

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.290/PUN/2016
निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Unilite Health Care Pvt. Ltd.,
206, Shivai Industrial Estate,
89, Andheri, Kurla Road,
Sakinaka, Andheri (E),
Mumbai – 400072

PAN : AAACU8023A

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Central Circle – 2(2), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri Hoshang B. Irani

सुनवाई की तारीख / Date of Hearing : 09-12-2019
घोषणा की तारीख / Date of Pronouncement : 19-12-2019

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 18-12-2015 passed by the Commissioner of Income Tax (Appeals)-12, Pune [‘CIT(A)'] for assessment year 2009-10.

2. Shri Kishor Phadke, the ld. AR submits that the assessee is not interested to prosecute ground No. 1 and prayed to dismiss the same as not pressed. Accordingly, the ground No. 1 raised by the assessee is dismissed as not pressed.

3. The ground No. 2 raised by the assessee against the action of CIT(A) in confirming the addition made by the AO on account of commission income in the facts and circumstances of the case.

4. The brief facts of the case as emanating from the record are that the assessee is a company and stated to have engaged in the business of trading of pharmaceutical product and supply of manpower for marketing of pharma products. The assessee filed return of income declaring a total income of Rs.16,67,843/-. Notices u/s. 143(2) and 142(1) of the Act were issued. In response to which authorized representative on behalf of the assessee appeared before the AO.

5. On examination of details submitted by the assessee, the AO doubted the genuineness of purchases and sales in respect of two parties that are Twilight Litaka Pharma Ltd., Pune and Peegasus Healthcare Ltd, Pune, respectively. To verify purchase of Rs.119,80,67,506/- and sales of Rs.109,16,52,583/-, the AO issued notices to the aforesaid two parties. In response to the said notices u/s. 133(6) of the Act, both the parties submitted their replies admitting purchases and sales to the extent shown by the assessee. According to the AO, both the parties above did not furnish any evidence of receipt and dispatch of goods i.e. photocopies of challans and transport receipts evidencing transportation of goods,

thereby, the AO held the transactions involving with both the parties with that of assessee not genuine and sham transactions and added Rs.4,79,49,000/- (at 2% of Rs.113,53,18,685/- + Rs.126,21,31,347/-) to the total income of the assessee. The CIT(A) upheld the order of AO.

6. Before us, the ld. AR submits that the name of assessee has been struck off in the register of companies by the ROC and there were no business activities by the assessee company as on today. He submits that determining the commission income at 2% is excessive and placed reliance on the order of Delhi Tribunal in the case of Sanjay Kumar Garg Vs. Assistant Commissioner of Income Tax reported in 12 taxmann.com 294 (Delhi) and prayed to restrict the addition @ 0.2%. Further, he referred to order dated 10-03-2015 of Mumbai Tribunal in the case of Assistant Commissioner of Income Tax Vs. M/s. Spanco Limited in ITA No. 1128/Mum/2012 for A.Y. 2007-08 and submitted that the Tribunal restricted the addition @ 0.25% involving the similar issue. Further, he referred to order of Delhi Tribunal in a batch of cases Prashant Aggarwal and argued that all the Tribunals on similar issues basing on identical facts and determined the commission income between 0.2% - 0.25% and submitted that all transactions in the present case are between the group companies having same i.e. directors, addresses and business activities and prayed to restrict the addition any one of the transactions that are purchase or sales.

7. Shri Hoshang B. Irani, the ld. DR vehemently opposed the same and submitted that the assessee could have submitted all these submissions before the AO and relief prayed by the ld. AR cannot be accepted where the

transactions between the assessee and above said two parties are proved to be ingenuine and sham and supported the order of CIT(A).

8. Heard both parties and perused the materials available on record. We find in the case of Sanjay Kumar Garg (Supra) as relied on by the ld. AR the facts and circumstances involved therein are similar to the present case. The Tribunal considering the issue therein in detail and restricted the commission income at 0.2% as against the 1.75% and 1% made by the AO and CIT(A), respectively. The orders of Mumbai and Delhi Tribunal in the cases of M/s. Spanco Limited (supra) and Prashant Aggarwal (supra) more or less restricted to 0.25% - 0.20% of commission income. Therefore, taking into consideration the facts and circumstances of the present case with that of the orders of Tribunal as discussed above, we restrict the addition on commission income at 0.20% on both the purchases and sales. Therefore, the order of CIT(A) is set aside and directed the AO to give effect to the appeal as indicated above. Thus, ground No. 2 raised by the assessee is allowed.

9. The ground No. 3 raised by the assessee questioning the action of CIT(A) in confirming the addition made on account of contract receipt in the facts and circumstances of the case.

10. The ld. AR submitted that the contract receipt is part of the total turnover and when the commission income is determined on estimation basis the addition made on account of contract receipt is not maintainable. The ld. DR supported the order of CIT(A). Having heard both the parties. We find the AO found contract receipt at Rs.24,90,820/- which has been

received from Twilight Mercantiles Pvt. Ltd. The AO allowed 50% as expenditure and added balance of Rs.12,45,410/- to the total income of the assessee. The CIT(A) confirmed the same. We have taken a view in determining the commission income at 0.20% on both purchases and sales in the aforementioned paragraph and by applying the same we adopt 0.20% on contract receipt. Thus, the order of CIT(A) is set aside and AO is directed to restrict the addition at 0.20% on contract receipts of Rs.24,90,820/-. Thus, ground No. 3 raised by the assessee is allowed.

11. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 19th December, 2019.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 19th December, 2019

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-12, Pune
4. The Pr. Commissioner of Income Tax (Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune