

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.193/PUN/2019
निर्धारण वर्ष / Assessment Year : 2013-14

Smt. Vandana Arun Sarawgi,
501, Visionnaire, 121/122,
Sakore Nagar Co-op. Society,
Viman Nagar, Pune-411014.

PAN : ADXPS3272L

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-7,
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri M. K. Kulkarni
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 20.03.2019
घोषणा की तारीख / Date of Pronouncement : 25.04.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-5, Pune dated 15.11.2018 for the Assessment Year 2013-14.

2. The solitary issue, raised by the assessee in this appeal, relates to the addition of Rs.71,32,100/- on account of commission payments.

3. Briefly stated the relevant facts include that the assessee is engaged in the business of trading ERW/Seamless Steel Tubes, G.I. Pipes, S.S. Pipes & fittings. The assessee filed the return of income declaring total income of Rs.1,93,68,330/-. At the end of the assessment proceedings u/s 143(3) of the Act, the Assessing Officer made an

addition of Rs.71,32,100/- on account of commission payments and added the same to the returned income of the assessee. The assessee carried the matter before the CIT(A).

Before the CIT(A), there was none to represent the assessee. However, the CIT(A) dismissed the appeal of the assessee *ex-parte* for want of evidences on one side and the assessee failure to discharge the onus on the other.

4. Before us, ld. Counsel for the assessee submitted that the issue stands now covered by the order of the Tribunal in assessee's own case for the earlier assessment year 2011-12 vide ITA No.16/PUN/2017 order dated 14.11.2018 where the similar disallowance made by the Assessing Officer in assessment year 2011-12. Appreciating the facts and relying on the decision of the Tribunal vide ITA Nos.1488/PUN/2013 & 1491/PUN/2013 for the earlier assessment year 2008-09 order dated 23.06.2017, the Tribunal restricted the disallowance @ 10% of the commission payments. On similar parity of reasoning, ld. Counsel submitted for restricting the disallowance to 10% of the claim i.e. Rs.7,13,210/-.

5. On the other hand, ld. DR for the Revenue relied heavily on the orders of the Assessing Officer and the CIT(A).

6. We heard both the sides and also perused the order of the Tribunal for the assessment year 2011-12 (supra) and find paras 6 and 7 of the

said order (supra) are relevant to extract and the same are as hereunder :-

“6. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, the assessee was engaged in the business of dealer in iron, steel pipes & pipe fittings. For the year under consideration, the assessee had declared income of ₹ 1,96,18,880/-. During the year under consideration, the assessee had paid commission of ₹ 75,18,667/- on its sales. The Assessing Officer noted that **there was fall in GP ratio as compared to earlier two years and another point which was noted was that the commission was being paid to sister concern.** After considering the reply of assessee in this regard that sister concern was the main player in the said field and had facilitated sales to the assessee and hence, commission paid, the Assessing Officer disallowed sum of ₹ 75,18,667/-. The CIT(A) confirmed the disallowance made by Assessing Officer, against which the assessee is in appeal before us.

7. We find that similar issue of allowability of commission arose before the Tribunal in **assessment year 2008-09** (supra) and in the said order also commission was paid to associate of assessee in order to facilitate sales to Gajanan Traders and the Tribunal noted that out of commission paid even TDS was deducted and in the totality of the facts and circumstances, disallowance of commission was **restricted to 10%**. Similar ratio has been laid down in assessment year 2009-10. Following the same parity of reasoning, we **direct the Assessing Officer to restrict disallowance of commission to the extent of 10%** in the hands of assessee. The grounds of appeal raised by assessee are thus, partly allowed.”

7. From the above, it is evident that, in assessee's own case (supra), the claim of the commission payments is being disallowed over the year starting from assessment years 2008-09 to 2011-12 and the issue for these assessment years becomes final. The issue of commission payments was common in this year also. We find the above ratio of the Tribunal's order in assessee's own case (supra) is applicable to the facts of the present case. The facts are identical in those assessment years and the commission was paid to the same sister concerns. Accordingly, the Assessing Officer is directed to restrict the disallowance at the rate of

10% of the commission payments. Thus, the ground raised by the assessee on this issue is partly allowed.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 25th day of April, 2019.

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|-------------------------------|--------------------------------------|
| Sd/- | Sd/- |
| (विकास अवस्थी /VIKAS AWASTHY) | (डी. करुणाकरा राव/D. KARUNAKARA RAO) |
| न्यायिक सदस्य/JUDICIAL MEMBER | लेखा सदस्य/ACCOUNTANT MEMBER |

पुणे / Pune; दिनांक / Dated : 25th April, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-5, Pune.
4. The CCIT, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.