

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'A' BENCH, KOLKATA****Before Shri P.M. Jagtap, Accountant Member and  
Shri S.S. Viswanethra Ravi, Judicial Member****I.T.A. No. 274/KOL./2016  
Assessment year: 2011-2012*****M/s. Soorajmal Baijnath (P) Limited,.....Appellant  
31, Shakespeare Sarani,  
Kolkata-700 017  
[PAN: AADCS 7271 D]*****-Vs.-*****Additional Commissioner of Income Tax,.....Respondent  
Range-3, Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700 069*****Appearances by:*****Shri V.N. Purohit, FCA and Shri H.V. Bhardwaj, ACA, for the assessee  
Shri Shallong Yaden, Addl. CIT, D.R., for the Department***Date of concluding the hearing : November 09, 2017  
Date of pronouncing the order : November 22, 2017**O R D E R****Per Shri P.M. Jagtap, Accountant Member :**

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-I, Kolkata dated 27.01.2016.

2. The issue raised in Ground No. 1 relates to the disallowance of Rs.6,63,939/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of commission expenses.

3. The assessee in the present case is a Company, which is engaged in the business of trading in iron and steel and rendering Consignment Agency and Straightening Services. The return of income for the year under consideration was filed by it on 22.09.2011 declaring total income of Rs.2,69,70,588/-. In the Profit & Loss Account filed along with the said return, a sum of Rs.95,19,939/- was debited by the assessee on account of

commission expenses. In order to cross verify the said expenses, letters were sent by the Assessing Officer to the concerned parties during the course of assessment proceedings. Out of the said letters, two letters sent to Vinay Agarwal (HUF) and Shri Navinchandra N Shah came back unserved with the remark "not known". When this position was confronted by the Assessing Officer to the assessee, the assessee could not offer any satisfactory explanation. The Assessing Officer, therefore, treated the claim of the assessee of having paid commission of Rs.3,19,010/- and Rs.3,44,929/- to Vinay Agarwal (HUF) and Shri Navinchandra N Shah respectively as bogus and made a disallowance of Rs.6,63,939/- out of commission expenses claimed by the assessee.

4. The disallowance made by the Assessing Officer out of commission expenses was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), it was submitted by the assessee that all payments to Vinay Agarwal (HUF) and Shri Navinchandra N Shah were made by account payee cheques after deduction of tax at source and the commission so paid was duly declared by the said two recipients in their returns of income. It was also submitted by the assessee before the Id. CIT(Appeals) that the expenditure on account of commission was claimed even in the earlier years and there was no disallowance made by the Assessing Officer out of such expenses. The Id. CIT(Appeals) did not find the submissions of the assessee to be accepted. According to him, every assessment year was separate and the onus in this regard was on the assessee to establish on evidence that the expenditure incurred on payment of commission to the concerned two parties was for the purpose of its business. He held that this onus was not discharged by the assessee as the relevant documentary evidence to establish the services rendered by the said two agents was not brought on record by the assessee. He held that the payment of commission by cheques after deduction of tax at source and declaration of commission as income by the recipients alone was not sufficient to establish the genuineness of the claim of the

assessee for the commission expenditure. He accordingly confirmed the disallowance made by the Assessing Officer on this issue.

5. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The ld. counsel for the assessee has mainly reiterated before us the submissions made on behalf of the assessee before the ld. CIT(Appeals) in support of the assessee's case on this issue. However, as rightly contended by the ld. D.R., there was no documentary evidence that has been produced by the assessee to establish the services rendered by the two concerned parties. There is nothing produced on record by the assessee to show the exact sales generated by the said two agents to justify the commission paid to them as well as the basis on which such commission was paid. As rightly held by the ld. CIT(Appeals), every assessment year is different and the expenditure incurred by the assessee on commission cannot be allowed simply because similar expenditure was allowed in the earlier years especially when the letters sent by the Assessing Officer to the concerned two parties had come back un-served with the remark "not known", which created doubt about the genuineness of the commission claimed to be paid by the assessee to the said parties. The assessee has failed to offer any satisfactory explanation in this regard either before the authorities below or even before us. Keeping in view all these facts of the case, we find no infirmity in the impugned order of the ld. CIT(Appeals) confirming the disallowance made by the Assessing Officer out of commission expenditure and upholding the same, we dismiss Ground No. 1 of the assessee's appeal.

6. The issue raised in Ground No. 2 relates to the disallowance of Rs.3,37,842/- made by the Assessing Officer out of supervision charges, which is sustained by the ld. CIT(Appeals) to the extent of Rs.1,68,921/- (50%).

7. During the year under consideration, the assessee had claimed a deduction on account of supervision charges of Rs.3,37,842/- paid to M/s. Soorajmull Baijnath, a related party. The assessee, however, failed to explain the nature of services rendered by the said related party. The Assessing Officer also noted that all the Directors of the assessee-company were paid remuneration for looking after the affairs of the Company. He held that the payment of supervision charges separately to a related party thus was not justified in the facts of the case and disallowed the entire expenditure of Rs.3,37,842/- claimed by the assessee on supervision charges. On appeal, the Id. CIT(Appeals) restricted the disallowance made by the Assessing Officer on this issue to 50% on the ground that the supervision charges paid by the assessee to the related party at the rate of Rs.10/- per Ton were excessive and unreasonable and it would be fair and reasonable to allow the supervision charges at the rate of Rs.5/- per Ton.

8. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As submitted by the Id. counsel for the assessee, similar expenditure incurred by the assessee on supervision charges was allowed by the Assessing Officer in the earlier years and although there was an increase of more than 20% in the turnover of the assessee during the year under consideration as compared to the immediately preceding year, the expenditure claimed on supervision was lower than that claimed in the immediately preceding year. In reply to query raised by the Bench, he clarified that supervision charges at the same rate of Rs.10/- Per Ton were paid by the assessee in the immediately preceding year and the same were allowed by the Assessing Officer. Keeping in view all these relevant facts and figures, we are of the view that there is no basis to say that the supervision charges paid by the assessee at the rate of Rs.10/- per Ton during the year under consideration are excessive or unreasonable and the Id. CIT(Appeals), in our opinion, was not justified in allowing the claim of the assessee for supervision charges only to the extent of Rs.5/- per Ton merely because

the same were paid to the related party without bringing on record any material to show that the rate of Rs.10/- per Ton shown by the assessee was excessive and unreasonable. We, therefore, delete the disallowance made by the Assessing Officer and sustained by the Id. CIT(Appeals) on this issue and allow Ground No. 2 of the assessee's appeal.

9. The issue raised in Ground No. 3 relates to the disallowance of Rs.8,36,810/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of entertainment expenses.

10. During the year under consideration, expenditure of Rs.8,36,810/- was claimed to be incurred by the assessee on entertainment. During the course of assessment proceedings, the assessee was called upon by the Assessing Officer to prove the business expediency of the said expenses. The assessee, however, failed to prove the said claim to the satisfaction of the Assessing Officer. The Assessing Officer, therefore, disallowed the entire entertainment expenditure of Rs.8,36,810/- claimed by the assessee.

11. The disallowance made by the Assessing Officer on account of entertainment expenses was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings, it was submitted by the assessee that substantial expenditure was required to be incurred by it on Hotel, Business Meals, etc. in order to host business meetings with large customers. It was also submitted that similar expenditure incurred by the assessee in the earlier years on entertainment was allowed by the Assessing Officer and the increase in such expenditure as claimed by the assessee in the year under consideration as compared to the immediately preceding year was less than the increase in the turnover. These submissions of the assessee were not found acceptable by the Id. CIT(Appeals). According to him, there was failure on the part of the assessee to establish the business expediency of the expenditure incurred on entertainment. He also noted that no

documentary evidence was filed by the assessee either before the Assessing Officer or even before him to support and substantiate its claim for entertainment expenditure. He accordingly confirmed the disallowance made by the Assessing Officer on this issue.

12. We have heard the arguments of both the sides and also perused the relevant material available on record. Even if it is agreed that the assessee has failed to produce the relevant documentary evidence in the form of bills, vouchers, etc. to support and substantiate its claim for entertainment expenditure, the fact remains to be same is that similar expenditure on entertainment was regularly incurred by the assessee in the earlier years and the same was allowed by the Assessing Officer even in the assessment completed under section 143(3). In these facts and circumstances, even if it is accepted that the entertainment expenditure claimed by the assessee was not verifiable for the want of supporting bills and vouchers, we are of the view that the same cannot be entirely disallowed. Keeping in view the nature of the assessee's business as well as the fact that similar expenditure incurred by the assessee on entertainment in the earlier years was fully allowed by the Assessing Officer, we are of the view that it would be fair and reasonable to make a disallowance of 25% out of entertainment expenditure for the unverifiable element involved therein. We accordingly restrict the disallowance made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of entertainment expenditure to 25% and allow partly Ground No. 3 of the assessee's appeal.

**13. In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open Court on 22<sup>nd</sup> day of November, 2017.

**Sd/-**  
**(S.S. Viswanethra Ravi)**  
**Judicial Member**

**Kolkata, the 22<sup>nd</sup> day of November, 2017**

**Sd/-**  
**(P.M. Jagtap)**  
**Accountant Member**

- Copies to :
- (1) **M/s. Soorajmal Baijnath (P) Limited,  
31, Shakespeare Sarani,  
Kolkata-700 017**
  - 2) **Additional Commissioner of Income Tax,,  
Range-3, Kolkata  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700 069**
  - (3) *CIT(Appeals)-I, Kolkata*
  - (4) *CIT- , Kolkata*
  - (5) *The Departmental Representative*
  - (6) *Guard File  
TRUE COPY*

*By Order*

*Senior Private Secretary,  
Head of Office/DDO,  
Income Tax Appellate Tribunal  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**