

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6970/Mum/2018
(Assessment Year: 2008-09)**

ACIT-17(1) Room No.117 Aaykar Bhawan M.K.Road Mumbai-400 020	Vs	Agromach Spares Corporation 194-D, Gaiwadi Compound Girgaum Road Girgaum Mumbai-400 004
		PAN/GIR No.AAAFA0607K
(Appellant)	..	Respondent)

Revenue by	Shri Michael Jerald, DR
Assessee by	Shri Vijay Mehta, AR
Date of Hearing	10/02/2020
Date of Pronouncement	04/03/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the revenue is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-28, Mumbai, dated 21/09/2018 and it pertains to Assessment Year 2008-09.

2. The revenue has raised the following grounds of appeal:

1 'On the facts and circumstances of the case and in law, whether the Learned. C I.T.(A) was correct in admitting the additional evidences before him during The appellate proceedings, which was not submitted before the AO during the assessment proceedings, without calling for remand report by violating provisions of Rule 46A of The Income tax Rules 1962.'

3. The brief facts of the case are that the assessee is engaged in the business of dealing in Spare Parts of heavy earth moving equipments and diesel engines etc, filed its return of income for AY

2008-09 on 29/09/2008, declaring total income at Rs. 4,13,96,922/-. The assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 09/12/2010, determining the total income at Rs. 4,13,96,922/-. The case has been subsequently, reopened u/s 147 of the I.T.Act, 1961, for the reasons recorded, as per which income chargeable to tax had been escaped assessment on account of non disclosure of commission income of Rs. 2,61,53,040/-. Accordingly, notice u/s 148, dated 31/03/2015 was issued and served on the assessee. The case has been selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that the assessee has failed to declare commission income of Rs. 2,61,53,040/-, even though, it has claimed TDS deducted on said commission and therefore, after considering relevant submission of the assessee completed assessment u/s 143(3) r.w.s 147 of the I.T.Act, 1961 by making additions of Rs. 2,61,53,040/- to total income declared for the year.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee submitted that the Ld. AO was erred in not appreciating the method of accounting followed by the assessee for accounting commission received from two parties, even though, it has filed necessary details, including summary of purchases, where the commission has been credited to purchases account and net purchase has been taken into account in the profit and loss account. The Ld.CIT(A) after considering relevant submission of the assessee and also taken note of various evidences filed during appellate proceedings, came to the conclusion that the Ld. AO has failed to appreciate the method of accounting followed by the assessee for

accounting commission received from certain parties, even though necessary evidences has been placed before him, vide written submissions, dated 14/07/2015. The Ld.CIT(A), further observed that although, the assessee has followed a peculiar method and reduced commission received from the total purchases, but when facts and evidences clearly shows that commission has been considered in books of accounts, the Ld. AO ought to have not made any additions towards commission income. Therefore, he opined that there is a merit in the contentions of the assessee and accordingly, deleted additions made towards commission income of Rs. 2,61,53,040/-. Aggrieved by the Ld.CIT(A) order, the revenue is in appeal before us.

5. The Ld. DR submitted that the Ld.CIT(A) has erred in admitting the additional evidences without calling for a remand report by violating provisions of Rule 46A of the I.T.Rules, 1962, while deleting the additions made by the Ld. AO towards commission income of Rs. 2,61,53,040/-.

6. The Ld. AR for the assessee, on the other hand strongly supporting order of the Ld.CIT(A) submitted that the assessee has not filed any additional evidences before the Ld.CIT(A) and whatever, evidences considered during appellate proceedings are already furnished before the Ld. AO during the original assessment proceedings, as well as during reassessment proceedings. Therefore, there is no merit in grounds raised by the Revenue challenging the findings of the Ld.CIT(A). The Ld. AR, further submitted that be that as it may, but fact remains that there is no escapement of income, in respect of commission received, because

the assessee has accounted commission income in books of accounts and reduced said commission income from purchase account, because it has been received from two major parties from whom purchase have been made.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. Having considered arguments of counsels for the assessee, as well as the revenue, we find no merit in grounds taken by the Revenue challenging violation of Rule 46A of I.T.Rules, 1962, because the assessee, neither furnished additional evidences before the Ld.CIT(A), nor the Ld.CIT(A) has considered any additional evidences, while adjudicating the issue before him. We further noted that the facts with regard to commission income received from two parties and accounting of such commission income in the books of accounts by reducing the same from purchases has been informed to the Ld. AO during the original assessment proceedings, vide letter dated 04/06/2013. Further, during the reassessment proceedings, the assessee has filed necessary details, vide written submissions dated 14/07/2015 and filed summary of purchases, where the commission income has been credited to purchases account. Therefore, we are of the considered view that there is no merit in grounds taken by the revenue challenging violation of Rule 46A of I.T.Rules, 1962. Be that as it may, but fact remains that the commission income received from two parties has been very much accounted in books of accounts, which is evident from the fact that the assessee has credited agency commission into purchase account and net purchase amount has been taken into profit and loss account. The Ld.CIT(A) after considering relevant details has

rightly deleted additions made by the Ld. AO towards commission income of Rs. 2,61,53,040/-. Therefore, we are of the considered view that there is no error in the findings recorded by the Ld.CIT(A), while deleting additions made towards commission income and hence, we are inclined to uphold the findings of the Ld.CIT(A) and dismissed appeal filed by the revenue.

8. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 04 /03/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 04/03/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai