

आयकर अपीलीय अधिकरण , ' बी ' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI**

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामन, लेखा सदस्य समक्

**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos.: 2527 & 1222/Chny/2018

निर्धारण वर्ष/Assessment Years : 2013-14 & 2014-15

A.V. Thomas Leather & Allied Products
Private Limited,
22, Marshalls Road,
Egmore, Chennai – 600 008.

Deputy Commissioner of Income Tax,
Vs. Corporate circle 1(1),
Chennai – 600 034.

[PAN: AAACA 6246K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. M. Sanjeev Aditya, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. A. Sundararajan, Addl. CIT

सुनवाईकीतारीख/Date of Hearing

: 10.03.2020

घोषणाकीतारीख/Date of Pronouncement

: 17.03.2020

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed these appeals against the orders of the Commissioner of Income Tax (Appeals)-1, Chennai, in ITA Nos. 26/CIT(A)-1/2016-17 dated 29.06.2018 and ITA No. 343/CIT(A)-1/2016-17 dated 26.02.2018 for assessment years 2013-14 & 2014-15, respectively.

2. M/s. A.V. Thomas Leather and Allied Products Pvt. Ltd., the assessee, is engaged in the business of export of leather goods. While making the assessment for assessment year 2013-14, the Assessing Officer, inter alia, disallowed sales commission paid to AVT Leather UK Ltd, and to M/s. Sukilangton holding that these expenses have not been incurred wholly and exclusively for the purpose of business. While making the assessment for assessment year 2014-15, the Assessing Officer, inter alia, disallowed sales commission paid to Marathon Global, Shoetek Services Ltd and Sukilangton holding that these expenses have not been incurred wholly and exclusively for the purpose of business. Aggrieved, the assessee filed an appeal before the CIT(A). The Ld. CIT(A) dismissed the appeal, Aggrieved against those orders, the assessee filed above appeals.

3. The Ld. AR submitted that the Ld. CIT(A) erred in stating that AVT Leather, UK has only one employee, and that too, a common director which is factually incorrect as the company also had another director Mr. Solanki, who carried on the operations of the company, and erred in stating that both the commission agents operate in the same territory which is factually incorrect as M/s. Suki Langton operated in United Kingdom alone whereas AVT Leather, UK operated in other parts of Europe. The Ld. CIT(A) also failed to note that in all earlier years, the Assessing Officer as well as the Income Tax Appellate Tribunal in earlier assessment years have examined the genuineness of the transactions and have arrived at their conclusion that the expenditure is allowable and no tax need be

deducted. The Ld. CIT(A) failed to note that the commissions paid are towards sales that have been canvassed by the agent and the agreements, invoices and other supporting material provided are sufficient evidences to establish that the transactions have been genuine and the commission payments have been made wholly and exclusively for the purpose of the business canvassed by the agent, and also ought to have noted that there is substantial business from Walmart from whom orders are canvassed by the agent. Further, the Ld. AR submitted that since, the lower authorities did not directly seek the required material to satisfy themselves, the assessee did not furnish the copies of E-mail between the assessee and the agents. Inviting our attention to the paper books filed, wherein mail communications were placed, the Ld. AR submitted that if effective opportunity is given to the assessee to satisfy the authorities concerned that the sales commission paid are towards sales that have been canvassed by the agents, the assessee would do so and hence, pleaded that this tribunal may decide the issue in assessee's favour. Per contra, the Ld. DR supported the orders of the lower authorities.

4. We heard the rival submissions and gone through the relevant material. The main issue is whether the sales commission paid to foreign agents are towards the services rendered by them or not. In this regard, the assessee shall have to place relevant material before the authorities concerned and render necessary explanation so that the authorities concerned draw appropriate conclusion as to whether the claim made by the assessee is eligible for the deduction as claimed or not. In this case, the assessee is pleading that the lower authorities have not

disclosed the nature of the required material for arriving the due conclusion and therefore, another opportunity may be given so that the issues are decided on merits. Therefore, we deem it fit to remit the issues under consideration to the AO for a fresh examination. The assessee shall place relevant material by which it relied in support of its contention before the AO and comply with the requirements of the AO in accordance with Law. The AO is also directed to require the assessee to furnish specifically the material/evidence required by him for the purpose of deciding the issues and after affording effective opportunity to the assessee shall decide the matter in accordance with law. The AO is also free to conduct appropriate enquiry as deemed fit. However, he shall furnish effective opportunity to the assessee on the materials which is/are likely to be used against assessee and then decide the matter.

5. In the result, the assessee's appeals are treated as partly allowed for statistical purposes.

Order pronounced on Tuesday, 17th March, 2020 at Chennai.

Sd/-
(धुव्वुरु आर. एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/Judicial Member

Sd/-
(एस जयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 17th March, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent
4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)
6. गार्डफाईल/GF