

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'SMC', KOLKATA  
(Before Shri P. M. Jagtap, Accountant Member)**

**ITA No. 138/Kol/2014 : Asstt. Year : 2008-2009**

Kishan Kumar Rathi PAN: ADCPR 5057F <b>(APPELLANT)</b>	Vs	ITO, Ward-47(4), Kolkata <b>(RESPONDENT)</b>
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**Appellant by : Shri Manoj Tiwari, FCA  
Respondent by : Smt. Ranu Biswas, JCIT, Sr.DR**

<b>Date of Hearing : 09.09.2015</b>	<b>Date of Pronouncement : 16.09.2015</b>
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**ORDER**

This appeal is preferred by the assessee against the order of the Commissioner of Income-Tax (Appeals)-XXX, Kolkata dated 10.09.2013 for the assessment year 2008-09 and the solitary issue involved therein relates to the addition of Rs.5,64,559/- made by the AO and confirmed by the Id. CIT(A) on account of disallowance made out of commission expenses.

2. The assessee, in the present case, is an individual, who is engaged in the business of manufacturing and trading of readymade garments under the name and style of M/s. Century Apparels, a proprietary concern. The return of income for the year under consideration was filed by him on 12.07.2008 declaring total income of Rs.4,01,180/-. During the course of assessment proceedings, it was noticed by the AO that the assessee has claimed expenses of Rs.14,92,996/- in the year under consideration on account of commission paid to the agents as against the similar expenditure claimed during the immediately preceding year to the extent of Rs.8,16,267/-. Since the gross sales of the assessee for the year under consideration amounting to

Rs.1,87,21,975/- were just marginally higher than the gross sales of Rs.1,79,73,578/- in the immediately preceding year, i.e. A.Y. 2007-08, the assessee was called upon the AO to explain the substantial increase in the expenditure claimed on account of commission paid to the agents in the year under consideration. In reply, the following explanation was offered by the assessee.

*ãa. The rate of commission was ranging from 3% to 8% in the financial year 2006-07.*

*b. There was a meeting of your assessee with agents wherein it was agreed to increase the commission rate to 8% subject to conditions detailed below:*

*1. The increased % ie around 3% will be added to the price of the products & will be recovered from the customers. This resulted in better realization from sales as is evident from G P ratio for the year 2007-08 which is 16.82 as compared to G P rate for the year 2006-07 which was 13.49%.*

*2. The agents were made responsible for collection of the amount from the customers and all collection expenses were to be borne by them.*

*3. Bad debts will be bourne in its entirety by the agents through whom the goods have been sold arid it's a matter of fact that we have not claimed any bad debt in F Y 2007-08 and also in the next financial year.*

*c. Collection of payments from outstation parties is a problem area and our agents are responsible for collection also.*

*d. We are practically giving no advertisement & our expenses was only Rs. 16031/- during year ended on 31.03.2008.*

*e. During the year ended 31.03.2010 percentage of sales made through commission agents increased substantially as compared to sales through agents during F Y 2006-07.*

*f. All the payees are regular income tax assessee and TDS were deducted.*

*g. All the payments have been made by account payee crossed cheques.*

*h. That the AO has accepted the genuiness of the payments. as question raised is on the rate of commission and not on commission payments.”*

3. The above explanation of the assessee was not found acceptable by the AO for the following reasons given in his order:

*ō1. The assessee has stated that rate of commission was ranging from 3% to 8% in the financial year 2006-07 which is in itself contradictory with the details given by him. The comparative chart as per his submission is given below*

Sl.No	F Y 2006-07			F Y 2007-08		
	Sales	Commission	Rate of commission	Sales	Commission	Rate of commission
1.	12755995	637799	5%	18656278	1492996	8%
2.	1479877	118390	5%			
3.	2002585	60077	3%			

*From the above it is very much clear that the %age of commission was ranging from 3% to 5%. In no case 8% commission was paid during F Y 2006-07.*

*2. The assessee has stated in point b{2} that increased percentage of commission resulted in better realization from sales which is evident from G P ratio.*

*It is an accepted fact that businessman are more interested in net profit as compared to Gross profit. Because the income derived is net profit and not G. P. Moreover in this case increased G P rate resulted in virtually no increase in N P rate because the increase in G P did not resulted in increased N P mainly due to excess claim of commission in profit and Loss Account.*

FY	Sales(net of returns)	G P (As per TAR)	NP
2006-07	Rs 17866486/-	Rs 2410882/-	Rs 452529/-
2007-08	Rs 18656278/-	Rs 3138183/-	Rs 484657/-

3. As regards point b(2) and b(3) and {c} the A/R has stated that collection work was given to agents and there was no bad debts during F Y 2007-08.

*It is pertinent to mention here that as far as collection is concerned it is very important to compare the sundry debtors of both the years.*

<i>Financial year</i>	<i>Sundry Debtors</i>	<i>Bad debts</i>
2006-07	Rs 4588958/-	NIL
2007-08	Rs 6180801/-	NIL

*It is very much clear from the above that there was no improvement in collection as evident from the quantum of sundry debtors given above. On the contrary it deteriorated. Further there was no bad debts in the preceding year also. Therefore, the contention of the A/R that there was improvement in collection is also not acceptable.*

4. As far as advertisement is concerned it is the decision of the concern. And there are many instances where without major advertisement and without any payment of commission sates are affected.

5. As far as point (e) is concerned the assessee has stated that percentage of sales through commission agent has increased substantially.

*The under mentioned chart would show that there was only 9.11% increase in sales through agents however there was 82% increase in commission payment which is extremely high.*

<i>Sl.No Particulars</i>	<i>2006-07</i>	<i>2007-08</i>
1. Sales	Rs.17877486/-	Rs. 18656278/-
2. Sales through Agents	Rs 16238458/-	Rs 18656278/-
3.%age of sales through agents	90.89%	100%
4.%age of increase in commission	100%	182%
<i>in F Y 2007-08 as compared to FY 2006-07.</i>		

*Apart from the above the assessee also claims to have allowed discount of Rs 453849/- during F Y 2007-08 for making timely payment as compared to discount allowed of Rs. 227684/- in F Y 2006-07. From the above chart it is very*

*much clear that there was no substantial increase in sales as compared to last year as claimed by the assessee but the commission payment increased drastically with negligible effect on net profit.*

*5. In point no (f) and (g) has stated about commission payment by cheque and deduction of TDS by the assessee.*

*It is to be mentioned here that payment by cheque and TDS does not justify the high rate of commission.*

*6. And lastly the rate of commission payment has been pointed out in the reply.*

*It is worth mentioning that commission is directly related to sales as it is given on sales. Given the fact that the assessee is in the same line of business as compared to preceding year and there was negligible increase in sales (only 4.42%) as compared to last year the substantial increase in commission payment (82%) is not justified. The assessee also failed to prove any commercial expediency in this case.”*

3.1 For the reasons given above, the AO held that the explanation offered by the assessee for higher payment of commission to the agents was not satisfactorily substantiated and allowing such commission @5% being reasonable, he disallowed the balance commission at Rs.5,60,182/-, in the assessment completed under section 143(3), vide an order dated 30.12.2010.

4. Against the order passed by the AO under section 143(3), appeal was preferred by the assessee before the Id. CIT(A) and the submissions made before the AO in support of his claim for the payment of higher commission to the agents was reiterated by the assessee before the Id. CIT(A). The same however was not found acceptable by the Id. CIT(A), who confirmed the disallowance made by the AO out of commission expenses for the following reasons.

*It appears that the Appellant paid in the earlier year commission @5% and 3%. But in the current Financial Year 2007-08 relevant to the Assessment Year 2008-09 the commission was increased in all cases to 8% of sale. The AO has pointed out that there is no visible reason for enhancing the rate of commission from 3%/5% to a flat rate of 8%. The commission recipients are the same and the business volume generated by these agents are also the same. The Appellant also has not generated extra volume of sale. The 4% increase in value of sale was because of increase in the price of the product, as pointed out by the AO. The commission has to be for matching service by agent. The appellant has failed to demonstrate as to how the Appellant has secured service corresponding to 8% of commission purportedly paid to the agent. Thus the Appellant has failed to show that the enhancement of commission percentage was driven by business exigencies. As a result disallowance of commission in excess of 5% [claimed in the earlier year] is confirmed.*

5. Aggrieved by the order of the Id. CIT(A), the assessee has preferred this appeal before the Tribunal.

6. The Id. Counsel for the assessee submitted that the rate at which the commission was paid by the assessee to the agents was increased during the year under consideration to 8% with an objective that they would bring more sales for the assessee. He submitted that although this objective was not achieved in the year under consideration and the actual increase in sales took place only after a couple of years, the genuineness of commission paid by the assessee to the agents and its business purpose has not been disputed or doubted either by the AO or by the Id. CIT(A). He submitted that all the agents to whom commission was paid by the assessee are regularly assessed to tax and while making the payment of commission to them, tax at source was also deducted by the assessee. He contended that disallowance on account of commission, however, is made by the authorities below, mainly on the

basis of higher rate of commission paid by the assessee, which is not permissible. In support of this contention, he relied on the decision of the Honøble Delhi High Court in the case of CIT-vs- Dalmia Cement (B) Ltd. 254 ITR 377.

7. The ld. DR, on the other hand, relied on the orders of the authorities below in support of the Revenueø case that the commission paid by the assessee to the agents, to the extent found to be excessive and unreasonable, is rightly disallowed.

8. I have considered the rival submissions and also perused the relevant documents. It is observed that the commission @3%, 5% and 8% was paid by the assessee to the same selling agents in the immediately preceding year and the commission so paid was allowed by the AO. In the year under consideration, the assessee increased the rate of commission payable to all the agents to 8% and this increase in the rate of commission was stated by the assessee to be for encouraging the concerned agents to generate more sales. This explanation of the assessee for payment of commission at higher rate of 8% was not accepted by the AO as well as by the ld. CIT(A) on the ground that there was no increase in sales during the year under consideration, as compared to the sales of the immediately preceding year. They, therefore, allowed the commission paid by the assessee to his agents only @5% treating the same to that extent as reasonable and disallowed the balance amount. As rightly contended by the ld. Counsel for the assessee, the action of the authorities below in allowing the commission @5% itself shows that the genuineness of the commission expenditure is not disputed by them and what has been disputed by them is the rate of 8% at which commission was paid by the assessee, which according to them, was excessive and unreasonable. In the case of CIT-vs- Dalmia

Cements (B) Ltd. (*supra*), cited by the Id. Counsel for the assessee, a similar issue was involved for consideration of the Delhi High Court and it was held by their Lordships that once it is established that there was a nexus between the expenditure and the purpose of the business, the Revenue cannot justifiably claim to put itself in the armchair of a businessman and assume the said role to decide how much is the reasonable expenditure having regard to the circumstances of the case. Accordingly, the disallowance made by the AO on account of part of the commission expenditure being excessive was held to be unsustainable by the Honøble Delhi High Court. In my opinion, the ratio of the decision of the Honøble Delhi High Court in the case of Dalmia Cements (B) Ltd. (*supra*) is squarely applicable to the issue involved in the present case with identical facts and respectfully following the same, I delete the disallowance made by the AO and confirmed by the Id. CIT(A) out of the commission expenses.

9. In the result, the appeal filed by the assessee is allowed.

Order Pronounced in the Open Court on 16<sup>th</sup> September, 2015.

**Sd/-**  
(P.M.Jagtap)  
ACCOUNTANT MEMBER  
**Dated: 16/09/2015**

Talukdar/Sr.PS

**Copy of order forwarded to:**

- 1 Kishan Kumar Rathi,17/1, Nityadhan Mukherjee Road, Kolkata ó 711101
- 2 ITO, Ward-47(4), Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata

