

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (SMC), KOLKATA**

[Before Hon'ble Shri P.M. Jagtap]

**I.T.A. Nos. 2059 to 2063/Kol/2016
Assessment Years : 2002-03 to 2005-06 and 2007-08**

M/s. Umbika Agency.....Appellant
14A/1A, Ultadanga Road,
Kolkata – 700 004
[PAN : AABFU 5344 E]

Income Tax Officer.....Respondent
Ward 41(1) Kolkata,
3, Government Place (West),
Kolkata – 700 004

Appearances by:

Shri Gaurav Mathur, Advocate appearing on behalf of the Assessee.
Shri R.P. Nag, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : October 03, 2017
Date of pronouncing the order : November 24, 2017

ORDER

These five appeals filed by the assessee are directed against five separate orders of the Ld. CIT (A) for A.Y. 2002-03, 2003-04, 2004-05, 2005-06 and 2007-08 and since some of the issue involved therein are common, the same have been heard together and are being disposed of by a single consolidated order for the sake of convenience.

2. First we take up the appeal of the assessee for A.Y. 2002-03 being ITA No. 2059/Kol/2016 which is directed against the order of Ld. CIT (Appeals) – 13, Kolkata dated 06.07.2016. The issue involved in ground no 1 of these appeals relates to the disallowance of Rs.

57,570/- made by the A.O. and confirmed by the Ld. CIT (A) on account of commission.

3. The assessee in the present case is a partnership firm which is engaged in the business of marketing and advertising hoardings, banners etc. and rendering services as liaisoning agent / contractor of clearing and forwarding. The return of income for the year under considering i.e. A.Y. 2002-03 was filed by it on 07.08.2002 declaring a total income of RS. 3,11,730/-. The said return was initially processed by the A.O. under section 143(1). However, the assessment was subsequently reopened by him and a notice under section 148 was issued by him on 01.12.2008 in response to which the return of income was filed by the assessee on 07.01.2009 declaring the same total income of Rs. 3,11,730/-. During the course of assessment proceedings, it was noticed by the A.O. that the assessee, as per sundry debtors ledgers, had received labour charges of 5,55,512/-, but in the trading account, an amount of Rs. 3,60,052/- only was credited by the assessee on account of labour charges. While explaining this difference, it was submitted by the assessee that the labour charges credited in the trading account were net off inter alia commission of Rs. 57,750/-. This explanation of the assessee was not found acceptable by the A.O. and the amount of Rs. 57,750/- was added by him to the total income of the assessee being suppressed labour charges. On appeal, the Learned CIT (A) confirmed the said addition made by the A.O. on the ground that the commission payment of RS. 50,000/- on a turnover of Rs. 7,92,052/- only was unreasonable and excessive. He also held that the assessee had failed

to establish the services rendered by the concerned parties to justify the payment of commission.

4. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As submitted by the learned counsel for the assessee, the assessee during the year under consideration had paid commission of Rs. 1,11,580/- and after adjusting the commission of Rs. 50,000/- received, net amount of Rs. 54,580/- was debited to the profit and loss account. He has contended that there was thus no adjustment of commission made by the assessee against the labour charges received as wrongly presumed by the A.O. He has also submitted that no specific adverse finding was recorded by the A.O. in the assessment order to justify the disallowance made on account of commission. However, as rightly submitted by the learned DR by referring to relevant portion of the impugned order of the Ld. CIT (A), specific defects were pointed out by the Ld. CIT (A) while confirming the disallowance made by the A.O. on account of commission. As noted by him, the confirmation of the concerned parties were not produced by the assessee and even there was a failure on the part of the assessee to establish the services rendered by the said parties to justify the payment of commission. Even at the time of hearing before us, no such evidence has been brought on record by the assessee to show that the expenditure on commission was incurred wholly and exclusively for the purpose of its business. I, therefore, find no justifiable reason to interfere with the impugned order of the Ld. CIT (A) confirming the disallowance made by the A.O. on account of payment of commission and upholding the same, I dismiss ground no 1 of the assessee's appeal.

5. As regards the issue involved in ground no 2 of the assessee's appeal for A.Y. 2002-03 relating to the disallowance of commission of Rs. 1,00,000/- paid to Probhat Kumar Srivastave (HUF), it is observed that the partners of the assessee firm were the members of the said HUF. As noted by the authorities below, the business procured by the assessee during the year under consideration was also not sufficient to justify the payment of commission of Rs. 1,00,000/-. Although the learned counsel for the assessee has placed on record, a copy of bill raised by the concerned HUF for commission and has pointed out that tax at source was deducted by the assessee firm from the payment of commission paid to HUF, it is observed that there is no basis whatsoever given of such commission paid by the assessee. As rightly observed by the Ld. CIT(A) in his impugned order, the onus in this regard is on the assessee to establish the services rendered by the HUF for the purpose of its business to show that the commission of Rs. 1,00,000/- was paid to them wholly and exclusively for the purpose of its business. It is observed that the assessee has failed to discharge this onus before the authorities below as well as before the Tribunal. I, therefore, find no infirmity in the impugned order of the Ld. CIT (A) confirming the disallowance made by the A.O. on account of commission paid to Probhat Kumar Srivastave (HUF) and upholding the same, I dismiss ground no 2 of the assessee's appeal.

6. Now I shall take up the appeal of the assessee for A.Y. 2003-04 being ITA No. 2060/Kol/2016 which is directed against the order of Ld. CIT (Appeals) -13, Kolkata dated 06.07.2016.

7. The issue raised in ground no 1 of this appeal relates to the addition of Rs. 2,62,437/- made by the A.O. and confirmed by the Ld. CIT (A) on account of unexplained creditors.

8. In the balance sheet filed along with the return of income for A.Y. 2003-04, sundry creditors of Rs. 29,71,348/- were shown by the assessee. During the course of assessment proceedings, the Assessing Officer verified the veracity of assessee's claim for the said creditors. On such examination, he found that one party namely M/s. S. Bhattachariya & Bros. was not traceable either at the address available on record or even at the new address given by the assessee. The notice sent to the said party by the A.O. under section 133(6) also remained unserved by post. The assessee also could not offer any satisfactory explanation in this regard. It was noted by the A.O. that the assessee had shown to have made purchase of printing materials of Rs. 2,99,871/- from the said party out of which cash payment was made to the extent of Rs. 37,434/- while the balance amount of Rs. 2,62,437/- was outstanding. Since the existence of concerned creditors was not proved, the A.O. treated the credit balance of Rs. 2,62,437/- appearing in the name of the said creditors as bogus and added the said amount to the total income of the assessee. On appeal, the Ld. CIT (A) confirmed the said addition made by the A.O. keeping in view the adverse findings recorded by the A.O. which the assessee failed to controvert. He also took into consideration the different stand taken by the assessee at different stages regarding the nature of materials claimed to be provided by the concerned creditors M/s. S. Bhattachariya & Bros.

9. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The learned counsel for the assessee has contended that the assessee is in the business of marketing of advertising hoarding and for the purpose of the said business, printed material was purchased by it from M/s. S. Bhattachariya & Bros. He has invited my attention to the copies of the bills raised by the said party placed at page no 8 to 10 of his paper book and submitted that the same are sufficient to establish that the expenditure on purchase made from M/s. S. Bhattachariya & Bros. was incurred for the purchase of the assessee's business. A perusal of the said bills however shows that the same are not numbered. Even the sales tax registration number is not given in the said bills. These bills are in the form of computer printouts and even the relevant details such as delivery chalan no, mode of transport etc. are not given. Even the adverse findings of the Assessing Officer regarding non-existence of the creditor at the address given are not rebutted or controverted by the learned counsel for the assessee. The only contention raised in this regard is that the enquiry was made by the A.O. at the wrong address. As rightly pointed out by the learned DR, enquiry was made by the A.O. at the address available on record as well as at the changed address given by the assessee, but the party was not found traceable. Keeping in view all these facts of the case, I find myself in agreement with the authorities below that the existence of the concerned creditor was not established by the assessee and consequently the amount shown in the name of the said party was rightly treated as unexplained credit. In that view of the matter, I uphold the impugned order of the Ld. CIT (A) on this issue and dismiss ground no 1 of the assessee's appeal.

10. As regards the issue raised in ground no 2 relating to the addition of Rs. 75,000/- made by the A.O. confirming by the Ld. CIT(A) by treating the balance appearing in the name of M/s. Biswanath Da. I find that the facts relevant to this issue are materially similar to the issue involved in ground no 1 in as much as the very existence of the concerned creditor was found to be doubtful by the A.O. on the basis of enquiry made at the address available on record as well as new address given by the assessee. Even the bill produced by the assessee in support of its claim of having purchased printed material from the said party (copy at page no 16 of the paper book) does not contain either the bill no or even the delivery details such as delivery challans, Mode of transport etc. Even the sales tax registration of the party is not mentioned in the bill. On the similar facts and circumstances of the case, I have already decided the issue involved in ground no 1 of the assessee's appeal whereby the action of the authorities below in treating the concerned credit as unexplained has been upheld by me. Following the conclusion drawn while deciding the similar issue involved in ground no 1, I uphold the impugned order of the Ld. CIT (A) confirming the addition of Rs. 75,000/- made by the A.O. by treating the credit in the name of Biswanath Da as unexplained and dismiss ground no 2 of the assessee's appeal.

11. The issue involved in ground no 3 relates to the addition of Rs. 3,31,389/- made by the A.O. and confirmed by the Ld. CIT (A) on account of the alleged suppression of income by the assessee on account of labour charges.

12. In the trading account filed along with the return of income, income from various charges received during the year under consideration was shown by the assessee at Rs. 42,00,933/-. As per the sundry debtor's ledger, the total receipts of the assessee, however were Rs. 48,77,551/- as found by the A.O. While explaining this difference, it was submitted by the assessee before the A.O. that adjustment was made inter alia on account of labour charges for loading and unloading amounting to Rs. 3,31,389/- thereby showing the charges received on net basis. It was also explained by the assessee that godown was owned by it and sometimes loading and unloading job was undertaken on behalf of the parties. This explanation of the assessee was not found acceptable by the A.O. According to him, the assessee could not substantiate his claim of having undertaken the job of loading and unloading on behalf of the parties. He accordingly rejected the explanation of the assessee of having adjusted the labour charges paid for loading and unloading against charges received as an afterthought and made an addition of Rs. 3,31,389/- to the total income of the assessee. On appeal, the Ld. CIT (A) confirmed the said addition made by the A.O. for the same reasons as given by the A.O.

13. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As submitted by the learned counsel for the assessee, the assessee was providing clearing and forwarding agent services to M/s. P.D. Pasad & Sons Pvt. Ltd. and during the course of the same, the assessee was required to collect and load the material on behalf of the company and also to

unload the same at the delivery place as required by the said party. He has submitted that the labour charges paid for such loading and unloading were separately debited by the assessee to ledger account 'labour loading/unloading and miscellaneous charges' and bills for such services, rendered were raised on M/s. P.D. Prasad and Sons Pvt. Ltd. He has invited my attention to the copy of the said ledger account at the page no 24 of the Paper Book which clearly shows that a sum of Rs. 5,31,772/- was earned by the assessee from the bills raised on M/s. P.D. Prasad & Sons Pvt. Ltd. on account of loading and unloading charges and after debiting the expenditure actually earned on loading and unloading charges of Rs. 3,31,389/-, the balance amount of Rs. 2,00,383/- was declared by the assessee as its income, which was duly credited in the trading account. It is also observed that the claim of the assessee of having incurred the expenditure on loading and unloading charges of Rs. 3,31,389/- is duly supported by the bills of the concerned parties, the copies of which are placed on record before the Tribunal. I, therefore, find that the claim of the assessee of having incurred expenditure of Rs. 3,31,389/- on loading and unloading charges and adjustment of the same against the corresponding bills raised on M/s. P.D. Prasad & Sons Pvt. Ltd. is duly supported by the relevant documentary evidence and the authorities below were not justified in making the addition of Rs. 3,31,389/- to the total income of the assessee without appreciating or understanding the claim of the assessee in right perspective. I, therefore, delete the said addition made by the A.O. and confirmed by the Ld. CIT (A) and allow ground no 3 of the assessee's appeal for A.Y. 2003-04.

14. Now I take up the appeal of the assessee for A.Y. 2004-05 being ITA No. 2061/Kol/2016 which is directed against the order of Ld. CIT (Appeals) – 13, Kolkata dated 06.07.2016.

15. The issue raised in ground no 1 of this appeal relates to the addition of Rs. 90,000/- made by the A.O. and confirmed by the Ld. CIT (A) by treating one of the creditors, M/s. Panna as unexplained.

16. During the year under consideration, the assessee had claimed to have made purchases of printing material from M/s. Panna amounting to Rs. 90,000/-. Since no payment against the said purchase was made by the assessee during the year under consideration, the entire balance of Rs. 90,000/- was outstanding as on 31.03.2004. In order to verify the said balance, enquiry was made by the A.O. at the address of the party furnished by the assessee. The party however, was not found traceable at the said address. When this position was confronted by the A.O. to the assessee, the later furnished a new address. On enquiry, the A.O. however, found that the party was not traceable even at the new address. Since no explanation in this regard could be offered by the assessee to the satisfaction of the A.O., the liability in the name of M/s. Panna was treated by the A.O. as bogus liability and the amount of Rs. 90,000/- was added by him to the total income of the assessee. On appeal, the Ld. CIT (A) confirmed the said addition.

17. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. Although the learned counsel for the assessee has relied on the copy of the bill

issued by M/s. Panna placed at page no 8 of his Paper Book in support of the assessee's case, a perusal of the said bill shows that it is a computer print out without having any serial no given therein. Even the relevant details regarding the delivery of material such as delivery challan number or mode of transport are not given in the bill. The sales tax number of the party is also not mentioned in the bill. The copy of the ledger account of M/s. Panna given at page no 9 and 10 of assessee's Paper Book shows that the payments against the purchases made from the said party in the year under consideration were settled only in the F.Y. 2007-08 and that too in cash. When the party was not found traceable at the address originally furnished by the assessee as well as at the new address furnished subsequently and no satisfactory explanation in this regard could be offered by the assessee, it is difficult to comprehend that the assessee could make payments to the said party after a period of almost 3 years and that too in cash through self made vouchers without any receipt or confirmation of the party. Keeping in view all these facts of the case, I find myself in agreement with the authorities below that the credit appearing in the name of M/s. Panna was not satisfactorily explained by the assessee. I, therefore, find no infirmity in the impugned order of the Ld. CIT (A) confirming the addition of Rs. 90,000/- made by the A.O. to the total income of the assessee on account of unexplained liability shown in the name of M/s.Panna and upholding the same, I dismiss ground no 1 of assessee's appeal for A.Y. 2004-05.

18. As regards the issue involved in ground no 2 relating to the addition of Rs. 52,000/- made by the A.O. and confirmed by the Ld. CIT (A) by treating the liability appearing in the M/s. S. Bhattacharya

& Bros. as explained, it is observed the same is similar to the issue involved in ground no 1 of the assessee for A.Y. 2003-04 which has already been decided by us in the foregoing portion of this order. Following the conclusion drawn in A.Y. 2003-04 on a similar issue, I uphold the impugned order of the Ld. CIT (A) confirming the addition made by the A.O. on this issue in A.Y. 2004-05 and dismiss ground no 2 of assessee's appeal.

19. Now I take up the appeal of the assessee for A.Y. 2005-06 being ITA No. 2062/Kol/2016 which is directed against the order of Ld. CIT (Appeals) – 13, Kolkata dated 06.07.2016.

20. As agreed by the learned representatives of both the sides, the issues involved in ground no 1 to 3 of the assessee's appeal for A.Y. 2005-06 relating to the additions of Rs. 45,000/-, Rs. 1,45,780/- and Rs. 75,000/- made by the A.O. and confirmed by the Ld. CIT (A) by treating the credit balances appearing in the name of M/s. S. Bhattarharya & Bros., M/s. B. Sign and M/s. Biswanath as unexplained are similar to the issues involved in the appeals of the assessee for the earlier years which have been decided in the foregoing portion of this order. Following the conclusion drawn on the similar issues in the earlier years, I confirm these additions and dismiss ground no 1 to 3 of the assessee's appeal for A.Y. 2005-06.

21. As regards the issue involved in ground no 4 relating to the addition of Rs. 90,000/- made by the A.O. and confirmed by the Ld. CIT (A) on account of credit balance appearing in the name of M/s. Panna by treating the same as unexplained, the learned counsel for

the assessee has submitted that the amount of Rs. 90,000/- having been already added by the A.O. in A.Y. 2004-05, it is a case of the double addition. I, therefore, direct the A.O. to verify this aspect and allow appropriate relief to the assessee if it is found to be a case of the double addition. Ground no 4 is accordingly treated as allowed for statistical purpose.

22. As regards the issue involved in ground no 5 and 6 relating to the additions of Rs. 67,500/- and Rs. 1,98,000/- made by the A.O. and confirmed by the Ld. CIT (A) by treating the credits appearing in the name of Shri Pratap Chand Kahar and S. Islam as unexplained, the learned counsel for the assessee has submitted that these credits pertained to the earlier year and the additions have been made on account of opening balances in the creditors account, which is not justified. As rightly contended by him, the additions on account of unexplained credit can be made only in respect of the credits appearing in the year under consideration and not on account of liability of the earlier years represented by opening balances unless it is established by the A.O. that the said liability had ceased to exist in the year under consideration attracting the provision of section 41(1). No such case however, appears to have made out by the A.O. I, therefore, direct the A.O. to verify as to whether the amounts in question represent liability of the earlier year which is carried forward as opening balance and if so, delete the additions made on these issues. Ground no 5 and 6 of assessee's for A.Y. 2005-06 are accordingly treated as allowed for statistical purpose.

23. Now I take up the appeal of the assessee for A.Y. 2007-08 being ITA No. 2063/Kol/2016 which is directed against the order of Ld. CIT (Appeals) – 13, Kolkata dated 06.07.2016.

24. The only issue raised in this appeal relates to the addition of Rs. 80,000/- made by the A.O. and confirmed by the Ld. CIT (A) on account of investment made by Shruti Shrivastava by treating the same as unexplained. In this regard, the learned counsel for the assessee has submitted that this addition was made by the A.O. in the assessment originally completed under section 143(3) and not in the reassessment made under section 147 which is the subject matter of this appeal. As agreed by him, this issue thus is not arising from the impugned order of the Ld. CIT (A) and this appeal filed by the assessee for A.Y. 2007-08 raising the said issue may be dismissed as infructuous. Accordingly, the appeal of the assessee for A.Y. 2007-08 is dismissed as infructuous.

25. In the result, the appeals of the assessee for A.Y. 2002-03, 2004-05 & 2007-08 are dismissed while the appeals of the assessee for A.Y. 2003-04 & 2005-06 are partly allowed as indicated above.

Order Pronounced in the Open Court on 24th November, 2017.

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 24/11/2017
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Umbika Agency, 14A/1A, Ultadanga Road, Kolkata – 700004.
2. ITO, Ward 41(1), 3, Government Place (West), Kolkata - 700004
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata