

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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 3706/MUM/2023
Assessment Year: 2015-16

Aczet Pvt. Ltd.,
Plot No. 15, Unit No. E02, CEP
Zone, MIDC Marol Opp. Speez,
Andheri (E),
Mumbai-400093.

PAN NO. AABCC 3800 G
Appellant

DCIT Circle-4(1)(1),
Aayakar Bhavan,
Mumbai-400020.

Vs.

Respondent

Assessee by : Mr. V.P. Kothari
Revenue by : Mr. Manoj Kumar Sinha, Sr. DR

Date of Hearing : 28/02/2024
Date of pronouncement : 01/03/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been filed by the assessee against order dated 23.08.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2015-16, raising following grounds:

1. The learned CIT(A) NFAC has erred in law and on facts in confirming the disallowance of Rs.6,50,000/- being commission paid as made by learned Assessing Officer to Aditya R. Dhiwar without properly considering the facts of the case.

2. The learned CIT(A) NFAC has erred in law and on facts in confirming the disallowance of expenses us 14A amounting to Rs. 1,65,560/- without properly considering the facts that the major portion of



disallowance is deemed interest expenses of Rs. 1,37,971/-without considering the facts and submissions that the appellant has its own interest free fund available for investment.

2. Briefly stated facts of the case are that the assessee is engaged in the business of manufacturing and supply of electronic weighting scales, balance and instruments etc. The assessee filed return of income for the year under consideration on 29.11.2015 declaring total income at Rs.1,54,42,290/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the scrutiny assessment completed u/s 143(3) of the Act on 19.12.2017, the Assessing Officer disallowed commission expenses amounting to Rs.6,50,000/-; disallowance u/s 14A amounting to Rs.1,65,560/- along with other additions in respect of late payment of PF, ESI etc.

3. On further appeal the Ld. CIT(A) upheld the disallowance in respect of commission expenses and disallowance u/s 14A of the Act.

4. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

5. Before us, the Ld. Counsel for the assessee has filed a Paper Book containing pages 1 to 72.

6. The ground No. 1 of the appeal relates to disallowance of Rs.6,50,000/- being commission paid to Shri Aditya R. Dhiwar. The



facts in brief qua the issue in dispute are that during the year under consideration the assessee company supplied gold testing machines to State Bank of India, for which the assessee engaged Shri Aditya R. Dhiwar for further liaisoning with various branches, getting bulk contract and keeping track of tenders other business related information. Against the liaison services, the assessee paid commission amounting to Rs.6,50,000/- during the year under consideration. Before the Assessing Officer, the assessee made a detailed submission in support of claim of services rendered by Shri Dhiwar. The relevant submissions made before the Assessing Officer are reproduced as under:

“4.2 In response to the above show cause, the assessee vide letter dated 18.12.2017, provide the reasoning to pay such commission was described by the assessee in the following manner, the extract of which is reproduced as under:

“We would like to state that SBI was already buying our competitors machines at individual branch level in various states before this tender. So the above persons informed us that they were able to convince SBI to amalgamate their individual requirement of each branch in different states into a big single requirement. This made us give SBI a competitive offer and also made us understand that they had done really outstanding work. With due regards to your point, the contract has been entered on a Principal to Principal basis in the normal course of business. However, merely because the contract has been entered on principal to principal basis does not mean that the commission payment was not necessary. The above persons have done all the grass root level work and all the ground work because of which it was possible for us to get an order of such big magnitude. It would be appreciated that getting an order at such big level and that too a Government Bank order. requires a lot of ground work which expertise was possessed by the above persons. We had never handled such single big orders in the past. The above persons were going to take care of generating the requirement, demonstrating our products as and when required through our engineers, make sure our products has all the compliance needed to the requirement best suited to SBI and also helped us in each stage of filling of tender till execution of order. The tender requirement was proposed



per lip to 2 years of leg work and meeting with SBI persons at AGM levels in various states along with demonstrating the products.

- 1) *We have been participating in various exhibitions / trade shows such as GUS, IUS, Indian Bank Association expo etc. These persons to whom the commission has been paid came to know through their sources the prospect of our Gold Testing Assaying Machine (Model: CUBE) in Agri business of SBI and upon sourcing through exhibitions 1 industrial shows / Internet found Citizen as one of the Vendors who had the technology and capacity to supply Gold Testing Machine*
- 2) *2) They did leg work in the market for almost 1.5 to 2 years after which tender was created and guided us in each and every step from filling the tender to arranging demonstration at different managerial levels of our machines with SBI and getting the same approved technically. They also assisted the company in managing transportation and timely delivery of the machines to the various locations of SBI spread all over Maharashtra, Goa & Andhra Pradesh in the initial stage and later on in other states also. They also assured that we could arrange timely installation & commissioning of the machines as well as getting our payments in their due time.*
- 3) *3) We have attached the invoices raised by them as (Annexure 5).*
- 4) *4) Generally, these type of people are graduates and have marketing skills / expertise in getting such big orders for various companies. It is not necessary for these people to have technical skills, since once these people are aware about the basic features of the product, these people who are expert in marketing use their marketing skills to market the product of the assessee It will be appreciated that they were engaged in doing ground work and for that no great technical skill is required and such marketing skills are acquired over a period of time by gaining experience.*
- 5) *5) If you still fill that you need person for further examination even after above clarification than you may asked us.*

There are no evasion of tax from revenue point of view. And considering the collective nature of services provided for the single largest order in life received by our company. Hence request you not to disallow the commission expenses under for business.

We would like to state that all the above commission expenses are incurred for the purpose of the business of the assessee and are therefore u/s 37(1).

The expenses are directly incurred for earning of income of the assessee and are therefore allowable. As a result of their efforts we were able to get this order and therefore the commission expense is allowable as deduction. Thus, we request your good self to allow the expenditure as deduction.”



6.1 However, the Assessing Officer rejected the contention of the assessee observing as under:

“4.3 On close observation of the details filed and the explanation given, the following is worth noting:

(a) The bills of the commission parties appears to be prepared in a stereotyped fashion because the description of the work mentions "generating enquiry, liasoning and demonstration work for State Bank of India tender for gold testing assaying machine". No bills contain the area of the operation, the rate applied for charging the commission, the amount of sale transaction executed on which commission became payable.

(b) Admittedly, the assessee agreed that supply to SBI is on a principal to principal basis. Having agreed so, still the assessee steps out to say that commission payment was necessitated. This fact is very difficult to be digested because the assessee has not brought on record any linkage between the SBI and the assessee as to how the individuals were skilled and competent. The assessee has not produced any evidence to show that had such commission not paid the business of supply to SBI would have been hindered. With respect to the qualification and expertise of the person to whom the commission was paid, the assessee had made a general remark that they are graduates and have marketing skills / expertise in getting such big orders for various companies, The agreement of the purchase order with SBI clearly shows that the rate decided with SBI includes all costs of incidental services such as transportation, insurance etc. upto various destination branches, which is reimbursable. In these circumstances, the assessee has not shown anything on record that the commission paid was also reimbursed by the SBI as per the contract signed with the SBI.

(c) The assessee in its submission has categorically agreed that the transactions are one time and specific order based itself shows that the assessee company though established in this business is not in need of the so-called expert people to whom commissions were paid for orders from SBI, This indicates that the so-called commission recipients have been used as a platform to inflate the expenses.”

6.2 Before us, the Ld. Counsel for the assessee has filed only a debit note issued by Shri Aditya R. Dhiwar in support of services rendered by him. The Ld. Counsel for the assessee was asked to substantiate the claim of services rendered by Shri Aditya R. Dhiwar including ground work, meeting with SBI persons at AGM



levels, the transportation, installation and commission of the machines etc. as stated before the AO, but he expressed his inability in producing said evidence readily. Since, demonstration of the services by way of documentary evidence is the core test for verification of the claim of the assessee and the assessee was not in a position to readily file the necessary documentary evidence, therefore, we feel it appropriate to set aside the finding of Id CIT(A) and restore this issue back to the file of the Assessing Officer with the direction to the assessee to produce all the necessary evidence in support of services rendered by Shri Aditya R. Dhiwar. The assessee may also file a certificate from the State Bank of India that Mr. Dhiwar was the nodal person interacting with Bank on behalf of the assessee in relation to tender of the gold testing machines supplied by the assessee and other associated services. The ground No. 1 of the appeal of the assessee is accordingly allowed for statistical purposes.

7. The ground No. 2 of the appeal is in respect of disallowance u/s 14A of the Act r.w. Rules 8D of the Income-tax Rules, 1962 (in short the Rules)

7.1 Before us, the Ld. counsel for the assessee submitted that the Assessing Officer has wrongly taken the amount of investment made in assets which could yield exempted income, for the purpose of computation under Rule 8D(2)(iii) of the Rules and the only investment in 'ICICI Prudential' amounting to Rs.26,32,500/-



was to be considered being investment in tax free income investment. Whereas the amount invested in 'Bank of India Treasury fund' amounting to Rs.11,79,178/- and 'HDFC CMF Treasury Advantage Fund' amounting to Rs.45,91,259/- was in the nature of taxable category. Since, these details of tax free and taxable investment has been filed for the first time before us ,therefore, we feel it appropriate to restore the issue of determination of the disallowance under Rule 8D(2)(iii) of the Act to the file of the Assessing Officer for deciding afresh. The disallowance under Rule 8D(2)(ii) in respect of proportionate interest has not been disputed before us , so same is not being disturbed. The ground No 2 of the appeal of the assessee is accordingly allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 01/03/2024.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 01/03/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai