

आयकर अपीलिय अधीकरण, न्यायपीठ – “ए” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.664/Kol/2019
Assessment Year :2014-15

M/s Lalchand Laxminarayan, 67/47, Strand Road, Kolkata-700 007 [PAN No.AABFL 1632 L]	V/s.	Income Tax Officer Ward-44(2), 3 Govt. Place (West), Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumitra Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Dr. A.K.Nayak, CIT-DR
सुनवाई की तारीख/Date of Hearing	04-09-2019
घोषणा की तारीख/Date of Pronouncement	20-11-2019

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2014-15 arises against the Principal Commissioner of Income Tax-15 Kolkata's order dated 11.02.2019 passed in M.No.PclT-15/Kol/u/s.263/12/118-19/7305-07, involving proceedings u/s 263 of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. We advert to the relevant basic facts. This assessee is a partnership firm engaged in trading in sugar and carrying out commission agent business. It filed its return on 24.09.2014 declaring taxable income of ₹7,82,590/- which stood processed u/s. 143(1) of the Act. The Assessing Officer thereafter framed regular assessment on 30.11.2016 disallowing 20% of the assessee's business expenses of ₹3,03,873/-; coming to ₹60,774/-.

3. Case file suggests that the PCIT thereafter issued his show cause notice dated 12.07.2018 that the above regular assessment was erroneous causing prejudice to interest of the Revenue on the ground that the assessee had paid commission / brokerage of ₹21 lakh and although the Assessing Officer had called for party-wise details regarding brokerage(s), the Assessing Officer issued u/s133(6) notice(s) to three parties totaling commission / brokerage amount of ₹4.05 lakh only. And he did not issue summons to any of the payee parties in order to verify genuineness of the commission payments. He was further of the view that one of the payee Shri Kailash Nath Singh (HUF) involving of ₹151,023/- had denied to have received any brokerage / commission. And the Assessing Officer had raised any query in respect of the said party(ies).

4. The assessee appears to have filed its reply contesting the PCIT's show-cause notice. It sought to explain that the above regular assessment was neither erroneous nor it caused prejudice to interest to the Revenue. It submitted on merits that it had paid brokerage amount of ₹1,51,023/- not to the individual but HUF in the name and style of Shri Kailash Nath Singh. And also that all the relevant details to this effect formed part of record. The PCIT has declined the said explanation by quoting various judicial precedents i.e. *Malabar Industrial Co. Ltd. vs. CIT* reported in (2000) 243 ITR 83 (SC) *Rampyari Devi Saraogi vs. CIT* (1968) 67 ITR 84 (SC), *Smt. Tara Devi Aggarwal vs. CIT* (1973) 88 ITR 323 (SC), *GEE VEE Enterprise Vs. Addl. CIT* (1975) 99 ITR 375 (Del) that since the Assessing Officer had not conducted the due enquiries regarding assessee's brokerage payments of Shri Kailash Nath Singh HUF as well as Sita Tiwari, the same is liable to be revised as erroneous causing prejudice to interest of Revenue as per sec. 263 as amended by way of "**Explanation**" with effect from 01.06.2015. This leaves the assessee aggrieved.

5. Learned counsel vehemently contends during the course of hearing that the PCIT has erred in law and on facts in revising the above regular assessment with a direction to the Assessing Officer to frame afresh one. He invites our attention to paper book page 28 onwards indicating the assessee's turnover of ₹275 crores as against the commission of 21 lakh in issue paid to twenty two parties in all cases. It had not only deducted TDS but also obtained PAN and evidence of payments followed by corresponding ledger account(s). He buttresses the point that the assessee's profit ratio in all assessment year throughout have remained almost the same leaving out any chance and bogus brokerage expenditure in issue.

6. Learned CIT-DR has chosen to place a strong reliance on the PCIT's direction under challenge since the Assessing Officer had not carried out due enquiries during scrutiny and therefore, the impugned revision proceedings are liable to be upheld. He further states that the assessee has claimed impugned brokerage amount in order to reduce its taxable income which deserves to be examined afresh.

7. We have heard both the parties at length against and in support of PCIT's revision order under challenge. Suffice to say, Learned PCIT has invoked his revision jurisdiction vested u/s. 263 of the Act on the Assessing Officer's action accepting the assessee's brokerage payments without making due enquiries. His main thrust is that one of the payee, Shri Kailash Nath Singh (supra) denied to have rendered any brokerage services to the assessee. The facts also remains that the assessee has not claimed the impugned brokerage sum in case of Shri Kailash Nath Singh (supra) are not through an individual HUF and denial also came from said individual's side only. It has not only deducted TDS on the impugned payments but also maintained all supportive evidence (supra) in respect of its brokerage payments. Hon'ble jurisdictional high court's decision in ITAT No. 225 of 2013 GA No. 3825 of 2013 *Commissioner of Income Tax, Kolkata-I vs. M/s Inbuilt*

Merchant Pvt. Ltd. holds that a commission expenditure claim raised by an assessee and supported by all such evidence cannot be disallowed on the ground that the same is not genuine. We hold in view thereof that even if the Assessing Officer has not disallowed the assessee's brokerage payments or not conducted due enquiries, the impugned payment could not have been disallowed since supported by all cogent evidence. Hon'ble apex court's decision in *Malabar Industrial Co. Ltd.* (supra) holds that the CIT's assumption of revision jurisdiction has to be upheld in case the assessment in issue is not only erroneous but also causes prejudice to interest of Revenue; simultaneously. We are of the opinion that the PCIT's action does not satisfy the twin conditions simultaneously in view of hon'ble jurisdictional high court's decision that commission payment cannot be disallowed if supported by all necessary evidence. We therefore reverse learned CIT's order under challenge in this factual and legal background.

8. This assessee's appeal is allowed.

Order pronounced in the open court 20/11/2019

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Kolkata,
*Dkp

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

दिनांक:- 20/11/2019 कोलकाता ।

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

1. अपीलार्थी/Appellant-M/s Lalchand Laxminarayan 67/47, Strand Road, Kolkata-007
2. प्रत्यर्थी/Respondent-ITO Ward-44(2), 3, Govt. Place (West), Kolkata-001
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, कोलकाता ।