



आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4517/Mum/2018
(निर्धारण वर्ष / Assessment Year:2012-13)
&

आयकर अपील सं./ I.T.A. No.4516/Mum/2018
(निर्धारण वर्ष / Assessment Year:2014-15)

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| Etco Industries Private Limited Unit No. S-13 & S-14, 2 nd Floor, Pinnacle Business Park, Shanti Nagar, MIDC Mahakali Caves Road Near Ahura Centre, Andheri (E) Mumbai-400 093. | बनाम/ Vs. | ACIT-9(2)(2) Room No.665A Aaykar Bhavan M.K. Road Mumbai-400 020. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACE-1393-H | | |
| (□ पीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| Assessee by | : | Shri Anuj Kishnadwala-Ld. AR |
| Revenue by | : | Shri Maurya Pratap-Ld. DR |

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| सुनवाई की तारीख/ Date of Hearing | : | 04/12/2019 |
| घोषणा की तारीख / Date of Pronouncement | : | 04/12/2019 |

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. In the aforesaid appeals for Assessment Years [in short referred to as ‘AY’] 2012-13 & 2014-15, the grievance of the assessee is common



i.e. disallowance of overseas commission for Rs.6.13 Lacs in AY 2012-13 & Rs.14.29 Lacs in AY 2014-15.

2. The learned Authorized Representative for Assessee (AR), at the outset, submitted that the stated issue is covered by the order of this Tribunal for AYs 2009-10 & 2011-12, ITA Nos. 4221-22/Mum/2016 common order dated 18/06/2018. The said order has subsequently been followed in AY 2013-14 ITA No.630/Mum/2018 order dated 05/10/2018. The copies of the orders have been placed on record. The Ld. DR could not controvert the same but supported the stand taken by lower authorities.

3. Facts in AY 2012-13 are that the assessee was saddled with disallowance of overseas commission for Rs.6.13 Lacs in an assessment framed u/s 143(3) on 19/01/2015 in view of the fact that the assessee failed to furnish the requisite documentary evidences to substantiate the rendering of services and also alternatively for want of deduction of tax at source.

4. During appellate proceedings, the assessee submitted that the commission was paid against goods exported to M/s Arad Textiles Industries Ltd. as per the contractual terms. It was agreed that M/s Arad Textiles Industries Ltd. will pay 2% commission on FOB value of goods to local agents and remit the net proceeds after deduction the said commission. However, in its books of accounts, the assessee credited the FOB value on gross basis and debited the commission expenditure separately. Therefore, the same was an allowable deduction. It was also submitted that since the services were rendered outside India, no tax was deductible at source. However, learned CIT(A), following the



appellate order for AY 2013-14 confirmed the disallowance. Aggrieved, the assessee is under further appeal before us.

5. As stated by Ld. AR, we find that the issue stood covered in assessee's favor by the cited decisions of this Tribunal for AYs 2009-10, 2011-12 & 2013-14. The learned CIT(A) has followed the order of its predecessor for AY 2013-14 which has been reversed by the Tribunal by observing as under: -

5. The learned Authorised Representative reiterating the stand taken before the Departmental Authorities submitted that the assessee has exported goods to M/s. Arad Textile Industries Ltd., Israel, and as per the terms of agreement, the said customer was entitled to deduct 2% of sale value towards commission expenses. He submitted, the payment made to Prampdex Agarwal Inc., Peru, is also under similar terms and condition. The learned Authorised Representative submitted, while deciding identical issue in assessee's own case for assessment year 2009-10 and 2011-12, in ITA no. 4222/Mum./2016 and ITA no. 4221/Mum./2016, dated 18th June 2018, the Tribunal has deleted the disallowance made by the Assessing Officer. Thus, he submitted, the aforesaid decision of the Tribunal squarely applies to the facts of the present case.

6. The learned Departmental Representative relied upon the observations of the learned Commissioner (Appeals) and the Assessing Officer.

7. I have considered rival submissions and perused materials on record. It is the case of the assessee that as per the terms of the agreement, what the assessee actually receives from the foreign customer is 98% of the invoice value after deduction of 2% commission amount. For e.g., if the invoice raised by the assessee is for Rs.100, it actually receives Rs.98 from the foreign customer. Notably, while deciding identical issue in assessee's own case for assessment years 2009-10 and 2011-12, the Tribunal, in the order referred to above, has deleted similar disallowance made by the Assessing Officer with the following observation:-

"7. Having heard rival contentions, we find merit in the contentions of the assessee. The invoice raised by the assessee as well as the Letter of Credit obtained by the customer of the assessee from bank clearly show that 2% commission was payable to local agents. It was submitted that the same was paid as per terms and conditions entered between the parties. In effect, what the assessee realised was only 98% of the invoice value. Even if the assessee was not able to substantiate the nature of services provided by the local agents, the shortage in realisation is allowable as normal business deduction. Since the impugned payment is not chargeable to tax in India in the hands of recipients, the provisions of sec. 40(a)(i) will not apply. Hence we are of the view that there is no reason to disallow the expenses of Rs.6,26,926/- claimed by the assessee. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance of Rs.6,26,926/- referred above.



ETCO Industries Private Limited
Assessment Years :2012-13 & 2014-15

8. We shall now take up the appeal filed for AY 2011-12. The first issue urged therein relates to the disallowance of commission expenses. During the year relevant to AY 2011-12, the assessee paid Commission to Israel parties and also certain other parties. The AO disallowed a sum of Rs.23.34 lakhs for non-deduction of tax at source. The Ld CIT(A) confirmed the same by following the decision rendered by him in AY 2009-10.

9. In the preceding paragraphs, we have deleted the disallowance of commission expenses on the reasoning that the assessee has realised only net amount and further the impugned payments are not liable for deduction of tax at source, since the same is not taxable in India in the hands of recipients. Following the same, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the disallowance of Rs.23.34 lakhs, referred above.”

8. Facts being identical, respectfully following the aforesaid decision of the Tribunal, I delete the addition made by the Assessing Officer and sustained by the learned Commissioner (Appeals). Grounds raised are allowed.

9. In the result, assessee's appeal is allowed.

Facts are *pari-materia* the same in this AY. No distinguishing fact / feature has been brought on record. Nothing on record would indicate that the aforesaid rulings are not applicable to the fact of the year under consideration. Therefore, keeping in line with the earlier decision of this Tribunal in assessee's own case, we delete additions for both the years.

6. Resultantly, both the appeals stand allowed.

Order pronounced in the open court on 04th December, 2019.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04/12/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent



3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.