यकर अपीलीय अधिकरण, मुंबई न्यायपीठ "जे" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

श्री सी. एन.प्रसाद, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
BEFORE SHRI C.N. PRASAD, JM AND SHRI RAJESH KUMAR, AM

ITA NO.3908/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2010-11)

Dy.Commissioner of Income Tax-15(2)(4), Room No.360, 3rd floor, Aayakar Bhavan, M K Road, Mumbai-400020	बनाम/ Vs.	M/s Priyadarshan Comtech and Developers, 9, Swamiraj Bldg, Shelar O Park, Khadakpada, Kalytan (W) -421301
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./PAN : AADCP9893Q

अपीलार्थी की ओर से / Revenue by	:	Ms.Arju Garodia
प्रत्यर्थी की ओर से/ Assessee by	:	Dr.P.Danial
सुनवाई की तारीख /Date of Hearing	:	25.9.2017
घोषणा की तारीख /Date of Pronouncement	:	22.12.2017

आदेश / O R D E R

PER RAJESH KUMAR, A. M:

This is an appeal filed by the revenue challenging the order dated 31.3.2015 of ld.CIT(A)-2, Thane, for the assessment year 2010-11.

2. The issues raised by the revenue are :

a) Deletion of disallowance of commission and brokerage on account of incompetent address amounting to Rs.12,17,000/- and

b) Deletion of disallowance of commission and brokerage on accounting to Rs.72,16,500/- on account of non-verification.

3. Facts of the case are that the AO observed that the assessee has not furnished complete addresses of 8 persons involving the brokerage amount of Rs.12,17,000/- to whom the commission was paid and therefore no inquiry could be made from these parties and accordingly, the AO disallowed and added a sum of Rs.12,17,000/- to the total income of the assessee being unverified commission. Pertinent to mention here that the assessee supplied PAN, copies of ledger accounts and details of payment and also details of commission payment. Similarly, the AO added a sum of Rs.72,16,500/- on account of non-verification for want of complete details and addresses which comprised an amount of Rs.37,44,000/- on account of commission paid to 11 persons to whom the AO has issued notice u/s 133(6) but they did not provide any information as called for by the AO. With regard to the commission of Rs.34,72,500/- commission paid to 9 persons, despite issue of service of notice u/s 133(6) of the Act these 9

persons did not appear before the AO nor they have provided any information. Hence, the AO disallowed and added a sum of Rs.72,16,500/- to the total income of the assessee on the ground that the same was not proved with the adequate evidences and the assessee failed to discharge onus cast upon it .

4. In the appellate proceedings, the FAA allowed the appeal of the assessee after considering the detailed submissions and documents submitted by the assessee. Aggrieved by the order of the FAA, the revenue is in appeal before us.

5. The ld. DR submitted before us that the order of the ld.CIT(A) is not correct as the substantial part of the commission was paid to the two directors of the assessee-company. The ld. DR also submitted that the order passed by the ld.CIT(A) is highly cryptic and lacks reasoning and based upon the wrong facts. The ld. DR stated that the verification of commission of Rs.37,44,000/- and Rs.34,72,500/- could not be made due to non-service of communications/non-attendance by the recipeints and thereafter the assessee was requested to produce these parties for verification which the assessee failed to do. The ld. DR contended that the CIT(A) has not given any finding and reasoning for allowing appeal of the assessee and therefore, the order passed by the FAA is completely against

the spirit of law. Finally, the ld. DR prayed that the order of ld.CIT(A) deserved to be reversed on the ground that it is without reasoning and non-speaking and also in view of the facts that the said payment could not be verified during the course of assessment proceedings. On the contrary, the ld.AR submitted that this was the first year of operation and no staff was appointed in the assessee company as a result of which no revenue expenditure was incurred on the running and maintenance of the business of the company. The ld.AR submitted that in the subsequent two years i.e. assessment years 2011-12 and 2012-13 the revenue has accepted the similar payment by referring to the assessment order dated 7.3.2014, 17.3.2015, which was placed at pages 173 to 178 of the paper book. The ld. AR also drew our attention to page 169 of the paper book which contained the comparative details of turnover and commission paid and percentage of commission to sales and book percentage to sales and the percentage to commission for the assessment year 2010-11 and the sales were 59%, whereas in the assessment years 2011-12 and 2012-13, the said percentage was 50.46% and 45% whereas the corresponding net profit percent was 1.81% in assessment year 2010-11, 1.79% in AY 2011-12 and 2.65% for assessment year 2012-13. The ld. AR submitted that these results were accepted by the revenue for the assessment years

2010-11 and 2012-13 especially in the scrutiny proceedings. The ld. AR further stated that the ld. CIT(A) has called for the details of commission paid along with all the necessary details and only thereafter considering the evidences produced by the assessee which included the details of addresses of the parties, PAN, TDS deducted from the said commission and deposited in the government treasury. The ld. AR finally submitted that despite all these evidences, on record the AO disallowed the commission which was rightly allowed by the FAA.

6. In defence, the ld. AR relied on the decision of the Hon'ble Gujarat High Court in the case of CIT V/s B M S Projects P Ltd reported in (2014) 361 ITR 195(Guj).

7. We have carefully considered the rival contentions and perused the material placed before us including the orders of authorities below and case relied upon by the assessee. The AO disallowed the commission and brokerage by stating the reasons that the necessary verification of the said payments could not be carried out either by due to submission of non-details as to the addresses of the recipient or the parties did not respond to the notice issued u/s 133(6) of the Act and the assessee also could not produce the said parties for verification. The undisputed facts are that the assessee supplied the PAN, ledger accounts, mode of payments, details of

TDS deducted from these parties and deposited into the government treasury along with the TDS return filed and the revenue has accepted the similar payments in the subsequent years i.e. AY 2011-12 and 2012-13 in the scrutiny proceedings. Though the ld. CIT(A) has passed the cryptic order but the facts on records justified that the assessee has incurred the expenses and has all the necessary evidences in its possession and mere non-production of recipient by the assessee could not be a valid ground to reject the claim of the assessee of legitimate expenses. The case of the assessee finds support from the decision of Hon'ble High Court of Gujarat in the case of CIT V/s BMS Projects P Ltd (supra), where in the similar disallowance due to non production of parties was discussed and the deletion was made on the ground that there was no reasons to disbelieve the evidences furnished by the assessee. The High Court dismissed the appeal of the revenue on the ground that the entire issue was based on factual matrix and the issue was decided on the basis of sufficient evidences. In view o the facts, the ratio laid down in the above said decision, we do not find any infirmity in the order of the ld.CIT(A). Accordingly, we confirm the same. Resultantly, appeal of the revenue stands dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 22nd Dec, 2017.

Sd/-	Sd/-
(C.N. Prasad)	**(Rajesh Kumar)**
न्यायिक सदस्य / Judicial Member	**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated : 22nd Dec.2017
SRL,Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai