

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**ITA Nos.1518 & 1519/M/2020  
Assessment Years: 2013-14 & 2014-15**

**ITA No.1520/M/2020  
Assessment Year: 2012-13**

DCIT, Cir.-9(1)(1), Room No.203, 2 <sup>nd</sup> Floor, Aayakar Bhavan, Churchgate, Mumbai - 400020	Vs.	M/s. Allied Offshore Services Pvt. Ltd., 212, New India Estate, 33, Mahal Industrial Area, Off. Mahakali Caves Road, Andheri (E), Mumbai - 400093 <b>PAN: AAACA8869J</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Dr. K. Shivaram, A.R.  
Revenue by : Shri Manoj Sinha, D.R.

Date of Hearing : 25 . 08 . 2022  
Date of Pronouncement : 13 . 09 . 2022

**ORDER**

**Per : Kuldip Singh, Judicial Member:**

For the sake of brevity aforesaid appeals bearing common question of law and facts are taken up to be disposed of by way of composite order.

2. The appellant, DCIT, Cir.-9(1)(1), Mumbai (hereinafter referred to as 'the Revenue') by filing the present appeals, sought to

set aside the impugned orders even dated 27.12.2019 passed by Commissioner of Income Tax (Appeals)-16, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment years 2012-13, 2013-14 & 2014-15 on the grounds inter alia that :-

**ITA Nos.1518 & 1519/M/2020 Assessment Years 2013-14 & 2014-15**

*“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.2,08,50,000/- & Rs.2,75,00,000/- for A.Y. 2013-14 & 2014-15 respectively on account of commission income, even though the assessee was unable to specifically state the method of reflecting part of the income to tax and the balance transferred to Balance Sheet under the garb of ‘commission received in advance’”*

**ITA No.1520/M/2020 Assessment Year 2012-13**

*“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.4,08,90,000/- on account of commission income without giving the AO an opportunity to examine the additional evidences?”*

*2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition, without examining the evidences of bifurcation of expenses incurred against the said advance commission received for the said project?”*

3. Briefly stated facts necessary for adjudication of the controversy at hand in all the aforesaid appeals are : the assessee is into the business of providing offshore services and the assessee being representative in India for various overseas manufacturers/dealers/suppliers who are in the oil and gas sector earns commission income in lieu of the services rendered. Assessee company filed return of income declaring total income at Rs.80,10,250/- after claiming deduction of Rs.2,62,500/- under section 80G of the Act. Assessee has declared book profit at

Rs.74,11,084/- under section 115JB of the Income Tax Act, 1961 (for short 'the Act'). During scrutiny proceedings Assessing Officer (AO) after declining the contentions raised by the assessee company treated the commission income amounting to Rs.4,80,90,000/-, Rs.2,08,50,000/- & Rs.2,75,00,000/- for A.Y 2012-13, 2013-14 & 2014-15 respectively proclaimed to be commission received in advance and reflected as part of current liability in the balance sheet as on 31.03.2012 and taxed the same, under the head "income from business/profession" by framing the assessment under section 143(3) of the Act.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the addition in all the three years by allowing the appeals filed by the assessee.

5. Feeling aggrieved with the impugned orders passed by the Ld. CIT(A) Revenue has come up before the Tribunal by way of filing present appeals.

6. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

7. Undisputedly assessee has received commission income from foreign entity for rendering services to them in advance in all the aforesaid three years. It is also not in dispute that assessee company has entered into an agreement to render the services as

commission agent to the foreign entity which has not been brought to the notice of the AO during assessment proceedings. It is also not in dispute that assessee company has not furnished any working as to rendering of services by bifurcating as to how much commission was earned for the years under consideration. It is also not in dispute that assessee company is a corporate entity paying same rate of tax in all the years.

8. The Ld. D.R. for the Revenue challenging the impugned orders passed by the Ld. CIT(A) contended inter alia that while entertaining the additional evidence by the Ld. CIT(A) provisions contained under rule 46A of the Act have not been complied with; that no working has been given by the assessee during the assessment proceedings nor during the appellate proceedings as to rendering services or as to how much commission was earned by the assessee company for a particular year; that agreement on the basis of which services have been rendered and commission has been earned by the assessee company has not been placed before the AO; that concluding para 4.6 of the impugned order is contradictory to the earlier discussions made in the impugned order wherein contentions of the assessee have not been accepted.

10. However, on the other hand, the Ld. A.R. for the assessee, to repel the argument addressed by the Ld. D.R. contended inter alia that remand report was called for by the Ld. CIT(A) which is available at page 1772 of the paper book for A.Y. 2012-13; that there is no loss of Revenue to the Revenue Department as assessee company being a corporate entity is being taxed at the same rate for all the years; that advance commission cannot be treated as income.

10. When we examine the issues in controversy before the Bench as to “whether amount received by the assessee on account of commission income in advance, reflected as part of the current liabilities in the balance sheet is liable to be taxed as assessee’s business income over the years under consideration”, the impugned order decided by the Ld. CIT(A) is not only self contradictory rather cryptic and unable to address the issue in controversy.

11. When we further examine the impugned orders passed by the Ld. CIT(A) in the light of the contentions raised by the Ld. Authorized Representatives of the parties to the appeal it has categorically come on record that remand report though called by Ld. CIT(A) during appellate proceedings has not been referred to in the impugned orders. When additional evidence entertained by the Ld. CIT(A) has not been brought on record in accordance with Rule 46A subsequent findings on the same are vitiated because there is not even a whisper of remand report admittedly submitted in this case by the AO. Secondly the AO has not got the opportunity to examine the agreement on the basis of which services have been rendered and commission has been earned by the assessee company.

12. Moreover, there is not an iota of evidence on the file if any working as to rendering services and as to how much commission was earned by the assessee during a particular year under consideration nor such any working has been provided during the assessment proceedings or during the appellate proceedings. When we examine para 4.4.9 Ld. CIT(A) has categorically recorded that terms and conditions contained in the agreements are tampered with

by way of subsequent correspondence by the parties to the contract which is hit by section 62 of the Indian Contract Act, 1872, but ultimately allowed the relief to the assessee.

13. In the given circumstances we are of the considered view that issue in question has not been addressed in entirety before the AO because of non availability of the agreement and other relevant information called for from the assessee company as well as before the Ld. CIT(A) for want of overlooking the remand report submitted by the AO and for want of furnishing complete working of the service rendered and commission earned by the assessee company during particular years under assessment. AO as well as Ld. CIT(A) have also not addressed the issue if the commission taken in advance by the assessee should be assessed in 2012-13 or in the subsequent years nor the AO as well as Ld. CIT(A) have referred to the agreement entered into between the parties.

14. Moreover, additional evidence selectively entertained by Ld. CIT(A) has not been taken on record in accordance with the rule 46A of the Income Tax Rules.

15. In view of what has been discussed above, both the authorized representatives of the parties to the appeal have agreed to the proposition mooted out that the case should be remanded back to the AO who will decide afresh after providing opportunity of being heard to the assessee by specifically addressing the issue that there is no double taxation qua the commission taken in advance by the assessee during the years under assessment and that whether the commission taken in advance is to be treated for a

particular year or in the next year as the case may be by duly referring to the agreement entered into between the parties. So impugned orders passed by the Ld. CIT(A) are hereby set aside and case is remanded back to the AO to decide afresh by providing opportunity of being heard to the assessee in the light of the observations made hereinabove. Consequently, aforesaid appeals filed by the Revenue are allowed for statistical purposes.

**Order pronounced in the open court on 13.09.2022.**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 13.09.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.