

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE
BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1612/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Racca Infoteck Pvt. Ltd.,
D Wing, Alco Market, Rajiv Nagar,
Nashik – 422009

PAN: AAHCR6518E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Asst. Commissioner of Income Tax,
Circle 2, Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Milind Joshi
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 12-07-2022
घोषणा की तारीख / Date of Pronouncement : 15-07-2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Ld. Commissioner of Income Tax (Appeals)-2, Nashik, dated 04.07.2018 for the assessment year 2014-15.

2. Briefly, the facts of the case are as under:

The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of sales and purchases of computers, computer peripherals, office automations works and AMC services. The return of income for the assessment year 2014-15 was filed

on 11.10.2014 declaring total income of Rs.56,03,430/-. Against the said return of income, assessment was completed by the Assessing Officer (AO) vide order dated 20.12.2016 passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') at total income of Rs.85,73,230/-. While doing so, the AO disallowed the commission paid of Rs.28,60,000/- to various persons for procuring the business for the appellant company. The AO was of the opinion that the commission payment was not a genuine expenditure as the commission payments were made to the persons who does not have the requisite expertise to render the services as liaisioning agents to procure the business. Being aggrieved by the above addition, an appeal was preferred before the CIT(A), who vide impugned order had discussed in threadbare the nature of expenditure and finally held that the disallowance of commission is restricted to 40% by holding that the commission payment is excessive. Being aggrieved, the appellant is in appeal before us in the present appeal.

3. The learned authorized representative submitted that the CIT(A) ought not to have sustained the adhoc disallowance without appreciating the fact that the commission expenditure was incurred by way of account payee cheques and TDS was deducted on such payments and the expenditure was incurred wholly and exclusively for the purpose of business. The AO has not brought any conclusive evidence to prove that no services were rendered by the persons to whom the commission payments were made. He also relied on the decision of Hon'ble High Court of Calcutta in the case of CIT vs. Alpha Hydrionics Pvt. Ltd., judgment dated 10.11.2014 in support of the proposition that no adhoc disallowance

can be made, inasmuch as, the expenditure is incurred during the normal course of business.

4. On the other hand, Sr.DR placing reliance on the order of AO submitted that the expenditure was not incurred for genuine purpose as the persons to whom the commission payments were made are not qualified to act as liaison agents for procurement of business.

5. We have heard the rival contentions and perused the material on record. During the previous year relevant to the year under consideration, the appellant claimed commission expenditure of Rs.28,60,000/-. The said claim for the allowance of commission expenditure was disallowed by the AO on the ground that the persons to whom the commission payments were made were not qualified to act as liaison agents for procuring the business of the appellant company. However, on an appeal before the CIT(A), the CIT(A) has restricted the disallowance to 40% of the expenditure. In this backdrop of facts, the issue that arises for consideration before us is whether the CIT(A) was justified in restricting the disallowance to 40% and in not allowing the commission expenditure in full. It is not the case of Revenue that the commission payments were made to related parties nor was the case of AO that the amount had come back to the appellant in cash from the payees. It is also an admitted fact that all the commission payments were made by the account payee cheque and the TDS on the said payment was made and the payees have filed the return of income showing this commission as income. The finding by the AO that the expenditure was not incurred for the genuine purpose was not borne out of material on record. It appears that the AO was driven by the fact that the payees of the commission are not qualified to act as liaisons

agents but had failed to appreciate that no qualifications are required to act as liaisons agents on behalf of any company for procurement of the business. Thus, the AO had not brought any conclusive evidence to conclude that the commission agents had not rendered any liaisons services. Equally, the CIT(A) cannot allow the expenditure in part in the absence of any material on record that the expenditure was not incurred wholly and exclusively for the purpose of business and therefore, the CIT(A) ought to have allowed the expenditure in full. In the circumstances, appeal filed by the assessee stands allowed.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 15th July, 2022.

Sd/-
S.S.VISWANETHRA RAVI
JUDICIAL MEMBER

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 15th July, 2022
GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Nashik;
4. The Pr.CIT-2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune