

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. Nos. 2914 & 2915/Ahd/2017
(निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15)

K Patel Chemo Pharma Private Limited 155, G.I.D.C. Estate, Ankleshwar 393002	बनाम/ Vs.	Assistant / Deputy Commissioner of Income Tax Circle 2(1)(2), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCK1320M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Surendra Modiani, A.R.
प्रत्यर्थी की ओर से/Respondent by:	Shri Mudit Nagpal, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	11/10/2019
घोषणा की तारीख /Date of Pronouncement	13/11/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed at the instance of the assessee against the respective orders of the Commissioner of Income Tax (Appeals)-2, Ahmedabad ('CIT(A)' in short), both dated 01.12.2017 arising in the assessment orders dated 18.03.2016 & 21/11/2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AYs. 2013-14 & 2014-15.

2. Both the appeals involve common question towards disallowance of commission expenses paid to one K N Mehta, Sharjah UAE. Accordingly, both the appeals are being disposed of by common order.

3. We shall first take the facts concerning AY 2013-14 in ITA No. 2914/Ahd/2017 for adjudication purposes.

ITA No. 2914/Ahd/2017-AY-2013-14

4. Briefly stated, the assessee, a private limited company, derives income from manufacturing of dyes, pigments and chemicals etc. and declared total income of Rs.13.50 Crores for the purposes of taxation. The AO *inter alia* disallowed commission expenses amounting to Rs.2,97,463/- paid to K N Mehta, Sharjah UAE by invoking Section 40(a)(ia) of the Act for non-deduction of TDS.

5. The CIT(A), in first appeal, however sustained the action of the AO by resorting to Section 37(1) of the Act instead of disallowance under s.40(a)(ia) of the Act.

6. Aggrieved by the action of the CIT(A), the assessee is in appeal before the Tribunal.

7. We have heard the rival submissions on the issue. On perusal of the order of the CIT(A) and material placed on record before the Tribunal, we notice that the commission payment of Rs.2.97 Lakhs has been paid to K N Mehta, non-resident foreign agent for facilitating export sales outside India. The commission so paid to the non-resident is thus with reference to services rendered outside India for obtaining export orders. The foreign agent is stated to be not carrying any business operation in India and therefore no income can be stated to accrue or arise in India. It is trite that in the absence of any chargeability of income under s.4 r.w.s. 5(2) of the Act, the provisions of Section 195 of the Act will not apply. A reference may be made to the decision of the Hon'ble Supreme Court in *GE India Technology Cen. (P.) Ltd. vs. CIT (2010) 193 Taxman 234 (SC)* in this regard. Thus, obligations for deduction withholding tax could not be fastened on the assessee. We also find that the assessee has produced documentary evidences in the form of sample copy of e-mail exchanged between the assessee and commission agent, transaction advices of the

bank, debit note/commission invoice of the parties, Form No.15CB as submitted to the bank making remittances etc. In the background of the aforesaid evidences to support the occurrence of expenditure, we are unable to understand the action of the CIT(A) in holding that such documents do not establish the identity and genuineness of the claim. The action of the CIT(A) in upholding the disallowance appears to be without any cogent basis. We accordingly set aside the impugned action of the Revenue and direct the AO to allow the commission expenses in question.

8. In the result, appeal of the assessee for AY 2013-14 is allowed.

ITA No. 2915/Ahd/2017-AY-2014-15

9. The facts situation in ITA No.2915/Ahd/2017 being similar, the AO is directed to allow the commission of Rs.39,40,158/- in question.

10. In the combined result, both appeals filed by the assessee are allowed.

This Order pronounced in Open Court on 13/11/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad: Dated 13/11/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBE

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।