

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.6280/Del./2015
Assessment Year 2010-2011

The DCIT, Circle-1, Ghaziabad. (Appellant)	vs.	Shri Anand Prakash, Prop. M/s. National Steel Suppliers, 71, Navyug Market, Ghaziabad. PAN ADDPP5884B (Respondent)
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For Revenue :	Shri Amit Katoch, Sr. D.R.
For Assessee :	Shri Akhilesh Kumar, Advocate.

Date of Hearing :	14.02.2019
Date of Pronouncement :	05.03.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the order of Ld. CIT(A), Muzaffarnagar, Dated 8.09.2015, for the A.Y. 2010-2011.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

3. On Ground No.1, Revenue challenged order of Ld. CIT(A) in deleting the addition of Rs.80,29,302/- for not fulfilling requirements of Section 10(37) of the Income Tax Act, 1961. The assessee has received compensation of Rs.80,29,302/- on compulsory acquisition of urban agricultural land and claimed the same as exempt under section 10(37) of the Income Tax Act. The A.O. noted that the assessee is an established Businessman engaged in Trading of Iron & Steel and also acting as C.S. Agent of Rashtriya Ispat Nigam Limited ("RINL") which requires a great deal of time to devote. It was revealed from the balance sheet that assessee has invested in *inter alia* urban plots and flats, at various agricultural lands namely Khasra No.110, 141/2, 681, Mubarikpur 1 and 2 and Land at Greater Noida. The A.O, therefore, noted that assessee does not have time to undertake agricultural activities on these scattered lands. The same will follow suit in the case of acquired lands at Gram Jaganpur, District Gautam Budh Nagar, which was purchased by assessee on 16th April, 2004 and in the Purchase Deed, it is mentioned that land

sold does not have any tube-well, boring, trees or standing crops. The A.O, therefore, required the assessee to prove with evidence that the impugned land was used for agricultural purposes by him during the period of two years immediately prior to the date of transfer/acquisition. The assessee explained that land was used for the purpose of agriculture for self-consumption, for which, no details were filed. The A.O, therefore, noted that assessee has not undertaken any agricultural activity on the said land, therefore, assessee will be deprived of the claim of exemption under section 10(37) of the Income Tax Act, 1961, on the amount of compensation of Rs.80,29,302/-. The A.O, therefore, made the addition on account of business income.

4. The assessee challenged the addition before Ld. CIT(A) and it was submitted that agricultural produce was used for self-consumption and that land was used for agricultural purposes only. In case there was any doubt, direct enquiry could be made from the Revenue Authorities. The Ld. CIT(A) noted that it is mentioned in the sale deed

that land under consideration is agricultural land and was purchased for agricultural purposes. The Ld. CIT(A) also noted that assessee has rightly submitted that even without tube-well, agricultural activities could be done. The Ld. CIT(A) also noted that richness of the assessee has no relevance to the claim of deduction under section 10(37) of the Income Tax Act. The Ld. CIT(A) at the appellate stage directed the assessee to file information from the Revenue Authorities under section 250(4) of the Income Tax Act and in compliance thereof, assessee filed Certificate from the Office of Tehsildar wherein it has been clearly stated that land was used for agricultural activities at the time of acquisition. The Ld. CIT(A) examined the original documents of the same and was satisfied that land was used for agricultural purposes before acquisition for at least earlier two years and thus, assessee is entitled for deduction under section 10(37) of the Income Tax Act. The Ld. CIT(A) also noted that property was purchased as investment. The assessee did not make any business activity out of the

agricultural lands. The Ld. CIT(A), accordingly, deleted the addition.

5. The Ld. Departmental Representative relied upon order of the A.O. and submitted that how Tehsildar issued certificate is not cleared.

6. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to the sale deed in which it was specifically mentioned that at the time of sale, it was an agricultural land and agricultural activities were going on. He has referred to the Certificate issued by the Tehsildar in which it is confirmed that in the impugned land agricultural activities were going on at the time of acquisition of the property by the Government. He has also referred to land records, in which, agricultural purpose have been mentioned of the impugned land. He has relied upon decision of Madras High Court in the case of Pr. CIT vs., Mansi Finance Chennai Limited 73 taxmann.com 312 (Mad.) in which as per Revenue records the land was used for agricultural purposes. On the basis of the evidence and

material and record, the claim of assessee has been allowed. He has also relied upon the order of ITAT, Hyderabad Bench in the case of CIT vs., N. Raghu Varma (2013) 142 ITD 421 (Hyd-Tribu.).

7. After considering the rival submissions, we are of the view that no interference is called for in the matter. It is not in dispute that the assessee received the compensation of the impugned amount on compulsory acquisition of urban agricultural land. The assessee claimed the same amount as exempt under section 10(37) of the Income Tax Act. The assessee filed copy of the sale deed which clearly described the impugned land to be agricultural land and used for agricultural purposes. At appellate stage, as per directions of the Ld. CIT(A), Certificate of Tehsildar was filed who has certified that at the time of acquisition of the land, the land was used for agricultural purposes. The assessee also produced Revenue record to show that land in question was used for agricultural purposes. Thus, sufficient material was produced on record to prove that at the time of acquisition of the land in question, the land was used for

agricultural purposes. Thus, assessee satisfied the conditions of Section 10(37) of the Income Tax Act. Therefore, assessee's income is exempt under the said provision. No interference is called for in the matter. We, accordingly, dismiss Ground No.1 of appeal of the Revenue.

8. On Ground No.2, Revenue challenged the order of Ld. CIT(A) in deleting the addition of Rs.5,14,485/- on account of commission payment. The A.O. noted that assessee has paid commission of Rs.33.24 lakhs to 11 persons during the year as against to that of Rs.14.32 lakhs in the preceding year. Out of these 11 persons, 04 persons resided at the same address at KD-41, Kavi Nagar, Ghaziabad and received commission of Rs.16,30,809/- and 03, out of these were ladies. This apart, 03 persons also belonged to the same address at Hari Nagar, New Delhi, who got total commission of Rs.9,41,616/-. The assessee was required to justify the necessity of paying Commission to persons dwelling in the same house and particularly the role of 03 ladies, enabling them to receive commission. Details of services rendered by them for the assessee and

description of their active and direct roles making them eligible for the Commission were desired to be submitted. Their expertise, experience, networking and delivery of services for other persons needed to be adduced with proof, How they were instrumental in procuring sales and new orders warranted to be justified by the assessee. The assessee furnished details to contend that in the referred cases, full family was involved in the same business for long. Affidavits of these persons, I.T. returns, and computation of income were filed. However, A.O. did not accept the same. The A.O. noted that filing of return of income and deduction of TDS would not serve the purpose. The A.O, accordingly, disallowed 20% out of the commission and made the addition of Rs.5,14,485/- under section 37 of the Income Tax Act, 1961 .

9. The assessee challenged the addition before the Ld. CIT(A). It was submitted that A.O. did not doubt the genuineness of the payments which were made through banking channel, upon which TDS was deducted, which is verified by the A.O. No payment is made to any related

party. The sales of the assessee have increased by over Rs.23 crores. The bills of Commission Agents have given details of tonnage and rate of commission is mentioned. It was submitted that rate of commission is far more lesser than the gross profit ratio which is over 4%. Commission is only @ 5%. The commission was paid since last many years which have been accepted. The comparative details of earlier year was also filed. The final book results could be verified from the assessment order for preceding A.Y. 2009-2010, in which, assessee similarly explained the issue. Besides all the parties are identified and they worked for assessee and paid the taxes on the income. Many case laws were relied upon. The Ld. CIT(A) noted that claim of commission is fully supported by comparative chart of earlier year, payment of TDS, is not doubted and rate of commission is uniform and even the sales have substantially increased and the Agents also disclosed their Commission income in their return of income. None of the parties are related. Genuineness of the payment is not doubted. The A.O. only disallowed part

payment. Therefore, there was no justification to make the addition. The Ld. CIT(A), accordingly, deleted the addition.

10. The Learned Departmental Representative relied upon the orders of the A.O. and submitted that the services rendered by the Commission Agent have not been explained.

11. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to Paper Book-94 to 104, which are copies of the commission bills, in which the services rendered by the Commission Agent and the rates of commission are clearly mentioned. He has submitted that Commission Agent render services for the assessee. He has relied upon the decision of Allahabad High Court in the case of Maya Machinery (P.) Ltd., vs., DCIT (2015) 54 taxmann.com 67 (Alld.) in which it was held that *“where A.O. had accepted genuineness of payment of consultancy charges to architect, the entire amount should have been allowed and allowing the part payment was not justified.”*

12. After considering the rival submissions, we do not find any merit in this ground of appeal of Revenue. The assessee explained that similar commission was paid in earlier year, which was also noted by the A.O. in the assessment order. The A.O, however, found that in this year assessee has made more Commission payment. The A.O. accepted 80% of the commission payment and disallowed 20% out of commission payment without giving any specific reasons. The assessee explained that commission payment was made for business purpose and in the commission bills, it is mentioned that the commission was paid for supply of Steel Material Round, Rebar, Structure etc. The TDS have been deducted and commission agents have disclosed the commission income in their return of income. There is an increase in sales of the assessee in assessment year under appeal. The commission payment in the past have been accepted by the authorities below. It is also explained that on the same reason, the commission payment have been accepted in preceding A.Y. 2009-2010. These facts, therefore, clearly show that commission payment have been

made to the Commission Agents who are unrelated parties and are identified. Genuineness of the commission payment is not doubted. Assessee proved that Commission Agents render services for business purpose of the assessee. Therefore, the Ld. CIT(A), correctly deleted the addition. Ground No.2 of the appeal of the Revenue is dismissed.

13. On Ground No.3, Revenue challenged the order of Ld. CIT(A) in deleting the addition of Rs.36,02,822/- on account of shortage in stock as found by RINL. The A.O. noted that assessee is saddled with the consignment work as Agent (Handling Contractor) of RINL. During the year, on physical verification of stocks lying in the custody of the assessee by Principal-RINL, it was found that stock worth Rs.36,02,822/- was lying short vis-a-vis total stock handedover to the assessee. It was obligatory for the assessee to safeguard the property of principal from any pilferage, damage or loss, for which, it is paid handling charges. It was noted that RINL deducted the above amount from the monthly handling bills of the assessee as stock was found short during physical verification. The assessee

claimed the about shortage as expenses. The assessee explained that all the control over material receipts and issues are in the hands of RINL. The material receipt Note are received and signed by staff and officials of RINL and all dispatch slips are issued, passed and signed by the staff and officials of the RINL. The A.O, however, did not accept the same because no FIR or Complaint have been lodged and that the work has to be done by the assessee and not by the principal. The A.O, accordingly, disallowed the above amount under section 37 of the Income Tax Act.

14. The assessee submitted before the Ld. CIT(A) that actually assessee is having stock yard and principal is sending their huge material for stocking, of which, they appoint Handling Agents, who provide facilities of stocking as well as of loading/unloading of material in the yard, after transporting the same mainly from Railway Yard as this is dispatched from far-off destinations. At each stage, weight etc., is measured and authenticated by the staff of the principal. In the stock yard, numerous employees of principal are posted who book the order and make

dispatches. Iron and Steel are stocked/stacked on the earth which is having dust/soil particles and during the course of transportation, loading/unloading and dispatches etc., this dust etc., is shedded, which causes weight loss and same is further shedded when items are sold in small quantities to parties, which is normal and as per the Agreement such loss is deducted by the Principal at the time of periodical audit of stock in the ordinary course of business, out of the charges claimed by the assessee. In the present case, after adjustment of earlier shortage estimated by RINL, a sum of Rs.55,246.86 is receivable from the principal. In fact opening balance in this account is Rs.20,44,315.41 which is relating to earlier A.Y. 2009 2010 and after debiting the deduction in the current year on account of shortages, total amount is Rs.36,58,069.04. While actual shortage found is Rs.36,02,822.18. This itself proves that even principal has estimated more shortage by Rs.55,246/- and it further proves that in the current year shortage is even lesser than the earlier year. During the assessment year under appeal, the assessee has received handling charges which were

around Rs.5 crores and finally received Rs.2.79 crore after the settlement is duly credited to the profit and loss account. Therefore, Section 37 would not apply. It was submitted that it is a normal feature of the business and for commercial decisions if principal deducted the amount from the bill, it should not have been shouldered upon by the A.O. The Ld. CIT(A) noted that assessee is a Handling Agent of RINL which is a Government Undertaking dealing in Iron and Steel and his job is to transport material which comes through Railway Wagons at Ghaziabad and then to take the material in his stock yard where the same is stacked. The staff of the RINL is posted in the stock yard from where sales are made by staff of RINL and material is dispatched to the parties by the staff of the principal. Against providing stock yard for staff/material and services of transportation etc., the assessee gets handling charges and in the same process, for the shortage of the material, it was detected from the final bill. The shortage occurred on day to-day basis and such shortage are debited by RINL on estimate basis. Since it is a business routine and normal shortage,

therefore, claim of assessee was allowed. The Ld. CIT(A) also noted that there is opening balance under the same head which supports the explanation of assessee that it was a routine shortage. Ld. CIT(A), accordingly, deleted the addition.

15. The Ld. D.R. submitted that shortage is abnormal. It cannot continue for many years.

16. On the other hand, Learned Counsel for the Assessee, reiterated the submissions made before the authorities below and submitted that amount in question is not debited to the profit and loss account, therefore, the same cannot be disallowed. PB-107 is the letter of RINL which certified that the amount in question have been recovered from the assessee on account of shortage. PB-109 and 110 is the ledger account of the principal to show there is a opening balance and that shortage is a debited to the ledger account.

17. After considering the rival submissions, we do not find any merit in this ground of appeal of Revenue. The

assessee has filed copy of the ledger account of the principal to show that there was opening balance in this account for the earlier year and that while settling the bills of the assessee for payment of handling charges, the principal has deducted amount in question from the final bill because of the normal shortage. The assessee is receiving handling charges and if during handling services principal has suffered loss on account of shortage and it has recovered from the assessee as is evident from the letter of RINL, the assessee would get a lesser payment. The amount in question have not been debited to the profit and loss account and has not been claimed as deduction by the assessee. Therefore, the same could not be disallowed by the A.O. since it is a normal business transaction and shortage is recovered by the Principal and is also confirmed by the Principal, therefore, A.O. should not have doubted the explanation of the assessee. We, accordingly, do not find any merit in this ground of appeal of the Revenue. The same is accordingly dismissed. Ground No.3 of appeal of Revenue is dismissed.

18. In the result, appeal of Revenue dismissed.

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th March, 2019.

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi