आयकर अपीलीय अधिकरण पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

श्री डी.करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D.KARUNAKARA RAO, AM & SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 2208/PUN/2014
निर्धारण वर्ष / Assessment Year : 2009-10

M/s.Messung Systems Private Ltd.,
501, Lunkad Skyvista,
S.No.230/A/3/2, Viman Nagar,
Pune – 411 014.

PAN: AABCM1832E .. Appellant

Vs.

Asst. Commissioner of Income-tax,
Circle-9, Pune.
.. Respondent

Assessee by	:	Shri P.D.Kudwa
Department by	:	Shri S.P.Walimbe

आयकर अपील सं. / ITA No. 2279/PUN/2014
निर्धारण वर्ष / Assessment Year : 2009-10

Asst. commissioner of Income Tax,
Circle–14, 2nd Floor,
PMT Commercial
Complex, Swargate,
Pune-411 037 .. Appellant

Vs.

M/s.Messung Systems Pvt Ltd,
EL-2, block MIDC, Bhosari,
Pune – 411 026.

PAN: AABCM1832E .. Respondent

Assessee by	:	Shri P.D.Kudwa
Department by	:	Shri S.P.Walimbe

आयकर अपील सं. / ITA No. 2289/PUN/2014
निर्धारण वर्ष / Assessment Year : 2010-11

Asst. commissioner of Income Tax,
Circle–14, 2nd Floor,
PMT Commercial
Complex, Swargate,
Pune-411 037 .. Appellant

Vs.

M/s.Messung Systems Pvt Ltd,
EL-2, block MIDC, Bhosari,
Pune – 411 026.

PAN: AABCM1832E .. Respondent

Assessee by	:	Shri P.D.Kudwa
Department by	:	Shri S.P.Walimbe
Date of Hearing	:	17-05-2017
Date of Pronouncement	:	19-05-2017

आदेश / ORDER

PER D.KARAUNAKARA RAO, AM :

There are three(3) appeals under consideration involving two(2) assessment years that is Assessment year 2009-10 & 2010-11. Appeals for the Assessment Year 2009-10 are cross appeals and the appeal for 2010-11 is filed by the Revenue. We shall now take up the cross appeals first.

2. **2208/PUN/2014 – AY 2009-10 – by Assessee**
2279/PUN/2014 – AY 2009-10 – by Revenue

These cross appeals are filed for the assessment year 2009-10 against the order of Commissioner of Income Tax(Appeals) dated 02/09/2014. Grounds raised by the **Assessee** reads as under:-

> *"1. On the facts and circumstances of the case and in law the CIT (A) erred in confirming the order of the AO erred in treating Sales Promotion expenses of Rs.13,18,930 as capital in nature and after allowing depreciation thereon of Rs.1,31,893, disallowing the claim to the extent of Rs.1,87,037.The appellant pleads that the expenses are revenue in nature and incurred wholly and exclusively business purpose and ought to be allowed in full."*

3. Similarly, **Revenue** raised five(5) grounds in their appeal and the ground 1 to 3 relates to the agency commission of Rs.33,73,787/- paid to M/s.Micro Log Systems. Ground no.4 & 5 relates to courier expenses of Rs.17,64,112/- paid to M/s.Sky Air. We shall now take up Revenue appeal first.

ITA No.2279/PUN/2014 – by Revenue

4. Relevant facts relating to the ground 1 to 3 raised by the Revenue i.e. allowability of agency commission include that the assessee is a distributor for programmable logic controllers (PLCs) and parts thereof. Assessee claimed payment of commission in respect of sales to top 100 customers of the assessee. One such customer, namely M/s.Manugraph India Private Ltd., registered huge sales in the year under consideration. Relevant agent for this customer is M/s.Microlog Systems, Kolhapur. The amount of

commission paid by the assessee to Micro Log Systems works out to 33,73,757/- i.e. equalent of the rate of 7.5% of the sale of the year made by the assessee to M/s.Manugraph India Private Limited. The payments are made by way of cheque / DD's and that relevant TDS deducted as per the provisions of the Act. In response to the AO's proposal of disallowance of the said agency commission payments, the assessee replied stating that the said commission agent has been rendering services constantly over the years and the similar claim of the assessee was accepted by the Revenue in the past. However, the Assessing Officer is of the view that the assessee is a sole distributor of manufacturers of the said controllers (PLC's). Assessing Officer is of the opinion that there is no need for commission payment considering the demand for the Product. In para 3.6 and 3.7 of the order of the Assessing Officer, he opined that the payment of commission is unwarranted. Assessing Officer inferred that the same was done with a view to drain out the profits of the assessee with a view to reduce the tax. Accordingly, he disallowed the entire claim of the assessee added to the total income of assesse.

5. During the first appellate proceedings, on the above said additions assessee made various written submissions. The contents of the reply of the assessee are extracted in para 9 of impugned order. After considering same and also the judicial pronouncements relied upon by the assessee, in para 10, the Commissioner of Income Tax(Appeals) discussed the issue at length and made out that the Micro Log Systems was involved in arranging the transactions, service and the support to the customer named

Manugraph India Ltd. He also observed the Assessing Officer's conclusion that assessee controls this product as a monopoly and eventually concluded that the payment of commission is necessary in the industry. He also commented that it is not the case of the Revenue that the Micro Log Systems as returned the money/cash to the assessee at any time. Considering the totality of the facts, the Commissioner of Income Tax(Appeals) deleted the entire addition on this account of commission payment to Micro Log Systems. Aggrieved with the above deletion the Revenue is in appeal before us. Ld.DR for the Revenue relied heavily on the order of the Assessing Officer on this issue.

6. On the other hand, Ld. AR for the assessee submitted that the order of Commissioner of Income Tax(Appeals) is fair and reasonable. He highlighted to fact that the payments to Micro Log Systems was done through the banking channels and the TDS was effected on the said payment in accordance with the TDS provisions of the Income Tax Act. The concerned recipients of the commission paid the taxes on the said commission by filing their income tax returns. No cash was returned by the agent to the assessee. The rendering of services by Micro Log Systems to the assessee as well as to the customer and also accepted by the Revenue. In these circumstances, the order of the Commissioner of Income Tax(Appeals) should be declared as fair and reasonable one. On hearing both the parties and also going through the contents of para 12, we find it is appropriate to insert the said paragraph as under:-

"12. Another ground on which the Assessing Officer has disallowed the commission payment is that the appellant group was enjoying monopoly position in PLC market and there was no need to pay commission for its sales. This observation of the Assessing Officer is made without appreciating the realities in business. These days markets have become quite volatile and maintaining dominant position requires lot of efforts otherwise slipping from the dominant position does not take much time. It also be appreciated that the party in question is not related to the appellant. It is also not a case where commission payment has come back to the appellant in any manner. Therefore, on totality of facts, it is held that the Assessing Officer wasnot justified in disallowing the commission of Rs.33,73,787/-. Accordingly, he is directed to delete the same. Thus, the ground is allowed."

7. The above extracted para suggests that the Assessing Officer has not brought any incriminating evidence to support his conclusion and against the assessee. In our view, the Assessing Officer has not discharged his onus completely. Therefore, making addition by disallowing the commission paid to M/s.Microlog Systems is not proper. For these reasons also, in our view, the addition is unwarranted. Accordingly, the conclusions drawn by the Commissioner of Income Tax(Appeals) are confirmed. Relevant grounds raised by the Revenue in ground no.1 to 3 are dismissed.

8. Ground no.4 to 5 of the Revenue's appeal relates to the allowability of courier expenses of Rs.17,64,112/-. Assessee paid the said expenses to M/s.Sky Air, Pune. Relevant facts on this issue include that, apart from making payments to couriers like GATI & BLUEDART, engaged the said Sky Air Courier for courier services owned by Shri Manish Vijay Sakpal.

Assessing Officer noticed certain discrepancies which are enlisted certain discrepancies such as M/s.Sky Air is not an established courier, rendered services only to the assessee, it has no sufficient manpower, the bills are not made, the rates are competent etc,. Thus, Assessing Officer came to the conclusion the facilities and establishment of the courier is not commensurate with the amount paid by the assessee. Therefore, Assessing Officer disallowed 18% of the entire payment of 22,05,141/-. During the first appellate proceedings assessee made elaborate submissions meeting the above referred allegations of the Assessing Officer and requested for allowing the claim of the assessee. Commissioner of Income Tax(Appeals) considered the same and examined the relevant documents and held the Sky Air being, a local courier service provider cannot be compared with the established couriers like GATI & BLUEDART. He also observed that Mr.Sakpal is unrelated biologically to the owner or directors of the company. Thus, Commissioner of Income Tax(Appeals) came to the conclusion that the claim of the assessee is allowable and therefore, allowed the ground raised by the assessee on his issue.

9. On hearing both the parties who essentially relied on the relevant orders of the Assessing Officer and the Commissioner of Income Tax(appeals) we are of the opinion, discussion given by the Commissioner of Income Tax(Appeals) in para 16 of the impugned order is proper and reasonable. We find the Assessing Officer has not brought any incriminating information against the assessee. He merely analysed the

documents furnished by the assessee and decided to make addition on the basis of surmises and suspicion. Considering the same the grounds raised by the Revenue is dismissed.

10. In the result, appeal of the Revenue is dismissed.

Assessee's appeal
2208/PUN/2014
by the assessee for the A.Y.2009-10

11. The solitary issue relates to the allowability of "sales promotion expenses" amounting of Rs.13,18,930/-. The relevant effects in this regard or that the assessee incurred above expenses in creation of certain structures at the premises of MKF Technologies, an agent of the assessee. During the assessment proceedings, assessee submitted the said expenditure incurred in upgradation and renovation. The premises of an agent who is a principle system house of the assessee at Mumbai. It is the requirement of the business that proper premises should be provided to the important agent. He also submitted through that sales of Rs.1.25 crores was brought by the said agent to the assessee during the year. The effect of not disputing the genuineness of the expenditure was also highlighted before the Commissioner of Income Tax(Appeals). On hearing the same, the Commissioner of Income Tax(Appeals) held that such expenditure was to avail long term business benefit which falls in the capital field. Therefore, the Commissioner of Income Tax(Appeals) confirmed the assessee is in appeal before us.

12. During the proceedings the assessee's counsel explained the above facts and relied heavily on the submissions made by the assessee before the Assessing Officer sales the Commissioner of Income Tax(Appeals). Ld.Counsel for the assessee submitted that the above expenditure is required for the business purposes and therefore, it is an allowable expenditure. After hearing both the parties, we find the order of the Commissioner of Income Tax(Appeals) is reasonable. The reasons include that there are no specific details with reference to the exact nature of expenditure on record. However, it is an undisputed fact that expenditure is for the extending the structures required for business purpose and it has long term benefit to the assessee through the said agent. Therefore, we also find the Commissioner of Income Tax(Appeals) after treating the same on capital depreciable asset, has rightly granted the depreciation on the said expenditure allowed capitalization. Therefore, the order of the Commissioner of Income Tax(Appeals) is fair and reasonable and it does not call for any inferences.

13. In the result, the appeal of the assessee is dismissed.

14. To sum up both the cross appeals for the assessment year 2009-10 are dismissed.

2280/PUN/2014
for Assessment Year 2010-11 filed by the Revenue

15. At the outset, both the counsels brought our information to the grounds raised by the Revenue and submitted ground no.1 to 4 relates to the issues relating the commission payment made to Micro Log Systems (Rs.16,02,127/-) and payment made to courier Sky Air (Rs.27,76,534/-). These two(2) issues are identical to the onus raised and adjudicated by the Revenue in the Revenue's appeal for the assessment year 2009-10. After hearing both the parties, we find the facts are similar to that of the similar issues raised in the assessment year 2009-10. In that appeal, we have decided to confirm the conclusions of the Commissioner of Income Tax(Appeals) as evident from the proceedings paragraphs of this order. Considering same our decisions are applicable equally to these grounds 1 to 4.

16. Accordingly, ground no.1 to 4 are of the Revenue's appeal are dismissed.

17. Relating to ground no.5, the Revenue is aggrieved against the relief granted by the Commissioner of Income Tax(Appeals) in matters relating to the claim travelling expenses. Relevant facts in this regard are that the assessee claimed travelling expenses amount to Rs.1,00,96,541/-). During the assessment proceedings, Assessing Officer examined certain bills on random basis and noticed that certain expenditure incurred on the travel of

Mrs.Ruhi Merchant (wife of Shri Azeem Farut Merchant) are included and claimed as an allowable expenditure. Considering the above discrepancy the Assessing Officer proceeded to make a disallowance on adhoc basis applying the flat rate of 15% of the entire claim. That it amounts to 15,14,481/-. During the first appeal proceedings the Commissioner of Income Tax(Appeals) notice that such disallowance is on high side. He, accordingly, restricted the disallowance to Rs.1,00,000/-.

18. After hearing both the parties on this issue we peruse the contents of para 17 to 20 of the Commissioner of Income Tax(Appeals) order and find para 20 constitutes an operational paragraphs and the same reads as under:-

> *"20. I have carefully considered the facts of the case as well as reply of the appellant. The claim of expenditure pertaining to the family of one of the Directors' son can be accepted to be business expenditure only when the same is supported with documentary evidence like posting of Shri. Azeem Farook Merchant to Gurgaon office and thereafter transfer back to Pune. The appellant has not submitted any evidence in this regard. This being so, considering the totality of facts, it is held that ends of justice will meet if the disallowance is restricted to Rs.1 lac. Accordingly, the Assessing Officer is directed to delete the addition of Rs.14,14,481/- i.e. 15,14,481 -1,00,000). Thus, the ground is partly allowed.*

19. From the above, it is evident that Commissioner of Income Tax(Appeals) as rightly discouraged the manner of making unfair adhoc disallowance applying 15% of the entire claim of expenditure. He considered the actual expenditure incurred by the assessee in connection with the domestic travel by Mrs.Ruhi Merchant is less than Rs.40,000/-.

Commissioner of Income Tax(appeals) opined the disallowance of Rs.15.14 laksh against the discrepancy of Rs.40,000/- on high side. There, the Commissioner of Income Tax(Appeals) restricted the disallowance to Rs.1 lakh. The same constitutes fair and reasonable. As such, the assessee has no grievance of this issue. Therefore, we are of the view that the finding of the Commissioner of Income Tax(Appeals) fair and reasonable and it does not call for any inference.

20. In the result, appeal of the Revenue is dismissed.

Order pronounced on 19th day of May, 2017.

Sd/-	**Sd/-**
(विकास अवस्थी/Vikas Awasthy)	**(डी.करुणाकरा राव/D.Karunakara Rao)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 19th May, 2017

~~*SGR*~~

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-V, Pune.
4. प्रधान आयकर आयुक्त / The CIT-V, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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सहायक पंजीकार / Assistant Registrar,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune