



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA Nos.445 & 521/CTK/2017
Assessment Years : 2012-13 & 2013-14

M/s. Metalloyods, 1 st floor, M.R.Towers, Main Road, Angul.	Vs.	ITO, Angul Ward, Angul.
PAN/GIR No. AAHFM 9629 E		
(Appellant)	..	(Respondent)

Assessee by : Shri Binod Agarwal AR
Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 16 /10/ 2019
Date of Pronouncement : 21/10/ 2019

ORDER

Per C.M.Garg,JM

The above captioned appeals have been filed by the assessee against the order of the CIT(A),12, Bhubaneswar dated 30.8.2017 for the assessment year 2012-13 and order dated 11.10.2017 for the assessment year 2013-14.

2. Learned Representatives of parties have agreed that identical issue is involved in both the appeals. Hence, for the sake of convenience for adjudication, we take up the appeal in ITA No.445/Ctk/2017 for assessment year 2012-13 as a lead case, wherein, Grounds of appeal raised are as under:

“1. For that the learned Commissioner of Income Tax (Appeals) is wholly unjustified to hold that commission paid to HUF of two partners for services render is not allowable in the hands of the firm, is illegal, arbitrary and bad in law and commission so paid should be allowed in the facts and circumstances of the case.

2. For that commission of Rs.3 lakh each paid to HUFs of two partners Sri Bikram Agarwal and Vinay Agarwal for services rendered is an allowable business expenditure and should be fully allowed in the hands of the firm.

3. For that the learned Commissioner of Income Tax (Appeals) acted beyond the scope of the Tribunal order setting aside the case to him with certain direction which were not followed and therefore his order is liable to be quashed in the facts and circumstances of the case.”

3. Ld Authorised Representative (AR) submitted that the CIT(A) is wholly unjustified in holding that the commission paid to HUF of two partners for services render is not allowable in the hands of the firm. Ld A.R. vehemently pointed out that the commission of Rs.3 lakhs each paid to HUFs of two partners Shri Bikram Agarwal and Vinay Agarwal for services rendered is an allowable business expenditure and should be allowed in the hands of the firm. Ld A.R. strenuously contended that the CIT(A) has mis-interpreted the decision of Hon'ble Supreme Court in the case of K.S.Subbiah Pallai vs CIT, 237 ITR 11 (SC). In this judgement in para 2, Hon'ble Apex Court held that if the remuneration has been paid to HUF because of the investment of HUF funds in the business, then it was the income of HUF but if the remuneration was compensation made for services rendered

by the individual co-parcener, then it was the income of the individual co-parcener. Ld A.R. submitted that the remuneration is wide term which includes commission also. Therefore, the commission paid by the assessee firm to the HUF should be allowed keeping in view that there was investment by both HUF in the appellant partnership firm in the form of unsecured loan which gets support from the copies of the balance sheet for financial year 2011-12 pertaining to assessment year 2012-13 filed by the assessee firm as well as both HUF entities. Ld A.R. submitted that the balance sheet of both HUFs as well as present assessee partnership firm clearly reveal that there was investment of HUF funds in the present partnership assessee firm. Therefore, the commission paid by the assessee should be allowed as business expenditure. Ld A.R. also submitted that even during financial year 2012-13 pertinent to assessment year 2013-14, the unsecured loan is further enhanced. Therefore, the commission paid to both HUFs should be allowed.

4. Ld AR also submitted that while paying commission to both HUF entities, the assessee partnership firm deducted TDS and the commission earned by the recipient HUFs has been duly shown by them in their income tax returns and same was offered for taxation and credit for TDS was also claimed. Ld AR submitted

that during assessment year 2012-13, the assessee paid commission of Rs.20,93,204/- including impugned commission paid to both HUFs and while the department has accepted the commission paid to other persons/entities, then the part commission paid to both HUFs cannot be denied or disbelieved. Ld A.R., also pointed out that if disallowance of impugned commission paid to both HUF is disallowed then it would tantamount to double addition as the commission income has been shown by the recipient HUFs and, their respective returns of income has been offered to tax.

5. Replying to above, Id DR submitted that both the HUFs are belonging to partners of assessee firm and it is not clear that which services were rendered by them for which the commission has been paid by the assessee partnership firm. Ld DR strongly supported the assessment and first appellate order and submitted that the AO was right in making the disallowance and the CIT(A) was also correct in confirming the addition.

6. On careful consideration of above rival submissions, first of all, we respectfully take cognizance of judgment of Hon'ble Supreme Court in the case of K.S.Subbiah Pillai (supra), wherein, Their Lordships observed thus:

" The judgment of the Andhra Pradesh High Court aforementioned was cited before the High Court at Madras in the reference proceedings out of

which these appeals arise but the Madras High Court dissented therefrom. It dilated at length on Hindu Law but, with great respect, missed the point that the Tribunal is the final fact-finding authority and, as it has itself noticed in the judgment under challenge, the Tribunal had held that the remuneration and commission received by the Karta of the HUF were earned by him on account of his personal qualifications and exertions and not on account of the investment of the family funds in the company and, therefore, could not be treated as the income of the HUF. **The High Court, having analysed the law, rightly concluded that the broad principle that emerged was whether the remuneration received by the coparcener was in substance one of the modes of return made to the family because of the investment of the family funds in the business or whether it was compensation made for services rendered by the individual coparcener. If it was the former, it was the income of the HUF; but if it was the latter, then it was the income of the individual coparcener.** Applying this test, the High Court held, "There is absolutely no evidence to support the contention of the learned counsel for the assessee that the development of the business was due to any peculiar qualification or experience on the part of the assessee"

Emphasis respectfully supplied by us

7. Now we proceed to adjudicate the sole controversy involved in this appeal. It is not in dispute that the assessee has paid commission of Rs.20,93,204/- to various persons/entities including Bikram Agarwal and Vinay Agarwal, HUFs, to whom Rs.3,00,000/- each was paid by the assessee partnership firm. The Assessing Officer has not disputed the payment of commission by the firm except impugned commission paid to HUFs. The bone of contention of Id DR is that same person cannot contribute in two capacities simultaneously i.e. one in the capacity of partnership firm and another in the capacity of Karta of HUF, which is a separate entity and recipient of the impugned commission. Identical controversy was placed for adjudication before the Hon'ble Supreme Court in the case of K.S.Subbiah Pillai (supra), where in para 2 (supra) speaking

for the Hon'ble Apex Court, Their Lordships of three Judges Bench held that if the remuneration is paid because of investment of family funds in the business then it was the income of the HUF and it was a compensation made for services rendered by the individual co-parcener of the HUF then same is to be treated as income of the individual co-parcener.

8. In our humble understanding, the remuneration is a wide term which includes commission also. As we have already noted above that from the balance sheet of both recipients and the assessee partnership firm, it reveals that Bikram Agarwal, HUF provided unsecured loan of Rs.9,02,401.00 and Vinay Agarwal provided unsecured loan of Rs.13,08,151 during financial year 2011-12 pertaining to assessment year 2012-13 and during subsequent assessment year 2012-13 relevant to assessment year 2013-14, the outstanding amount of unsecured loan as on 31.3.2003 was Rs.10,68,102/- and Rs.12,00,171/-, respectively and these glaring facts substantiate the factum that there was investment of HUF funds in the assessee partnership firm. However, it has also been submitted by the appellant-assessee that in addition to investment of funds of HUF in the partnership firm, the Karta of HUF also contributed to support the business of the firm in the form of canvas sales, liaison and procure orders and these investments made by two HUFs greatly support the firm financially and to further develop its business and payment of commission was one of

the mode of return and acknowledgement of their financial support to the firm.

9. In view of foregoing discussion, we agree with the contention of Id D.R. that the rendering of services of contribution of an individual cannot be segregated into two parts, one in the capacity of partner of the assessee firm and secondly in the capacity of Karta of HUF firm but in view of proposition rendered by Hon'ble Supreme Court in the case of K.S.Subbiah Pillai (supra), the claim of the assessee firm gets support in the facts and circumstances of the present case. This fact cannot be controverted that both HUF have provided unsecured loan to the assessee partnership firm, which substantiate that the family funds of HUF has been used by the assessee's partnership firm to financially support and enhance its business. Therefore, in a peculiar situation when the contribution of an individual, who helps the firm in two capacities viz; first in the capacity of partner and secondly as Karta of HUF cannot be segregated satisfying and clearly establishing the factum of the services rendered towards payment of commission to the HUF but the factum of use of HUF funds by the partnership firm in the form of secured loan in the business of assessee firm, bring home the support of the proposition rendered by Hon'ble Supreme Court in the case of K.S.Subbiah Pillai (supra). Therefore, in view of foregoing discussion, we reached to a logical conclusion that the commission paid by the assessee firm to HUFs is allowable and thus, we

direct the Assessing Officer to delete the addition of Rs.3 lakhs each to both HUF and allow the grounds of appeal of the assessee.

10. Our above view applies mutatis-mutandis to the assessment year 2013-14 being facts are identical. Hence, we direct the delete the addition of Rs.7,00,000/- and allow the grounds of appeal of the assessee.

11. In the result, both the appeals of the assessee are allowed.

Order pronounced on 21 /10/2019.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 21 /10/209
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : M/s. Metalloyods, 1st floor, M.R.Towers, Main Road, Angul
2. The Respondent. ITO, Angul Ward, Angul
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2 , Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack