

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

**ITA No. 720 & 722/MUM/2024
(A.Ys. 2011-12 & 2008-09)**

DCIT-14(1)(1) Room No. 432, 4 th Floor Aayakar Bhavan, M.K. Road Mumbai, Maharashtra - 400020	V.	M/s. Allweiler India Pvt. Ltd. C/1205,6,7, Lodha Supremus Near Kanjurmarg Station Kanjurmarg(East), Mumbai – 400042 PAN: AABCT7703K
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Ashish Thakurdesai
Department Represented by	:	Shri Sunny Kachhwaha
Date of conclusion of Hearing	:	29.05.2024
Date of Pronouncement	:	29.05.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. ITA Nos. 722 & 720/MUM/2024 are two separate appeals by the revenue preferred against two separate orders of National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Ys. 2008-09 and 2011-12.

2. Since the common grievance is involved, both the appeals were heard together and are disposed off by this common order, for the sake of convenience and brevity.

3. The common grievance involved in both the appeals relates to the deletion of the addition on account of commission paid to agents for obtaining orders from Government Agencies, when such payments to Governments Agencies is prohibited by law and not allowable deduction under section 37 of Income-tax Act, 1961 (in short "Act") and deleting the penalty levied by the Assessing Officer under section 271(1)(c) of the Act.

4. Briefly stated the facts of the case are that the, assessee electronically filed its return of income on 10.09.2008 declaring total income of ₹.9,66,67,146/- under the normal provisions of the Act and book profit of ₹.8,45,53,093/-. The assessment was completed after making the addition to the amount of computer expenses and commission paid to agents.

5. The additions were challenged before the Ld. CIT(A) and the Ld.CIT(A) found that similar disallowance on account of commission

payments was made in A.Y. 2011-12 which were deleted by the Ld.CIT(A) vide order dated 19.11.2018. The Ld. CIT(A) further found that on identical facts the revenue has challenged the order of the Ld.CIT(A) for the A.Ys. 2012-13 & 2013-14 before the Tribunal and the Tribunal in ITA Nos. 7364 & 7365/MUM/2017 vide order dated 28.02.2019 has deleted the addition on account of commission payments. Following the order of the Tribunal the Ld. CIT(A) deleted the addition.

6. Since the additions has been deleted the penalty levied by the Assessing Officer has no legs to stand, therefore, the penalty levied under section 271(1)(c) of the Act was also deleted.

7. Before us, the Ld. DR could not bring any distinguishing decision in favour of revenue.

8. We have carefully perused the orders of the authorities below. The Coordinate Bench in ITA Nos. 7364 & 7365/MUM/2017 vide order dated 28.02.2019 had the occasion to consider a similar grievance and held as under: -

"8. We have noted that in the present case, no commission payment is made to the official of PSU/BHEL, rather the payments were made to the agents, and the agents were working for assessee. Therefore, the ratio of law laid down in M/s Acro Electro Technologies Pvt. Ltd. (supra) is squarely applicable on the facts of present case. The Id. CIT(A) also observed that the similar issue on similar fact was decided by his predecessor for A.Y. 2010-11 and by following the principle of consistency, it was held that the payment made to Denetto International & Bhalla & Associate cannot be disallowed.

9. In view of the above factual and legal discussion, we do not find any infirmity in the order passed by Id. CIT(A), which we affirm."

9. Respectfully following the decision of the Coordinate Bench (supra), the additions stands deleted. Since the foundation has been removed the super-structure i.e. the Penalty should fall. Both the appeals by the revenue are accordingly dismissed.

10. In the result, appeals filed by the revenue are dismissed.

Order pronounced in the open court on 29th May, 2024

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 29.05.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

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

(Asstt. Registrar)
ITAT, Mum