

आयकर अपीलीय अधिकरण नागपुर न्यायपीठ, नागपुर में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL NAGPUR BENCH, NAGPUR**

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.369/NAG/2014

निर्धारण वर्ष / Assessment Year : 2010-11

Debashu Services Pvt. Ltd.,  
18, Saptak Plaza, Shivaji Nagar,  
Nagpur-440010.

PAN : AAACD6682J

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-1,  
Nagpur.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.259 to 262/NAG/2017

निर्धारण वर्ष / Assessment Years : 2006-07 to 2008-09 & 2012-13

M/s. Debashu Services Pvt. Ltd.,  
18, Saptak Plaza, Shivaji Nagar,  
Nagpur-440010.

PAN : AAACD6682J

.....अपीलार्थी / Appellant

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आयकर अपील सं. / ITA Nos.227 to 230/NAG/2017

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ITA Nos.259 to 262/NAG/2017  
ITA Nos.227 to 230/NAG/2017

**निर्धारण वर्ष / Assessment Years : 2006-07 to 2008-09 & 2012-13**

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M/s. Debashu Services Pvt. Ltd.,  
18, Saptak Plaza, Shivaji Nagar,  
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PAN : AAACD6682J

.....प्रत्यर्थी / Respondent

Assessee by : Shri C. J. Thakar, Adv. &  
Shri S. C. Thakar, Adv.  
Revenue by : Shri R. K. Baral, Jt.CIT

सुनवाई की तारीख / Date of Hearing : 28.03.2019  
घोषणा की तारीख / Date of Pronouncement : 29.03.2019

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM:**

There are **9 appeals** under consideration. Out of 9 appeals, 5 appeals filed by the assessee and 4 cross appeals filed by the Revenue. ITA No.369/NAG/2014 for the assessment year 2010-11 is filed by the assessee against the order of CIT(A)-I, Nagpur dated 23.05.2014.

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ITA Nos.259 to 262/NAG/2017 and ITA Nos.227 to 230/NAG/2017 for the assessment years 2006-07 to 2008-09, 2012-13 are filed by the assessee as well as by the Revenue against the common orders of CIT(A)-I, Nagpur dated 17.04.2017 respectively. Since the facts and issues involved in all these 9 appeals are common, therefore, they were heard together and are being disposed of by this composite order.

2. Briefly stated the relevant facts include that the assessee is a company and is engaged in dealership for Kirloskar Bros. Ltd., Make Pumps, Spares & Valves. The assessee filed the return of income declaring total income of Rs.80,54,339/- for the assessment year 2010-11 and also filed the returns of income in its respective assessment years 2006-07 to 2008-09 and 2012-13. At the end of the assessments, the Assessing Officer made additions on account of '**commission payments**'. The CIT(A) partly allowed the appeals of the assessee.

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3. Aggrieved with the above order of the CIT(A), the assessee is in appeals before the Tribunal. Further, the Revenue also filed the cross appeals against the part relief granted by the CIT(A) to the assessee.

4. Narrating the above facts, ld. counsel for the assessee filed the following chart giving breakup of the turnover of sales, the commission charges paid, disallowance of entire commission by the Assessing Officer, part relief granted by the CIT(A) and part addition confirmed by the CIT(A) :-

<i>A.Y.</i>	<i>Turnover of sales (Rs.)</i>	<i>Commission charges paid by the assessee</i>	<i>Disallowance made by Assessing Officer</i>	<i>Part relief granted by CIT(A)</i>	<i>Part addition confirmed by the CIT(A)</i>
<i>2006-07</i>	<i>68,802,031</i>	<i>11,260,843</i>	<i>1,12,60,843</i>	<i>72,98,290</i>	<i>36,62,553</i>
<i>2007-08</i>	<i>69,964,424</i>	<i>11,996,510</i>	<i>1,19,96,510</i>	<i>81,04,369</i>	<i>38,92,141</i>
<i>2008-09</i>	<i>73,098,877</i>	<i>11,959,063</i>	<i>1,19,59,063</i>	<i>83,07,079</i>	<i>36,51,984</i>
<i>2010-11</i>	<i>78,199,282</i>	<i>11,692,870</i>	<i>1,16,92,870</i>	<i>The CIT(A) dismissed the appeal of the assessee vide order dated 25.03.2014.</i>	
<i>2012-13</i>	<i>86,593,793</i>	<i>15,221,872</i>	<i>1,52,21,872</i>	<i>98,06,731</i>	<i>54,15,141</i>

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5. Deviating from the grounds of appeal, the assessee filed a written submission and the same is extracted hereunder :-

*“ALLOWABILITY OF COMMISSION PAYMENT BY THE ASSESSEE*

- (i) In the nature of business of supply of spare parts of motors to numerous mines spread over large and interior areas of Chhattisgarh, M.P., Maharashtra, appointment of number of agents is necessary. Without such appointment the assessee cannot get even half the business he is getting.*
- (ii) Necessity of appointing agent is not disputed even by revenue.*
- (iii) Practice of appointing commission agent is going on from the beginning of business from A.Y.2000-2001 and is continuously going on till date.*
- (iv) Commission payment has always been allowed as deduction by the Revenue for all the years under scrutiny assessment U/s.143(3) as well as U/s.143(l) - Chart in this regard is filed separately.*
- (v) Commission agents are appointed under an agreement which is of binding nature, which binds the Principal and Agent equally and is an legally enforceable document.*
- (vi) Commission agent on executing the work are paid commission by account payee cheques.*
- (vii) On such payment tax at applicable rate is deducted at source and tax so collected is regularly deposited and TDS certificates are also issued to the Agents receiving commission payment.*
- (viii) All commission agents are regular Income tax assessee and are regularly filing their returns declaring the commission received by them along with their other income.*

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- (ix) Agents have filed confirmation letters confirming their accounts and confirming the commission received by them in respective years.
- (x) Copies of their returns along with the computation of income and P and L A/c. including the copies of their bank statements (wherever supplied by agents) etc. are also filed.
- (xi) Above referred evidence is contained in paper books filed before the Hon. ITAT.

Reason for Disallowance by A.O. for A.Y. 2010-11

For the first time the A.O. disallowed the commission payment in its entercity for A. Y.2010-11. His reasons were

(1) He examined the agents. A few agents who are in Govt. Service and were doing work in behalf of their HUF or wife denied having done the work and a few stated that they received commission amount by cheques and afterwards they returned the amount. Such witnesses are three viz. (1) Anil Asarkar (2) Diwakar Dahat and (3) Atul Patil.

Note :- It may be noted that the said witnesses retracted their statement and confirmed that they got commission not in individual capacity but on behalf of HUF or their wives. Their confirmations, and their I.T. Returns are already on record.

A.O. classified the witnesses in three categories viz. A B and C. Above three witnesses for five entities were categorized as A.

In B Category be examined various agents who confirmed having done the work for assessee and received commission. But according to A.O. there were various discrepancies in their statement.

In Category C there were agents who could not appear in response to his summons.

Hence A.O. for A. Y.2010-11 disallowed the entire commission paid to them as not proved.

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2] *His second reason was that the agreements between the assessee and agents were unilateral and were not on stamp paper etc. and hence not legal.*

3] *His third reasoning was that he made enquiries with W.C.L. Official who stated that no agents are authorized from our side to enter into mine area for enquires etc. And that as per Purchase Manual requirement of material above Rs.10 lacs is required to be procured by publishing tenders in news paper.*

*Against the said order of A.O. for A. Y.2010-11 appeal was filed before C.I.T.(A). C.I.T.(A) confirmed A.O.'s order and dismissed assessee's appeal."*

6. Before us, the ld. counsel submitted that the payment of commission paid by the assessee to the commission agents was allowed by the Tribunal in the assessee's own case for the assessment year 1999-2000 by virtue of revisional order passed by the CIT u/s 263 of the Act. The Tribunal quashed the said revisional order of the CIT, thereby confirming the allowability of the commission payments by the assessee, in principle. For the sake of completeness, the relevant extract from the said order of the Tribunal in connection with revisional order u/s 263 of the Act are extracted hereunder :-

*"7. To resolve this preliminary issue we have further examined some of the basic facts of this case. We have noticed that at para 4 of the order passed under section 263 learned C.I.T. has mentioned that the assessee is a dealer in pumps as well as spare parts manufactured by Kirloskar Bros. Ltd. The main clients of the assessee are Western Coal*

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*Fields Ltd. (WCL), Nagpur and South Eastern Coal Fields Ltd. (SECL), Bilaspur. The assessee used to make payment of commission to agents for procuring information regarding the requirement of pumps and spare parts at various mines of WCL and SECL. Those agents are said to be collecting the required information from various mines which are located in remote places. Learned Commissioner in para 3 has also mentioned that similar type of expenditure was duly allowed in assessment year 2000-01 and assessment year 2004-05 on scrutiny assessment. The assessee has furnished submissions to learned Commissioner to demonstrate the genuineness of the expenditure, claimed as "order procurement charges" wherein the following facts were placed on record :*

- (i) The payment is made to agents by virtue of Agency agreement executed with them;*
- (ii) The payment of commission is for the services rendered by them and according to the terms and conditions laid down in the agreement;*
- (iii) All the payments are made by A/c payee cheques which are also proved fact;*
- (i) Proper tax was deducted at source as per Income Tax Act. Provisions and copies of TDS certificates as given to agents were submitted during assessment proceedings.*
- (ii) TDS certificates were duly issued to the agents by the Company;*
- (iii) No agent is relative of any of the Directors of the Company or directly or indirectly related with the company.*
- (iv) The agents were associated with the Assessee company from many years.*
- (v) There is a steady increase in the business of the company with increase in sales and profits due to efforts and services rendered by the agents.*

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7.1 It has also been placed on record that the assessee had entered into an agreement with those agents termed as “agency agreement” depicting the terms and conditions of the commission to be paid to the agents. From the side of the assessee it is vehemently claimed that all those “agency agreements” executed with respective agent were placed in the assessment record in the past specially when the assessment was carried out for assessment year 2000-01. **Due to the reason that all the relevant information in respect of the payment of commission was very much available in the assessment record, therefore, it is not judicially correct to allege that the Assessing Officer had passed the impugned assessment order in the absence of proof of genuineness of the expenditure.** It has also been stated that the commission was paid through account payee cheques, hence the agents were identifiable. Moreover, TDS had also been deducted which was claimed as tax paid by the respective agents in their respective income-tax returns.

7.2 In the background of above discussion and evidences in our considered opinion prima facie it is wrong to allege that the Assessing Officer had allowed the expenditure without verifying the genuineness of the claim. At the outset, we also observe that the assessment order in question cannot be said to be a case of “no enquiry” at all, but at best could alleged to be a case of “inadequate enquiry”, but not absolutely correct. Therefore, in the light of the above discussion and the factual matrix of the case, we studied a precedent cited as Sunbeam Auto Ltd. 332 ITR 167 (Del.). In the said decision it was held that if there was an enquiry, even inadequate, would not by itself give occasion to the C.I.T. to pass order under section 263 of I.T. Act. According to the Hon’ble Court an action under section 263 is open only in cases where there was “lack of enquiry” by the Assessing Officer. We have also examined the decision of CIT v/s. Vodafone Issar South Ltd. 212 Taxman 184 (Del.) wherein it was found that the said case was not a case of “no enquiry”, rather specific queries were made by the Assessing Officer and those were duly replied. The Assessing Officer had taken one view and now the learned Commissioner under revisionary powers wanted to adopt an another view. According to the Hon’ble Court dual views could be possible, one could be a plausible view and the other could be a reasonable view. One more case of Max India Ltd. 292 ITR 282 (SC) has also been referred for the legal

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*proposition that the C.I.T. could not validly exercise his revisionary power under section 263 by holding a probable view.*

8. *Even the order of learned Commissioner does not contain a finding to the effect that he was in possession of some material to indicate or demonstrate that the commission paid to the agent was not genuine or even doubtful. The only reason given by the learned Commissioner to invoke the revisionary power was that the enquiry has not been made by the Assessing Officer and the claim was allowed without examining the genuineness of the expenditure. In our humble understanding of law the C.I.T. could not take recourse to revisionary powers under section 263 by drawing merely fresh enquiries of a particular transaction which was otherwise accepted by the Revenue Department for several years in the past. Not only this, we have been informed that in the subsequent years no such disallowance was made. However, we are not concerned about the merits of the expenditure whether rightly allowed considering the business exigencies of the assessee, although that too was proved by the assessee, but we are concerned in this appeal only in respect of a legal position that whether the revisionary powers under section 263 were rightly invoked by the Commissioner or not. We have adjudicated this legal issue in the background of limited facts and circumstances and thereupon we hereby hold that in a situation **when relevant details have been filed by the assessee and the Assessing Officer had allowed the claim then such decision of the Assessing Officer would not be held to be erroneous order simply because in his order he had not made any elaborate discussion in that regard.** On this very fact that a query was raised during the course of scrutiny which was satisfactorily answered by the assessee but did not get reflected in the assessment order, would not by itself lead to a conclusion that there was no enquiry with respect to payment of commission by the assessee. Hence **we hereby hold that a revisionary order passed under section 263 is not sustainable in the eyes of law.** Hence the same is hereby quashed. The grounds raised by the assessee are, therefore, allowed.”*

7. Further, elaborating the case of the assessee, ld. counsel submitted that, the CIT(A) adjudicated this issue of commission payment partly allowing the ground. The same is not appropriate and not on the scientific lines, when the details and evidences furnished by the assessee fully. There is no reason why the departmental authorities confirmed the additions partly and hence the same is unsustainable. Further, ld. counsel mentioned that the payment of commission which is backbone for the turnover is in the range of +/- 15% – 16% of the turnover and the same is allowable deduction. The payments are made by way of cheque and the payees are assessed to tax. Further, ld. counsel for the assessee fairly given the option to the Bench to disallow a nominal sum out of the commission payments claimed by the assessee in the Profit & Loss Account.

8. On the other hand, ld. DR for the Revenue relied heavily on the order of the Assessing Officer. Referring to the grounds raised by the Revenue in their appeals, ld. DR submitted that the relief granted by

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the CIT(A) in this regard should be reversed and submitted that the order of the Assessing Officer should be approved in full.

9. We have heard both the sides on this of payments of commission issue and the allowability of the same. We have already extracted the details of the turnover of commission payments and additions made by the Assessing Officer and part relief granted/part addition confirmed by the CIT(A) in the preceding paragraphs of this order. From the above tabulated chart, it is evident that the CIT(A) merely made a disallowance on the proportionate basis which is unsustainable in law. Considering the evidences furnished by the assessee by virtue of confirmation letters, payment challans, sustainability of the commission recipients for the tax purposes etc, in our view, the decision of the CIT(A) is not sustainable fully. Further, we have observed that the commission claimed by the assessee in proportionate to the turnover is only range of +/- 15% - 16% which is found to be on higher side. As such, the Tribunal already took a view in allowing the entire claim of commission payment for the

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assessment year 2010-11. This is also true that the Assessing Officer did not make any disallowance on account of commission payments in the years 2002-03 to 2005-06, which were completed under the provisions of section 143(1) as well as section 143(3) of the Act, as the case may be.

10. Considering the above referred facts of the case, we are of the opinion the claim of the assessee should not be entirely allowable. Similarly, the Assessing Officer's decision to disallowance of entire commission is not proper and unsustainable. Further, the order of the CIT(A) is restricted the part of the commission payment is also done on scientific lines. Therefore, we find the disallowance at the rate of 5% of the commission paid and claimed in the Profit and Loss Account should be disallowed uniformly in the assessment years under consideration and added to the income returned by the assessee in respective assessment years. Thus, we direct the Assessing Officer to restrict the disallowance to only 5% of commission payment uniformly for all the assessment years under

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consideration i.e. A.Ys. 2006-07 to 2008-09, 2010-11 and 2012-13. Accordingly, all the grounds raised by the assessee are partly allowed and all the grounds raised by the Revenue are dismissed.

11. In the result, all the appeals of the assessee are partly allowed and all the appeals of the Revenue are dismissed.

Order pronounced on 29<sup>th</sup> day of March, 2019.

**Sd/-**

(विकास अवस्थी /VIKAS AWASTHY)  
न्यायिक सदस्य/JUDICIAL MEMBER  
MEMBER

**Sd/-**

(डी. करुणाकरा राव/D. KARUNAKARA RAO)  
लेखा सदस्य/ACCOUNTANT

नागपुर / Nagpur; दिनांक / Dated : 29<sup>th</sup> March, 2019.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)
4. The CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच, नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary

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आयकर अपीलीय अधिकरण, नागपुर / ITAT, Nagpur.