

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 356/Ahd/2015  
Assessment Year 2010-11**

M/s. Vamendu, A-54, GIDC, Sector-15, Gandhinagar PAN: AAHFM6685J (Appellant)	Vs	The ACIT, Gandhinagar Circle, Gandhinagar (Respondent)
--	----	--

**Revenue by: Shri Mudit Nagpal, Sr. D.R.  
Assessee by: Shri Abhimanyu Singh Bhati, A.R.**

Date of hearing : 22-11-2017  
Date of pronouncement : 28-11-2017

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This assessee's appeal for A.Y. 2010-11, arises from order of the CIT(A), Gandhinagar dated 15-12-2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following grounds of appeal:-

*"1.0 The learned Commissioner of Income-tax (Appeals) erred in law and on facts in dismissing the appeal of the appellant.*

*2.0 The learned Commissioner of Income-tax (Appeals) erred in law and on facts in confirming the disallowance of commission on sales amounting to Rs.9,20,958/-."*

3. The assessee has filed return of income declaring income of Rs. 43,40,780/- on 15<sup>th</sup> September, 2010. During the course of assessment proceedings, the assessing officer observed that assessee has paid commission of Rs. 9,20,598/- to Shri Mukesh L. Patel HUF @ 3% on sale of Rs. 3,06,86,585/- made to Rajasthan Electronics & Instruments Ltd. The assessing officer also observed that assessee has been selling goods to the aforesaid concern for the last several years without making any payment of commission . To examine and to prove the genuineness of the commission expenses , the assessing officer has recorded the statements of Shri Mukesh L. Patel u/s. 131. The following facts were emerged from the above statement:-

*“1 As per Answer no.4 Shri Mukesh Patel, Karta of HUF has gone to Rajasthan only once that too before three year.*

*2 As per Answer-5, he has given phone call to Rajasthan only once or twice in the year.*

*3 As per Answer 6 he replied that he talked to employee of Rajasthan Electronics & Instrument Ltd. once or twice only in a year.*

*4 He had visited office of M/s. Vamendu only twice or thrice in a year.*

*5 As per answer 110.8 he admitted that he is not handling day to day affairs. He don't know what is the orders. How it is to be sent etc.*

*6 In answer to question no.9 he replied that he is making salary payment out of commission received to Dharmesh, Sanjay Kakadia, Rajiv Sureja etc. But in subsequent answers he admitted that money claimed as given for salary has received back to him in form of loan. Thus there was no actual out flow on account of salary.*

*7 On the top of all the assessee is doing business with this company since long & commission is paid only from A.Y. 2009-10.”*

During the course of assessment proceedings the assessee could not establish the services rendered by the party to whom the commission was paid. Therefore, the assessing officer concluded that claim of the assessee for commission payment was only an arrangement made with the payee of the commission without doing anything for

the assessee .Consequently, the assessing officer has disallowed the commission payment of Rs. 9,20,598/-. Aggrieved assessee filed appeal before the Id. CIT(A) against the impugned disallowance. The Ld.CIT(A) has sustain the disallowance by observing as under:-

*“4.3 I have considered the facts of the case, assessment order and the submission made by the appellant.*

*The AO's main objection for not allowing the submission made before him was the statement recorded of Shri Shri Mukesh Patel, Karta of HUF, He had specifically stated that he is not handling day to day affairs and he do not know much about the business of the appellant. It has been confirmed by him that the money claimed as salary being paid is received back by him in the form of Loan and that there was no actual out flow of money involved. He had also stated that he had visited the office of the appellant only twice or thrice in a year and had also given phone call to Rajasthan Electronics & Instruments Ltd. once or twice. The A.O. is of the view that appellant was having business with Rajasthan Electronics & Instruments Ltd since many years but no commission has been paid in the past. The A.O. has held that as per section 37 only those expenses which are incurred wholly and exclusively for the purpose of business are to be allowed from the facts of the case, it was inferred by the A.O. that he commission expense was only an arrangement and not incurred holly and exclusively for business as the person to whom commission is paid hardly does anything for the appellant.*

*On the other hand- -appellant has proceedings that one of the partner Shri Deepak V. Patel of the firm who was looking after the functions, fell ill and he could not look after the business of the firm. In such circumstances, it had appointed Mukesh L. Patel (HUF) to deal with Rajasthan Electronics & Instruments Ltd. i.e. for procuring, supervising production staff at factory and to follow specification of buyer, processing and to look after sales services for Rajasthan Electronics & Instruments Ltd. It is also contended that appellant had deducted TDS @ 10% on the sales commission paid to Mukesh L. Patel (HUF) and paid to the account of Central Government and also filed IDS returns.*

*On careful examination of the whole facts, it is seen that Shri Mush L, Patel was paid commission @ 3% on total sales to Rajasthan Electronics & Instruments Ltd. Appellant in both the submissions made before me, appellant has not rebutted the facts narrated by the AO in para.5 of the order. Further, it is a fact that appellant is a partnership firm and apart from this, as contended by the appellant one of the partner who got ill, other partners could well have taken care of the business instead of appointing Shri Mukesh L. Patel to look after the sales of Rajasthan Electronics & Instruments Ltd and paying 3% of the commission on the total sales made. Business was beig done with Rajasthan Electronics &. Instruments Ltd since many years and necessity of appointing Shri Mukesh L. Patel is not given by the appellant to the satisfaction of the undersigned. Further, it is also a fact that the nature of payment like commission always comes into picture for either enhancing of business turnover or for bringing new customers/clients. Here, in the case of the appellant there is no such case, as discussed by the AO in the assessment order. There is no such substantial increase in turnover and the sales made to Rajasthan Electronics & Instruments Ltd is one of the oldest client of the appellant. Further, it is also noted that the appellant has not submitted rebuttal on the 7 points of the AO narrated in the assessment order which are based on the statement recorded u/s 131 of the Act of Shri Mukesh L, Patel (HUF), to whom commission was paid. Appellant has submitted rebuttal only on 2 points in his submission dated*

*18/11/2014 which are interlined, with one another and on the other points, appellant has remained silent. Here it is very important to mention that Shri Mukesh L. Patel (HUF) has very categorically accepted in reply to question no. 4 that he has gone to Rajasthan only once; that too before 3 years and in reply to Q.No.5, he has stated that he has given phone call to Rajasthan only once or twice in the year. Further, in reply to Q.9, it is categorically stated that he was making salary payment out of commission received to Dharmesh, Sanjay Kakadia, Rajiv Sureja etc. and has admitted in subsequent answers that the money claimed as given for salary has been received back to him in the form of loan and that there was no actual outflow on account of salary. In view of the above facts of the matter, the action of the AO in making the disallowance of Rs.9,20,598/- to Shri Mukesh L Patel (HUF) is held justified and the addition made is confirmed. The relevant ground of appeal is rejected.”*

4. During the course of appellate proceedings before us, the Id. counsel submitted paper book containing information pertaining to submission made before the Id. CIT(A) and the assessing officer, copy of ledger account of the parties, copy of tax audit report etc. On the other hand, Id. departmental representative has contended that assessee has not proved with relevant evidences that commission payment was made against the services rendered by the person to whom commission was paid. He also supported the order of the Id. CIT(A).

5. We have heard both the sides and perused the material on record carefully. We observed that assessee has been selling goods to M/s Rajasthan Electronics & Instruments Ltd. for the last several years without any commission payment to Shri Mukesh L. Patel HUF. Therefore, to verify the genuineness of the commission payment, the assessing officer has examined Shri Mukesh L. Patel but he could not demonstrate satisfactorily the kinds of services he has rendered against which commission was paid by the assessee. We have noticed from the findings of the Ld. CIT(A) that the assessee

failed to substantiate with relevant documentary evidence that any services had been rendered by those persons to whom commission was paid. In view of these facts and findings, we do not find any reason to interfere in the findings of the Id. CIT(A). Therefore, the appeal of the assessee is dismissed.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 28-11-2017

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 28/11/2017**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश का प्रतिलिपि अर्पण / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलार्थ आधिकरण,  
अहमदाबाद