

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK
'SMC' BENCH, CUTTACK**

BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

**ITA No.23/CTK/2017
Assessment Year : 2012-2013**

M/s. Metalloyds, 1 st floor, M.R.towers, Main Road, Angul	Vs.	ITO, Angul Ward, Angul
PAN/GIR No. AAHFM 9629 E		
(Appellant)	..	(Respondent)

Assessee by : Shri Binod Agarwal, AR
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 17 /05/ 2017
Date of Pronouncement : 17/05/ 2017**

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-2, Bhubaneswar, dated 21.10.2016, for the assessment year 2012-2013.

2. The sole issue involved in this appeal is that the Id CIT(A) was not justified in confirming the addition of Rs.6,00,000/- paid as commission to HUF of two partners.

3. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. The Assessing Officer found that the assessee has claimed to have paid commission of Rs.6,00,000/- to

Bikram Agarwal (HUF) and Binay Agarwal (HUF) of Rs.3,00,000/- each. The Assessing Officer held that Bikram Agarwal and Binay Agarwal are working partners in the firm and they are entitled to draw salary @ Rs.20,000/- per month from the firm. He further found that Bikram Agarwal is the karta of Bikram Agarwal (HUF) and Binay Agarwal is the kartka of Binay Agarwal (HUF). He relied on the decision of Hon'ble Supreme Court in the case of K.S.Subbiah Pillai vs CIT, 237 ITR 11 (SC) and held that Bikram Agarwal and Binay Agarwal cannot take any commission for doing any business of the partnership firm as per terms of partnership deed. Consequently, he disallowed deduction for commission payment of Rs.6,00,000/-.

4. On appeal before the CIT(A), the assessee filed ledger copy of commission account, copy of income tax return of Bikram Agarwal (HUF) and Binay Agarwal (HUF) and copy of TDS certificate issued by the assessee. The assessee has also filed order of the CIT(A)-II, Bhubaneswar in the case of Shree Balajee Ispat where such commission has been allowed as expenses.

5. The CIT(A) after considering the submission of the assessee held that the fact that Bikram Agarwal and Binay Agarwal are working partners of the assessee is not disputed. They are karta of their respective HUF is not disputed. During the course of appeal proceedings on 18.10.2016, the

assessee has filed the following agent commission agreements of the assessee with Bikram Agarwal (HUF) and Binay Agarwal (HUF):

SI No.	Name	Date	Commission account of
01	Binay Agrawal(HUF)	01.04.2011	L&T
02	Bikram Agrawal (HUF)	01.12.2011	Sagar Sales Coproration
03	Bikram Agrawal(HUF)	39.04.2011	Gayatri Construction
04	Bikram Agrawal (HUF)	15.04.2011	Jagannath Projects (P) Ltd

The text of the agreement is same in all the four agreement, which is reproduced below:

"Vinay Agarwal(HUF)

Shankar Cinema Road, Angul- 759122(Odisha)

Dear Sir,

We on behalf of the Partnership firm M/s. Metalloyds. Main Road, Angul are pleased to inform you that you have been appointed as Commission Agent with effect from 1st April, 2011 till 31st March, 2012 under the following terms and conditions:

- 1. You shall canvas sales, liason and procure orders from M/s. Larsen & Toubro Ltd., various sites on our behalf for the items dealt by us like Welding Electrodes, Special Electrodes, Wires & Fluxes, Industrial Gases, Equipment, PPE Products, Paints, Lubricants, Grinding/Cutting Wheels, etc.*
- 2. You shall be paid a commission of 1% on every completed crore worth of order procured & materials supplied to the above mentioned party during the Financial Year.*
- 3. You shall make all efforts for early payment of pending bills, collection of forms, if any from the customer.*
- 4. You shall be bound to maintain the secrecy of the firm.*
- 5. The management shall be at liberty to revoke your appointment without assigning any reason what so-ever.*
- 6. Any disputes what so-ever arising out of the above with the firm itself shall be subject to Angul Jurisdiction.*

You are requested to kindly sign the duplicate if this letter as a token of acceptance of the above terms & conditions immediately on receipt of the same.

Thanking you,

*Yours faithfully,
For Mettalloyds*

"

6. The CIT(A) further observed that the assessee has also filed the following chart regarding the working of the commission.

SI no	Commission paid to	Amount	Commission on A/c. of	Business during the F.Y. 2011-12	Commission basis	Commission	Total commission
01	Vinay Agarwal(HUF)	300000.00	L&T Ltd	33107455.33	1 lakh of every completed Crore	300000.00	300000.00
02	Bikram Agarwal	300000.00	Jagannath Corpn. Project (p) Ltd	8560045.93	2.5% of every completed lakh	212500.00	300000.00
			Gayatri Constructions	1452832.85	3% of every completed 50 k	43500.00	
			Sagar Sales Corporation	2188061.93	2% per lakh	44000.00	

7. The CIT(A) further observed that Hon'ble Supreme Court in the case of K.S. Subbiah Pillai (supra) has held that when commission was earned by the Karta of the HUF on account of his personal qualifications and exertions not on account of the investment of the family funds, such income will be taxed in the hands of individual and not in the hands of HUF. Therefore, he confirmed the addition of Rs.6 lakhs on account of disallowance of commission made by the Assessing Officer.

8. Before me, Id A.R. of the assessee argued that the assessee had filed commission agreement before the CIT(A). He further argued that both the Assessing Officer as well as the CIT(A) has not examined the services rendered by the HUF to the assessee firm. He argued that the assessee has detailed evidence in the form of sale invoices evidencing the sales

procured by the HUF in consideration of which the commission payment was made. He further argued that similar commission payment has been allowed in the case of Shree Balajee Ispat by the CIT(A)-II, Bhubaneswar, which was the submission made by the assessee before the CIT(A) but the CIT(A) has not given any reasoning as to why the said decision was not applicable in the case of the assessee before confirming the addition. Therefore, he prayed that in the interest of justice, the matter should be restored back to the file of the Assessing Officer for readjudicating the issue afresh after considering all the evidences on the issue.

9. Ld D.R. had no objection to the above submission of Id A.R. of the assessee.

10. I find that the assessee has relied on the decision of CIT(A)-II, Bhubaneswar in the case of Shree Balajee Ispat before the CIT(A). The CIT(A) has not given why the said decision is not applicable to the assessee's case. The CIT(A) has not examined the evidence of services rendered by two HUFs for which commission payment was paid by the assessee firm. In my considered opinion, this has to be examined and considered by the CIT(A) while adjudicating the appeal of the assessee which has not been done. Therefore, in order to render substantial justice, I set aside the order of the CIT(A) and remand the matter back to his file for adjudication of the issue afresh in the light of the discussion made hereinabove. Needless to mention that the CIT(A) shall allow reasonable

and proper opportunity of hearing to the assessee before adjudicating the issue afresh. Consequently, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 17/05/2017 in the presence of parties.

Sd/-

(N.S Saini)

ACCOUNTANT MEMBER

Cuttack; Dated 17 /05/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : M/s. Metalloyds, 1st floor,
M.R.towers, Main Road, Angul
2. The Respondent. ITO, Angul Ward, Angul
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack