

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G" MUMBAI**

**BEFORE SHRI RAJESH KUMAR, HON. ACCOUNTANT MEMBER &
SHRI AMARJIT SINGH, HON. JUDICIAL MEMBER**

**ITA No. 6155/MUM/2018
(Asst. Year : 2013-14)**

Shantital Jain,
171-B, Panjrapole,
Opp : Sarvodaya Nagar,
Mumbai

Vs. ITO-19(3)(3),
Mumbai.

PAN No. AAAPJ 9199 D
(Appellant)

(Respondent)

Assessee by : Shri Mayank Thosar, Adv.

Department By : Shri V. Vinod Kumar, Sr. DR

Date of hearing : 04/12/2019.

Date of pronouncement : 05/12/2019.

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-2, Mumbai, dated 14/04/2018 for the A.Y. 2013-14.

2. The only issue raised by the assessee in this appeal is against the confirmation of disallowance of commission paid of Rs.3,39,054/- by the Id.CIT(A), thereby upholding the order of the AO.

3. Facts of the case in brief are that assessee filed his return of income on 30/09/2013 declaring total income of Rs. 16,94,680/- which was processed u/s. 143(1) of the Act. Thereafter, case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served on the assessee. The assessee is a proprietor of M/s. Surya Impex carrying on business of stainless steel utensils, household products and appliances during the year. The assessee has debited commission of Rs.17,55,023/- to the Profit & Loss account. Accordingly, the AO called upon the assessee to furnish the details of commission paid along with the names and addresses of the recipients. Accordingly, the assessee has filed the details before the AO. The AO on perusal of the said details found that commission agents included *inter alia* Shri Nitesh J. Jain and Shri Jitesh J. Jain to whom the assessee has paid Rs. 1,68,018/- and Rs.1,71,036/- respectively as commission. Accordingly, summons u/s. 131 were issued to both the parties. The AO disallowed the commission paid after recorded their statements in which those parties could not give specific reply and finally the AO concluded that the said commission is bogus and not genuine, however, the AO noted that the said persons have disclosed the commission receipts from the assessee in their returns of income. The assessee has made the

payments by cheque and the commission was remitted to those parties after deducting TDS at source. According to the AO, the commission is not genuine as the parties/recipients could not provide the nature of services rendered by them to the assessee. The assessee also could not furnish the details of services rendered or details of suppliers introduced to the assessee by these two persons and finally disallowance of Rs.3,39,054/- was made and added to the income of the assessee.

4. In the appellate proceedings, the Id.CIT(A) also dismissed the appeal of the assessee by upholding the order of the AO by observing that the said parties were not having any knowledge and experience in the field in which assessee was dealing.

5. After hearing the rival contentions and perusing the material available on record, we observe that in this case, the assessee is engaged in the business of stainless steel utensils, household products and appliances. During the year under consideration, the assessee paid commission of Rs. 17,55,023/- which *inter alia* includes commission paid to Shri Nitesh J. Jain of Rs. 1,68,018/- and Shri Jitesh J. Jain of Rs.1,71,036/-. The said commission was undisputedly paid by account payee cheque after deducting tax at source. According to the assessee, the said commission was paid for introducing new suppliers to the assessee, however,

the lower authorities did not agree with the contentions of the assessee on the ground that the said recipients were not having knowledge and could not give satisfactory answer to the queries put during the course of recording their statements u/s.131 of the Act. In our view, the expenses claimed by the assessee as commission, cannot be disallowed merely because details of suppliers introduced could not be provided whereas assessee has duly deducted TDS on the said payments and the payments were made by cheques. The correspondingly commission amounts were shown as income by the two persons. Under these facts and circumstances, we are not in agreement with the Id.CIT(A) that commission is bogus and not genuine. The AO has also not brought anything on record to show that money has come back to the assessee after paying to the recipients. Under these circumstances, we set aside the order of the Id.CIT(A) and direct the AO to delete the addition. Thus, this appeal filed by the assessee is allowed.

6. In the result, appeal of the assessee is allowed.

Order Pronounced in the open Court on 05th December, 2019

Sd/-
(AMARJIT SINGH)
Judicial Member

sd/-
(RAJESH KUMAR)
Accountant Member

Dated : 05th December, 2019.

vr/-

Copy to:

1. *The Assessee – Shantital Jain, 171-B, Panjrapole, Opp : Sarvodaya Nagar, Mumbai.*
2. *The Revenue – ITO-19(3)(3), Mumbai.*
3. *The Pr.CIT-19, Mumbai.*
4. *The CIT(A)-2, Mumbai.*
5. *The D.R., Mumbai.*
6. *Guard file.*

By order

//True Copy//

Assistant Registrar
I.T.A.T., Mumbai