



IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA no.355/Nag./2014
(Assessment Year : 2005-06)

ITA no.356/Nag./2014
(Assessment Year : 2006-07)

ITA no.357/Nag./2014
(Assessment Year : 2007-08)

Shilpa Re-Rollers Pvt. Ltd.
(Now known as Shilpa Steel & Power
Ltd.), 1, 2, 3 & 4, Wanjara Layout
Kamptee Road, Nagpur 440 001
PAN - AABCS8627D

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-2, Nagpur.

..... Respondent

Assessee by : Shri R.V. Loya
Revenue by : Shri A.R. Ninawe



Date of Hearing - 29.03.2017

Date of Order - 31.03.2017

ORDER

PER RAM LAL NEGI, J.M.

These appeals have been preferred by the assessee against the three orders dated 13.6.2014, passed by the learned Commissioner (Appeals)-I, Nagpur, hereinafter to be referred as 'CIT(A)', whereby the learned CIT(A) dismissed the appeals filed by the assessee against assessment orders passed under section 143 read with section 147 of the Income Tax Act, 1961 (for short "the Act") by the Assessing Officer.

2. Since, all the three appeal pertain to the same assessee for the different assessment years and the issues involved in all the appeals are identical, all the appeals were clubbed, heard together and are being disposed of by this common order for the sake of convenience.

ITA NO 355/NAG/2014, A.Y. 2005-06

3. Since, the facts of all the three cases are identical except the amount involved, we take the brief facts of the case pertaining to the assessment year 2005-06. The assessee engaged in the business of hot steel re-roller manufacturing, angles, channels etc. filed its return for the assessment year under consideration on 31.10.2005 declaring total income of Rs.6,64,56,100/-. The return was processed and assessment order was passed under section 143(1) of the Act accepting the returned income. Thereafter, the assessment was reopened and assessment was completed under section 143(3) read with section 147 of the Act determining the total income of Rs.7,14,10,480/- as against the returned income of Rs.6,64,56,100/-. The AO made addition of Rs. 49,54,383/- on the ground that the assessee has failed to prove involvement of M/s. Nilesch Steel & Alloys Pvt. Ltd., Jaina, to whom commission was paid.

4. The assessment order passed under section 143 (3) read with section 147 of the Act was challenged before the learned CIT(A) who after hearing the assessee confirmed the addition and dismissed the appeal of the assessee. The assessee is in appeal before the tribunal against the order passed by the learned CIT(A) on the following effective grounds of appeal:-

"(1) That the notice u/s 148 and the reassessment proceedings thereafter are bad in law and wrong on facts and the learned CIT(A) erred in not setting aside the same. On the facts of the case the proceedings are illegal.



(2) That the orderu/s 147 r.w.s. 143(3) passed by the Asstt. Commissioner of Income Tax, Circle 2, Nagpur is bad in law and on facts the learned CIT(A) erred in confirming the action of the AO. On the facts of the case the action of the authorities is highly unjustified.

(3) (a) That the Assessing officer erred in law and on facts in disallowing expenditure on Commissioner of Rs.49,54,383/-holding that the commission payment is not genuine and merely an accommodation entries and the learned CIT(A) erred in confirming the action of the AO.

(b) The Assessing Officer erred in disregarding the explanation furnished and evidence placed before him the reassessment proceedings and further erred in holding that the assessee has failed to prove the involvement of M/s. Nilesh Steele and Alloys Pvt.Ltd. in the transactions of the assessee with Reliance Industries Ltd. and Reliance Infocomm Ltd. And the learned CIT(A) erred in confirming the same. On the facts and circumstances of the case the action of the authorities is arbitrary and on the basis of condensers and surmises.

(c) The learned CIT(A) erred in holding that the assessee has failed to provide satisfactory explanation and sufficient evidence in support of the expense on account of commission. On facts of the case the action of the learned authorities is arbitrary and unjustified.

(4) That the learned Assessing Officer according law and on facts in charging interest under section 234B and 234C. On the facts and circumstances of the case and in law the action is improper."

5. Before us the learned counsel for the assessee submitted that the reopening of the case is bad in law as reopening proceedings cannot be initiated on the basis of vague or general information received from third



party. Relying on the various decisions of the Income Tax Tribunals and judicial pronouncements the learned counsel submitted that the AO has initiated reassessment proceedings mechanically on the basis of information received from the investigation wing and without application of mind.

6. On merits the learned counsel for the assessee submitted that brokerage and commission was paid to M/s. Nilesh Steel and alloys private Ltd against procurement of order through them for supply of material to various parties. The transaction is supported by cogent evidence and has been confirmed by the party. The finding of AO is not based on any cogent reason in spite of that the Ld CIT(A) confirmed the order passed by the AO. AO has held that the transaction is not genuine as there is no written agreement between the assessee and M/s. Nilesh Steel and alloys private Ltd. whereas, similar nature of payments of commission to various parties were allowed. The learned CIT(A) has passed the impugned order without considering the said fact. Similarly, the AO has held that the transaction is not genuine because in the sale bills, delivery challans, transportation receipt etc. the name of commission agents is not mentioned, where as in case in similar situations the payments were allowed as genuine. The learned counsel further contended that the expenditure on commission is justified in view of the substantial increase in turnover and profitability.

7. On the other hand the learned departmental representative relying on the concurrent findings of the authorities below submitted that since the assessee has failed to prove the genuineness of the transaction the learned CIT (A) has rightly confirmed the addition made by the AO during the assessment.

8. We have heard the rival submissions and also perused the material placed before us including the decisions/judgments relied upon by the assessee. We notice that reassessment proceedings were initiated in this case on the basis of information received from the DIT(inv.) Nagpur that the commission paid by the assessee to M/s Nilesh Steel & Alloys is not genuine



and is merely an accommodation entry. Accordingly, notice under section 142(1) was issued and in response thereof the assessee submitted that the commission was paid on per ton basis on the quantity of material sold to Reliance Industries Ltd. And Reliance Infocomm Ltd. and in such business transactions no written agreements are executed for payment of commission/brokerage. Regarding genuineness of transaction for the assessment year 2005-06 the assessee submitted that there was capacity expansion in Butibori Unit and to get assured sale for products the assessee entered into an arrangement with M/s. Nilesh Steele & Alloys private Ltd. to identify customers for its products and sell the same. The assessee agreed to pay commission on such sale/transaction and keeping in view the benefit obtained in the year 2005- 06 the assessee continued its arrangement with M/s. Nilesh Steel & alloys private Ltd.



9. We notice that the assessee has submitted the audited balance sheet and profit and loss account, with Nilesh Steele and alloys private Ltd, copy of brokerage bill received from Nilesh Steel and alloys Ltd, copy of TDS issued by the assessee and copy of confirmation of account from M/s Nilesh Steele and alloys private Ltd in order to establish the transaction of payment of commission claimed as business expenditure by the assessee. We also notice that the net profit of the assessee company was 2.41 Cr. in 2004-05 and it increased to 16.23 Cr. in 2007-08. Hence, it cannot be said that the assessee has made the accommodation entry to reduce the net profit of the company. As pointed out by the learned counsel since similar nature of payments of commission to various other parties were found genuine in spite of the fact that no written agreements were entered into, there is no reason to hold the similar transaction with M/s. Nilesh Steel and alloys private Ltd. as not genuine. The AO has not pointed out any cogent and convincing evidence to rebut the documentary and circumstantial evidence on record which prima facie establishes that commission was paid by the assessee to the said party.

10. In view of the above discussion, we are of the considered opinion that there is no reason to disallow the expenditure incurred on payment of commission to M/s. Nilessh Steel and Alloys Pvt. Ltd. We, therefore, decide this issue in favour of the assessee. Since we have decided the issue regarding payment of commission on merits, we do not consider it necessary to adjudicate the issue relating to the jurisdiction raised by the assessee vide ground No 1 and 2 of the appeal. Ground No 4 is consequential hence no adjudication required.

**ITA no.356/NAG/2014, for A.Y. 2006-07 &
ITA no. 357/NAG/2014 for A.Y. 2007-08**

11. The facts and the issues involved in ITA No 356/Nag/2014 & ITA No 357/Nag/2014 are identical to the facts and issues involved in appeal no. 355/Nag/2014, pertaining to the assessment year 2005-06 as aforesaid (except the amount of commission involved). Since, we have decided the identical issue in favour of the assessee and allowed the appeal of the assessee, we also allow the appeals of the assessee for the assessment year 2006-07 and 2007-08 for the same reasons.

12. In the result, appeal filed by the assessee for the assessment years 2005-6, 2006-07 and 2007-08 are allowed.

Order pronounced in the open Court on 31.03.2017



**Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER**

**Sd/-
RAM LAL NEGI
JUDICIAL MEMBER**

NAGPUR, DATED: 31.03.2017