

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.1781/Kol/2017
Assessment Year :2008-09

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| DCIT, Circle-5(1) P-7, Chowringhee Square, Kolkata-69 | V/s. | M/s Kesoram Industries Ltd., 9/1, R.N. Mukherjee, Kolkata-700001 [PAN No.AABCK 2417 P] |
| अपीलार्थी /Appellant | .. | प्रत्यर्थी/Respondent |

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|--------------------------------------|-------------------------------|
| अपीलार्थी की ओर से/By Appellant | Shri A.K. Singh, CIT-DR |
| प्रत्यर्थी की ओर से/By Respondent | Shri Dilip S. Damle, Advocate |
| सुनवाई की तारीख/Date of Hearing | 29-11-2018 |
| घोषणा की तारीख/Date of Pronouncement | 30-11-2018 |

आदेश / O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for assessment year 2008-09 arises from the Commissioner of Income Tax (Appeals)-17, Kolkata's order dated 07.03.2017, passed in case No.226/CIT(A)-17/Kol/15-16, in proceedings u/s. 147/154/251/143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The Revenue's sole substantive ground pleaded in the instant appeal seeks to revive the Assessing Officer's action disallowing / adding this taxpayer's discount and brokerage claim of ₹21,83,16,311/- during the course of assessment as reversed in lower appellate proceedings as follows:-

“Decision: *In this case the AO has made the addition on the ground that discounts offered by the assessee have been netted from the sales so there cannot be an admissible claim for additional discount. It is the contention of the AO that once the discount has been deducted from the gross sales the assessee cannot claim further*

discount under the accounting head "Brokerage and Discount". Accordingly, the order post sales discount claimed by the assessee was treated by the AO as a double claim and disallowed. Accordingly, disallowance of Rs.21,83,16,311/- was made by the AO.

I have gone through the submissions of the assessee and the findings of the AO carefully. It has been submitted that the assessee offers upfront discount at the time of the sales which is called trade discount. The sales are reported net of trade discount. The other discounts offered by the assessee which are mostly the post-sale are:

- (a) Turn over discount
- (b) prompt payment discount
- (c) Quantity discount;
- (d) slab discount
- (e) discount on sale of disposal of second tubes;

It has also been submitted that assessment orders for assessment year 2005 to 2007-08 were passed u/s. 143(3). In all the earlier years same accounting policy regarding the discounts offered by the assessee was followed i.e. trade discounts were netted off against sales and the other post-sale discounts were shown separately and independently in the profit and loss account. In these years the AO has accepted the method of accounting followed by the assessee with respect to treatment of post-sale discount. In this case it has been argued that the AO has not rejected the books of account u/s.145(3). There is no change of facts as far as accounting treatment of discount is concerned. Accordingly, reliance was placed on the decision of the Apex Court in the case of Radhasoami Satsang vs. CIT (193 ITR 321), wherein it observed s follows:

'Where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.'

It was also submitted that on same set of facts that the order passed u/s.263 by the CIT in A. Yr. 2011-12 has been set aside by the Hon'ble ITAT.

Trade discount is offered upfront on sales. I have gone through the sample bill submitted by the A/R of the assessee, in the case of Eastern Tyre Corporation,, wherein the invoice amount is Rs.416680/- on which trade discount is R.140/- and therefore the net product value billed is Rs.41540/-. Thereafter, VAT of 12.5% has been levied and the net invoice value is Rs.46733/-. The other discounts are not netted off against sales and are debited separately in the P/L Account. Like prompt payment discount of 0.5% is offered by the assessee to its customer if the payment is realized within 30-32 days. Turnover discount of 1.5% is offered if the dealer of the assessee exceed the net billing limit by 3-4 times. Moreover, on identical facts the claim of the assessee in the A.Yr. 2005-06 to 2007-08 in scrutiny assessments passed under section 143(3). The AO has not brought any new material facts on record which would necessitate a change in the stand taken as regard the accounting method with respect to treatment of post-sale discounts earlier accepted by the department. This accounting method has been continuously followed by the assessee and accepted by the department in scrutiny assessments. Respectfully following the decision of the Apex Court in Radhasoami Satsang (supra) I am of the opinion that the AO has taken an entirely contrary stand in this year on the treatment of post-sale discounts which is not supported by any change in material facts which is not correct. Accordingly, the disallowance is hereby deleted."

3. Learned CIT-DR vehemently contends that CIT(A) has erred in law as well as on facts in deleting the impugned discount and brokerage disallowance. We invited his attention to the fact that this tribunal has already reversed the CIT's action in assessment year 2011-12 seeking to disallow the very claim in sec. 263 proceedings. Learned co-ordinate bench's order to this effect in **ITA No.1189/Kol/2016** decided on 04.11.2016. forms part of served before us. We are informed that Revenue's appeal against the same is pending before hon'ble jurisdictional high court. There is no distinction on facts or law pointed out at either parties' behest in these two assessment years qua the impugned identical issue. We therefore adopt judicial consistency in this facts and circumstances to affirm the CIT(A)'s findings under challenge deleting discount and brokerage disallowance of ₹21,83,16,311/-.

4. This Revenue's appeal is dismissed.

Order pronounced in the open court 30/11/2018

Sd/-
(लेखा सदस्य)
(Dr. A.L. Saini)
(Accountant Member)
Kolkata,
*Dkp, Sr.P.S

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 30/11/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-DCIT, Cir-5(1), P-7, Chowringhee Square, Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Kesoram Industries Ltd. 9/1, R.N.Mukherjee, Kolkata-001
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।