

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

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 3943/MUM/2017
Assessment Year: 2012-2013**

Shri Shailesh Jagannath Chaudhari, Plot No. 23, Sector 19C, Palm Beach Road, Vashi, Navi Mumbai - 400705 PAN: ACWPC8403D	Vs.	The Asstt Commissioner of Income Tax, Circle 3 Thane, Ashar IT Park 6 th Floor, Room No. 2, Wagle Industrial Estate, Thane - 400604
(Appellant)		(Respondent)

Assessee by : Shri Anil Sathe (CA)

Revenue by : Shri Ajay Kumar (CIT DR)

Date of Hearing: 19/12/2019

Date of Pronouncement: 30/12/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 21.03.2017 passed by the Commissioner of Income Tax (Appeals)-1 (for short 'the CIT(A), Aurangabad, for the assessment year 2012-13, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee proprietor of M/s Siddhansh Electronics, filed its return of income for the assessment year under consideration declaring the total income of Rs. 93,96,270/-. The return was processed u/s 143 (1) of the Act. Since the case was selected for scrutiny, the AO issued notice u/s 143 (2) of the Act. In response to the said notice, the authorized representative (AR) of the assessee appeared before the AO, furnished the details called for and discussed the case. It was noticed that the assessee had debited an amount of Rs. 75,80,900/- towards commission payment. Accordingly, the AO asked the AR to submit the details of

commission expenses. On the basis of the details, furnished by the AR it was further noticed that out of the aforesaid amount, the assessee paid Rs. 44,32,500/- to various HUFs. The AO asked the AR to produce the evidence in this regard. The AR submitted copy of agreement for commission and details of payments etc. However, the AO rejected the contention of the assessee on the ground that the agreements are neither registered nor notarized, and added the said amount to the income of the assessee and determined the total income at Rs. 1,38,28,770/-. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee confirmed the addition made by the AO and dismissed the appeal. The assessee is in appeal against the said findings of the Ld. CIT (A).

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

“The learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 44,32,500/- made by the Assessing Officer by disallowing commission expense paid by the appellant to different persons, which were paid by account payee cheques to various persons, merely on an presumption that the services provided by such persons could not be established without considering the agreements between the appellant and such persons & other details provided by the appellant.”

4. The Ld. counsel for the assessee submitted before us that the Ld. CIT (A) has wrongly confirmed the addition made by the AO holding that there is no evidence to establish that the HUFs had necessary expertise in this line of business. The Ld. counsel further contended that the Ld. CIT(A) has wrongly held that the fact that the payments were made under a contract or an agreement is not conclusive to prove that the expenditure is incurred wholly and exclusively for the purpose of business. The Ld. counsel further submitted that the payments cannot be disallowed on the ground that the same have been made to HUFs. Since the AO had allowed the payments to other parties, there was no reason for the authorities below to reject the payments made to HUFs. The Ld. counsel further submitted that since the genuineness of

payments is not in dispute, the Ld. CIT (A) ought to have allowed the expenses keeping in view the nature of the business of the assessee. The Ld. counsel further pointed out that in the preceding year commission paid to the same parties were allowed and disallowance was made to the extent of 8% on an *ad-hoc basis* in the order passed u/s 143 (3) of the Act. The Ld. counsel invited our attention to establish that the payments were made in this year to the same parties to whom similar payments were made during the year relevant to the assessment year 2011-12. The Ld. counsel without prejudice to the contention that entire disallowance should be deleted, submitted that only 8% of the commission may be disallowed in the year under consideration by following the principle of consistency.

5. On the other hand, the Ld. Departmental Representative (DR) supporting the order passed by the Ld. CIT (A) submitted that since the assessee has failed to furnish any cogent and convincing evidence to substantiate its claim, the Ld. CIT (A) has rightly confirmed the addition made by the AO.

6. We have heard the rival submissions of the parties and also perused the material on record. As pointed out by the Ld. counsel, in the year relevant to the assessment year 2011-12, the assessee had paid commission to the same parties. As per the copy of assessment order dated 25.02.2014, for the assessment year 2011-12, the AO made disallowance of 8% of the commission and incentive paid out of the total amount of commission expenses claimed by the assessee. However, in the present case, the AO has disallowed the entire amount claimed by the assessee without giving any reason for taking a different view. The revenue has not pointed out any change of material facts in the present case for taking a view different from the one already taken in the assessee's own case for the AY 2011-12. From the lists furnished by the Ld. counsel, it is clear that the assessee had made payment of commission to the same parties in the assessment year 2011-12, which was partly allowed. However, the AO made disallowance of the entire payments made to the same parties in the previous year.

7. In view of the aforesaid facts, we are convinced that the AO has passed the assessment order without taking into consideration the stand taken by the department in assessee's own case for the assessment year 2011-12 under the similar set of facts. The Ld. CIT (A) has not given any justification for the inconsistent stand taken by the AO. We are therefore, of the considered view that the matter requires fresh adjudication by the AO in the light of the submissions made by the Ld. counsel. Hence, we set aside the impugned order passed by the Ld. CIT (A) and send the file back to the AO for fresh adjudication of the issue in the light of the submissions made by the Ld. counsel for the assessee, after affording a reasonable opportunity of being heard to the assessee.

In the result, appeal filed by the assessee for assessment year 2012-2013 is allowed for statistical purposes.

Order pronounced in the open court on 30th December, 2019.

Sd/-
 (SHAMIM YAHYA)

ACCOUNTANT MEMBER

Sd/-
 (RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 30/12/2019

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai