

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G. MANJUNATHA, AM**

**ITA No. 5941/Mum/2016
(A.Y. 2012-13)**

M/s Inter Foto India Private Ltd. 602-603, 6 th Floor, Nirman Kendra, Off. Dr. E. Mosses Road, Mahalaxmi, Mumbai-400 011	Vs.	The Dy. Commissioner of Income Tax, Circle-6(3)(1), Mumbai
Appellant	..	Respondent
PAN No. AAAC18655C		

Assessee by : Saurabh Jhunjunwala, AR
Revenue by : V. Vidhydhar, DR

Date of hearing: 20-03-2018 **Date of pronouncement :** 21-03-2018

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax-12, Mumbai [in short CIT(A)], in appeal No. CIT(A)-12/DCIT-6(3)(1)/21/15-16 dated 15-07-2016. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-6(3)(1), Mumbai (in short 'DCIT') for the A.Y. 2012-13 vide order dated 25.02.2015 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the commission expenses for not explaining the nexus of expenditure incurred with the business income. For this assessee has raised the following ground No. 1: -



"1. On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in disallowing the Commission Expenses of Rs.37,84,655/- on the alleged plea that the assessee has failed to justify the nexus of expenditure incurred with Business Income, without considering the facts and circumstances of the case.

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee is a domestic company engaged in the business of dealership in digital camera and accessories. The assessee claimed commission expenses of ₹ 37,84,655/- on account of business expenditure. The AO disallowed the commission expenses on the ground that the assessee has failed to furnish the evidences and also failed to explain the nature of services rendered for such commission payment to the agents. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) also confirmed the action of the AO and stated that the assessee failed to establish that such payments were made for services rendered. Aggrieved, assessee preferred the appeal before Tribunal.

4. We find from the facts of the case that the assessee has paid commission and deducted TDS also but in the year under consideration, the AO required the assessee to explain the nature of services rendered by these commission agents. Since, assessee failed to establish the nature of services rendered, the AO as well as CIT(A) made addition. He finds that both authorities below have taken a consistent stand and rightly so. But now before us, the assessee's Counsel only requested for setting aside the matter to the side of the AO to prove the services rendered by these commission agents for which the expenses of commission is



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incurred by assessee. We find that the plea of the assessee is quite reasonable and hence, we restore the matter back to the file of the AO and assessee will submit the details of services rendered by these commission agents to whom commission payment is made and claimed the same as expense. Accordingly, this issue of assessee's appeal is set aside and allowed for statistical purposes.

5. The next issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of conveyance and travel expenses at ₹ 4,30,448/- i.e. 1/5th of the total expenses of ₹ 21,52,240/- on adhoc basis. For this assessee has raised the following ground No. 2:-

"2. On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in disallowing the Conveyance & Travelling expenses of Rs.4,30,448/- on adhoc basis (i.e. 1/5 of total expenses of Rs.21 ,52,240/-) on the alleged plea that said expenses are not verifiable and used for the personal purpose, without considering the facts and circumstances of the case."

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee has incurred the conveyance expenses of ₹ 9,47,837/- in cash and also incurred travelling expenses of ₹12,04,403/- in cash. As the assessee has not furnished any details / vouchers hence, the AO disallowed 1/5th of the expenditure being ₹ 4,30,448/-. The CIT(A) also confirm the action of the Assessing Officer. Now, before us the learned Counsel for the assessee stated that most of the travelling expenses were incurred through credit card and this was explained before the AO and before CIT(A). According to the learned Counsel for the assessee few of the vouchers has been



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self made. In such circumstances, we are of the view that the disallowance at the rate of 1/5th i.e. 20% is on higher side and hence, the same are restricted at 10% of the total expenditure. We direct the AO accordingly. This issue of assessee's appeal is partly allowed.

7. In the Result, the appeal of the Assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 21-03-2018.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 21-03-2018
Sudip Sarkar /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.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI