

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ D ” BENCH, AHMEDABAD

सर्वश्री एस.एस.गोदारा, न्यायिक सदस्य एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.1002/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2012-13)

Anand Petrochem Pvt.Ltd. 16, 1 st Floor, Nirav Complex Nr.Navrang High School Naranpura Ahmedabad	बनाम/ Vs.	The DCIT Circle-1 Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCA 7659 K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri C.N. Shah, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri V.K. Singh, Sr.DR

सुनवाई की तारीख / Date of Hearing	21/02/2018
घोषणा की तारीख /Date of Pronouncement	23 / 02 /2018

आदेश / O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the appellate order of the Commissioner of Income Tax(Appeals)-1, Ahmedabad [CIT(A) in short] dated 26/02/2016 arising in the assessment order passed under s.143(3) of the Income Tax

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Act, 1961 (hereinafter referred to as "the Act") dated 04/02/2015 relevant to Assessment Year (AY) 2012-13.

2. The captioned appeal involves solitary issue towards disallowance of incentive commission Rs.9,84,530/- paid to working directors as a part of remuneration package by invoking section 36(1)(ii) of the Act.

3. Briefly stated, the assessee, a private limited company, is engaged in wholesale trading in bulk chemicals. In the course of the scrutiny assessment, the AO found that the assessee has *inter-alia* claimed commission expenses of Rs.9,84,530/- in aggregate which has been paid to directors of the company of varied amounts. The Assessing Officer (AO) questioned aforesaid claim of expenses on the ground that the assessee has failed to prove rendering of any services for which commission has been paid. The AO noted that the Board Resolution filed by the company shows that the commission is paid @ 1.8% to 3% of net profit. The AO alleged that there is no correlation between the payment of commission and rendering the specific services. The payment is also not related to increase in turnover or net profit. The AO accordingly resorted the disallowance of commission amounting to Rs.9,84,530/- and added to the total income of the assessee.

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4. Aggrieved, the assessee preferred appeal before the CIT(A) without any success.

5. Further aggrieved, the assessee is in appeal before the Tribunal.

6. The Ld.AR for the assessee submitted at the outset that the commission payment has been made to the directors which is part of remuneration of the directors. The payment has been made as per the Board Resolution for discharging diverse managerial functions involved and therefore cannot be linked to any specific services. The Ld.AR thereafter adverted to the financial statement of the assessee and submitted that the assessee has clocked a turnover of Rs.54.36 crores during the year as against the turnover of Rs.48.84 crores in the previous year. Similarly, net profit has been returned at Rs.69.18 lakhs as compared to 54.27 lakhs in the earlier years. This growth in turnover and profits amplifies seamless efforts of the directors and justifies the commission payment. The Ld.AR thereafter adverted our attention to the fact that the commission payment has no rational connection to the shareholding pattern of the respective directors. The Ld.AR finally referred to the decision of Hon'ble Supreme Court in the case of Shahzada Nand & Sons vs. CIT 97 AIR 1182 (SC) for the proposition that section 36(1)(ii) does not postulate that there should be any extra services rendered by an employee before payment of commission to him

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can be justified as an allowable expenditure. What it required is only that commission paid to an employee should be for some services rendered by him. The Ld.AR submitted that the commission payment are of very small amount ranging between Rs.1.8 lakhs to Rs.3 lakhs p.a. per director and an aggregate commission (Rs.9.04 lakhs) is also very meager and reasonable and thus does not call for application of section 36(1)(ii) of the Act in the facts of the case.

7. The Ld.DR, on the other hand, vehemently supported the orders of the authorities below and submitted that the commission payment is proportionate to the shareholding pattern and paid in lieu of dividend to avoid the clutches of dividend distribution tax. The Ld.DR further submitted that the assessee has failed to bring any material on record towards services rendered to justify the payment of commission.

8. We have carefully considered the rival submissions. The short issue involved in the present appeal is whether the disallowance of commission payment to directors who are also shareholders of the company is justified in the backdrop of section 36(1)(ii) of the Act. We straightaway find that the directors have been paid fixed salary as well as commission relatable to the profits earned. The justification for salary payment has not been disputed by the revenue. Thus, the fact of

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rendering services by these directors as employees cannot be denied on a wholesome basis. The limited

aspect therefore remains is whether additional commission over and above salary payment is justified or not. The assessee as a business organization has shown Board Resolution reflecting the wisdom of the Board for such commission payment. The increase in turnover, commensurate increase in purchases and increase in profitability of the company impliedly justifies the extra efforts of the directors in this direction. Merely because the directors also happens to be shareholders of the company cannot raise estoppels for payment of commission for discharge of profitable services. Coupled with this, we also note that the commission payment is not found to have any nexus to the proportionate shareholding of the respective directors. Thus, the commission payment is not commensurate with the respective shareholding of directors. We also find merit in the claim of the assessee having regard to the substantial working shown in the company as per its financial statement. Notwithstanding aforesaid, extra services is not always necessary to justify payment of commission to employee as held by the Hon'ble Supreme Court in the case of Shahzada Nand & Sons(supra). Therefore, weighing the issue from any angle, we find little merit in the action of the revenue for such disallowance. Therefore, the disallowance of commission of Rs.9,84,530/- requires to be reversed and deleted.

9. In the result, appeal of the assessee is allowed.

This Order pronounced in Open Court on	23 / 02/2018
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Sd/-
(एस.एस.गोदारा)
न्यायिक सदस्य
(S.S. GODARA)
JUDICIAL MEMBER
Ahmedabad; Dated 23/ 02/2018

Sd/-
(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-1, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad