

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 367/Kol/2023
Assessment Year : 2014-15

Jai Trading Company	vs	ITO, Ward-35(2), Kolkata
AAFFJ 5655 B		
Appellant		Respondent

Date of Hearing	21.12.2023
Date of Pronouncement	15.01.2024
For the Assessee	Mr. Miraj D. Shah, AR
For the Revenue	Mr. P.P. Barman, Addl. CIT

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 22.02.2023 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

"1. That on the facts and in circumstances of the case, the disallowance and/or denial of claims and/or relief, imposition of tax and interest with reference thereto, quantification of taxable income and the tax liability including interest by the ld. CIT(A) has been grossly unjustified, erroneous and unsustainable and necessary direction may please be given to give appropriate relief in accordance with law.

2. That on the facts and circumstances of the case, the ld. CIT(A) was not justified and grossly erred in confirming the order of the AO ex-parte towards addition of the amount paid for commission and brokerage to the brokers/agents to the tune of Rs. 84,52,802/- without considering the details and evidences produced.

3. That on the facts and in the circumstances of the case, the ld. CIT(A) was not justified and grossly erred in not providing sufficient opportunity to the appellant while confirming the order passed by the AO and hence the order is against principles of equity and jurisprudence.

4. That on the facts and in the circumstances of the case, on disposal of this appeal material adjustments would be required in computing total income and tax (including interest if any payable by and/or to the appellant) for the assessment year under reference and necessary direction may be given to the AO on this front.

5. That the appellant craves leave to add, amend, modify, rescinding, supplement, or alter any of the grounds stated here in above either before or at the time of hearing of this appeal.”

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2014-15 declaring income of Rs. 9,60,518/-. The case of the assessee was selected for scrutiny under CASS followed by notices issued u/s 143(2) and 142(1) of the Act. In response to the notices, the AR of the assessee appeared before the AO time to time to explain various details of return of income as asked for him by the ld. AO. During the assessment proceeding, the AO notice that the assessee had claimed huge expenses on commission and brokerage to the tune of Rs. 84,52,802/-. The ld. AO in order to verify the claims of the assessee to furnish comparative chart showing as to why the purported service of agents/brokers in connection to the business of the assessee. However, during the assessment proceeding, assessee had failed to provide necessary details before the ld. AO. The ld. AO in order to ascertain the transaction sought information from the sales parties but certain parties had stated that transactions were made directly with the party and denied the rule of any broker/agent even assessee has failed to bring a single confirmation from the corresponding sales parties regarding the involvement of the agent/brokerage in support of its claim of expenses and the ld. AO disallow the claim of expenses of Rs. 84,52,802/- in the hands of assessee.

3. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Dissatisfied with the above order, assessee is in appeal before the Tribunal. At the time of hearing, ld. DR stated that details of commission payment to brokers were duly submitted before the AO during the assessment proceeding by submitting as mentioned below:

- “i. Copy of invoices of commission agent/brokerage*
- ii. Copy of confirmation of accounts with commission agent with brokerage.*
- iii. Copy of agreement entered with all the commission agent/brokerage before the ld. AO at the time of framing of assessment order.”*

However, he did not look into the matter and arbitrarily pass the assessment order against the assessee.

5. Further he stated that all the payments were made to such broker commission agent through proper banking channel and against such payment TDS also taken as per section 194H of the Act and the commission agent/brokers were extensively involved in the increase of the business of the assessee.

6. On the other hand, ld. DR objected to such prayer made by the ld. AR of the assessee. He has stated that authorities below have rightly passed the order against the assessee since the assessee could not justify its claim before the authorities below. Therefore, the order passed by ld. CIT(A) may be sustained by dismissing the appeal filed by the assessee.

7. We after hearing the rival submission of the parties and have perused the material available on record find that the assessee has in order to justify its claim submitted necessary details of expenses incurred during the year under consideration but the ld. CIT(A) did not look into the document submitted by the assessee by simply dismissed the appeal of the assessee. We also note the fact that assessee has duly deducted TDS on the payment of such commission made to the parties and produce the necessary agreement in order to prove its case. The ld. AR also in order to prove its claim submitted that at the time of hearing before the ld. CIT(A) has also called a remand report from the ld. AO on 23.11.2017 in order to examine the documents filed by the assessee and in this regard, the ld. AO except to object the documents filed by the assessee nothing new can be brought to prove the fact contrary to the assessee. Therefore, the ld. AR prayed before the bench to allow the claim of the assessee in respect of commission expenses as claimed by the assessee.

8. We after hearing the rival submission of the parties and on perusal of the record find that assessee in order to justify its claim produce various documents in order to prove the genuineness of the expenses and incurred during the year but the ld. CIT(A) did not look into the documents submitted by the assessee by simply dismiss the appeal of the assessee. We also note that assessee has duly deducted TDS on the payment made to the various parties against the commission and necessary agreement also furnished in order to prove the genuineness of the transactions. We also note the fact that there was no evidence to show that such payments were

not incurred by the assessee. In such situation, after going through the facts of the case finds that the services of agents are termed to be business purposes and, therefore, the commission paid to the agents are in relation to business expenses. Therefore, we have no hesitation to allow such expenses as claimed by the assessee in connection with business of the assessee and accordingly we direct the AO to allow the claim of assessee such expenditure towards commission payment made to the various parties.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 15.01.2024.

Sd/-

(Dr. Manish Borad)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 15.01.2024

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant – Jai Trading Company, 16, 2nd Floor, Room No. 83, Bonfields Lane, Burrabazar, Kolkata-700001.
2. Respondent – ITO, Ward-35(2), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata