

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**ITA No. 2474/Mum/2017**  
**(Assessment Year :2012-13)**

Shri Pragnesh J Patel 510 C Wing, Bhakti Building Om Nagar, Andheri (E) Mumbai – 400 099	Vs.	ACIT – 24(3) Aayakar Bhavan M.K. Road Mumbai – 400 020
<b>PAN/GIR No. AACPP0600R</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri Dinkle Hariya
Revenue by	Shri Ram Tiwari
<b>Date of Hearing</b>	<b>25/09/2017</b>
<b>Date of Pronouncement</b>	<b>26/09/2017</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A)-39, Mumbai dated 30/01/2017 in the matter of order passed u/s.143(3) of the IT Act.

2. In this appeal, assessee is aggrieved for disallowance of commission paid to the HUFs. Assessee is also aggrieved for disallowance of Rs.17,136/- u/s.14A.

3. Rival contentions have been heard and record perused. The brief facts of the case are that assessee is an individual and has filed return of income on 30<sup>th</sup> September 2012 declaring total income of Rs.20,31,390/-. Subsequently assessment was completed under section 143(3) at total income of Rs.26,78,526/- after making an addition on account of

disallowance of commission amounting to Rs.6,30,000/- and on account of expenditure of Rs.17,136/- under Section 14A of the Act. In the assessment order, it was noted by the AO that the assessee was asked to explain the nature of commission paid and the necessity of incurrance of these payments to above HUFs. As per AO the assessee could not explain these expenses satisfactorily. As such the commission payment claimed at Rs.6,30,000/- was disallowed.

4. By the impugned order, CIT(A) confirmed the addition and assessee is in further appeal before us.

5. It was argued by learned AR that the assessee procures work from existing clients as well as the assessee is in constant search of new contracts to expand its ongoing business and that huge amount is spent on sales promotion. Commission is paid to parties through whom orders are received. During the year under consideration, the commission was paid to the said HUFs for similar reason. Learned AR also emphasized that TDS was made on all such payments and respective income was shown by the HUFs in their return of income.

6. On the other hand, contention of learned DR was that the assessee could not substantiate the services for which commission was paid by assessee.

7. Rival contentions have been considered and record perused. The Assessee is in the Business of Printing and undertakes printing orders of all sorts from brochures, Slip Books, Cheque Books of various Banks, Banners, to supply of printed stationery to offices and also undertakes

Binding Work and trading of all sorts of Printing papers and Notepads. The Assessee procures work from existing clientele as well as the assessee is in constant search of new contracts to expand his ongoing Business. Commission was paid to parties through whom new orders were received during the year under consideration. Commission was paid to Vinay Brahmania (HUF), Vipul Solanki (HUF) and Niranjan Tirodkar (HUF), of Rs.21,00,000/- each aggregating to Rs.6,30,000/-. The company had procured huge orders through the concerned parties. Tax was deducted at source and was duly paid to the Government. A copy of the TDS challan and TDS return filed by the assessee was also placed on record.

8. I also found that the said income is duly disclosed by the parties in their return of income, and tax has been duly paid thereon. However, AO has disallowed the same on the plea that the HUF does not possess any qualification so as to earn the commission income. However, it is to be noted that no professional qualification is required to earn the said income. Commission is paid in order to introduce new parties to the Assessee through their contacts in order to secure new orders. HUF is a separate legal entity which can perform its business through its Karta and other members.

9. It appears that AO has not properly appreciated the purpose for which commission was paid vis-à-vis increase in sales due to such payment of commission. Keeping in view the totality of facts and circumstances of the case, I restore the matter back to the file of the AO for examining the

business necessity of the commission so paid, after giving due opportunity to the assessee. I direct accordingly.

10. With regard to disallowance of expenditure u/s.14A, in the assessment order, it was noted by the learned AO in para 5.1 that while going through the return of income it is seen that the assessee has shown income which does not form part of total income which included dividend amounting to Rs.12,047/-, gifts from mother and father of Rs.3,06,888/- and Rs.1,00,000/- respectively. The assessee was asked to explain as to why disallowance under Section 14A should not be made. The assessee vide letter dated 12/02/2015 has filed working of disallowance under Section 14A of the Act r.w.rule 8D of the Rules at Rs.17,136/-. The AO accepted the disallowance so worked out by assessee himself. Accordingly, I do not find any reason to interfere in the order of lower authorities with respect to accepting the disallowance offered by the assessee himself.

**11. In the result, appeal of the assessee is allowed in part.**

Order pronounced in the open court on this 26/09/2017

**Sd/-  
(R.C.SHARMA)  
ACCOUNTANT MEMBER**

Mumbai; Dated 26/09/2017  
Karuna Sr.PS

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai