

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ -“ए”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, ‘A’, CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर, कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 700 & 701/CHD/2018

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Kwalty Overseas (P) Ltd., 863, Indl. Area-A, Ludhiana	बनाम	The ACIT, Circle-7, Ludhiana
स्थायी लेखा सं./PAN NO:	AABCK6381J	
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Ashwani Kumar, CA

राजस्व की ओर से/ Revenue by : Sh. Gulshan Raj, CIT DR

सुनवाई की तारीख/Date of Hearing : 13.09.2018

उदघोषणा की तारीख/Date of Pronouncement : 11.12.2018

आदेश/Order

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the separate orders of the Commissioner of Income Tax (A)-3, Ludhiana dated 29.3.2018 and 30.3.2018 [hereinafter referred to as ‘CIT(A)’] respectively.

2. First, we shall take up the appeal in ITA No. **700/Chd/2018**. In this appeal, the assessee has taken following grounds of appeal:-

- 1. That order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-3, Ludhiana is against law and facts on the file in as much as she was not justified to arbitrarily uphold the' disallowance of Commission*

paid to various parties at Rs. 3,01,48,514/-.

- 2. That she further gravely erred in upholding an addition of Rs. 18,92,080/- made by the Ld. Assessing Officer by resort to provisions of Sec. 68 of the Income Tax Act, 1961 on account of unsecured loans raised during the year.*
- 3. That the Ld. Commissioner of Income Tax (Appeals) was not justified to arbitrarily uphold an addition of Rs. 4,82,90,607/- made by the Ld. Assessing Officer on account of alleged bogus claim of expenditure.*
- 4. That the Ld. Commissioner of Income Tax (Appeals) was not justified to observe that the account books were not produced by the assessee during the course of assessment proceedings despite a specific recording by the Ld. Assessing Officer in the body of the assessment order.*

3. **Ground No.1** : vide ground No.1, the assessee has agitated the confirmation of disallowance of expenditure amounting to Rs. 3,01,48,514/- on account of commission paid. The brief facts relating to the issue are that the assessee is engaged in the business of manufacturing, trading, import and export of all kind and textile and textile related articles. During the assessment proceedings for the year under consideration, the Assessing officer noted that assessee had debited Rs. 3,01,48,514/- as payment of commission to various parties in the profit and loss account. On being asked to explain in this respect, the assessee furnished the names of parties, bank accounts / details, confirmations etc. It was further explained that, in fact, the amount of commission was not separately paid to these parties, rather, these parties have deducted the commission amount

from the sale bills issued by these parties. The assessee claimed that the parties to whom commission was paid were also the same parties which generated bills for export done by the assessee. No separate remittance has been given to these foreign parties on account of commission paid. The Ld. Assessing officer, however, noted that the commission was shown to have been paid to four parties but the assessee could produce the written agreement in relation to two parties only. Further, the assessee had not given any proof of any services having been rendered by the commission agent. Even the commission was paid to the Buyers themselves. That the concept of commission payment envisages payment to third party for some specific service rendered by that party. However, in this case no third party was involved but the services allegedly rendered has been by buyers themselves. Further, actual remittance in the alleged commission payment had not been through any banking channel but the same was reduced from the invoice value. He, therefore, disallowed the aforesaid commission payment and added the same into the income of the assessee.

4. In appeal, the Ld. CIT(A) confirmed the addition so made by the Assessing officer.

5. We have heard the rival contentions and have gone through the record. The Ld. Counsel for the assessee has invited our attention to the various invoices raised in respect of the exported items and has submitted that the assessee had made a total export sales at Rs.

32,27,15,957/- during the year under consideration. To facilitate such export sales, the same were done through foreign buyer agents. The foreign buyers agents purchased goods on behalf of foreign buyers at best price and at negotiated term of delivery and payment etc. for which they charged 10% commission. The Ld. counsel inviting our attention to the sample invoice has further submitted that, in fact, invoice is not raised by the assessee in the name of actual buyer but in the name of agent only, wherein, a commission @ 10% of FOB is itself deducted / discounted at the instruction of the buyer as listed in invoice, who actually is agent of the actual buyer. The goods are delivered to the actual buyer / third party. He has invited our attention to the copy of the invoice, one of which is placed at page 39 of the paper book, wherein, he has shown that the name of the buyer is mentioned as 'Hatta Fort Trading LLC' at Dubai UAE, whereas, the name of the consignee has been mentioned as 'DALY DAY S.L.' at Madrid, Spain and in the invoice itself it has been mentioned as 'Agency commission @ 10% of the FOB'. There are many identical bills which have been placed on the file. Further, he has also placed reliance on the foreign remittance certificate from the bank, wherein, the amount paid / deducted as commission has been duly mentioned. The Ld. Counsel has further submitted that in order to secure the payment realization from export sales on timely basis, the export invoices are issued in the name of foreign commission agents since it is very difficult to locate foreign buyers. In the bills, the foreign commission agents are designated as buyers. Those foreign buyers agents would collect the payments from consignee and arrange to

remit the payments to the exporter's assessee's bank after deducting the agency commission. Some samples copies, bank certificates of export realization were also submitted to the lower authorities.

6. After considering the rival contentions, in our view, no disallowance of commission amount is warranted in this case. Though the assessee has booked the said amount as commission amount, however, the assessee could conveniently have booked this amount as discount on sales. As per the case of the Revenue, the commission has been shown to be paid to the buyers themselves, which has been discounted / booked in the invoices itself. Under the circumstances, it is not the case of the Revenue that the assessee has received any amount more than the billed amount or remitted separate amount as commission payment. The assessee has tried to demonstrate the actual method of transaction done by him. However, the fact on the file is that the assessee has not paid any separate amount to any party as commission. The assessee has realized the payment of export sales which have been remitted to the assessee by the said commission agents / buyers after deduction of the commission.

7. Since the assessee has not claimed any payment on account of separate commission apart from the actual bill amount received by the assessee, hence, we do not find any justification on the part of the lower authorities for the impugned disallowance of commission and thereby making the impugned additions. This ground of the

appeal of the assessee is accordingly allowed in favour of the assessee.

8. **Ground No.2:** Vide ground No. 2, the assessee has agitated the confirmation of addition of Rs. 18,92,080/- made by the Assessing officer u/s 68 of the Act on account of unexplained loans raised during the year.

9. The brief facts relating to the issue are that the assessee raised unsecured loans amounting to Rs. 18,92,080/- from different parties. On being asked to explain in this respect, the assessee furnished name of the parties, the amount of unsecured loans raised during the year from the respective parties and confirmations. However, the copies of their ITRs and bank statements were not produced. The Assessing officer doubted the genuineness of the transactions and made the impugned additions.

10. In the first appeal before the Ld. CIT(A), the assessee produced further details like bank statements and Income tax returns. It was also stated that the loans were not raised from third party but from the director of the assessee company namely Sh. Rakesh Goyal and Ms. Geeta Goyal. The Ld. CIT(A) called for a remand report in this respect from the Assessing officer. However, in the remand report the Assessing officer reported that assessee had not produced the relevant documents during the original assessment proceedings. The

Ld. CIT(A) acting on the remand report of the Assessing officer confirmed the impugned additions.

11. Before us, the Ld. Counsel for the assessee has relied on the copy of the confirmation of unsecured loans from the directors, balance sheet and audit report, copies of Income tax returns and copy of statement of bank account. In our view, the above relevant documents should have been considered by the Ld. CIT(A). The fact on the file is that the unsecured loans have been raised from the directors of the companies and for the business of the assessee. The creditworthiness of the directors has been proved from the bank statements and confirmation of the accounts. Since the loans have come from the directors of the assessee company, hence, there was no doubt about the identity of the creditworthiness and genuineness of the creditors. In view of this, we do not find any justification on the part of the lower authorities in making the impugned disallowance and the same is accordingly ordered to be deleted.

12. **Ground No.3** : Vide ground No.3, the assessee has agitated the conformation of addition of Rs. 4,82,90,607/- on alleged bogus claim of expenditure on estimation basis. The Assessing officer disallowed 10% of the total expenses on account of non-production of books of account. However, the case of the assessee has been that account books were duly produced. The Ld. counsel has also invited our attention to page 5 of the assessment order, wherein, in the column 3 at Sr. No.19, it has been specifically mentioned by the Assessing

officer that the counsel for the assessee also produced all the books of account with supporting purchase / sale bills and other documents and also produced all the sale bills of sister concern with whom the assessee entered into transactions during assessment year 2010-11 with their ledger account. The Ld. counsel has further invited our attention to page 13 of the impugned order of the CIT(A), wherein, the assessee even before the Ld. CIT(A) has pleaded that assessee was still willing to produce its books of account to avoid any unnecessary encumbrance. Even the Ld. Counsel has submitted that even the audited statement of account was filed along with the return. The Assessing officer while making the assessment did not reject the books of account.

13. The Ld. DR could not rebut the above contention raised by the Ld. Counsel for the assessee. In view of this, we do not find any justification on the part of the lower authorities in making the impugned disallowance and the same is accordingly ordered to be deleted.

In the result, this appeal of the assessee is hereby allowed.

ITA No. 701/Chd/2007

14. In this appeal the assessee has agitated the confirmation of levy of penalty u/s 271(1)(c) of the Act in respect of the quantum additions made as discussed above in ITA No. 700/Chd/2018 . Since in our detailed order as discussed above, we have deleted the impugned additions, hence, the very basis for which the penalty was

levied has ceased to exist. Therefore, the impugned penalty has no legs to sustain, and the same is accordingly ordered to be deleted.

15. In the result, both the appeals of the assessee are hereby allowed.

Order pronounced in the Open Court on 11.12.2018

Sd/-

(बी,आर.आर. कुमार / B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Sd/-

(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य /Judicial Member

दिनांक/Date: 11.12. 2018

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant
Registrar