

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

(Through Video Conferencing)

**Before Shri S.S. GODARA, Judicial Member
AND
Shri L.P. SAHU, Accountant Member**

ITA No. 2274/Hyd/2018		
Assessment Year: 2015-16		
Dy.CIT, Circle 3(1) Hyderabad	Vs.	M/s Rolex Meters Private Limited Hyderabad [PAN: AACCR8147E]
(Appellant)		(Respondent)
Revenue by:		Sri Sibendu Moharana, DR
Assessee by:		Sri K.C. Devdas, Adv.
Date of hearing:		02/02/2021
Date of pronouncement:		18/03/2021

ORDER

PER S.S. GODARA, JM

This Revenue's appeal is directed against the Commissioner of Income Tax (Appeals)-3 ['CIT(A)' for short], Hyderabad's order dated 28.09.2018 in case no. 0102/2017018 for A.Y. 2015-16 involving in proceedings u/s 143(3) of the Income Tax Act, 1961 ['the Act' for short].

Heard Shri S.Moharana, Ld.CIT-DR representing Revenue and Shri KC Devdas, learned AR appearing at assessee's behest. Case file perused.

2. The Revenue has raised the following substantive grounds in the instant appeal.

2. Whether in the facts and circumstances of the case, the Ld CIT(A) is correct in allowing the appeal of assessee by completely ignoring the fact that a Government authority viz. the Chief Engineer, Maharashtra State Electricity Distribution Company has clearly spelled out the process of e-tender, design, specification of a public utility product and confirmed that no third party was involved in any of the services as mentioned in the relied upon agreement?

3. Whether in the facts and circumstances of the case, the Ld CIT(A) is correct in allowing the appeal of assessee by ignoring the fact that the parties namely M/s. Ghankun Steels Private Limited, Raipur and M/s. Nutan Ispat and Power Private Limited, Raipur were not involved in the liasoning work/ tender management / payments as confirmed by the Chief Engineer, Maharashtra State Electricity Distribution Company?

4. Whether in the facts and circumstances of the case, the Ld CIT(A) is correct in allowing the appeal by deleting the addition made of Rs.16,78,07,963/- being commission paid to the services rendered by the agents for the business of assessee solely depending on cheque payments, TDS, 26AS and an agreement with said agents by completely ignoring the fact that what was being questioned during assessment proceedings was the actual nature of services rendered, if any, by the said agents for the expenses to fall under the head commission?

3. It transpires during the course of hearing that the Revenue's instant appeal itself is not maintainable in view of the clinching fact that the Assessing officer himself had filed remand report

dated 19.09.2018 before the CIT(A) regarding commission payment(s) of Rs. 16.78 crores as follows:-

Office of the
Dy. Commissioner of Income-tax,
Circle - 3(1), Hyderabad.

F.No. Cir-3(1)/Remand Reports/2018-19

Dt : 19-09-2018.

To:
The Commissioner of Income-tax (Appeals) - 3,
Hyderabad.

(Through Proper Channel)

Sub:- Remand report - In the case of M/s Rolex Meters Pvt. Ltd., Hyderabad - AY 2015-16 - Submission of - Reg.
Ref:- Letter of CIT(A)-3, Hyd in F.No. Remand Rep/CIT(A)-3/ 2018-19 dated 30-07-2018.

Kind attention is Invited to the above cited subject and reference.

In this connection, it is submitted that vide letter under reference, this office was asked to submit a factual report. After examining the additional evidences submitted by the assessee, the report called for is submitted as under:

During the course of assessment proceedings, the AO made an addition of Rs. 16,78,07,963/- being commission payments to two agents namely M/s Ghankun Steel Pvt. Ltd. and M/s Nutan Ispat and Power Pvt. Ltd. treating the same as payments not for the actual services rendered but to reduce tax incidence.

During the appeal proceedings, the assessee contended that these payments were actually made to the agents for the services rendered by them and after deduction of TDS. For this the assessee submitted affidavit and other documents an additional evidence basing on which a remand report was called for.

During the Course of remand proceedings, Summons u/s 131 were issued to both the two contractors. In response, Sri Bimal Kishore Khetan, MD of M/s Ghankun Steels Pvt. Ltd. appeared on 11-09-2018. A sworn statement was recorded from him Wherein, he clearly stated that his company has entered into agreement with the assessee company for providing services in facilitating supply of digital meters and timely follow up of payments. He further stated that these monies were received by his company and was duly offered to tax in its return.

Against the summons issued to M/s Nutan Ispat & Power Pvt. Ltd., the Director of the Company, Sri Pradeep Kumar Agarwal, while taking excuse from personal appearance due to ill health, submitted that his company has entered into agreement with the assessee company for providing services in facilitating supply. of digital meters and timely follow-up of payments. He further stated that these monies were received by his company and was duly recorded in its books of account and was offered for taxation.

The claims made by these two agent companies were verified. It is seen that these amounts paid by M/s Rolex Meters Pvt. Ltd. were duly reflecting in the Form No. 26AS of these two agent companies and were included in their respective returns. Further, the agreements entered into by M/s Rolex Meters Pvt. Ltd. with these two agent companies clearly mentions about what all are the services to be rendered by them and for what consideration.

Further, the assessee company vide letter dated 07-09-2018 submitted as under:

" ... With their assistance we were able to secure contract of approx. Rs. 138.09 Crores during AY 2015-16 from Maharashtra State Electricity Distribution Company Limited (MSEDCL), a Government of Maharashtra undertaking " Also, the company has given details of some of the services rendered by these two agent companies as per the agreement and stated as under:

" ... the agreement entered into by our company with these two agent companies clearly mentions about the payment to be made for the entire project in toto but not for each and every specific aspect... "

The above submissions of the assessee and two agent companies are available on record.

Submitted along with Misc. Records in 2 Vols. for kind consideration.

*Yours faithfully,
Sd/-
(B. RAVINDER)
Dy. Commissioner of Income-Tax
Circle-3(1), Hyderabad.*

Encl: MRs in 2 vols. For AY 2015-16.

3.1. Learned CIT DR vehemently contended during the course of hearing that the CIT(A)'s order has erred in law and on facts in granting relief to the assessee despite the fact that the Maharashtra State Electricity distribution company had deposited

in department's favour that there was no involvement of any commission component in the entire bidding process. We find no merit in Revenue's foregoing argument. It has already come on record that the Assessing Officer has himself verified the impugned commission activity/payment in the remand report. Case law (2020) 426 ITR 119 (Kar) PCIT vs. DM DM Purnesh; and Smt. B. Jayalakshmi vs. ACIT (2018) 96 taxman.com 318 (Mad) holds that the Revenue cannot be held to be an aggrieved party once the Assessing Officer himself finds assessee's explanation to be genuine. We thus hold in view of Assessing Officer's remand report that the Revenue's instant appeal deserves to be declined even on the ground of maintainability itself. Ordered accordingly.

This Revenue's appeal is dismissed in above terms.

Order pronounced in the Open Court on 18th March, 2021.

Sd/-

Sd/-

(L.P. SAHU) ACCOUNTANT MEMBER	(S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 18th March, 2021.

***Gmv**

Copy to:

- 1 Dy.CIT, Circle 3(1), Hyderabad, Telangana.
- 2 Rolex Meters Private Limited, Plot no. 20 & 21, 1st floor, Prashanti Nagar, Kukatpally Industrial Estate, Hyderabad 500 072
- 3 ACIT, Range 3, Hyderabad
- 4 CIT (A)-3 Hyderabad
- 5 Pr. CIT-3 , Hyderabad
- 6 The DR, ITAT Hyderabad
- 7 Guard File