

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5346/MUM/2016
Assessment Year: 2010-11**

ACIT 24(1), R. No. 604, Piramal Chambers 6 th floor, Lalbaug, Mumbai-12.	Vs.	A-1 Fence Products Company, 503, Golden Height, Shastri Nagar, Andheri (West), Mumbai-400053.
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PAN No. AAATG0045M

Appellant

Respondent

Revenue by	:	Mr. B.S. Bist, DR
Assessee by	:	Mr. Ajay Singh, AR

Date of Hearing	:	08/05/2019
Date of pronouncement:	:	13/05/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-51, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The ground of appeal filed by the revenue reads as under:

Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.92,56,287/- being claim of commission expense paid to M/s Arab Link Equipment Trading as service

rendered by M/s Arab Link Equipment Trading in getting the contract to the assessee from M/s Consolidated Contractor Co. is not proved.

3. Briefly stated, the facts are that the assessee, a manufacturer of fencing products, filed its return of income for the assessment year (AY) 2010-11 on 18.08.2010 declaring total income of Rs.64,21,041/-. During the course of assessment proceedings, the Assessing Officer (AO) noticed that the assessee had claimed commission expenses of Rs.1,13,60,951/- and out of it Rs.92,56,287/- was paid to only one party M/s Arab Link Equipment Trading (ALET) which is based in Dubai. On further verification, the AO found that M/s Consolidated Contractors Co. had given the purchase order directly to ALET, who in turn gave it to the assessee. As per the AO this means that ALET is purchasing goods from the assessee, who is supplying the material to the site which was given in the purchase order and any commission payment should be substantiated by the genuineness of payment and services rendered. The AO after perusing the e-mails filed by the assessee noted that M/s Consolidated Contractors Co. has appointed ALET as a sole agent of the present assessee. The AO thus came to a finding that M/s Consolidated Contractors Co. has appointed ALET as the agent of the assessee and had directed the assessee to pay the difference in amount between the quoted price to ALET and hence the services rendered by ALET in getting the contract to the assessee from M/s Consolidated Contractors Co. are not proved. As per the AO, it is M/s Consolidated Contractors Co. who has appointed ALET to be the sole agent of the assessee in UAE. On the basis of above reasons, the AO disallowed the commission expenses of Rs.92,56,287/- claimed by the assessee to have been paid to ALET.

4. In appeal, the Ld. CIT(A) after examining the letter dated 01.04.2009 written by ALET to the assessee for supply of fencing products to M/s Consolidated Contracts Co. observed as under:

- i. Order is placed by M/s ALET to the appellant for supply of goods i.e. fencing products to M/s Consolidated Contractors Company;
- ii. Goods be supplied at the Muskat Port on the terms and conditions as per the purchase order ;
- iii. The share of M/s ALET will be difference between the value as per purchase to the appellant and the proceeds received from the M/s Consolidated Contractors Company (CCC) as per the purchase order from the CCC to M/s ALET;
- iv. Responsibility of the M/s ALET would be to get the order from the M/s Consolidated Contractor Company, custom clearance in Muskat, transport goods to Muskat International Airport from Mina Qaboos Port and then finally follow up for the payments to the appellant;
- v. The said surplus will be remitted to the M/s ALET within 15 days of receipt by the appellant. Delay will attract 18% interest p.a.;
- vi. Appellant will strictly comply with the standard of the quality and delivery of goods strictly on time. M/s ALET will not be responsible for any failure on this count;
- vii. Appellant duly accepted these terms and conditions.

Thus observing that payment has arisen out of contractual obligations, the Ld. CIT(A) deleted the disallowance of Rs.92,56,287/- made by the AO.

5. Before us, the Ld. DR relies on the order of the AO, whereas the Ld. counsel of the assessee relies on the order of the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. As mentioned at para 4 hereinbefore, the Ld. CIT(A) has rightly interpreted the letter dated 01.04.2009 written by ALET to the assessee for supply of fencing products to M/s Consolidated Contractors Co. Those facts and circumstances prove the genuineness of services rendered by ALET to the assessee. On the basis of the evidence submitted by the assessee, ALET is the main intermediary company for the sale by the assessee to M/s Consolidated Contractors Co. This fact is accepted by the AO. Also ALET has procured the order and rendered various post sale services such as customs clearance at Muscat; arrange the transport from the port to the site; arrange goods for inspection; passing of the bills and getting payments released from M/s Consolidated Contractors Co. The payment has arisen out of contractual obligation.

Therefore, we uphold the order of the Ld. CIT(A).

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 13/05/2019.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 13/05/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai