

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. Nos. 619 & 620/KOL/2023
Assessment Years: 2013-2014 & 2014-2015**

***Ankit Impex Marketing Services Pvt. Ltd.,...Appellant
46C, J.L. Nehru Road,
Kolkata-700071
[PAN: AALCS9318R]***

-Vs.-

***Income Tax Officer,.....Respondent
Ward-8(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700069***

Appearances by:

*Shri Anil Kochar, Advocate, appeared on behalf of the
assessee*

*Shri Prabhakar Prakash Ranjan, Addl. CIT, appeared
on behalf of the Revenue*

Date of concluding the hearing : January 08, 2024

Date of pronouncing the order : January 17, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present two appeals are directed at the instance of
assessee against the separate orders of ld. Commissioner of

Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 05.06.2023 passed in A.Ys. 2013-14 and 2014-15.

2. The assessee has taken six grounds of appeal in A.Y. 2013-14 and nine grounds of appeal in A.Y. 2014-15. These grounds are not in consonance of Rule 8 of Income Tax Appellate Tribunal Rules. They are descriptive in nature. In brief, the grievance of the assessee is that the Id. CIT(Appeals) has erred in confirming the disallowance of commission payment at Rs.22,83,800/- and Rs.19,22,641/- in A.Ys. 2013-14 and 2014-15 respectively by way of an *ex-parte* order.

3. Brief facts of the case are that the assessee has filed its return of income declaring total income of Rs.2892,160/- and Rs.48,71,610/- on 01.10.2013 and 27.11.2014 in A.Y. 2013-14 and 2014-15 respectively. The case of the assessee was selected for scrutiny assessment for both the years. The Id. Assessing Officer on examination of the record found that the assessee has debited a sum of Rs.77,97,546/- and Rs.1,67,87,407/- towards commission payments. The Id. Assessing Officer has alleged that he has issued notices under section 133(6) of the Act to all the recipients to whom commission was paid by the assessee. In A.Y. 2013-14, three recipients of commission did not respond to him and their notices were returned to the Office of Id. Assessing Officer by the Postal Authority. These parties are M/s. Pushpak Advisory Pvt. Limited, Meetu Jain, M/s. Aay Aar Consultancy

Services Pvt. Limited. He recorded the similar finding in A.Y. 2014-15. Thereafter Id. Assessing Officer all of a sudden discussed the provision of section 68 and the decision of the Hon'ble Delhi High Court in the case of CIT -vs.- Nova Promoters & Finlease (P) Ltd. Reported in 342 ITR 169. The discussion in both the years is verbatim same except variation in the amounts. Therefore, for the facility of reference, we take note of his finding in A.Y. 2013-14. From paragraph no. 3.2 prior to that, he just narrated the details of commission recipients, i.e. three companies and three individuals:-

"3.2. The accounts of the assessee company has been duly perused. The assessee company has failed to prove the identity of the commission receipt and their genuineness of the transaction. Merely claiming immunity by virtue of routing transactions through bank can not be held to be adequate in the presence of overwhelming surrounding attendant facts and circumstances of this case. The afore mentioned transactions were found to be not genuine. Reliance is placed on the decision of Hon'ble jurisdictional Kolkata tribunal in the case of M/s Patangi Trade & Holdings Pvt Ltd in ITA Nos 1533 to 1537/kol/2012 amd M/s Bisakha Sales Pvt Ltd vs CIT in ITA No. 1493/Kol/2013. Para 7.21 of the order in the case of M/s Bisakha Sales Pvt Ltd (supra) is re-produced below :

"Merely dumping papers and documents on the table of the assessing authority does not in any way mean compliance. The burden of proof cannot be shifted on the revenue by cart loads of documents. The documents submitted must be explained".

3.3. Mere filing of Permanent Account Number (PAN), acknowledgement of Income Tax Returns, Bank account statement is not sufficient to discharge the onus on the assessee. In this regard, reliance is also placed on the order of Hon'ble Delhi High Court in the case of CIT v Nova Promoters & Finlease (P) Ltd 342 ITR 169. Mere production of PAN of assessment particulars does not establish the identity of person. The identification of a person includes the

place of work, the staff and the fact that it was actually carrying on business and further recognition of the said company/individual in the eyes of public. In this regard, Para 24 of the order the Hon'ble Delhi High Court in the case of CIT vs N. Tarika Investments (P) Ltd reported in [2013] 40 taxman.com 525 (Delhi) is reproduced below. Further, the SLP filed by M/s N. Tarika Investments (P) Ltd has also been dismissed by the Hon'ble Supreme Court (reported in [2014] 51 taxman.com 387 (sc)).

"..... 24. Recently in the case of CIT V. NR Portfolio (P) Ltd [IT Appeal No.1018 of 2011 and 1019 of 2011] vide Judgment dated 22nd November,2013 we have held :hat mere production of PAN Number or assessment particulars does not establish the identity of a person. The identification of a person includes the place of work, the staff and the fact that it was actually carrying on business and further recognition of the said company/ individual in the eyes of public. We have further noticed that PAN Numbers are allotted on the basis of applications without actual de facto verification of the identity or ascertainment of the active nature of business activity. PAN Number is allotted as facility to revenue to keep track of transactions. The PAN Number cannot be blindly and without consideration of surrounding circumstances treated as sufficiently disclosing of identity of individual".

3.4. The commission with regard to the transactions in question are found to be not satisfactorily proved by the assessee company. Considering the facts and circumstances of this case and the aforementioned judicial pronouncements, I hereby disallow the payments of commission of Rs.22,83,800/-.

Subject to the above discussion, the total income of the assessee-company is assessed as under:-

COMPUTATION OF INCOME:

*Total Income as per the assessee's computation: Rs.28,92,160/-
Add: As discussed in para 3: Rs.22,83,800/-*

Assessed income: Rs.51,75,960/-

Net Tax Payable(As per separate sheet): Rs.14,64,220/-

*Assessed u/s. 143(3) of the I.T. Act, 1961.
Issued copy of the order & demand notice.*

4. Dissatisfied with this type of finding in both the years, the assessee carried the matter in appeal before the ld. CIT(Appeals). The ld. 1st Appellate Authority has dismissed both the appeals for want of prosecution. Before us, ld. Counsel for the assessee has placed on record the details submitted on the Income Tax Portal during the assessment proceedings. He also submitted that the assessee has applied for adjournment but the ld. CIT(Appeals) dismissed the appeals for want of prosecution.

5. On the other hand, ld. D.R. relied upon the orders of revenue authorities.

6. We have duly considered the rival contentions and gone through the record carefully. The assessee is dealing in batteries, refrigerant gas, electric items, compressors and other parts etc. as a commission agent. It has sold these products through sub-agents and, therefore, returned income of more than Rs.28,92,160/- in A.Y. 2013-14 and Rs.48 lakhs & above in A.Y. 2014-15. The details of recipient of the commission are placed in the paper book. We have gone through these details. A perusal of these details would indicate that the assessee had made most of the payments through RTGS or Account Payee Cheque. It has given the details of those recipients including copies of their income tax returns. Reverting back to the alleged enquiry by the ld. Assessing Officer. He issued notice under section 143(2) on 04.09.2014. Thereafter he issued a questionnaire on 23.11.2015, i.e. the proceeding remains dormant more than one year. He

started the inquiry in November, 2015 and passed the assessment order on 08.03.2016. According to him, he has issued notice under section 133(6), which was returned back. Thereafter he has issued summons under section 131 dated 04.02.2016 directing those individuals to appear before him on 11.02.2016. Let us see, who are the recipients. The first party is in Kolkata, but the next party i.e. Meetu Jain is from Jaipur, Rajasthan and M/s/. Aay Aar Consultancy Services Pvt. Ltd. is from Delhi. How these summons under section 131 could have been served upon them within a week and they could revert back to the ld. Assessing Officer. It is practically impossible. It is not ascertainable whether these summons have ever served upon or not. Therefore, the inquiry at the end of the ld. Assessing Officer is a flawed one. Apart from this observation, we find that he has nowhere examined how this expenditure was not necessary for the business. What are the products obtained by the assessee as a commission agent and how these were sold with the help of different parties across India. The assessee has not shown losses rather it has shown profit. Instead of approaching the controversy with that approach, ld. Assessing Officer all of a sudden took help of jurisprudence which deals with unexplained share application money from paper companies. This shows the careless attitude at the end of the ld. Assessing Officer while framing the assessment order.

7. On appeal, ld. CIT(Appeals) has totally ignored all these submissions, which are available on the Portal but dismissed the

appeals for want of prosecution. It is very difficult to make understand the grievances of the assessee before the authority on an overall appreciation of the evidence available before us. We are satisfied that these expenses were incurred for the business purposes during the course of business. The assessee has submitted all basic details. The Officer failed to cross verify these details. It is important to note had the assessment machinery remained in motion after selection of the case for scrutiny assessment, probably ld. Assessing Officer could take help of the Officers where these assesseees are situated. But instead of adopting that course, he first kept the proceeding dormant and then all of a sudden completed in a hurried manner. Therefore, we allow these appeals and delete the additions in both the years.

8. In the result, both the appeals are allowed.

Order pronounced in the open Court on 17/01/2024.

Sd/-

(Girish Agrawal)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 17th day of January, 2024

*Copies to :(1) Ankit Impex Marketing Services Pvt. Ltd.,
46C, J.L. Nehru Road, Kolkata-700071*

*(2) Income Tax Officer,
Ward-8(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square, Kolkata-700069*

- (3) *Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*
(4) *CIT- , Kolkata;*
(5) *The Departmental Representative*
(6) *Guard File*
TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.

