IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 123 OF 2013

Commissioner of Income Tax-19. ..Appellant

Vs.

M/s The Asian Trader (India) ..Respondent

....

Mr. Suresh Kumar, Advocate for Appellant.
None for Respondent.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 2nd FEBRUARY 2015

P.C.:

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 29th June 2012 passed by the Income Tax Appellant Tribunal (the 'Tribunal).

2. The Assessment Year involved is the Assessment Year 2005-06.

3. The revenue has pressed the following question of law for our consideration:

> *"Whether on the facts and in the circumstances of the case and in law the Tribunal is justified in deleting the disallowance made out of commission amounting to Rs.46,65,963/- in spite of the fact that there is drastic reduction in total turnover and net profit and abnormal increase in payment of commission as compared to immediately preceding year i.e. Asst. Year 2004-05?"*

4. In the Assessment Year 2005-06, the respondent has filed the return of income showing income of Rs.1.42 Crores. During the course of the assessment proceedings, the Assessing Officer noticed that the net profit of the respondent-assessee had come down from 11% in the earlier assessment year to 4% in the subject assessment year. On a specific query, the respondent-assessee pointed out to the Assessing Officer that the fall in the profit margin is due to the delay in realization of sale proceed of goods, fluctuation in foreign exchange and payment of higher commission. The Assessing Officer by his order dated 24th December 2007 disallowed on ad-hoc basis the expenses attributable commission on sale to the extent of Rs.46.65 Lakhs out of Rs.66.65 Lakh claimed.

5. On appeal, the Commissioner of Income Tax (Appeals) (the CIT(A)) by his order dated 09.03.2010 upheld the order of Assessing Officer. This on the ground that although the profits and turnover has gone down to that achieved in the earlier year the payment of commission had increased by two and a half times as compared to the commission paid in the earlier year.

6. On further appeal, the Tribunal by the impugned order held that the Assessing Officer as well as the CIT(A) has disallowed the commission paid on sales on an ad-hoc basis without considering the

claim of the respondent-assessee on case to case basis. On examination of the facts, the impugned order records that it is not disputed that the rate of sales commission was decided at the time of shipment of goods and is reflected in the corresponding shipping bill. There is also no dispute that the commission agents have rendered services and commission on sales has been allowed in the earlier years. In case, the Assessing Officer had any doubt with regard to commission paid in respect of any particular case, investigation in respect thereof could have been made by the Assessing Officer rather than disallowing the commission on ad-hoc basis. The impugned order further records that the Assessing Officer has not proved that the commission paid is not bonafide nor has he proved that the commission paid is not for the purposes of business. In view of the above findings of fact, the Tribunal allowed the respondent-assessee's appeal.

7. We find that the findings of the tribunal are clear findings of fact. Moreover, in view of the fact that the Assessing Officer as well as the CIT(A) have been not disputed the genuineness of the commission paid and also the purpose for which it is spent the disallowance on an ad-hoc basis was not justified. We find that the findings of the Tribunal are the findings of fact and the view taken by the Tribunal is a reasonable view. The Respondent has not shown the findings of the Tribunal to be

perverse or arbitrary. Accordingly, as it is a finding of fact, no substantial question of law arises for our consideration.

8. Hence **appeal** is **dismissed.** No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

S.S.DESHPANDE