

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'C', KOLKATA  
(Before Shri S. S. Godara, J.M. & Dr.A.L.Saini, A.M.)

ITA No. 1765/Kol/2016 : Asstt. Year : 2013-14

M/s. Ganesh Steels PAN: AACFJ 5157F (APPELLANT)	Vs	Income Tax Officer Ward 43(4), Kolkata (RESPONDENT)
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Assessee by : Shri S.M Surana, Advocate, Id.AR Id.AR  
Department by : Shri Saurabh Kumar, Addl. CIT, Id.Sr.DR

Date of Hearing : 09-10-2018	Date of Pronouncement: 30.11.2018
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ORDER

Per Dr. A.L.Saini, A.M.:

The captioned appeal filed by the Assessee, pertaining to assessment year 2013-14, is directed against the order passed by the Commissioner of Income-tax (Appeals)-13, Kolkata in Appeal No. 294/CIT(A)-13/Kol/W-43(4)/2015-16, dated 05-07-2016, which in turn arises out of an order passed by the Assessing Officer u/s. 143(3) of the Income-Tax Act, 1961 (in short, the Act), dated 10-02-2016.

2. The grievances raised by the assessee are as follows:-

*1.For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) erred in confirming the disallowance made by the Ld. Income-tax Officer of a sum of Rs.13,68,000/- on account of supervision charges.*

*2.For that on the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals) erred in confirming the disallowance made by the Ld. Income-tax Officer a sum of Rs.33,05,115/- on account of commission paid.*

3. Ground No. 1 raised by the assessee relates to disallowance made by the AO of Rs. 13,68,000/- on account of supervision charges.

4. The facts qua the issue are that the assessee is a firm and it filed its return of income for the A.Y 2013-14, on 28-09-2013, declaring total income at Rs.9,65,760/-. The assessee's case was selected for scrutiny assessment u/s. 143(3) of the Act and the AO completed the assessment u/s. 143(3) of the Act by making addition on account of expenses of supervision charges of Rs. 13,68,000/- and addition on account of commission paid to the tune of Rs.33,05,115/-. As far as disallowance of supervision charges at Rs.13,68,000/- is concerned, the AO noted in the statement of accounts that the assessee had claimed to have incurred an expenditure of Rs. 13,68,000/- during the year and as per the requisition, the assessee filed the details of seven (7) persons, who were claimed to have received the supervision charges during the year. The details of supervision charges paid were also certified in the tax audit reports (TAR), which included the name of the recipients and their relationships with the assessee etc. It was also noted by the AO that the seven recipients were lady members, having close relation either directly with the partners of the firm or with the other members belonging to the group of the partners' family. Therefore, the AO, in order to verify the feasibility and genuineness of the expenditure incurred by the assessee on account of supervision charges, notices u/s. 133(6) of the Act were issued to four (4) recipients on test check basis, directing them to furnish point-wise details & documents and relevant information i.e. copy of agreement/financial terms & conditions, if any, particularly regarding the nature of services rendered by them for which they were paid supervision charges during the year. In compliance, the replies along with some enclosures directly submitted by the five (5) recipients, which were carefully perused, wherein the AO noted that all the replies appearing to have been prepared from one and same desk, were evasive in manner and not in conformity with the line of directions mentioned in the notice, particularly having no proper mention about the nature of services rendered by them for which they were paid supervision charges during the year. Therefore, the AO noted that the seven recipients of supervision charges required to be examined in person and all of them were summoned u/s. 131 of the Act, requiring their personal attendance before the AO as per given time line. But none of them responded to the summons, even the reasons for their non-compliances were not also communicated by any of them. However, the

assessee submitted further details and information in respect of five recipients, namely (1) Smt. Priti Jagnani, (2) Smt. Neerja Jagnani, (3) Smt. Khushbu Jagnani, (4) Smt. Ritu Jagnani and (5) Smt. Gayatri Jagnani, highlighting their services rendered for the assessee as supervisors. However, on a careful perusal of the further details so furnished, the AO issued notices u/s. 133(6) of the Act on 14.01.2016 again to the five responding recipients, calling for their personal and family details. In response, the details were furnished before the AO. The AO after going through the details furnished by the assessee noted that the client firm has duly deducted tax at source and deposited the same to the credit of Central Govt. in respect of payment made towards supervision charges, within the specified due time under Chapter XVII-B. The AO noted that crux of the issue in the case is whether the recipients have rendered their true services to the assessee during the year or not, but the assessee failed to bring on record any convincing argument/evidence to justify the claimed performances of the recipients as supervisors. Therefore, the AO disallowed the claim of assessee in respect of expenses incurred towards supervision charges to the tune of Rs.1,368,000/-.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Commissioner of Income-tax (Appeals), Kolkata, who has confirmed the addition made by the Assessing Officer. Aggrieved by the order of the Commissioner of Income-tax (Appeals), the assessee is in further appeal before us.

6. Before us, the Id. Counsel for the assessee has reiterated his same submissions as made before the lower authorities. Whereas the Id. DR for the Revenue relied on the stand taken by the AO.

7. We have given a careful consideration to the rival submissions and perused the material available on record. We note that the assessee has furnished PAN numbers in respect of respective recipients of supervision charges. The assessee submitted names and addresses of all the recipients. We also note that in the Tax Audit Report (TAR) issued by the chartered accountant, contains reporting about the recipients of service charges. In

response to notices issued u/s. 133(6) of the Act, the assessee filed the details of services rendered by these persons. In addition to this, in response to notice issued u/s. 131 of the Act, the assessee filed the relevant details in respect of services rendered by the respective recipients of supervision charges. Appropriate TDS were deducted while making the payment by the assessee and payments were made through banking channels. We also note that in respect of each recipient of supervision charges, the assessee filed copies of Income Tax Returns of receiving payments through banks, deduction of tax at source and depositing the same (TDS) to Govt account. In addition to these, supervision charges received by the respective recipients were also shown in their respective Income Tax Returns and offered for taxation. Moreover, the transactions were also through banking channel and deduction of tax at source was deposited in the govt. account. The Id AO did not find any irregularity in the documents so submitted by the assessee during the assessment proceedings. The Ld AO, as well as, the Id. CIT(A) failed to bring any cogent evidence on record to show that the services rendered by them and claim of supervision charges were bogus.

Therefore, based on the factual position discussion above, we delete the addition of Rs.13,68,000/-. Ground no. 1 raised by the assessee is allowed.

8. Ground No. 2 raised by the assessee relates to disallowance of Rs.33,05,115/- on account of commission paid.

9. The brief facts qua the issue are that during the assessment proceedings the AO noted that Shri Narayan Jagnani, Shree krishna Jagnani, Raj Kumar Jagnani, Purusottam Das Jagnani & Manish Jagnani have their own residence at 29A, Sir Hari Ram Goenka Street, Kolkata-700007. During the assessment proceedings the AO noted that their services rendered were not mentioned by these persons. The genuineness of the payment could not be established. The AO observed that the services rendered by these persons could not be established. Out of the total, eleven (11) commission agents, were of the same family group of partners of the firm. They did not give any details before the AO for

examination of services rendered by them. The AO further noted that the assessee has emphasized that the tax has been deducted over the payment. But, the AO did not consider the plea of the assessee. Keeping in view that the transactions were service oriented which could not be proved. The assessee failed to bring any record before the AO, which can convince about the services rendered by the recipients of commissions. The AO further noted that neither the assessee brought anything on record to establish the services rendered by the commission agents nor the commission agents brought any record, which can convince about the services rendered by the recipients that commission payments were in the line of business. Considering the facts, the AO made the addition of Rs. 33,05,115/- on account of commission paid.

10. Aggrieved by the stand so taken by the AO, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the impugned addition made by the AO. Aggrieved by such order of the Id. CIT(A), now the assessee is in appeal before us..

11. The Id. Counsel for the assessee reiterated his same submissions made before the lower authorities. Whereas the Id. DR for the revenue reiterated the stand taken by the AO.

12. We have given a careful consideration to the rival submissions and perused the material available on record. We note that all the persons who received the commission, duly complied with the notices issued by the AO u/s. 133(6) of the Act by making submissions, furnishing information, explanation and evidence as sought by the AO. All the sixteen persons have made submissions in response to summons dated 28-12-2015. We note that all the persons were service provider i.e supervision charges and commission as specified their separate and distinct nature of service rendered by them. The assessee has relied upon these service providers, who have rendered their services in connection with business of the assessee. The expenses incurred by the assessee were wholly and exclusively for the purpose of business. The commission so paid was offered to tax by the respective recipients. It is the decision and prerogative of the businessman to whom he recruits to run

his business and on which personnel he should trust. Normally, the businessman appoints experienced, resourceful and truthful persons to maintain and enhance the profit and sales of his organization. As a prudent business man, it is required to take decision in the given fact and circumstances sought the services of above said 16 experienced, trustful and resourceful personnel. It is the prerogative of the businessman to decide that from whom services is to be hired. The decision of businessman to hire employees and take their services in the interest of business cannot be interfered by the Revenue. The Revenue cannot sit on an arm chair of the businessman to decide which employee is to be hired and how much amount is to be paid. It is a businessman's decision to take the services and decide the quantum of payment against these services for business purpose. However, in case of relative person, the revenue can interfere to examine the fair value of services rendered as per provisions of section 40A(2) of the Act. In the instant case the assessee has paid supervision charges and commission to these persons by account payee cheques after deduction of TDS and TDS has been deposited in the govt. account. The assessee has also filed the details of services rendered by these persons. Most of these persons have replied to the AO. Therefore, the AO failed to bring any cogent material on record to show that the commission payment and commission charges were bogus. Hence, we delete the impugned addition to the tune of Rs.33,05,115/-. Ground no. 2 raised by the assessee is allowed.

13. In the result, the appeal filed by the assessee is allowed

Order Pronounced in the Open Court on 30-11-2018

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

Sd/-  
(Dr. A.L.Saini)  
Accountant Member

Dated: 30-11-2018

\*PRADIP (Sr.PS)

Copy of the order forwarded to:

1. The Appellant/Assessee: M/s. Ganesh Steels C/o Sri Jitendra Kaushik, Advocate, 19-D Muktaram Babu Street, Kolkata-700 007.
2. The Respondent/Revenue: Income Tax Officer, Ward 43(4), 3 Govt. Place (W), Kolkata-700 001.
3. The CIT-I,
4. The CIT(A)-I,
5. DR, Kolkata Benches, Kolkata

True Copy, By order,

Asst. Registrar  
ITAT, Kolkata Benches