

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA No. 264/Hyd/2018
(Assessment Year: 2014-15)

M/s. Sai Krishna Agencies Vs Asstt. Commissioner of
Medak Income Tax, Circle 15(1)
PAN: ABIFS5472K Hyderabad
(Appellant) (Respondent)

For Assessee : Shri A.V. Raghuram
For Revenue : Shri M. Sitharam, DR

Date of Hearing: 31.07.2018
Date of Pronouncement: 10.08.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2014-15 against the order of the CIT (A)-7, Hyderabad, dated 04.12.2017. The assessee has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the order of the Id. Commissioner of Income Tax (Appeals)-7, Hyderabad, dismissing the appeal of the Appellant is erroneous, illegal and unsustainable in law.

2. The Commissioner (Appeals) erred in sustaining the addition of Rs.1,34,44,000/-being the discount allowed by the Appellant to its customers.

3. On the facts and in the circumstances of the case, the CIT(A) failed to appreciate that the AO allegedly got the inquiry conducted with the customers behind the back of the Appellant and without any intimation to the Appellant, and therefore is improper and legally unsustainable.

4. On the facts and in the circumstances of the case, the authorities below failed to appreciate that allowance of discount in this type of business is normal and is

allowable. The CIT(A) failed to appreciate the credit vouchers and other ledgers produced before him, in support of allowing discount by the Appellant to its customers.

5. The authorities below failed to appreciate that the net effect of allowing discount so far as the Appellant is concerned remains the same viz., whether it is reduced from the invoice amount, or by offering gross sales and showing the discount separately in the profit and loss account. The alleged violation of maintain the invoice under the APVAT Act would not dis-entitle the allowance of genuine expenditure in the hands of the Appellant”.

2. Brief facts of the case are that the assessee, a partnership firm, an authorized dealer of Mahindra & Mahindra Tractors in part of Medak District, is in the business of sale of tractors and its spare parts and is also offering after sales services to the customers. The assessee filed its return of income for the A.Y 2014-15 declaring a total income of Rs.26,72,503 on 29.9.2014.

3. During the assessment proceedings u/s 143(3) of the Act, the AO observed that the assessee has debited an amount of Rs.1,33,44,000/- towards “owners discounts” to trading account. When asked for the details, the assessee submitted that the discount offered at the time of discussion of the price of the tractor and that the invoice includes the discount offered, temporary registration, insurance and extra fittings. However, on verification of the invoices, the AO observed that discount is not reflected therein, even though as per the AP VAT Act, 2005 and Sale of Goods Act, 1930, it is mandatory that all discounts and rebates should be mentioned in the invoice. The AO therefore, did not accept the assessee’s claim of owners discount given from the gross receipts. Further, the AO also made random enquiries with

the buyers as to whether the assessee has given any cash discount and an Inspector from the Office of the AO was also deputed to enquire from few of the customers whether they received any discount. The inspector reported that two customers he met had stated that they have not received any discount and confirmed that the payment was made as per the invoice. The AO also made telephonic calls to few customers who also confirmed that no discount was given to them. In view of the same, the AO disallowed the entire discount of Rs.1,34,44,000 claimed by the assessee and brought it to tax as unexplained expenditure. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of the AO and the assessee is in second appeal before us.

4. The learned Counsel for the assessee submitted that the AO conducted enquiries behind his back and has not given any opportunity to the assessee to rebut the findings in the report. He submitted that the assessee could not furnish relevant material before the CIT (A), but has filed additional evidence in the form of a paper book before this Tribunal. An application for admission of additional evidence is filed before us.

5. The learned DR, on the other hand, opposed the admission of additional evidence and also submitted that the assessee has not yet routed the alleged cash discount through the P&L A/c and therefore, it is not allowable.

6. Having regard to the rival contentions and the material on record, we find that the AO had made some enquiries from the customers to find out if they received any discounts from the

assessee, but the assessee has not been confronted with the findings of such an ex-parte enquiry report. This is in clear violation of principles of natural justice. The assessee has now filed the confirmation from the parties and also relevant material in support of his claim that he has given cash discount to the customers and his explanation as to why it is not included in the invoices is that Mahindra & Mahindra does not allow such discount to be given and therefore, it could not be included in the invoices, but only to ward off the competition, the assessee was constrained to give the cash discount. We find that this evidence goes to the root of the matter and if it is proved that the assessee has given cash discounts, the same is allowable as expenditure. This material is filed before us for the first time. Therefore, we deem it fit and proper to admit the same and remand the issue to the file of the AO for verification and adjudication in accordance with law. Needless to mention that the assessee should be given a fair opportunity of hearing.

6. In the result, assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 10th August, 2018.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 10th August, 2018.

Vinodan/sps

Copy to:

- 1 K.Vasantkumar, A.V. Raghuram & P.Vinod, Advocates, 610 Babukhan Estate, Basheerbagh, Hyderabad
- 2 Asstt. CIT, Circle 15(1) IT Towers, AC Guards, Masab Tank, Hyderabad-4
- 3 CIT (A)-7 Hyderabad
- 4 Pr. CIT – 7, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order