

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
5863/Mum/2024	2015-16	M/s. Menzel Engineering India Pvt. Ltd., Gala No.9, Building No. 2, Agarwal Udyog Nagar, Ext Village Waliv, Vasai East, Maharashtra PAN: AAECM7733R	DCIT/ACIT, Circle-10(2)(2), Second Floor, Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai
5864/Mum/2024	2016-17		

Assessee by : Shri Suchek Anchaliya, C.A. a/w.
Shri Tushar Nagori, C.A.

Revenue by : Shri R.R. Makwana, Sr.DR

Date of Hearing : 16-01-2025

Date of Pronouncement : 20-01-2025

PER B.R. BASKARAN, A.M :

Both the appeals of the assessee relate to AYs. 2015-16 and 2016-17. They are directed against the orders passed by Ld CIT(A), NFAC, Delhi. The solitary common issue urged in both the appeals relate to the partial confirmation of disallowance of commission expenses incurred by the assessee. Both the appeals were heard together and hence they are being disposed of by this common order, for the sake of convenience.

2. The assessee is engaged in the business of manufacture and sale of textile processing machineries like fabric mercerizing machine, bleaching range, washing range etc.

3. We shall first discuss the facts relating to AY 2015-16. During the course of assessment proceedings relating to AY 2015-16, the AO noticed that the assessee has incurred commission expenses of Rs.1,04,42,539/- and the same was incurred in respect of sales made through 24 agents. In order to verify the genuineness of commission expenses, the AO asked the assessee to furnish purchase order copy/sales invoices or other document to show that these agents were instrumental for the sales done by the assessee. In response thereto, the assessee furnished the details of sales carried out through each of the commission agent, details of all sales parties.

4. Since those documents did not contain the name of the commission agents on them, the AO issued notices u/s 133(6) of the Act to the Sales parties asking them whether any broker/commission agent was involved in the transactions entered between them and the assessee. In response thereto five sales parties only responded by stating that no agent was involved in the sales made to them. The assessee was informed about the replies so given by five sales parties and also non-compliance of the notices by other sales parties. The assessee replied that the agents have been appointed by it and not by the sales parties. Hence the agents have rendered services to the assessee only. It was submitted that it is possible that the sales parties might have misconstrued the agents as employees of the assessee. The assessee also furnished confirmation letters and ledger accounts of agents.

5. The AO, however, did not get convinced with the explanations of the assessee. He took the view that the assessee has failed to show that the commission expenses have been incurred for the purposes of business of the assessee. Accordingly, the AO disallowed the entire commission expenses of Rs.1,04,42,539/- in AY 2015-16.

6. Before the Ld CIT(A), the assessee furnished certain documents showing correspondence between the assessee and one of the commission agent named R K Varandani. Accordingly, the Ld CIT(A) directed the AO to allow commission expenses relating to the above said agent and confirmed the remaining amount of disallowance.

7. We shall now discuss the facts relating to AY 2016-17. In this year, the assessee had claimed commission expenses of Rs.69,65,000/-. The AO noticed that the commission paid to five agents, viz., M/s Prime Enterprises, M/s Kannan Associates, M/s R K Varandani, M/s R S Enterprises and M/s Labquat Partner had been disallowed in AY 2015-16. Following the assessment order passed in AY 2015-16, the AO disallowed the commission expenses paid to the above said five agents aggregating to Rs.50,35,000/-. In the appellate proceedings, the Ld CIT(A) granted relief in respect of commission paid to M/s R K Varandani and confirmed the remaining amount of addition.

8. We heard the parties and perused the record. We notice that the assessee has furnished the details of commission payments, viz..

- (a) the name of the commission agent
- (b) name of sales parties contacted by each of them
- (c) quantum of sales procured by each of them
- (d) Commission amount paid to each of them
- (e) TDS deducted from the commission payments
- (f) Confirmation obtained from commission agents
- (g) Ledger account copies of commission agents

Further, the assessee has furnished the details of sale parties including their PAN number. We notice that the AO has made enquiries with the Sales parties by sending notices u/s 133(6) of the Act. As noticed earlier,

only five persons responded by stating that there was no agent in respect of their transactions.

9. The Ld A.R submitted that the assessee herein has appointed the agents and hence the contract existed between the assessee and those agents only. The sales parties are not involved in this agreement. In respect of sales achieved by the agents, the assessee has made the commission payments. The Ld A.R submitted that the assessee has furnished all the details relating the commission expenses. The AO did not find fault with any of those documents. Further, the AO did not make any enquiry with any of the agents. Instead, he has chosen to make enquiries with the sales parties, who were, in no way, concerned with the agents. He submitted that it is quite possible that the sales parties have considered the agents as employees of the assessee. Accordingly, he submitted that the AO should not have drawn adverse inference by making enquires with sales parties, who were not concerned with the commission expenses.

10. The Ld D.R, on the contrary, supported the orders passed by Ld CIT(A).

11. Having heard rival contentions, we are of the view that there is merit in the contentions of Ld A.R. First of all, we notice that the assessee has furnished all the documents relating to commission expenses. The AO did not find fault with any of those documents. It has also linked the commission expenses with corresponding sales amounts. The said reconciliation has not also been found to be false. The assessee has also deducted TDS from the commission payments and this fact has not been denied. Since some of the sales parties have denied involvement of agents, the AO has taken the view that the commission expenses have not been incurred for the purposes of business, without pointing out the possible

non-business purpose for which they might have been incurred. These discussions would show that the AO was influenced by surmises and conjectures rather than the facts.

12. As rightly pointed out by Ld A.R, the AO should have conducted enquiries with commission agents in order to find out the genuineness of expenses, if he was having doubt. On the contrary, conducting of enquiries with the sales parties, who were not concerned with the commission expenses, may not prove that the claim was wrong. Hence, it was not a right approach adopted by the AO. As submitted by the assessee, it is quite possible that the sales parties might have considered the agents as the employees of the assessee company, in which case, they will naturally deny involvement of agents. We notice that the assessee has offered very same explanation before the AO, but the AO did not chose to make further enquiries with the sales parties to disprove the above said explanations.

13. We notice that the assessee has been incurring commission expenses year after year, which shows that the assessee was dependent upon the agents for promoting sales. It is a business strategy adopted by a business man, whose wisdom cannot be questioned by the tax officials. Under these set of facts, we are of the view that the commission expenses have been disallowed by the AO in both the years without conducting proper enquiries and also without establishing that they were not incurred for the purposes of business.

14. We noticed earlier that the Ld CIT(A) has granted partial relief to the assessee and it shows that the first appellate authority is accepting that they have been incurred for the purposes of business only. We noticed that the AO has disallowed the commission expenses on the reasoning that they were not laid out for the purposes of business. Even though the Ld

CIT(A) granted partial relief, the same would actually demolish the above view taken by the AO in respect of all commission expenses.

15. In view of the foregoing discussions, we modify the orders passed by Ld CIT(A) in both the years under consideration and direct the AO to allow entire commission expenses in both the years.

16. The assessee has raised a legal contention, viz., the addition made by the AO in both the years were beyond the scope of limited scrutiny. Further, in AY 2015-16, the AO did not mention the scope of limited scrutiny. Accordingly, it was contended that the addition made by the AO is liable to be deleted in both the years on this legal ground. Since we have deleted the additions in both the years on merits, we decline to adjudicate the above said legal grounds.

17. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 20-01-2025

Sd/-
[SUNIL KUMAR SINGH]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 20-01-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "D" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai