

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI. OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 4804/MUM/2023 (A.Y: 2015-16)**

<p>MPRS Shipping and Logistics Vs. DCIT Circle 12(3)(2), Mumbai Private Limited Present DCIT Circle 4(3)(1), 1207, 12th Floor, Ghanshyam Mumbai Enclave, Link Road, Nr. Laljipada Aayakar Bhavan, Room No. Kandivali West, Mumbai – 400 067. 649, Churchgate, Mumbai – PAN: AAECM6717D 400 020. (Appellant)</p>	<p style="text-align:center">(Respondent)</p>
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Assessee Represented by	: Shri. Manish J. Sheth
Department Represented by	: Shri. Sunil Shinde, Sr. A.R.
Date of conclusion of Hearing	: 15.05.2024
Date of Pronouncement	: 06.08.2024

ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. This appeal is filed by the appellant/assessee against the order dated 20.11.2023 of Learned Commissioner of Income Tax (Appeals), ADDL/JCIT(A)-5, Kolkata [hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “the Act”] for the A.Y. 2015-16, wherein the order of the



Assessing Officer, Circle 12(3)(2), Mumbai (hereinafter referred to as the “AO”) dated 28.12.2017 was confirmed.

2. The appellant is Company and derives income from business in freight forwarders. The appellant filed return of income for the A.Y. 2015-16 on 28.10.2015 declaring total income of Rs. 75,36,680/-. The case was selected for scrutiny. Notice u/s. 143(2) of the Act, was issued on 19.03.2016 and duly served. The Assessing Officer passed the order u/s. 143(3) dated 28.12.2017, making addition of Rs. 84,20,786/- in disallowance of commission payment. Being aggrieved with the above, the appellant filed appeal against the said order u/s. 143(3) of the Act.
3. The Ld. CIT(A) confirmed the order of the Ld. AO and passed the following order:

“I have gone through assessment order passed by assessing officer (AO) and detail submission made by appellant.

The fact of the case, appellant had paid commission to 4 parties during the year under consideration, that is AY 2015-16. Further, appellant had also paid commission to same 4 parties in AY 2014-15 also.

AO had enquired about genuineness of transaction, details of services rendered by appellant same parties etc. AO had found that, these four parties are accommodation entry providers, appellant had received no genuine services from them. Further, they have not responded to third party enquiry by AO. Therefore, AO had found that these commission expenses are not genuine, and disallowed the same in AY 2014-15. As appellant had again paid commission to same four parties for AY 2015-16,



AO had applied findings of AY 2014-15 in AY 2015-16 and held that commission payment to these four parties as not genuine.

The enquiry result arrived for AY 2014-15 also applied by AO for AY 2015-16 as both the assessment years involved similar issues. This is logical, there is no legal infirmities in applying evidences and conclusions drawn in respect of similar issues of same appellants for different assessment years.

The appellant had clearly not been able to establish any rendering of services by these parties for the payment of Rs.8,84,111/-. The onus was on the appellant to prove that services were actually rendered by them. And the appellant had failed to discharge its onus.

In the light of above facts, there is no infirmity in AO's action.

In the result, appeal of the appellant is dismissed.”

4. It is against this order that the appellant/assessee is in appeal before us and has raised following grounds:

- “1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not allowing the claim of deduction of sales commission paid to four parties by the assessee of Rs.8,84,111/-.
2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in considering the similar disallowance made by the ld. AO in previous assessment year 2014-15, including the notices u/s section 133(6) sent in scrutiny proceedings in AY 2014-15, without an independent inquiry made by the ld. AO for AY 2015-16, whereas, the assessment year 2015-16 is independent assessment year from assessment year 2014-15 The ld. CIT(A)-NFAC made the same contention of the ld. AO that since commission to these four parties were disallowed during the assessment proceedings in the preceding year i.e. A.Y. 2014-15, then the same need to be disallowed in this year as well. o
3. On the facts and in the circumstances of the case and in law, the ld. CIT(A) did not consider the fact that the assessee has deducted and paid the TDS on such commission amount.



4. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not considering the fact that during the scrutiny proceedings the assessee provided the following relevant documents to the ld. AO. Also, the parties to whom the commission paid has disclosed the commission income in their individual ITR Copy of ITR of commission party Ledger balance confirmation Debit Memo of the commission party.*
 5. *The assessee craves Your Honour leave to add or alter or amend or delete any of the above grounds.”*
5. We have heard the Ld. AR on behalf of the appellant, the Ld. AR submitted that as observed by the Ld. CIT(A) in para no. 4.6 of his order that no documentary or circumstantial evidence has been provided to prove that any service was rendered by the parties who were paid commission by the assessee, therefore, an opportunity be granted to the appellant to file those necessary documents/evidence before the Ld. AO. It is further submitted that the end of justice requires that the assessee/appellant should not suffer due to inadvertent lapse in not filing the necessary documents/evidence at relevant time due to ignorance and as such the impugned order of the Ld. CIT(A) wherein he was confirmed the order of the Ld. AO be set aside. It is further submitted that the assessee shall submit an undertaking before this Tribunal stipulating that it shall submit the necessary documents/evidence before the Ld. AO within 30 days of the order of this Tribunal.



6. The Ld. DR on behalf of the revenue has submitted that the appellant should not be awarded for his own negligence as the assessee has failed to file the necessary documents/evidence in support of his case before the Ld. AO. However, the Ld. DR fairly submitted that the Tribunal may consider the request of the appellant in case the necessary undertaking be filed for submitting evidence/documents before the concerned authorities.
7. We have considered the rival submissions. The end of justice requires that the assessee need to be given an opportunity where able to submit all necessary documents/evidence in support of its case for claiming the deduction of Rs. 30,96,197/- which was disallowed by the Ld. AO and disallowance was confirmed by the Ld. CIT(A).
8. The required undertaking has been filed on 15.5.2024 which reads as under:

“The assessee hereby provides undertaking to the Hon'ble Bench "8" that the assessee shall fully co-operate to the Id. Assessing Officer during the set aside assessment proceedings and provide the necessary documentary evidences related to sales order procurement in support of its claim of deduction of sales commission of Rs.8,84,111/-in assessment year 2015-16.”

9. In view of the filing of the undertaking and in given facts and circumstances as enumerated above we are of the considered opinion that



the opportunity needs to be given to the assessee to present his case completely before the Ld. AO. The impugned order is accordingly set aside.

10. The case of the appellant is restored to the file of the Ld. AO with the directions that the assessee shall file the requisite evidence or documents in support of its case before the Ld. AO within 30 days from this order.
11. In the result, appeal filed by the assessee is allowed in the above terms.

Order pronounced in the open court on 06.08.2024

Sd/-
(OM PRAKASH KANT)
(ACCOUNTANT MEMBER)
Mumbai / Dated 06.08.2024
Karishma J. Pawar, (Stenographer)

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL 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, Mumbai