



ITA No.1082/Mum/2018
M/s. Interplex India P.Ltd.
Assessment Year :2010-11

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.1082/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. Interplex India Pvt.Ltd. 404-B, Bakhtavar Opp. Colaba Post Office Colaba, Mumbai-400 005.	बनाम/ Vs.	DCIT-Circle-3(2) Room No.608 Aaykar Bhavan, M.K. Road Mumbai-400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACI-2634-R		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Appellant by	:	Kuldeep Mehta- Ld. AR
Respondent by	:	Abhi Rama Kartikeyan-Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	12/03/2019
घोषणा की तारीख / Date of Pronouncement	:	18/03/2019

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-8, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-8/IT-214/14-15* dated 18/12/2017 *qua* confirmation of disallowance of commission expenses for Rs.13.98 Lacs. The assessee being *resident corporate entity* was stated to be engaged as



ITA No.1082/Mum/2018
M/s. Interplex India P.Ltd.
Assessment Year :2010-11

manufacturers of cellulose acetate sheets (plasticized) IG Grade granules, PET sheets, sun strap etc.

2.1 The assessment for impugned AY was framed by Ld. Deputy Commissioner of Income Tax-Circle-3(2), Mumbai [AO] in scrutiny assessment u/s.143(3) of the Act on 24/12/2012 wherein the assessee was saddled with impugned disallowance of Rs.13.98 Lacs, being excessive commission paid by the assessee to an entity namely *M/s. Jayson International [Jayson]*.

2.2 During assessment proceedings, it transpired that assessee paid certain commission to the following parties: -

No.	Name of Party	Commission Paid (Rs.)	Rate of Commission (Rs./Per Kg)
1.	<i>Jayson International</i>	16,70,221/-	7.50 per Kg / 10.00 per Kg
2.	<i>Samara Udhyog</i>	4,60,539/-	1.5 per Kg

The same led the Ld. AO to form a belief that commission was paid at excessive rate to *M/s. Jayson International*. Although the assessee defended the difference in rates vide reply dated 05/12/2012, *inter-alia*, by submitting that *M/s Jayson International* was associated with the assessee for about 15 years and created customer base of about 70 companies scattered all over North including smaller towns in Punjab whereas *M/s Samara Udhyog* was appointed to service 2-3 customers in *Nashik region*. It was also submitted that *Jayson* was responsible for timely collection of payment and was required to remit the same twice in every month irrespective of fact whether the actual payment was received from the customer or not in contrast to *Samara* who would remit amount only once in a month and that too, after realizing the same from



the customers. Another distinguishing factor adduced was that customers handled by *Jayson* were scattered and their order sized varied considerably. Lastly the per Kg realization by *Jayson* was stated to be higher by more than Rs.19/- per kg in comparison to *Samara*. However, Ld. AO, noticing that the sales quantity of 3.07 Lac Kg achieved by *Samara* far exceeded the sales quantity of 1.81 Lac Kg achieved by *Jayson* and therefore, there was no justification for higher commission payment. It was also observed that the facts that *Jayson* was catering to larger area or the sales realization per Kg. were higher has not been supported with any comparative data /evidences. Finally, not convinced, the allowable commission payment was restricted to Rs.1.50 per Kg and the differential amount i.e. Rs.13.98 Lacs was disallowed and added to the income of the assessee. The stand of Ld. AO, upon confirmation by Ld. first appellate authority, is under appeal before us.

3. The Ld. Authorized Representative for Assessee [AR], *Shri Kuldeep Mehta*, drawing our attention to the documents on record, submitted that similar commission was paid by the assessee in preceding years and the same has been accepted by the revenue. It has been submitted that *Jayson* was associated with the assessee for more than 15 years and the commission was being paid pursuant to written agreement entered into by the assessee with *Jayson*. The Ld. AR also drew our attention to the factors that justifies payment of commission at higher rate. An application for admission of additional evidences u/r 29 of the Income Tax Rules, 1962 has also been put forward to submit that *Jayson's* sales realization per Kg were much higher than that of *Samara*.



ITA No.1082/Mum/2018
M/s. Interplex India P.Ltd.
Assessment Year :2010-11

These evidences are in the shape of sales invoices raised by the assessee. Per *Contra*, Ld. DR submitted that the complete onus to justify higher rate to *Jayson* was on assessee.

4. Upon careful consideration, we find that basic facts are not in dispute. The only dispute is with regard to higher rate of commission paid by the assessee to *Jayson*. It is also undisputed fact that *Jayson* was associated with assessee for more than 15 years and was being paid commission at certain rate regularly. The genuineness of the same is not under doubt since the Ld. AO himself, has allowed the same to the extent of Rs.1.50 per Kg. One of the major factors which led the Ld. AO to make the said disallowance was the fact that the assessee failed to demonstrate that the *Jayson's* sales realization was much higher than that of *Samara*. To rebut the same, the assessee has placed on record additional evidences which, if found tenable, would dispel the apprehension raised by Ld. AO. Therefore, we remit the issue back to the file of Ld. AO to appreciate the additional evidences as placed on record and re-adjudicate the same after affording reasonable opportunity of being heard to the assessee, who, in turn, is directed to substantiate his stand, in this regard.

5. Resultantly, the appeal stands allowed for statistical purposes.

Order pronounced in the open court on 18th March, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 18/03/2019
Sr.PS, Jaisy Varghese



ITA No.1082/Mum/2018
M/s. Interplex India P.Ltd.
Assessment Year :2010-11

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**