

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

SHRI M. BALAGANESH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1770/MUM/2021
(ASSESSMENT YEAR: 2013-14)

Deputy Commissioner of Income Tax,
Central Circle-8(1),
Room No. 656, 6th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai - 400020

..... Appellant

Vs

M/s Sopariwala Exports Pvt. Ltd.,
21st Floor, Nirmal, Nariman Point,
Mumbai - 400020
[PAN: AACCS1620D]

..... Respondent

Appearances

For the Appellant/Department : Shri B.K. Bagchi
For the Respondent/Assessee : Shri Siddharth Kothari

Date of conclusion of hearing : 13.06.2022
Date of pronouncement of order : 08.09.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the order, dated 06.07.2021, passed by the Learned Commissioner of Income Tax (Appeals)-50, Mumbai, [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2013-14, whereby the CIT(A) had partly allowed the appeal filed by the Assessee against the Assessment Order, dated 20.12.2019 passed under section 147 read with Section 143(3) of the Act (hereinafter referred to as 'the Act').

2. The Revenue has raised following grounds of appeal:

"1. Disallowance of commission paid to overseas agent M/s Khadlaj Perfumes LLC.

2. The appeal is filed though the tax effect is below the monitory limit for filing appeal before Hon'ble ITAT as prescribed by the CBDT's Circular NO. 17/2019 dated 08.08.2019 as the case is covered under the exception clause of Para 10 to the Board Circular No. 03/2018 dated 11.07.2018 which is subsequently classified by Board letter dated 20.08.2018 vide letter No. 279/misc./142/2007-ITJ(Pt)."

3. The relevant facts in brief are that the Assessee filed return of income for the Assessment Year 2013-14 on 30.11.2013 declaring total income of INR 43,12,21,230/-. Vide order, dated 26.02.2016, assessment under Section 143(3) of the Act was framed on the Assessee at income of INR 43,50,64,350/-. Thereafter, reassessment proceedings were initiated and order under Section 147 read with Section 143(3) of the Act was passed on 20.12.2019 making a disallowance of INR 23,50,154/- being service tax on commission paid to foreign agent claimed as deduction on payment basis.

4. Being aggrieved, the Assessee preferred appeal before the CIT(A). It was contended on behalf of the Assessee before CIT(A) that the Assessee had made payment of service tax of INR 23,50,154/- and had, therefore, claimed deduction for the same on payment basis. The service tax pertained to commission paid to foreign agents which was disallowed by the Assessing Officer as a non-genuine expense in assessment framed for the Assessment Year 2011-12. Since the commission expenses are held to be non-genuine in the assessment proceedings for the Assessment Year 2011-12, the

service tax paid on such commission was also held to be non-genuine by the Assessing Officer in the assessment proceedings for the Assessment Year 2013-14. Since the CIT(A) has deleted the aforesaid disallowance of commission paid to foreign agents during the Assessment Year 2011-12, the very basis of making disallowance of service tax during the Assessment Year 2013-14 does not survive. The aforesaid contentions of the Assessee found favour with the CIT(A), who granted relief to the Assessee holding as under:

“6.4.4 From the above, it is evident that the disallowances made of commission payments made to M/s Khadlaj Perfumes LLC in AY 2011-12 has been deleted by my Ld. Predecessor and in AY 2013-14, similar claim of payment of service in A.Y 2013-14 has been allowed by my Ld. Predecessor. Hence, respectfully following the above referred decisions of my Ld. Predecessor in appellant’s own case for AY 2011-12 and 2013-14, the Ld. AO is directed to verify the claim of the appellant that impugned payment of service tax of Rs. 23,50,154/- pertains to Commission paid to M/s Khadlaj Perfumes LLC in AY 2011-12 and which stands deleted by the Ld. CIT(A)-50, Mumbai and which is not yet reversed by the Hon’ble ITAT and if the same is found to be true, then the impugned disallowance of service tax at Rs. 23,50,154/- shall be deleted. The Ld. AO is directed accordingly, The Ground Nos. 1 to 5 raised in appeal is disposed off as per above directions.”

5. The Revenue is now in appeal before us against the order passed by CIT(A) deleting the addition of INR 23,50,154/-.
6. The Ld. Departmental Representative relied upon the assessment order passed by the Assessing Officer to support the grounds raised in the present appeal. Per contra, the Ld. Authorised Representative for the Assessee, supporting the order passed by CIT(A), submitted, that the order passed by CIT(A) deleting disallowance of commission paid to foreign agents during the Assessment Year

2011-12 stands confirmed by the common order, dated 21.09.2021, passed by the Tribunal in a batch of appeals including ITA No. 13/Mum/2018 for the Assessment Year 2012-13.

7. We have heard the rival submissions and perused the material on record. On perusal of computation of income for Assessment Year 2011-12 and 2013-14 it is clear that the Assessee had offered disallowance of INR 23,50,154/-, being service tax on foreign commission, in the computation of income for the Assessment Year 2011-12 and had, thereafter, claimed deduction for the same in the computation of income for the Assessment Year 2013-14 on making the payment. We note that the Tribunal has vide common order dated 21.09.2021 dismissed the appeal filed by the Revenue for the Assessment Year 2012-13 (ITA No. 13/Mum/2018) against the order of CIT(A) deleting the disallowance of commission paid to foreign agents. Therefore, the very basis on which the disallowance was made by the Assessing Officer does not survive. In view of the aforesaid, we do not find any infirmity in the order passed by the CIT(A). The appeal filed by the Revenue is, therefore, dismissed.

Order pronounced on 08.09.2022.

Sd/-

(M. Balaganesh)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 08.09.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai