

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'SMC-A' BENCH : Hyderabad**

Before Smt. P. Madhavi Devi, Judicial Member

**ITA No. 2003/Hyd./2018
Assessment Year: 2010-11**

Sri Alok Ranasaria
Secunderabad

vs. ITO, Ward 10(3)
Hyderabad

PAN: ACYPR7729M

**ITA No. 2004/Hyd./2018
Assessment Year: 2010-11**

Sri Muralilal Ranasaria
Secunderabad

vs. ITO, Ward 10(3)
Hyderabad

PAN: ABSPR4648C

(Appellant)

(Respondent)

For Assessee: Sh. A.V. Raghuram, A.R.
For Revenue: Sh. Mookambikeyan S, D.R.

Date of Hearing : 04/11/19
Date of Pronouncement : 11/11 /19

ORDER

Both the above are appeals of respective assessees for A.Y. 2010-11 against separate orders of CIT(A)-6, Hyderabad dated 4.6.2018.

2. Brief facts in the case of Sri Alok Ranasaria are that he is an individual carrying on business under the name and style of M/s Dupon Agencies. He filed his return of income for the AY 2010-11 declaring income of Rs.17,89,760/-. During the assessment proceedings of Smt. Sarika Ranasaria, Proprietor of Sarthak Enterprises, a statement was recorded from Smt. Chanchal Kanwar who denied the receipt of the commission payments from the assessee Sri Alok Ranasaria. She stated that she is a house wife and was earning rental income and interest income and had been regularly filing

returns, and that she had not done any work or rendered any services to any concern including Sarthak Enterprises. She also clearly denied that she had rendered any services and received any income from Sri Alok Ranasaria i.e. the assessee herein and stated that it is an accommodation entry and she had not benefitted directly or indirectly in any way from this transaction. On the basis of this statement, the return of income of assessee was examined and found that the assessee claimed expenditure on account of commission of Rs.2,07,378/- paid to Smt. Chanchal Kanwar. Therefore, the assessee's assessment was reopened by issuance of notice u/s 148 on 31.3.2017. The assessee filed a reply and also sought reasons for issuing notices u/s 148 of the Income Tax Act, 1961 (the Act).

When reasons for reopening were communicated to assessee, assessee sought cross examination of Smt. Chanchal Kanwar and accordingly, assessee was given an opportunity of cross examination. During the assessment proceedings, the commission agent Smt. Chanchal Kanwar also filed a letter dated 19.12.2017 confirming that she has received commission from the assessee and that the same was offered to tax by her for the A.Y. 2010-11. During the cross examination, Smt. Chanchal Kanwar submitted that on earlier occasions she had denied to have rendered any services and to have received the commission on earlier occasions due to some personal reasons which could not be revealed. Thus, she confirmed the receipt of commission. However, the AO did not accept the statement of Smt. Chanchal Kanwar and proceeded to disallow the claim of commission paid to her. Aggrieved, the assessee preferred an appeal before the CIT(A) who confirmed the order of the AO by relying upon the statement of Smt. Chanchal Kanwar in the proceedings of Sarika Ranasaria by holding that during the assessment proceedings of Smt. Sarika Ranasaria, Smt. Chanchal Kanwar denied the rendering of any service and after a period of 4 years from the date of giving the statement she could not have retracted her statement, and, therefore, subsequent statement cannot be considered as bonafide.

3. Against this order of CIT(A), the assessee is in second appeal before the Tribunal by raising the following grounds of appeal.

ITA 2003/H/18

“1. The order of the ld.CIT(A) dismissing the appeal is erroneous both on facts and in law.

2. Though the assessee could not appear due to inadvertent in noting of the date of hearing, the ld.CIT(A) ought to have appreciated that on similar facts the ITAT in the case of wife of the assessee has directed to allow the commission when it is accepted by the recipient and thereby erred in confirming the disallowance of commission of Rs.2,07,378/- as the same was narrated in the statement of facts.

3. Any other ground that may be urged at the time of hearing.”

ITA 2004/H/18

“1. The order of the ld.CIT(A) dismissing the appeal is erroneous both on facts and in law.

2. Though the assessee could not appear due to inadvertent in noting of the date of hearing, the ld.CIT(A) ought to have appreciated that on similar facts the ITAT in the case of Smt. Ranasaria, has directed to allow the commission when it is accepted by the recipient and thereby erred in confirming the disallowance of commission of Rs.7,39,440/- as the same was narrated in the statement of facts.

3. Any other ground that may be urged at the time of hearing.”

4. The Ld. Counsel for the assessee also placed reliance upon the decision of Co-Ordinate Bench of the ITAT in the case of Smt. Sarika Ranasaria, to which I am also a signatory, wherein under similar circumstances the commission paid to the agent who has confirmed the receipt subsequently and also has offered the income to the tax in her hands has been allowed.

5. Ld. DR, on the other hand. Supported the orders of the authorities below.

6. Having regard to rival contentions and material placed on record, I find that though Smt. Chanchal Kanwar, who is a commission agent, has initially denied to have rendered any services or to have received any commission from the assessee, subsequently, during the course of cross examination, she confirmed the services and also receipt of commission and that such commission has also been offered to tax for the relevant AY. The Co-Ordinate Bench of this Tribunal, in the case of assessee's wife Smt. Sarika Ranasaria,

has considered similar payment of commission and at para 7 of its order has held as under:

“ 7. Considered the submissions of both the counsels and material facts on record. The Assessing Officer had made enquiries on the claim of commission expenditure by himself by calling directly agents, and procuring companies u/s 133(1) of the Act. Out of the 15 agents, 3 agents have denied any links with the assessee and having any business connection with the assessee. But, rest of the agents have accepted that they have business connection. It is worth to note that three ladies, who had denied the association, the statements recorded by the Assessing Officer, it was noticed that their answers are stereo type, the sentences, coin of words are similar, how these people will give exact/similar statements. Secondly, the people who bought the materials also had denied, any presence of agents in the transaction. To counter these, ld. AR submitted that the services utilized were not procuring the order but for gathering demand information/requirements from the market. The ld. AR has not clarified on the above issue to the bench convincingly. However, in business, important thing is the contractual relation between parties. In the given case, the assessee has utilized the services of few individuals to expand her business and the other parties had agreed to act as agents. They acknowledged the services by confirming before the Assessing Officer. Assessee also acknowledged the services by way of making payment after deducting TDS. However, the assessee has to prove the relevance of the expenses to the revenue generated by him along with the details of the service providers. Assessee had submitted the list of service providers and submitted that she had fulfilled the primary duty of onus of proof by paying in cheque and deducting relevant taxes. This cannot replace the relevance of expenses as held in the case of K. V. Minerals (ITA No. 1996/Hyd/2011). The assessee has to bring cogent material to prove the genuineness of the transaction like agreements, confirmation from the service providers and the customers as well. Coming to present case, the assessee had used the services of 15 agents and only 3 have declined to have made any services to the assessee. In the given case, there are certain issues such as there exist only oral agreements, the agents are from different field of activities and the customers are denying the presence of agents in the transaction. At the same time, revenue had investigated this issue independently without involving the assessee but it has carried out the investigation partially. There are some holes in this investigation. The first being the statements recorded from the 3 lady agents are stereo typed and the languages of all three are exactly similar. The revenue has not brought out whether the agents who denied, has done any service to assessee had filed their return of income, if filed, whether they have declared the commission as their income and taken the tax credit. In absence of such details and for the sake of fair justice, in our considered view, the case is peculiar and assessee

had submitted the details of the agents, who had agreed that they had provided services, assessee must be given the advantage, even though there is no written agreement. Accordingly we allow the commission to the extent of those agents who had confirmed before AO to have provided the service to the assessee and at the same time, we cannot overlook the point of view of the department that the agents have declined to have any business connection with the assessee. Accordingly, we direct the Assessing Officer to allow the commission to the extent of 12 agents and uphold the disallowance of commission to the extent of 3 agents, who denied to have done any services to the assessee.”

6.1. Hence, we direct the AO to allow commission if the recipient has offered the said commission to tax in her hands during the relevant A.Y. Similarly in the case of Sri Murali Lal Ranasaria also, the commission paid to Smt. Naina Kothari, who initially denied to having rendered any services and to have received commission, but has retracted the same during cross examination, is also directed to be allowed only if Smt. Naina Kothari has also offered the said income to tax in her hands during the relevant A.Y.

7. In the result, both the appeals are treated as allowed for statistical purposes.

Order pronounced in Open Court on 11th November, 2019.

Sd/-

(P MADHAVI DEVI)
JUDICIAL MEMBER

Dated: 11th November, 2019.

**GMP*

Copy forwarded to:

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3. ITO, Ward 10(3), Hyderabad.
4. Pr.CIT 6, Hyderabad
5. D.R. ITAT Hyderabad
6. Guard File

// C o p y //

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