

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.1668/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Savitri Baslingappa Sanikop,
91, Neelam Jayprakash Housing Society,
Jaysingpur, Tal.-Shirol, Dist.-Kolhapur

PAN : ALZPS7366M

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Ichalkaranji

.....प्रत्यर्थी / Respondent

Assessee by : N O N E

Revenue by : Shri Vishal A. Makawane

सुनवाई की तारीख / Date of Hearing : 22-09-2020

घोषणा की तारीख / Date of Pronouncement : 28-09-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 24-04-2017 passed by the Commissioner of Income Tax (Appeals)-2, Kolhapur [‘CIT(A)'] for assessment year 2010-11.

2. We find no representation on behalf of the assessee nor any application filed seeking adjournment. Thus, the assessee called absent

and set ex-parte. Therefore we proceed to dispose of the case by hearing the ld. DR and perusing the material available on record.

3. The assessee raised two grounds amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in confirming the addition to an extent of Rs.7,71,115/- in the facts and circumstances of the case.

4. The facts relating to the issue on hand are that the assessee is an individual filed return of income declaring a total income of Rs.1,77,79,030/-. Under scrutiny 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 and produced required details as sought by the AO. The AO found that the assessee debited sales commission of Rs.23,88,515/- towards 7 parties. To verify the genuineness of sales commission, the AO asked the assessee to furnish the details of such persons, amount of commission paid. The assessee has given names of agent and amount of sales commission paid. To verify the same the AO issued notice u/s. 133(6) along with summons u/s 131 of the Act. According to AO some parties filed information and did not appear before the AO in the assessment proceedings on given date. The AO proceeded to add entire amount in the total income of assessee for want of evidence vide order dated 24-12-2012 u/s. 143(3) of the Act. The CIT(A) restricted the addition to an extent of Rs.7,71,115/-. Aggrieved by the order of CIT(A), the assessee is before us.

5. Heard the ld. DR, Shri Vishal A. Makawane and perused the material available on record. The contention of ld. DR is that no confirmations of

few parties are filed before the AO nor the assessee produced all the parties in the assessment proceedings. There was no evidence before the AO to show the genuineness of payment of commission paid to the said 5 parties. The CIT(A) examined the record of assessment proceedings and found the confirmations to an extent of Rs.6,17,400/- and deleted the same. With regard to Parul R. Desai and Sonal Dinkar no evidence whatsoever substantiating the payment of commission were filed before the AO nor before the CIT(A) and even before this Tribunal. He submits that the CIT(A) rightly confirmed the additions made by the AO against the Parul R. Desai and Sonal Dinkar and prayed to uphold the same.

6. We note that in the assessment proceedings party by name Parul R. Desai submitted ledger account and the AO examined the same. We note that she is assessed to tax and marketing agent for the product of assessee. She stated there was fixed commission rate and it varies from 5 to 25%. We find that the assessee stated that she raised bills to an extent of Rs.1,64,300/- towards M/s. R.B. Enterprises on the sale of product of Imco Alloys Pvt. Ltd. The said statement is reflected in the assessment order at page No. 7. We note that the Parul R. Desai has given every details before the AO and the AO examined the same, in our opinion the addition to an extent of Rs.7,71,115/- against Parul R. Desai is substantiated and therefore the addition of Rs.7,71,115/- is deleted.

7. With regard to Sonal Dinkar Khape we note that the said person did not appear before the AO nor filed any confirmation and details about commission received by him from the assessee. The assessee has also not filed confirmation from the party nor any details regarding the nature of work and commission paid. We note that there was no response to notices

u/s. 133(6) and summons u/s. 131 of the Act by the Sonal Dinkar Khape. The CIT(A) examined the assessment record and found no details filed in respect of Sonal Dinkar Khape before AO nor in the First Appellate proceedings. We find there was no evidence before this Tribunal substantiating the payment of commission paid to Sonal Dinkar Khape to an extent of Rs.10,00,000/-. In the absence of any documentary evidence substantiating the commission paid and the addition made in respect of Sonal Dinkar Khape is confirmed and the order of CIT(A) is justified. Thus, the grounds raised by the assessee are partly allowed.

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

Order pronounced in the open court on 28th September, 2020.

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

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

पुणे / Pune; दिनांक / Dated : 28th September, 2020.

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Kolhapur
4. The Pr. CIT-2, Kolhapur
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