

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 7577/Mum/2016

(निर्धारण वर्ष / Assessment Year 2010-11)

आयकर अपील सं./ ITA No. 7578/Mum/2016

(निर्धारण वर्ष / Assessment Year 2011-12)

M/s Positive Industries 305-306, Vindhyachal CHS, 7 th Road, Neelkanth Valley, Rajawadi, Ghatkopar (East), Mumbai-400 077	Vs.	The Dy. Commissioner of Income Tax, Circle 22(1), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AADFP8298A		

अपीलार्थी की ओर से / Appellant by	:	Mr. Navin B. Gandhi & Mr. Naveen Deshpande, ARs'
प्रत्यर्थी की ओर से / Respondent by	:	Shri Arvind Kumar, DR

सुनवाई की तारीख / Date of hearing:	18.06.2019
घोषणा की तारीख / Date of pronouncement :	18.06.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These two appeals filed by the assessee are arising out of the common order of the Commissioner of Income Tax (Appeals)]-25, in



short CIT(A), in appeal No. CIT(A)-25/IT-35/13-14/49&50/IT 694/13-14 dated 14.10.2016. The Assessments were framed by the Dy. Commissioner of Income Tax, Circle 22(1), Mumbai (in short DCIT/ITO/ AO) for the A.Y. 2010-11 & 2011-12 vide order dated 06.03.2013 & 12.02.2014 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in these two appeals of assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing the commission payment made to Premium Paper Board and Industries Ltd.(PPBIL). For AY 2010-11 commission disallowance was Rs. 27,69,706/-, for AY 2011-12 the commission disallowance was Rs. 16,83,315/-. The fact and circumstances of the case are exactly identical in both the years and the issue is identical. Hence, we will take the facts from AY 2010-11 and will decide the issue. The relevant ground raised by assessee reads as under: -

“A) Disallowance of Commission - Rs. 27,69,706/-

1) The learned Commissioner of Income Tax (Appeals) - 25, Mumbai [CIT(A)] erred on facts and in law in confirming the disallowance of Rs. 27,69,706/- made by the Deputy Commissioner of Income Tax - 22(I), Mumbai (AO) out of commission expenses holding that the appellant had not submitted any concrete or substantial documents or proof to substantiate the claim of commission, without appreciating the fact that



the appellant had availed the services of the agent and as per the terms of the agreement and the commission was payable during the year under consideration.

2) The appellant prays that the disallowance of commission of Rs. 27,69,706/- as made by the AO and as confirmed by the CIT(A), may be deleted.”

3. Brief facts are that the assessee is a partnership firm carrying on the business of manufacturing of BOPP self-adhesive tapes. During the financial year 2009-10, relevant to this assessment year 2010-11, the assessee purchased the raw material from Jindal Polly Film Ltd. through one agent of Premium Paper Board and Industries Ltd. The assessee paid commission of Rs. 17,69,706/- for the efforts put up by PPBIL. The AO required the assessee to explain as to why the commission payment on purchase made from Jindal Polly Film Ltd. He issued show cause to the assessee as to why the commission paid to PPBIL be not disallowed. The assessee explained that this commission is paid as per MOU dated 16.08.2008 between the assessee firm and its purchase agents viz. PPBIL. The assessee also explained before AO that the assessee has deducted TDS on the commission payment and also paid service tax and produced the bills and vouchers raised by PPBIL. The AO issued notice under section 133(6) of the Act to Jindal Polly Film Ltd., who in turn, stated that it sale goods directly to customers as well as commission agent but in this case, the assessee sales



ITAs No.7577 & 7578/Mum/2016

have been made directly. In view of the above admission by Jindal Polly Film Ltd, that there is no direct agent between the assessee and them, the AO disallowed the commission paid made to PPBIL. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) also confirmed the action of the AO on the basis that the assessee failed to establish the genuineness of commission payment or business expediency of the commission payment and also admission of Jindal Polly Film Ltd. that there is no commission agent. For this, the CIT(A) gave his finding at Para 12 and 13 as under: -

“12. It is observed from the submission of the appellant in para 15 that, it has admitted that sales by M/s Jindal Poly Films Ltd., during the year under consideration, were not through Premium Paper & Board Industries Ltd. and the appellant was receiving the BOPP films directly and not through commission agent. The arrangement has continued in subsequent years too. inspite of this, the appellant has taken a strange plea that it had paid commission to M/s Premium Paper & Board Industries Ltd. for a period of 3 years. During the appellate proceedings, the AR was requested to submit any agreement, document or written understanding to substantiate its



claim, which he denied to have any. He was also requested to bring on record as to how the business of the appellant got benefitted or the payment was for the purpose of business. No worthwhile verbal or written argument could be made in this regard.

13. Looking to the overall facts and circumstances of the case, I am of considered opinion that the appellant has miserably failed in establishing genuineness or business expediency of the commission payment amounting to Rs.27,69,706/- claimed to be paid to M/s Premium Paper & Board Industries Ltd. Hence, the addition made by the Assessing Officer is upheld and these grounds of appeal are dismissed.”

Aggrieved, assessee came in appeal before Tribunal.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has paid commission on purchase made from Jindal Poly Films Ltd. to PPBIL in lieu of the Memorandum of Understanding entered into between these two parties dated 16.08.2008. We noted that the terms and conditions are stated in the memorandum and the relevant memorandum read as under: -



ITAs No.7577 & 7578/Mum/2016

“As per the discussion had with you during our meeting regarding sourcing of BOPP Films which has been made the arrangement for direct supply from manufacturer to your plant at Silvassa location for your lime-to-time requirements as per your specification and quantity which will start supplying from 18.8.2008 onwards. As all the discounts i.e. Trade discount, cash discount, CST discount and price protection discount will directly get credited to your account on ever)’ quarterly basis.

Against above terms and conditions for rendering of our service to you, we will raise the commission invoice by 6 months to 9 months period which you need to pay within 60 to 90 days’ time along with service tax and you are entitled to deduct TDS and debit to our account.

We are taking responsibility that supply will be done without any interruption or in case your production is suffered due to lack of supply, the production cost maybe debited to our account and in case any rejection occurs, we will see to it that it should resolve the issue.”

5. The learned Counsel for the assessee also differentiates the rates of purchases directly from Jindal Poly Films Ltd. in regard to raw material and also purchases made from other parties. The



ITAs No.7577 & 7578/Mum/2016

assessee has filed the details of purchases directly from major manufactures of BOPP films viz. Jindal Poly Films Ltd. from 18.08.2008 and the relevant details read as under: -

<i>Period</i>	<i>Quantity purchases (Kgs.)</i>	<i>Purchase cost (₹)</i>	<i>Net average purchase cost per kg.</i>	<i>Annexure No.</i>
18.08.2008 to 31.03.2009	2,09,200	1,71,95,011	82	II
01.04.2009 to 31.03.2010	4,05,852	3,41,07,389	84	III
01.04.2010 to 31.03.2011	4,23,448	3,98,73,741	94	IV

6. Further, the assessee pointed out the benefits derived by assessee from direct purchase vis-a-vis purchase from Jindal Poly Films Ltd. purchase cost consequently reduced and the relevant chart read as under: -

<i>Period</i>	<i>Purchase from Middle Men</i>			<i>Purchases from Jindal Poly Films Ltd.</i>		
01.04.2007 to 31.03.2008	2,73,471	85	2,33,20,704	Nil		
01.04.2008 to 17.08.2008	1,25,668	110	1,38,00,115	Nil		
18.08.2008 to 31.03.2009	Nil			2,09,200	82	1,71,95,011

7. From the above, the learned Counsel explained before us that the assessee has saved considerable amounts from its direct purchase of BOPP Films from Jindal Poly Films Ltd. on average of



ITAs No.7577 & 7578/Mum/2016

Rs. 28 per kg in FY 2008-09. As a result, the assessee saved Rs. 28 on every kg of BOPP Film purchase from Jindal Poly Films Ltd which worked out to Rs. 58,57,600/- on total purchase and the cost of the saving is the commission of purchase at the rate of 8% on assessable purchase value. The assessee has also filed the details of discount earned and in the relevant FYs 2009-10, 2010-11 the discount earned i.e. trade discount/ cash discount / price protection discount is Rs. 11,19,645/- and Rs. 13,38,361/- respectively. In view of the above, the learned Counsel for the assessee worked out the cost benefit vis-à-vis commission paid on purchase and the relevant benefit enjoyed by assessee is tabulated year-wise as under:-

<i>Period</i>	<i>Saving on purchase cost</i>	<i>Discount received on direct purchase from Jindal poly films Ltd.</i>	<i>Total benefits received</i>	<i>Whether goods delivered in time</i>	<i>Cost of benefit i.e. Commission paid on purchase to the purchase agent</i>
<i>01.04.2007 to 31.03.2008</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Not always</i>	<i>Nil</i>
<i>01.04.2008 to 17.08.2008</i>	<i>Nil</i>	<i>Nil</i>	<i>Nil</i>	<i>Not always</i>	<i>Nil</i>
<i>18.08.2008 to 31.03.2009</i>	<i>58,57,600</i>	<i>5,92,973</i>	<i>64,50,573</i>	<i>Yes</i>	<i>15,09,709</i>
<i>01.04.2009 to 31.03.2010</i>	<i>1,05,52,126</i>	<i>11,19,645</i>	<i>1,16,71,771</i>	<i>Yes</i>	<i>27,69,706</i>

8. Further, the learned Counsel before us stated that TDS was deducted and paid to the Income Tax Department, as a whole. Service tax was also deducted and paid. The learned Counsel for



the assessee drew our attention to few of the invoices raised by PPBIL. It is admitted fact that even PPBIL has also included this commission in their return of income for the relevant AYs and paid the tax on this commission. We noted that this commission payment booked as expenditure by assessee is basically tax neutral and even otherwise the assessee is able to establish the genuineness of the transactions and the business expenditure. It was the case of the assessee that it had derived substantial benefit out of the transactions. In view of the above, we are of the view that this commission expenses claimed by assessee is genuine and allowable. Hence, we allow the claim of the assessee.

9. Similar is the issue in AY 2011-12 also, hence taking a consistent view in this year also, we allow the claim of the assessee.

10. The next issue in AY 2010-12, is as regards to the adhoc disallowance of unloading charges of Rs.75,000/-. For this assessee has raised the following ground B: -

“B) Adhoc Disallowance out of unloading charges - Rs. 75,000/-

3) The learned CIT(A) erred on facts and iii law in confirming the adhoc disallowance of Rs. 75,000/- made by the AO out of unloading charges by holding that the vouchers appears to be prepared at a later date and the authenticity of the same has not been established, without appreciating the fact that, during the appellant



ITAs No.7577 & 7578/Mum/2016

proceedings it has submitted the relevant vouchers which contained the complete details such as invoice nos., name of the parties and duty signed by the recipient.

4) The appellant prays that the adhoc disallowance of Rs. 75,000/- out of unloading charges made by the AO and con tinned by the CIT(A), may be deleted.”

11. We have heard the rival contentions and gone through the facts and circumstances of the case. We are noted that the assessee has claimed unloading charges of Rs. 1,66,711/-. The AO disallowed the unloading charges to the extent of Rs. 75,000/- on adhoc basis in the absence of view of the self made bills and vouchers. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the AO. Now, aggrieved is in second appeal before Tribunal.

12. We noted that none of the authorities below have really gone into the issue and just made adhoc disallowance. We noted that the assessee has incurred unloading charges of Rs. 1,66,711/- on total raw material purchases of Rs. 8,26,19,918/- which works out to 0.20% of the total turnover. It is a fact that the assessee purchase BOPP Film Rolls and adhesive tapes purchased and received through transport, which have to be loaded and unloaded and brought into to the stores within the factory. The inevitable expense has to be incurred and in this there cannot be any adhoc expenses. Hence, we are of the view that the AO has wrongly disallowed the



ITAs No.7577 & 7578/Mum/2016

claim and CIT(A) also confirmed without any basis. We delete the disallowance and allow this issue of assessee's appeal.

13. **In the result, both, the appeals of the assessee are allowed.**

Order pronounced in the open court on 18.06.2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 18.06.2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai