

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI
BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.2597/Mum./2023
(Assessment Year : 2013-14)

M/s. Srinathji Yamunaji Enterprises
One Lodha Place, Unit No. 1015C,
10th Floor Next to Kamla Mill Compound, Appellant
Senapati Bapat Marg,
Lower Parel, Mumbai- 400013
PAN – AAAFS3457K

v/s

Income Tax Officer
Circle-20(3)(4), Mumbai Respondent

Assessee by : Shri Bharat Raichandani,
Shri Jasmin Dixit
Revenue by : Shri Manoj Kumar Singh

Date of Hearing – 26/02/2024

Date of Order – 27/02/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 29/05/2023 passed u/s 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2013-14.

2. In this appeal, the assessee has raised the following grounds:-

"1. The Learned Commissioner of Income Tax Appeals, National Faceless Appeal Centre, Delhi (The Ld CIT-A) has erred in law and in facts in upholding the validity of order passed u/s143 (3) of the Act mechanically and purely on the basis of mathematical calculations instead of considering the facts and circumstances which compelled the appellant to pay higher amount of commission to the foreign agent who is a unrelated person and without giving an opportunity of personal hearing to the appellant which is in gross violation of principle of natural justice.

2. The Ld. AO erred in law and on facts in disallowing commission paid to foreign agent u/s 37 of the Act and without considering the submissions made by the Appellant while passing the order of assessment u/s143 (3) of the Act and the Ld. CIT-A has also erred in law and on facts in upholding the same. Therefore, the Impugned order is bad in law.

3. The Ld. CIT(A) erred in law and in facts in confirming the action of the Ld. AO in denying the commission amounting to Rs. 67,53,982/- out of the total commission of Rs. 2,28,81,286/- paid to foreign agent u/s 37 of the act on the ground that the commission paid by the Appellant to its foreign commission agent has increased as compared to the previous assessment year. The fact that the amount paid to the commission agents, one needs to consider that the export was made in financially, politically disturbed region or in a war-torn country like Yemen.

4. The Ld CIT-A has erred in law and on facts in confirming the action of the Ld AO in denying the claim of deduction u/s 37 of the Act. The appellant state and submits that the turmoil in global scenario resulted in fluctuations in exchange rates and constant devaluation in Rupee value viz-a-viz USD. The exchange rate of Rupee went upto INR 6-63 from INR 50-52.

5. The Ld. CIT-A has erred in law and on facts in confirming the action of the Ld. AO in not taking into account the agency agreement entered Into between the foreign party (agent) and the Appellant. The agent was not only required to do follow up but was also has to ensure timely collection of payments from the overseas buyers.

6. The Ld CIT-A has erred in law and on facts in confirming the action of the Ld AO in not taking into consideration the fact that export commission is within the limit of 12.5% as prescribed by the Reserve Bank of India (RBI) and within the limit prescribed by the Director General of Foreign Trade, Government of India vide Custom Circular no. 64/2003 dated 21.07.2023.

7. Due to the ever prevalent war like situations in Yemen, the outward remittances was stopped in the disputed assessment year. Therefore, the RBI prudently allowed remittances to flow from other countries for exports made to Yemen. Moreover, even the Export Credit Guarantee Commission had

stopped giving guarantee on export sale recoveries. Thus, our foreign agent had a crucial role to play. Our foreign agent M/s AL SAQI Trading LLC, UAE not only helped in furthering our sales but also helped in recovering the amounts due from the customers. These facts alone sets the case apart from a normal routine export sale relationship between an exporter and its foreign agent.

8. The Ld CIT-A has erred in law and on facts in confirming the action of the Ld AO in making addition of Rs. 67,53,982/- as disallowance of income tax expenses debited to Income & expenditure account, ignoring the fact that it was spent for the business and application of income as claimed deduction u/s 37 of the Act. The impugned addition needs to be deleted.

9. The appellant craves leave of the Hon'ble Bench to add to, alter, amend and/ or delete all or any of the foregoing grounds of appeal."

3. The only grievance of the assessee, in the present appeal, is against part disallowance of export commission paid by the assessee.

4. The brief facts of the case pertaining to this issue, as emanating from the recorded, are: The assessee is engaged in the business of exporting items like textiles, building hardware, empty glass bottles, white oil, tiles, and other general items. For the year under consideration, the assessee filed its return of income on 28/09/2013 declaring a total income of Rs.16,67,226/-. The return filed by the assessee was selected for scrutiny and statutory notices u/s 143(2) as well as u/s 142(1) were issued and served on the assessee. During the assessment proceedings, it was observed that in the assessment year 2012-13, the assessee had a total sale of Rs.16.40 Cr, whereas in the assessment year under consideration, the total sale increased to Rs.23.37 Cr. Thus, it was noticed that the sales have increased by around 44% as compared to the assessment year 2012-13. On perusal of the profit and loss account, it was observed that the

assessee has debited commission expenses of Rs.94,37,792/- in the assessment year 2012-13, whereas, in the assessment year 2013-14, it has paid commission expenses of Rs.2,28,81,286/-. Accordingly, it was noticed that the turnover has increased only by 45% however; the commission expense paid by the assessee has increased by 142%. The assessee was asked to justify the claim of commission expenses which was found to be excessive as compared to the increase in sale turnover. In response thereto, the assessee submitted that the exports from India have declined in the past three years and commission agents have put in more effort and therefore, are asking for higher commission. The assessee further submitted that the export commission paid is approved by RBI and the payment of commission is within a limit prescribed by the RBI. The Assessing Officer ("AO") vide order dated 29/03/2016 passed u/s 143(3) of the Act did not agree with the submissions of the assessee and proceeded to compute the alleged excess export commission of Rs. 67,53,982/-, as under:-

"4.2 It is apparent from the above fact the assessee had taken support of the rate of exchange of USD-INR to substantiate its claim. However, it shows that the rate exchange is within the range of 20% of increase. Even if this increase in the currency rate is considered still there is a vast difference in the ratio of turnover and commission paid to the party. In view of the above as assessee failed to justify the excess commission paid as compared to the turnover. The working of disallowance of commission of Rs. 67,53,982/- is as under:-

| | A.Y. 2012-13 | A.Y. 2013-14 |
|---------------------|--------------|--------------|
| Sales (in Rs.) | 16,40,73,968 | 23,37,01,793 |
| Commission (in Rs.) | 94,37,792 | 2,28,81,286 |
| Commission in % | 5.75% | 9.79% |

Increase of commission due to decrease in INR Value for the year under consideration as compare to the AY 2012-13 i.e. (20% of 5.75)- 1.15%

Justified claim of commission-5.75%+1.15% = 6.90%

Actual Commission paid-9.79%

Commission Disallowed- (9.79% -6.90%) - 2.89%

Therefore commission paid by the assessee to only one party i.e. Al Saqi Trading LLC, of. UAE of Rs. 2,28,81,286/- is not justified. I disallowed the commission of 2.89% of the total turnover of the current year as against the 9.79% as claimed by the assessee, which works out to Rs.67,53,982/-. In this connection penalty proceedings u/s 271(1)(c) are separately initiated."

5. The learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and upheld the part disallowance of the export commission paid by the assessee. Being aggrieved, the assessee is an appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. It is undisputed that the assessee is a merchant exporter having the business of exporting textiles and other goods. It is evident from the records that the AO found the export commission paid by the assessee, in the year under consideration, to be excessive as compared to the preceding year. Accordingly, the AO has computed the disallowance of excess commission as provided in paragraph 4.2 of the assessment order. Admittedly, in the present case, all the commission has been paid by the assessee to only one party, i.e. AL Saqi Trading LLC, of UAE. It is pertinent to note that there is no allegation that the aforesaid entity is a related party of the assessee or that the commission paid by the assessee is bogus. Therefore, the payment of the export commission of Rs. 2,28,81,286/- by the assessee, in the year under consideration, has not been

doubted by the Revenue. From the record, we find that in the preceding year commission @ 5.75% of sales was paid by the assessee, while in the year under consideration, the same has increased to 9.79%. As per the assessee, the increased commission was paid due to the difficult market situation in the export industry because of which extra efforts were put in by the commission agents, for which a higher commission was charged. Therefore, when the facts clearly show that the expenditure was incurred wholly and exclusively for the purpose of business and there is no contrary material available on the record, we are of the considered view that merely because a higher commission was paid as compared to the preceding year cannot justify the impugned disallowance by the lower authorities. Accordingly, the part disallowance of the export commission made by the AO and upheld by the learned CIT(A) is directed to be deleted. As a result, grounds raised by the assessee are allowed.

7. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 27/02/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/02/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai