

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

(Before Sri J. Sudhakar Reddy, Accountant Member)

ITA No. 1485/Kol/2018
Assessment Year: 2014-15

Shri Mahipal B. Shah.....Appellant
26, Amartalla Street
1st Floor
Burrabazar
Kolkata- 700 001
[PAN : AVMPS 0284 P]

Vs.

Income Tax Officer, Ward-35(4), Kolkata.....Respondent

Appearances by:

Shri Manish Tiwari, FCA, appeared on behalf of the assessee.

Shri Nicholas Murmu, JCIT D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : November 28th, 2018

Date of pronouncing the order : January 9th, 2019

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals)-10, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 28/05/2018, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2014-15.

2. The assessee is an individual and derives income from business and other sources. He is in the business of sale of plastic containers. The issues that arise for my consideration are as follows:-

"2. That on the facts and in the circumstance of the case, Ld. CIT(A) has erred in confirming the disallowance of commission expenses of Rs. 8,81,966/- incurred on sales as bogus though the agents were identified and TDS was accordingly made therefrom.

3. That on the facts and in the circumstance of the case, Ld. CIT(A) is wrong in confirming disallowance of salary payment of Rs. 1,40,000/- to K.K. Choraria as not genuine without accepting assessee's explanation.

4. That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong in confirming the disallowance of salary payment of Rs. 6,33,000/-

to Shri Bhogilal M. Shah, a senior citizen and relative of assessee with adequate technical experience in same business line as excessive and unjustified.

5. That on the facts and in the circumstances of the case, Ld. CIT(A) is wrong in confirming the disallowance of Rs. 1,86,040/- under General expenses as not genuine without considering the future business growth potential of assessee firm."

3. After hearing rival contentions, perusing the papers on record and the orders of the authorities below, as well as case-law cited, I hold as follows:-

4. The first issue is on the disallowance of commission paid to agents. The assessee's case is that, it had produced details of parties from whom sales were procured by the commission agents. The commission was paid to Shri Jinen M. Shah, Shri Sahil M. Shah and Shri Kanchan Kr. Choraria. The ld. CIT(A) upheld the order of the Assessing Officer on the following grounds:-

- a) The services rendered by these three commission agents, have not been satisfactorily explained.
- b) The Assessing Officer has examined these persons and from their statements, it is clear that they have not rendered any service to the assessee to be deserving any commission.
- c) The submission that these payments are normal trade practices cannot be accepted.
- d) The assessee was not able to name a single customer who was brought to the assessee by the agent, by bringing any evidence on record.
- e) Deductions of tax at source on commission paid and identification of parties cannot lead to a conclusion that services were rendered.
- f) Many purchasers have confirmed that there was no involvement of any middlemen/brokers while purchasing from the assessee.

5. Before me, these findings of the Assessing Officer were sought to be controverted by the assessee by furnishing confirmations from these commission agents that they have in fact received commission. The same arguments were repeated before us. No further evidence is laid before us. Under these circumstances, we uphold the finding of the ld. First Appellate Authority and dismiss this ground of the assessee.

6. The second issue is on an addition of Rs.1,40,000/-, being salary paid to Shri Kanchan Kr. Choraria.

The Assessing Officer disallowed this amount on the ground that the commission has been paid to him for sales and at the same time salary of Rs.1,40,000/- was shown as paid. The so-called salary was paid only once in a year. The Id. Counsel for the assessee submits that a mutual agreement has been arrived at between the parties, as to what amount would be paid as commission and as to what amount would be paid as salary. The Id. CIT(A) at para 3 page 12 of his order held as follows:-

"3. Having examined the impugned issue, I find that there are certain suspicious and unbelievable features in the matter of payment of salary to Shri Choraria by the appellant. I completely agree the Ld. AO that no salary holder, if he in truth renders regular services will wait till the end of the year to receive salary. As it were, before the Ld AO under oath Shri Choraria has denied receiving any salary from the appellant. I also find that the appellant has not countered any of the specific findings of the Ld. AO that it was discernable from the ledger of Sri Kanchan Kumar Choraria that an entry of salary of Rs.1,40,000/- was made in the month of March 2014 only, and therefore appears to be an afterthought. On the whole, I find that the Ld. AO has made the addition after bringing forth cogent reasoning and evidence, and as such the action of the Ld. AO does not call for any interference. The ground is therefore dismissed."

6.1. I find no infirmity in the same and dismiss this ground of the assessee.

7. Ground No. 4, is on the issue of salary paid to Shri Bhogilal M. Shah.

The assessee claims that Shri Bhogilal M. Shah, has vast experience and knowledge in plastic trade and that he looked after the activities involving purchase of new moulds, mould maintenance and other production issues. The Assessing Officer doubted this claim of the assessee on the ground that no evidence has been filed. I find that the disallowance was made only on the basis of suspicion. The fact of the experience of Shri Bhogilal M. Shah, who was earlier carrying on business of manufacture of plastic and alkathene toys and novelty goods, is not disputed. Shri Bhogilal M. Shah is an income-tax assessee.

7.1. In my view, this disallowance is bad in law for the reason that, the assessee has discharged the burden of proof that lay on him and the revenue has simply disallowed

the amount based on suspicion. Hence, I delete the disallowance and allow Ground No. 4 of the assessee.

8. The last issue is regarding the disallowance of general expenses claimed. The amount of Rs.1,86,040/-, was paid to *S.P. Jain Institute*, for management training of the assessee's son Shri Sahil M. Shah. The revenue authorities disallowed the same on the ground that the expenses are personal in nature. The assessee has not produced any evidence as to how the expenditure in question incurred on the assessee's own son would constitute business expenditure of the assessee concern. Hence I uphold the disallowance and dismiss this ground of the assessee.

9. In the result, appeal of the assessee is allowed in part.

Kolkata, the 9th day of January, 2019.

Sd/-

[J. Sudhakar Reddy]

Accountant Member

Dated : 09.01.2019

{SC SPS}

Copy of the order forwarded to:

1. **Shri Mahipal B. Shah**

**26, Amartalla Street
1st Floor
Burrabazar
Kolkata- 700 001**

2. **Income Tax Officer, Ward-35(4), Kolkata**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches