

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 799/मुं/2019 (नि.व 2013-14)  
ITA NO.799/MUM/2019(A.Y 2013-14)

Paresh Vinitlal Shah,  
1402, 14<sup>th</sup> Floor, Centre Point,  
90 Ft. Road, Mulund (E)  
Mumbai 400 081

PAN: AAEPS-6162-P

..... अपीलार्थी /Appellant

बनाम Vs.

The DCIT 29(2)

Mumbai

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms.Radha Halbe, Advocate

प्रतिवादी द्वारा/Respondent by : Shri Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 07/09/2021

घोषणा की तिथि/ Date of pronouncement : 03/12/2021

**आदेश/ ORDER**

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals)-40, Mumbai [ in short ' the CIT(A)'] dated 03/12/2018 for the Assessment Year 2013-14.

2. The assessee in appeal has assailed the findings of CIT(A) on two counts (i) confirming disallowance of Rs.4,37,370/- in respect of commission payment to two parties.; and (ii) disallowance of Rs.52,276/- in respect of expenses.

3. Ms. Radha Halbe, Advocate appearing on behalf of the assessee submitted that assessee is engaged in wholesale trading of ferrous and non-ferrous metals. During the period relevant to assessment year under appeal, the assessee had paid

commission and brokerage charges amounting to Rs.26,05,615/-. During the assessment proceedings the Assessing Officer sought details of the commission payments. Notices were issued u/s. 133(6) of the Income Tax Act, 1961 ( in short 'the Act') to the persons to whom the assessee had made commission and brokerage payments. All except two parties i.e. Mr. Jitendra N. Shah and Mr. Narendra G. Shah did not respond to the notice, as the notices sent to them were returned back unserved. During the course of assessment proceedings, the assessee furnished various documents viz. credit note issued by the assessee to Mr. Narendra G. Shah, Mr. Jitendra N. Shah, ledger of the aforesaid parties, bank statement indicating payments made to both parties through banking channel, etc. Subsequently, in Appellate proceedings the assessee had also furnished PAN details of both the parties. Despite furnishing all the relevant documents to prove genuineness of transactions the Assessing Officer disallowed commission payment to the aforesaid two parties and made addition of Rs.4,37,370/-.

Further, the assessee had claimed expenditure towards telephone expenses Rs.68,151/-, car expenses Rs.1,64,855/- and travelling expenses Rs.2,89,780/-. The Assessing Officer without examining expenditure details made adhoc disallowance of 10% of the aforesaid expenses and made addition of Rs.52,276/-. Aggrieved by the assessment order dated 24/02/2016, the assessee filed appeal before the CIT(A). The CIT(A) without appreciating documents on record sustained the additions made by Assessing Officer and dismissed the appeal of assessee. The Id. Authorized Representative for the assessee prayed for deleting the additions and allowing appeal of the assessee.

4. Per contra, Shri Sanjay J. Sethi representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that the assessee has not been able to substantiate with cogent documentary evidence payment of commission to two parties. The Assessing Officer has allowed payment of commission and brokerage charges, wherever the assessee was able to discharge

his onus in proving the genuineness of transactions. The Id. Departmental Representative prayed for upholding the impugned order.

5. Both sides heard, orders of authorities below and documents on record examined. The first issue in the present appeal is against disallowance of commission and brokerage expenses. The assessee has paid commission of Rs.26,05,615/- on sale of Rs.62,57,96, 785/-. The Assessing Officer accepted entire payment of commission and brokerage except commission /brokerage paid to :

Mr.Jintendra N. Shah - Rs. 2,19,255/-

Mr.Narendra G. Shah - Rs.2,18,115/-

The commission/brokerage paid to aforesaid parties was disallowed on the ground that notice issued u/s 133(6) of the Act could not be served and notices were received back from Postal Authorities with remarks " Not Known" . During assessment proceedings the assessee had furnished various document including bank statement indicating payment of commission, ledger accounts, credit notes, etc. The assessee has also furnished Form-16 of the aforesaid commission agents. A perusal of the documents on record indicate that assessee has paid commission to both the aforesaid parties. In any case, the Assessing Officer has not raised any doubt over the sales turnover declared by the assessee and the modus operandi of the assessee's business, wherein the assessee in the normal course of business paid commission and brokerage to the intermediaries on sales. In view of documentary evidences furnished by the assessee, I find no reason to reject assessee's claim of payment of commission/brokerage to Jitendra N. Shah and Narendra G. Shah. Consequently, ground No.2 raised in the appeal is allowed.

6. In ground No.3 of appeal, the assessee has assailed adhoc disallowance of expenditure viz. telephone expenses, car expenses and travelling expenses. The Assessing Officer has made adhoc disallowance of 10% of the said expenses on the ground that the expenses are supported by self made vouchers and possibility of

use of telephone, car for personal use cannot be ruled out. Taking into consideration entirety of facts I am of the considered view that disallowance of 10% is on higher side. Restricting disallowance to 5% would meet the ends of justice. I hold and direct accordingly. Consequently, ground No.3 of appeal is partly allowed.

7. The ground No. 1 and 4 of appeal are general in natures, hence, require no adjudication.

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

Order pronounced in the open Court on Friday the 03<sup>rd</sup> day of December, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 03/12/2021

Vm, Sr. PS (O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai