

आयकर अपीलीय अधीकरण, न्यायपीठ – “सि” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “C” KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.481/Kol/2017
Assessment Year: 2013-14

Rajesh Jajodia 135A, C.R. Avenue, 3 rd Floor, R.No.22, Kolkata-700 007 [PAN No.ACGPS 1686 D]	बनाम / V/s.	ACIT(IT) Circle-45, 3, Govt. Place, Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	None
प्रत्यर्थी की ओर से/By Respondent	Shri Supriyo Pal, JCIT, Sr-DR
सुनवाई की तारीख/Date of Hearing	28-11-2019
घोषणा की तारीख/Date of Pronouncement	17-01-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (Appeals)-13, Kolkata's order dated 16.12.2016 passed in case No.50/CIT(A)-13/Cir-45/Kol/2016-17, involving proceedings 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Case called twice. None appears at the assessee's behest. The registry has already sent an RPAD notice to the assessee from time to time. The lower co-ordinate bench's order dated 16.12.2016 had dismissed the instant appeal on account of non-prosecution which stood recalled on 02.04.2019. We therefore

proceed *ex parte* against the assessee. The case is now taken for adjudication on merits.

2. The assessee's former substantive ground challenges correctness of both the lower authorities'; action disallowing / adding its commission payment of ₹31,66,030/-. The CIT(A)'s detailed discussion to this effect reads as under:-

“Decision:-

6. I have gone through the contention of the assessee, the order passed by the AO and the submissions made by the Appellant. The decision of this appeal is given as under:-

The ground of appeal relates to the addition of Rs.31,66,030/- on the ground that the commission payment made to M/s. Suryamukhi Projects Pvt. Ltd could not be found genuine. The appellant was asked to produce the directors of M/s. Suryamukhi Projects Pvt. Ltd by whom the services were stated to be taken. It was also observed by the AO that the appellant received commission amount to Rs.54,66,990/- from M/s Biological E.Ltd. against sale made by the said company directly to various government hospital amounting to Rs.518.36 lac. It was further claimed by the appellant that the total sale made by M/s. Biological E. Ltd. to the government hospital is on account of orders procured by M/s Suryamukhi Projects (P) Ltd. It is also noticed that the assessee claimed to have paid commission of Rs.31,66,030/- to M/s Suryamukhi Projects (P) Ltd out of the sum received from M/s Biological E. Ltd as commission. Though the appellant claimed payment of commission to M/s Suryamukhi Projects (P) Ltd, but the A/R of the appellant could not produce any contract / agreement in support of his claim. Further, it is observed that the appellant failed to comply with the provision of Chapter XVII-B of the Act and did not deduct tax at source from the amounts paid as commission. It is also noticed that the list of hospitals provided by the assessee for which orders were claimed to be procured by M/s Suryamukhi Projects (P) Ltd., contain 35 hospitals / Chief Medical Officers of Health and all of the hospitals are managed & operated by the Govt. of West Bengal, In this context, the AO further observed that e-tenders are mandatory in almost all the Govt. departments for orders above certain money limit and canvassing-by bidders during tender process of offline and online tenders are strictly prohibited, Therefore, it was highly unlikely that M/s Suryamukhi Projects (P) Ltd. had rendered any services to the assessee in respect of procurement of orders of medicine from Government entities and the claim of M/s Suryamukhi Projects (P) Ltd. that it had obtained orders from DGHS, Govt. of West Bengal and their District Reserve Stores and all medical colleges hospitals of West Bengal is not at all acceptable, The said party also could not furnish any supporting documents in support of services rendered to the appellant. In the light of the above, the complete deal of commission payment to M/s Suryamukhi Projects (P) Ltd, was treated by the AO as fictitious and fabricated by the appellant. The AO further carried out enquiry on about genuineness of M/s Suryamukhi Projects (P) Ltd. and it revealed that the company is assessed to tax-under the jurisdiction-of-AC/DCTT, Central Circle-3(1), Kolkata, The AO had received information from the o/o the DGIT (Inv.) WB, Sikkim & NER, Kolkata on 21.07,2015 in respect of 'Dissemination of intelligence regarding tax evasion by showing long term capital gains perpetrated through accommodation entry operators', As per information received it is revealed that one of the share brokers covered u/s 133A of the Act is M/s Gateway Financial Services Ltd at 31, Shakespeare Sarani, Kolkata-17 and the statement of Shri Praveen Kumar Agarwal, one of the directors of M/s Gateway Financial Services was recorded under oath by the DDIT (Inv.), Kolkata on 10,02,2015, In his statement Shri Praveen Kumar Agarwal admitted that M/s Suryamukhi Projects (P) Ltd. is a paper company used for providing accommodation entries to various beneficiaries, The statement of Shri Praveen Kumar-Agarwal is quite voluminous; hence the relevant portion of the statement is reproduced below:

" ... **Q.7.** Please note that you have admitted in your statements recorded in different occasion that you are engaged in providing accommodation entry in the form of share capital, bogus billing, unsecured loan etc. through different jama-kharchee companies formed by you by appointing different dummy directors, Please also note that different dummy directors such as Prarnod Rarndln . Sharma etc. mentioned by you in your different statements have also confessed that they are mere name lender and appointed by you in your different companies floated by you, Please offer your comment.

Ans. Yes. I admit that the statement deposed by me in different occasions are true and in sound statement of mind and health. I have appointed different persons as dummy directors. Some of the persons are Pramod Ramdin Sharma, Umesh Singh, Neeraj Kedia, Pulak Bagchi, Charanjit Mahata, Pinki Agarwal, Vishal Sharma etc. I confirm my earlier statements.

Q.13. On verification of list of clients found from your office computer, it is seen that it contains the list of corporate clients registered under Gateway Financial Services Pvt. Ltd. On further verification, it is found that the said list includes different paper companies controlled and managed by you. The details of such companies which are controlled and managed by you are given herewith. Please go through the list and offer your comment.

Client code	Name of paper companies	Add1	Add2	Add-3	City
S045	Suryamukhi Projects Pvt. Ltd.	c/o Dilip Kumar Yadav	4A, Madan Mohan Burman St.		Kolkata

***Note: The list of companies contains 46 names and M/s Suyamukhi Projects (P) Ltd is reflected in Row-35 of the list.

Ans. Yes I admit that all the companies were formed by me by appointing different dummy directors for providing accommodation entry to different beneficiaries. The clients are registered for rigging of price of different scripts for providing bogus long term capital gain.....,"

Apart from the above the AO has observed from the Memorandum & Article of Association of M/s Suryamukhi Projects (P) Ltd. which has been submitted by the A/R of the assessee, that the said company is floated by two promoters i.e. Pramod Ramdin Sharma and Pulak Bagchi whose names prominently features as dummy directors & mere name lenders in the statement of Shri Praveen Kumar Agarwal reproduced above.

Further, the certificate of incorporation submitted by the A/R of the assessee in respect of M/s Suryamukhi Projects (P) Ltd, reflects the mailing address as per record available in ROC office as C/o, Dilip Kumar Yadav, 4A, Madan Mohan Burman Street, Kolkata - 07, whereas the address provided in the return of income of M/s Suryamukhi Projects (P) Ltd for Asst Year 2013-14 reflects the address as 1A, Grant Lane, Kolkata - 12. Such companies which are notoriously known as paper companies resort to such practices of keeping multiple addresses to avoid detection by Enforcement Authorities. Further, the assessee had claimed to have paid of commission to two parties but deducted tax at source on payment of commission to the party only i.e. Shri Netai Chandra Das to whom commission Rs.6,00,000/- was paid. Had the commission payment of Rs.31,66,030/- was genuine in respect of M/s Suryamukhi Projects (P) Ltd, the assessee would have deducted tax at source on the said payment also. Further, it is established by the statement of Shri Praveen Kumar Agarwal

recorded under oath that M/s Suryamukhi Projects (P) Ltd is a paper company with dummy directors used for providing accommodation entries to different beneficiaries.

Keeping in view of the fact that M/s. Biological E. Ltd. was a government supplier to a government hospital from whom the appellant has stated for receiving of commission and further payment to M/s Suryamukhi Projects (P) Ltd, was made, the appellant was asked to produce the directors of M/s Suryamukhi Projects (P) Ltd, which failed to do so. It is also a matter of record that the appellant could not give the correct correspondence address of the alleged commission agent M/s Suryamukhi Projects (P) Ltd,. it is also seen that the compliance of TDS provision were not made by the appellant particularly when substantive payment was made to M/s Suryamukhi Projects (P) Ltd,. The inspector deputed for the enquiry could not trace out the so-called alleged commission agent namely M/s Suryamukhi Projects (P) Ltd. as the primary onus was not discharged by the appellant which can prove that the services of the so called commission agent were taken by the appellant. The AO concluded it as a fictitious transaction made by the appellant in order to reduce its taxable profit which was further strengthened by the AO's information based on investigation wing that M/s Suryamukhi Projects (P) Ltd, was floated by Mr. Pramod Ramdin Sharrna and Pulak Bagchi which were pointed out by Shri Praveen Kumar Agarwal as a dummy directors and it was also revealed by the statement of Mr. Praveen Kumar Agarwal that M/s Suryamukhi Projects (P) Ltd, is a paper company used for providing accommodation entries to various beneficiaries.

*The appellant contention is that survey was conducted on Suryamukhi projects Pvt. Ltd and one M/s. Gateway financial services Ltd. and director of Gateway claimed that Suryamukhi is fictitious entity. All these matter was stated in the assessment order but nothing was mentioned during the course of hearing leave apart the cross examination. Even in the order it was nowhere mentioned that the commission obtained from my client is bogus, even the director of Suryamukhi was also not questioned. Some 3rd party who had relation with Suryamukhi stated that Suryamukhi is a fictitious entity and on that basis AO assumed that the transactions made by my client is bogus AO neither felt to ask explanations from my client nor thought fit to inform. Appellant was not given any opportunity of being heard. In this regard it is pertinent to point out that the AO has used the information supported by Investigation Wing and the statement of Mr. Praveen.Kurnar Agrawal as a circumstantial evidences. The conclusion of the AO is not solely based upon the statement rather it is purely and independently concluded by the AO that the appellant failed to discharge its onus of producing the commission agent and proving its services rendered and the statement made by Sri Praveen Kumar Agarwal has only strengthen the conclusion taken by the AO that the expenses under the guise of commissions were only paper entry. The transaction of the appellant is not in substances. The documentary evidences submitted by the appellant have no evidential value as they are neutral on facts. The claim of the appellant that cross examination has not provided, has no bearing because the evidences received from investigation wing has only been used as a circumstantial evidences. Once the appellant failed to produce the persons from whom the services were claimed to be taken, his address were not provided, no TDS was deducted, and the persons were not found at the given address clearly goes to so that it was merely a paper transaction only for which M/s Suryamukhi Projects (P) Ltd has been used in order to reduce the tax ability. Therefore, the action taken by the AO is hereby upheld and the ground of appeal is **dismissed**."*

3. We have heard the Revenue represented by learned senior departmental representative. Case file perused. It is sufficiently indicated from the CIT(A)'s detailed discussion hereinabove that the assessee has failed to prove the genuineness

of the impugned commission payment as per the voluminous evidence indicating the same to be bogus. There is no material in the case file rebutting the same. We accordingly affirm the lower authorities action disallowing the assessee's impugned commission payment. The instant former substantive grievance is declined.

4. Same reasoning to follow *qua* the assessee's latter grievance seeking to delete disallowance / addition of ₹67,204/- on account of various expenditure items. Since the assessee has failed to prove the same to have been rendered wholly and exclusively for the purpose of his business.

5. This assessee's appeal is dismissed.

Order pronounced in open court on 17/01/2020

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member

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

*Dkp-Sr.PS

दिनांक:- 17/01/2020 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-Rajesh Jajodia, 135A, C.R. Avenue, 3rd Floor, R.No. 22, Kolkat-007
2. प्रत्यर्थी/Respondent-ACIT(IT), Circle-45, 3Govt. Place, Kolkata-001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
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 ।