

IN THE INCOME TAX APPELLATE TRIBUNAL  
NAGPUR BENCH :: NAGPUR

BEFORE SHRI R.S. SYAL, HON. VICE-PRESIDENT &  
SHRI PARTHA SARATHI CHAUDHURY, HON. JUDICIAL MEMBER  
(Through virtual hearing)

ITA Nos.13 & 14/NAG/2019  
(A.Y. 2015-16 & 2014-15)

Ms Debashu Services Pvt. Ltd., 18, Saptak Plaza, WHC Road, Shivaji Nagar, Nagpur.  PAN: AAACD 6682 J	vs	DCIT, Circle-1, Nagpur.
Appellant		Respondent

ITA Nos.23 & 24/NAG/2019  
(A.Y. 2014-15 & 2015-16)

DCIT, Circle-1, Nagpur.	vs	Ms Debashu Services Pvt. Ltd., 18, Saptak Plaza, WHC Road, Shivaji Nagar, Nagpur.  PAN: AAACD 6682 J
Appellant		Respondent

Assessee by	:	Shri Sanjay Thakar, AR
Revenue by	:	Shri Sanjay Agrawal, DR
Date of hearing	:	22/08/2023
Date of pronouncement	:	23/08/2023

ORDER

Per Bench:

These cross appeals preferred by the assessee as well as the Revenue emanates from the common order of Commissioner of Income Tax [Appeals]-1, Nagpur, dated 22.11.2018 for A.Ys.2014-15 & 2015-16 as per the grounds of appeal on record.

2. At the outset, the parties herein submitted that the facts and

circumstances and the issues involved in these appeals are identical and similar, thus having heard the submissions, these appeals were heard together and disposed of vide this consolidated order.

3. Brief facts of the case(s) are that assessee-company is a dealer of Kirloskar Brothers Ltd., engaged in the business of marketing pumps, spare parts and valves manufactured by M/s. Kirloskar Brothers Ltd. There were certain additions/disallowances which have been made by the AO, against which the assessee went on appeal before the Id. CIT(A). It is, but natural to state in respect of all these cross appeals that in the decision of the Id. CIT(A) there were certain reliefs provided to the assessee, against which the Department has preferred the present appeals and there were certain disallowances which were confirmed by the Id. CIT(A), against which the assessee has preferred their appeals before this Tribunal.

4. The issue essentially involves addition made by the AO on account of commission payment. The Id. CIT(A) had partly allowed the appeals of the assessee.

5. We find that this Tribunal at Nagpur in assessee's own case for A.Y. 2010-11 in ITA No.369/NAG/2014 and others, dated 29/03/2019 on identical facts and circumstances and on similar issue of commission payment, has observed and held as follows:-

*"9. We have heard both the sides on this of payments of commission issue and the allowability of the same. We have already extracted the*

*details of the turnover of commission payments and additions made by the Assessing Officer and part relief granted/part addition confirmed by the CIT(A) in the preceding paragraphs of this order. From the above tabulated chart, it is evident that the CIT(A) merely made a disallowance on the proportionate basis which is unsustainable in law. Considering the evidences furnished by the assessee by virtue of confirmation letters, payment challans, sustainability of the commission recipients for the tax purposes etc., in our view, the decision of the CIT(A) is not sustainable fully. Further, we have observed that the commission claimed by the assessee in proportionate to the turnover is only range of +/- 15% - 16% which is found to be on higher side. As such, the Tribunal already took a view in allowing the entire claim of commission payment for the assessment year 2010-11. This is also true that the Assessing Officer did not make any disallowance on account of commission payments in the years 2002-03 to 2005-06, which were completed under the provisions of section 143(1) as well as section 143(3) of the Act, as the case may be.*

*10. Considering the above referred facts of the case, we are of the opinion the claim of the assessee should not be entirely allowable. Similarly, the Assessing Officer's decision to disallowance of entire commission is not proper and unsustainable. Further, the order of the CIT(A) is restricted the part of the commission payment is also done on scientific lines. Therefore, we find the disallowance at the rate of 5% of the commission paid and claimed in the Profit and Loss Account should be disallowed uniformly in the assessment years under consideration and added to the income returned by the assessee in respective assessment years. Thus, we direct the Assessing Officer to restrict the disallowance to only 5% of commission payment uniformly for all the assessment years under consideration i.e. A.Ys. 2006-07 to 2008-09, 2010-11 and 2012-13. Accordingly, all the grounds raised by the assessee are partly allowed and all the grounds raised by the Revenue are dismissed."*

Therefore, as per the aforestated decision of the Tribunal, the disallowance was restricted to 5% of the commission paid and claimed in the profit & loss account. The AO was accordingly directed to restrict the disallowance to only 5% of the commission payment uniformly for all the assessment years under consideration.

6. Having read findings of the Id. CIT(A), we find that the disallowance sustained in his order is more than 5%. Further, Id.DR

could not produce any material/document in support of the Revenue contradicting the aforesaid judicial pronouncements. Therefore, following the decision of the Tribunal in assessee's own case, on the same parity of reasoning for these assessment years also i.e. A.Ys. 2014-15 & 2015-16, we direct the AO to restrict the disallowance only to 5% of the commission payment uniformly for all the assessment years.

7. Resultantly, appeals of the assessee are allowed and that of Revenue are dismissed.

Order pronounced in open Court on 23<sup>rd</sup> August, 2023.

Sd/-  
(R.S. SYAL)  
VICE-PRESIDENT

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Dated : 23<sup>rd</sup> August, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, Nagpur Bench Nagpur.
6. Guard File.

By Order

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Senior Private Secretary  
ITAT, Pune.