

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 528/HYD/2018

Assessment Year: 2013-14

Chak Rader Farm Equipments Private Limited, HYDERABAD [PAN: AABCC5121G]	Vs	Dy.Commissioner of Income Tax, Circle-1(2), HYDERABAD
(Appellant)		(Respondent)

For Assessee : Shri S.Rama Rao, AR
For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 26-04-2021
Date of Pronouncement : 11-06-2021

ORDER

PER S.S.GODARA, J.M. :

This assessee's appeal for AY.2013-14 arises from the CIT(A)-1, Hyderabad's order dated 15-12-2017 passed in appeal No.0041 / CIT(A)-1,Hyd / 2016-17 / 2017-18, in proceedings u/s.143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance challenging correctness of both the lower authorities' action disallowing alleged commission payment of Rs.1,01,15,715/- to its director Mrs.P.Vani @6% of the material sold in domestic

market, we find that the instant issue is no more *res integra* as this tribunal's co-ordinate bench's order in assessee's case itself ITA No.1192/Hyd/2016, dt.25-01-2018 (AY.2012-13) has accepted the very nature of claim as under:

"13. As regards grounds No. 3 and 4 against the disallowance of commission paid to Smt. P. Vani to the extent of Rs.1,15,00,000/- is concerned, the Ld. Counsel for the assessee has reiterated the submissions made before the authorities below and submitted that Smt. P. Vani is the proprietress of M/s Chowdhary Enterprises and is a well known figure in the poultry equipment business. He has filed the turnover of M/s Chowdhary Enterprises for the A.Ys 2003-04 to 2011-12 to demonstrate that the Smt. P. Vani is doing good business and she is deriving huge profits from such business. He justified the payment of commission because of the huge turnover generated by the assessee from sales made through her. He submitted that she has become the director of the company only in 2006, and the Board Resolution supports payment of commission to her @ 6% of sales through her. He has also referred to the Board resolution placed at page No. 23 of the paper book. He submitted that there has been no disallowance of the commission paid to her in the earlier or subsequent assessment years and therefore the disallowance during the relevant assessment year is not justified. He also filed the copy of the return of income of Smt. P. Vani for the A.Y 2013-14 to demonstrate that she has reflected the commission income in her return of income. Therefore, according to her there is no diversion of income or escapement of tax on the income.

14. The Ld. DR, however, supported the orders of the authorities below and submitted that Smt P. Vani is wife of the managing director of the assessee company and that she is only an SSLC passed and therefore she is not well educated to be doing the business of the assessee company and to earn such huge margins as commission.

15. Having regard to the rival contentions and the material on record, we find that the income of M/s Chowdhary Enterprises, of which Smt. P. Vani is the proprietor is accepted by the department and Smt. P. Vani has also offered the commission income in her return of income for the A.Y 2012-13. It is also not in dispute that she is being paid commission from the A.Y 2003-04 onwards and no disallowance has been made either in the earlier or subsequent years. The A.O is only restricting the commission paid to 2.3% as against 6% paid by the assessee company. We find that Smt P. Vani is doing good business and the products manufactured by the assessee company are being traded through her and she being the person through whom

the assessee is selling most of its goods, is entitled to the commission at a higher rate. In view of the same, we do not see any reason to restrict the commission paid to her, than what is received by her. In view of the same, grounds No 3 and 4 are allowed”.

3. The Revenue is fair enough in not being able to pin point any distinction of facts *qua* the assessee’s instant commission payment made to Smt.Vani in these twin assessment years.

4. We thus accept the assessee’s instant sole grievance in principle and direct the Assessing Officer to delete the impugned commission payment disallowance of Rs.1,01,15,715/- in light of the tribunal’s directions in AY.2012-13 *qua* the very issue.

5. This assessee’s appeal is treated as allowed in above terms.

Order pronounced in the open court on 11th June, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Hyderabad,
Dated: 11-06-2021

Copy to :

*1.Chak Rader Farm Equipments Private Limited, 11-7-265,
Potluri House, HUDA Complex, Saroor Nagar, Hyderabad.*

*2.The Dy.Commissioner of Income Tax, Circle-1(2),
Hyderabad.*

3.CIT(Appeals)-1, Hyderabad.

4.Pr.CIT-1, Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.