

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI
BEFORE SHRI R. S. SYAL, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No.-2876/DEL/2013
(ASSESSMENT YEAR 2009-10)**

DCIT Circle-5(1) New Delhi (APPELLANT)	vs	K. S. Infosystems Pvt. Ltd. 316, IIIrd Floor, LSC, Sainik Vihar, Pitampura New Delhi-110 034 AABCK5340D (RESPONDENT)
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Appellant by	Sh. Umesh Chandra Dubey, SR. DR
Respondent by	Sh. K. P. Garg, Adv

Date of Hearing	10.10.2016
Date of Pronouncement	14.10.2016

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 25/02/2013 passed by CIT(A) -VIII, New Delhi

2. The grounds of appeal are as under:-

- “1. *On the facts and in circumstances of the case, the learned CIT(A) deleted the disallowance of commission to the tune of Rs. 60,08,192/- ignoring the fact that the assessee could not prove the genuineness of the expenditure*

claimed as it could not substantiate any rendering the services in lieu of which commission was paid or give any justification or basis for payment of commission.

2. *The Ld. CIT(A) erred is not appreciating the fact that the assessee was into the business of commission agent in information technology sector as it received commission income mainly from HCL info systems Ltd. and Escort Ltd., but it claimed to have paid commission to companies engaged in the business of manufacturing of M S Ignots.*
3. *The Ld. CIT(A) erred is admitting the evidences furnished by the assessee without providing opportunity to the assessing officer in violation of Rule 46A of the I. T. Rules.*
4. *The Ld. CIT(A) erred in accepting the genuineness of the payment of commission only on the basis of details of payment, confirmation of the recipient and deduction of TDS without appreciating that no justification whatsoever for the payment of commission, nor the capacity of the recipient for rendering of services in the IT field, nor the verification of actual rendering the of service was placed on record by the assessee.*
5. *The appellant craves leave to add, to alter, or amend any grounds of the appeal raised above either before or at the time of the hearing.”*

3. The assessee had debited commission expenses in the P&L A/c under the head office and administrative expenses. On being asked to furnish the details the assessee submitted that the commission was paid to the following persons:-

NAME	AMOUNT (Rs.)
M/s. Arti Engineering Co.	37,50,000/-
M/s. Sewa Casting (P) Ltd.	15,00,000/-

Mr. Subodh Kumar	7,00,000/-
Out of pocket expenses	41,200/-
Others	16,992/-

The assessee was required by the Assessing Officer to submit the complete details of the persons to whom commission had been paid along with the nature of services rendered and proof of TDS in form 16A. The Assessing Officer has observed that the assessee had filed the details called for along with copies of form 16A. The Assessing Officer has further observed that from the perusal of the records it was observed that the sales of the assessee had fallen considerably as compared to the earlier years but the payment of commission had gone up abnormally. The Assessing Officer further observed that the percentage of commission of sales was 0.1% during AY 2008-09 whereas it was 20% during AY 2009-10. In view of the above facts the Assessing Officer observed that a show cause notice was issued to the assessee as to why the commission should not be disallowed. The appellant filed the copies of audited accounts along with audit report in the cases of M/s. Arti Engineering Co. and M/s. Sewa Casting (P) Ltd. and a copy of Form 16A regarding proof of payment of commission to various parties. However, the Assessing Officer has further observed that no explanation regarding the justification of payment of commission and the services for which it had been paid were filed by the assessee. The Assessing Officer observed

that M/s. Arti Engineering Co. and M/s. Sewa Casting (P) Ltd. were engaged in the business of manufacturing and trading of M. S. Ingots whereas the assessee was engaged in the business of trading and general commission agent. Since in the opinion of the Assessing Officer, there was no co-relation between the business carried out by the assessee and that carried out by the above two companies , the Assessing Officer held that probability of any transaction between the assessee and the other two companies was totally ruled out. The Assessing Officer has further observed that M/s. Arti Engineering Co. and M/s. Sewa Casting (P) Ltd. had not shown any income on account of commission in their accounts. In view of the above facts the Assessing Officer held that the payment of the commission was not genuine transaction. It has also been held by the Assessing Officer that the rates at which the commission had been shown to have been paid was very high. It has also been held by the Assessing Officer that the deduction of TDS was nothing but a device to give the colour of genuineness to a transaction which was not genuine. In view of the findings, the Assessing Officer disallowed the deduction claimed by the assessee on account of payment of commission of Rs. 60,08.192/-.

4. Aggrieved by this, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee by holding that the assessee had submitted the details of payment of commission which is supported by documentary evidences in

the form of confirmation from the parties who had received commission payment from the assessee and copies of form 16A regarding deduction of TDS. The receipt of commission has been shown by the persons who have received commission from the assessee in their income. The nature of services rendered along with the benefit which the assessee had derived from the services had also been submitted during the assessment proceedings. The Assessing Officer has not brought any facts on record to show the commission had not been paid and has also not brought any evidences on record to show that the expenditure was not related to the business of the assessee. The Revenue is before us.

5. The Ld. DR submitted that the Assessing Officer has rightly disallowed the commission to the tune of Rs. 60,08,192/-. The CIT(A) failed to look into the same.
6. The Ld. AR submitted that the CIT(A) rightly considered all the aspects and taken cognisance of the documents and evidences produced before the Assessing Officer which the Assessing Officer has overlooked. Thus the Ld. AR submitted that the order of the CIT(A) is just and proper.
7. We have perused all the records and heard both the parties. The assessee filed the copies of audited accounts along with audit report in the cases of M/s. Arti Engineering Co. and

M/s. Sewa Casting (P) Ltd. and a copy of Form 16A regarding proof of payment of commission to various parties. the assessee had submitted the details of payment of commission which is supported by documentary evidences in the form of confirmation from the parties who had received commission payment from the assessee and copies of form 16A regarding deduction of TDS. The receipt of commission has been shown by the persons who have received commission from the assessee in their income. The nature of services rendered along with the benefit which the assessee had derived from the services had also been submitted during the assessment proceedings. The Assessing Officer has not brought any facts on record to show the commission had not been paid and has also not brought any evidences on record to show that the expenditure was not related to the business of the assessee.

8. *In the result, appeal is dismissed.*

The order is pronounced in the open court on 14th of October, 2016.

**Sd/-
(R.S. SYAL)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 14/10/2016

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	.10.2016	PS
2.	Draft placed before author	.10.2016	PS
3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	14.10.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	14.10.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

