

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI
BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1745/Del/2019
(ASSESSMENT YEAR 2015-16)**

Maini Construction Equipments Pvt. Ltd. B1/A21, Mohan Cooperative Industrial Estate, Mathura Road New Delhi-110 044 PAN-AABCM 8818N	Vs.	DCIT Circle-1, Faridabad
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Alok Bhura, Sr. DR

Date of Hearing	11/10/2023
Date of Pronouncement	13/10/2023

ORDER

PER M. BALAGANESH AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals), Faridabad [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No.10352/2017-18 dated 19/12/2018 against the order passed by Deputy Commissioner of Income Tax, Circle-1, Faridabad (hereinafter referred to as the 'Ld. AO') u/s 143(3) of the Income Tax Act

(hereinafter referred to as 'the Act') on 29/12/2017 for the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal:-

"1) That the Ld. CIT(A) has grossly erred on facts and in law in upholding the additions made u/s 143(3) on account of commission paid by the assessee.

2) That, in view of the facts and circumstances of the case, the Ld. CIT(A) has failed to appreciate that assessee company's onus is discharged once it has provided the details of the payee i.e. Name, Address, PAN, invoice etc.

3) That the addition made by the A.O and upheld by CIT(A) is unjust, unlawful.

4) That the appellant craves to add, alter or amend any grounds of appeal during the course of the appellate proceedings."

3. None appeared on behalf of the assessee. Since, sufficient opportunities have been given to the assessee in the instant case, we deem it fit to dispose of this appeal on hearing the Ld. DR and based on materials available on record.

3. The only effective issue to be decided in the instant case is as to whether the Ld. CIT(A) was justified in upholding the disallowance of commission of Rs.46,99,657/- in the facts and circumstances of the instant case.

4. We have heard the Ld. DR and perused the materials available on record. The assessee is engaged in the business of

manufacturing of Scaffolding. The return of income for AY 2015-16 was filed by the assessee on 30/09/2015 declaring total income of Rs.61,11,850/-. During the course of scrutiny assessment proceedings, the assessee had furnished the books maintained in the computerized environment and had furnished the various documents that were called for by the Ld. AO from time to time which were also examined by the Ld. AO. The Ld. AO observed that assessee had claimed deduction on account of 'commission on sales' amounting to Rs.46,99,657/-. The assessee was asked to furnish the confirmation from the recipient i.e., commission agents. The assessee could not furnish the same before the Ld. AO. Accordingly, the Ld. AO concluded that the said expenditure remained unverifiable and proceeded to disallow the same as non-genuine expenses u/s 37 of the Act in the assessment. The assessee before the Ld. CIT(A) submitted that it had been making sales to Reliance Industries Ltd, apart from other parties and also furnished the year wise details of sales made to Reliance Industries Ltd. vis-a-vis commission paid and also the year wise turnover as under:

Assessment Years	Total turnover	Sales to Reliance Industries Ltd.	Commission Paid
2013-14	26,40,58,600	5,70,711	Nil
2014-15	39,40,27,702	25,81,87,369	Nil
2015-16	75,31,46,798	64,37,88,500	1%
2016-17	53,38,64,783	31,27,27,096	Nil
2017-18	28,57,76,462	95,30,023	Nil

5. It was pointed out before the Ld. CIT(A) that the erstwhile director of the assessee company Mr. Pramod Maini was looking after the transactions of sales to Reliance Industries Ltd and also payment of commission to the commission agents. Since, he had strained relationship with his brother Mr. Ajay Maini, he retired from the company in May, 2015. The sales were made to Reliance Industries Ltd. as per the instructions of Mr. Pramod Maini only due to which the details of commission including copy of confirmation and ITR of the respective commission agents could not be obtained and furnished before the Ld. AO. All efforts taken by the assessee to obtain confirmations from the commission agents were invain. It was submitted that the said commission was duly subjected to deduction of tax at source and the payments were made through regular banking channels. The assessee, however,

furnished the details of the commission agents by furnishing their name, address and PAN and requested the Ld. CIT(A) to issue notice u/s 133(6) of the Act. The Ld. CIT(A) forwarded these details to the file of the Ld. AO and sought for remand report. The Ld. AO furnished the remand report on 09/08/2018 reiterating the same observations as was done in the assessment order. The Ld. CIT(A) had, however, categorically held that no evidence has been placed on record by the assessee to demonstrate the role of actual role played by these commission agents in procuring sales order from the Reliance Industries Ltd. In fact, on perusal of the invoices furnished by the assessee, the Ld. CIT(A) concluded that the invoices submitted thereon do not appear to be genuine as the same does not bare any receipt no. or invoice no. or any seal of the company. The Ld. CIT(A) also observed that all the three commission agents are residing at the same address, 2729, Gali Matawali, Chirkhana, Chandni Chowk, Delhi. On these observations, the Ld. CIT(A) confirmed the disallowance made by the Ld. AO treating the entire transaction of the commission as non-genuine. Even before us, none of these factual findings were controverted by the assessee by cogent evidences to justify the

allowability of the expenses. Accordingly, we do not deem it fit to interfere in the order passed by the Ld. CIT(A). Accordingly, grounds raised by the assessee are dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 13th October, 2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 13/10/2023

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI