 2009-10 and 2010-11 and also the same has attained finality since no action u/s 147 or u/s 263 was taken for those years. The Ld. CIT(A) was excepted to maintain the consistency. The addition be deleted.*
- 3) *On the facts and circumstances of the case and in law the Ld. CIT(A) was further not justified in confirming the disallowance made by the A.O. accepting the books of account maintained and duly audited. The disallowances and confirmation was not justified without rejecting the books of account under S. 145(3) of the Act. It be held accordingly.*

3. Though the assessee has raised several grounds of appeal but the only issue raised in the present appeal is against disallowance of commission paid by assessee at ₹ 75,18,667/-.

4. The learned Authorized Representative for the assessee at the outset pointed out that similar commission payments were being paid by assessee in its line of business and during the year under consideration, against turnover of ₹ 76.38 crores, commission of ₹ 75,18,667/-, which was about 10% of total turnover, was paid. He further pointed out that in earlier years and even in subsequent assessment years, commission payment has been allowed. He however, fairly pointed out that in assessment years 2008-09 and 2009-10, commission was disallowed and the Tribunal had restricted disallowance to 10% of total commission paid. In this regard, he invited our attention to the order passed by Tribunal in ITA Nos.1488/PUN/2013 & 1491/PUN/2013, relating to assessment year 2008-09, order dated 23.06.2017.

5. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

6. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, the assessee was engaged in the business of dealer in iron, steel pipes & pipe fittings. For the year under consideration, the assessee had declared income of ₹ 1,96,18,880/-. During the year under consideration, the assessee had paid commission of ₹ 75,18,667/- on its sales. The Assessing Officer noted that there was fall in GP ratio as compared to earlier two years and another point which was noted was that the commission was being paid to sister concern. After considering the reply of assessee in this regard that sister concern was the main player in the said field and had facilitated sales to the assessee and hence, commission paid, the Assessing Officer disallowed sum of ₹ 75,18,667/-. The CIT(A) confirmed the disallowance made by Assessing Officer, against which the assessee is in appeal before us.

7. We find that similar issue of allowability of commission arose before the Tribunal in assessment year 2008-09 (supra) and in the said order also commission was paid to associate of assessee in order to facilitate sales to Gajanan Traders and the Tribunal noted that out of commission paid even TDS was deducted and in the totality of the facts and circumstances, disallowance of commission was restricted to 10%. Similar ratio has been laid down in assessment year 2009-10. Following the same parity of reasoning, we direct the Assessing Officer to restrict disallowance of commission to the extent of

10% in the hands of assessee. The grounds of appeal raised by assessee are thus, partly allowed.

8. In the result, appeal of assessee is partly allowed.

Order pronounced on this 14th day of November, 2018.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 14th November, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Pune-10;
4. The PCIT-4, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune