



IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.2047/Mum./2018
(Assessment Year : 2014-15)

Dy. Commissioner of Income Tax
Circle-16(1)(1), Mumbai

..... Appellant

v/s

Aarvi Encon Pvt. Ltd.
Unit no.155, 1st Floor
Shah & Nahar Industrial Estate
A-1, Dhanraj Mill Compound
Sitaram Jadhav Marg, Lower Parel
Mumbai 400 013 PAN – AAACA3640H

..... Respondent

Revenue by : Shri Vidhyadhar V.
Assessee by : Dr. K. Shivaram a/w
Miss Neelam Jadhav

Date of Hearing – 16.04.2019

Date of Order – 29.05.2019

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the Revenue challenging the order dated 4th January 2018, passed by the learned Commissioner (Appeals)-12, Mumbai, pertaining to the assessment year 2014-15..

2. The Revenue has filed this appeal being aggrieved with the decision of the learned Commissioner (Appeals) in deleting the addition of ₹ 1,91,79,686 towards commission paid to employee directors.

3. Brief facts are, the assessee company filed its return of income for the impugned assessment year on 31.10.2014, declaring income of ₹ 8,09,35,090. During the assessment proceedings, the Assessing Officer while verifying the Profit & Loss Account noticed that the assessee has debited an amount of ₹ 1,91,79,686, towards commission paid to two of its directors. However, he found that payments were actually made to the Directors on 03.09.2014 and the Directors have offered it as income in Assessment Year 2015-16. Being of the view that the commission payment pertains to the assessment year 2015-16, the Assessing Officer disallowed assessee's claim. The assessee challenged the aforesaid disallowance before the first appellate authority.

4. Being convinced with the submissions of the assessee, and following his decision in assessee's case for Assessment Year 2013-14, learned Commissioner (Appeals) deleted the disallowance made by the Assessing Officer.

5. We have considered rival submissions and perused the material on record. Identical dispute arising in assessee's own case in Assessment Year 2013-14 came up for consideration before the Co-ordinate Bench in ITA no. 6495/Mum/2017 dated 29.05.2019. While deciding the issue the Bench held as under:-

"We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. It is evident from the facts and material on record, the Assessing Officer does not dispute the fact that the commission paid to the directors is allowable as business expenditure. The dispute is only with regard to the assessment year in which such expenditure is allowable. It is the view of the Assessing Officer that since the commission was actually paid to the directors in the assessment year 2014-15, its expenditure pertains to the assessment year 2014-15, and not the impugned assessment year. However, as rightly observed by learned Commissioner (Appeals), the commission was paid to the directors on the turnover of sales pertaining to the impugned assessment year. That is why the assessee made a provision in its books of account towards commission payment which was an ascertained liability. There is no dispute that the payment of commission to the directors on the turnover of sales pertaining to the financial year 2012-13 crystallized during the year. Therefore, all the expenditures pertaining to the income accruing or arising in a particular assessment year has to be allowed. That being the case, assessee's claim of deduction towards commission payment has to be allowed since it pertains to the turnover of sales of the current year, the income from which was offered in the impugned assessment year. Therefore, as per matching concept, the expenditure pertaining to the income offered has to be allowed as deduction. Merely because the assessee paid the commission and deducted tax in the succeeding assessment year is not a reason to disallow assessee's claim. In any case of the matter, the commission paid to the directors has to be allowed as deduction if not in the impugned assessment year, then, in the assessment year 2014-15. When the tax rate pertaining to both the assessment years are same and loss to the Revenue on account of assessment year 2014-15 is either nil or minimal, assessee's claim of deduction cannot be disallowed in the impugned assessment year. In this context, we rely upon the ratio laid down by the Hon'ble Supreme Court in Excel Industries Ltd. (supra). In view of the aforesaid, we do not find any infirmity in the order of the learned Commissioner (Appeals) on this issue. Grounds raised are dismissed."

6. Facts being identical, following the aforesaid decision of the Co-ordinate Bench we uphold the decision of learned Commissioner (Appeals). Grounds raised are dismissed.

7. In the result, appeal is dismissed.

Order pronounced in the open Court on 29.05.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 29.05.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai