

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-II": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 3716/Del/2016

A.Y. : 2012-13

Smt. Shashi Sharma,
8, Dev Lok Colony,
Shimla Bye Pass Road,
Dehradun

vs. DCIT, Circle-1,
Dehradun

(PAN: AQGPS6528P)

(Assessee)

(Respondent)

Assessee by : Sh. Sayasachi K. Sahai, Adv.
Department by : Sh. S.K. Jain, Sr. DR

ORDER

This appeal by the Assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-, Muzaffarnagar dated 22.3.2016 pertaining to assessment year 2012-13.

2. The grounds of appeal read as under:-

1. Because the rejection of the appeal by the learned CIT(A) is against the facts on record and in law.
2. Because it is wrong of the CIT(A) to mention at para 7 of his order dated 22/03/2016 that 'the appellant has not produced before the AO and during appellate proceedings the nature of services taken from the Commission Agents. This observation is not true as the complete nature of services availed from the

agents and reason for paying the commission was filed before the AO and this fact was also discussed in the assessment order and not disputed by him.

3. Because in spite of placing all the facts before the CIT(A), it is wrong of the CIT(A) to sustain the addition of RsA,36,684/- made by the AO on account of excessive commission paid to agents.
4. Because the appellant paid commission to agents not as a percentage of sales value, as has been presumed by the AO and the CIT (A), but as a unit of volume of sales achieved by him and thus the facts of the case have been wrongly interpreted.
5. Because the figure of commission paid in the previous year cannot be compared with the figure of commission paid during the year under appeal as commission was paid on volume of sales for a period of only 4 months in the previous year and for complete 12 months in the year under appeal.
6. Because the submissions placed on file have not been considered, judicially in the order and the appeal dismissed summarily denying justice to the appellant.
7. Because a speaking order has not been passed by the learned CIT (A).
8. Because justice has not been done with the appellant and thus the order is illegal, unjustified, arbitrary and bad in law.

3. The facts of the case are that in this case assessment has been completed u/s 143(3) of the I.T. Act on 27.6.2014. The assessee during the year was engaged in the trading of soda ash (Rs.6.21 crore and paper (Rs.1.27 crore) - reflecting total turnover of Rs.8.28 crore in the P & L a/c. AO noted that the sales were for Rs.9.62 crore for Asstt. year 2011-12 (sale of Rs.5.76 crore for soda ash and Rs.3.84 crore for paper) whereas commission has been claimed for soda ash was Rs.217000/- in A.Y. 2011-12 and Rs.991800/- in the A.Y. 2012-13 i.e. sales have gone down and whereas the commission expenditure has increased. The assessee was required to justify the increase in commission expense in this year during the assessment proceedings. It was explained before the A.O. that the commission of Rs. 217000/- has been paid in A.Y. 2011-12 for last four months. Whereas, the commission has been paid for the entire assessment year 2012-13. The assessee explained that the commission was paid only on the sale of Soda Ash and it has been paid for the complete financial year relevant to the A.Y. 2012-13 and sale of Soda Ash has increased by Rs.50 lacs as compared to the last year. However the A.O. was not satisfied with the explanation of the assessee and allowed commission @ 0.67% (relevant to A.Y. 2011-12) at RS.515116/- i.e. disallowed balance commission of Rs.436684/- and assessed the total income of the assessee at Rs. 31,44,130/- vide his order dated 27.6.2014 passed u/s. 143(3) of the I.T. Act, 1961.

4. Aggrieved with the assessment order dated 27.6.2014, assessee appealed before the Ld. CIT(A), who vide impugned order dated 22.3.2016 has partly allowed the appeal of the assessee by confirming the addition of Rs. 4,36,684/-.

5. Against the aforesaid order of the Ld. CIT(A), the Assessee is in appeal before the Tribunal.

6. Ld. Counsel of the assessee has stated that assessee paid commission to agents not as a percentage of sales value, as has been presumed by the AO and the CIT(A), but as a unit of volume of sales achieved by him and thus the facts of the case have been wrongly interpreted. He further stated that the figure of commission paid in the previous year cannot be compared with the figure of commission paid during the year under appeal as commission was paid on volume of sales for a period of only 4 months in the previous year and for complete 12 months in the year under appeal. Therefore, he stated that the addition in dispute may be deleted.

7. On the other hand, Ld. DR relied upon the orders of the authorities below.

8. I have heard both the parties and perused the records available with me, especially the orders of the revenue authorities. The assessee is engaged in the trading of soda ash-(a by-product of the paper industry) end paper (a Virgin Product). The total sales of the Assessee during A.Y. 2011-2012 and A.Y. 2012-2013 was as follows:

<u>A.Y.</u>	<u>Sale of Soda Ash</u>	<u>Sale of Paper</u>	<u>Total Sales</u>
2011-2012	INR 5.76 Crore	INR 3.84 Crore	INR 9.62 Crore
2012-2013	INR 6.21 Crore	INR 1.27 Crore	INR 8.28 Crore

8.1 Therefore, it is crystal clear from the above that while total sales did indeed decrease during A.Y. 2012-2013 as compared to A.Y. 2011-2012, due to substantial decrease in sales of paper, the sales of soda ash itself increased between the two financial years. During the F.Y. 2010-2011, due to recurrent issues related to quality of product of soda ash-a by-product (not paper-a virgin product) which often required the Assessee to intervene personally at any point of time as the process of the user is continuous, the Assessee appointed various agents in the month of December 2010 and the Assessee fixed the commission rate of the agents at INR 200/MT of soda ash. It is pertinent to note here that irrespective of the price at which the Assessee sold the soda ash to the customer, the rate of the commission payable to the agent was constant at INR 200/MT. During F.Y. 2010-2011, the Assessee sold a total of 5205 MT of soda ash. During the relevant period of December 2010 to March 2011 (i.e. when agents were hired), the Assessee sold 1085 MT of soda ash and therefore made a total payment of INR 2,17,000 (1085 MT x INR 200/MT) as commission. In F.Y. 2011-2012, the Assessee continued to use the agents it had hired for the entire year as opposed to the 4 month period in the previous year and the Appellant sold 4959 MT of soda ash and continued to make payment at the pre-agreed commission rate of INR 200/MT, which amounts to INR 9,91,800/- as commission. As evident from above, the hiring of agents resulted in an increase of approximately INR 45 Lakhs. In fact, during F.Y. 2010-2011 (including December 2010 to March 2011), the average return of the Appellant on each MT of soda ash was approximately INR 11,066 (i.e. INR 5.76 Crore earned for the sale of 5205 MT). In contrast, due to the services provided by the agents, the average return of the Appellant on each MT of soda ash was approximately INR 12,522 (i.e. INR 6.21 Crore earned for the sale of 4959 MT).

This is an increase of about INR 1,450 per MT of soda ash. From the above, the A.O. used a wholly baseless and erroneous calculation to determine the percentage of commission by dividing the commission paid by the total sales and not take into account the factors mentioned above. In view of the above there is no ground or basis for any disallowance, hence, the addition in dispute is deleted.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 03/1/2017.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 03/1/2017

SRBhatnagar

Copy forwarded to: -

1. Assessee 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches

