

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

सर्वश्री राजपाल यादव, न्यायिक सदस्य एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 1019/Ahd/2015
(निर्धारण वर्ष / Assessment Year : 2011-12)

The DCIT, Circle-3(2), Room No. A-509, 5 th Floor, Pratyaksha Kar Bhavan, Nr. Panjra Pole, Ambawadi, Ahmedabad-380015	बनाम/ Vs.	M/s. Techno Industries Plot No. 613, Phase- IV, GIDC Estate, Vatva, Ahmedabad- 382445
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFT1503D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri S.K. Dev, Sr. DR
प्रत्यर्थी की ओर से/Respondent by :	Shri Pravin R. Shah, AR

सुनवाई की तारीख / Date of Hearing	27/02/2018
घोषणा की तारीख /Date of Pronouncement	15 / 05 /2018

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income

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Tax(Appeals) dated 27.02.2015 arising in the assessment order dated 27.03.2014 passed by the Assessing Officer under section 143(3) of the Income-tax Act, 1961 (the Act) concerning assessment year 2011-12.

2. The short issue in the captioned appeal involves disallowance of commission expenses of Rs. 32,65,628/-.

3. Briefly stated the assessee, a partnership firm, derives business income from sale of capital goods. The assessee has declared a business turnover of Rs. 19.23 crores during the year and declared taxable income of Rs. 67,24,730/-. The return filed by the assessee was subjected to scrutiny assessment. In the course of the assessment proceedings, the Assessing Officer noted that assessee has *inter alia* claimed commission expenses of Rs. 32,65,628/-. The Assessing Officer made certain enquiries regarding the genuineness and business purposes of the commission expenses so claimed. For this purpose, the Assessing Officer issued notices under section 133(6) of the Act to all the 18 parties to whom assessee has claimed to have paid commission. The Assessing Officer observed that only 04 parties responded to the aforesaid notices and that too did not file the crucial details called for such as details of services provided to the assessee. The Assessing Officer in these broad facts held that expenses claimed

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by the assessee on account of commission is not proved. The Assessing Officer accordingly relied upon the decision of the Hon'ble Supreme Court in the case of Laxminarayan Madan Lal vs. CIT (1972) 86 ITR 439(SC) and disallowed the expenses claimed by the assessee. While doing so, the Assessing Officer also observed that majority of parties have not even confirmed the factum of receipt of commission. The assessee has failed to prove the nexus between its business and the expenses incurred. The particulars of services rendered against commission is not placed on record. The Assessing Officer observed that payment to the recipient by cheque and deduction of TDS thereon is of no consequence to establish the genuineness and business purpose of the expenses claimed.

4. Aggrieved by the disallowance of commission expenses, the assessee preferred appeal before the CIT(A). The CIT(A) revisited the facts and circumstances of the case and found that payment of commission to be genuine. The CIT(A) *inter alia* observed that the assessee has provided the names and addresses of the agents, their PAN numbers as well as nature of services rendered. The CIT(A) noted that similar nature of commission has been paid to the parties in the earlier years and therefore expenses ought to have been allowed. The CIT(A) observed that the Assessing Officer has not doubted the existence of the person to whom commission has been paid and has

not established that the payment of commission was not for the business purposes. The CIT(A) accordingly reversed the action of the Assessing Officer and deleted the addition made by the Assessing Officer on this score.

5. Aggrieved by the order of the CIT(A), the Revenue is in appeal before the Tribunal.

6. The Ld. Departmental Representative appearing for the Revenue contended that the CIT(A) has mis-directed itself in law and facts in coming to the conclusion of genuineness without any substantive material in this regard. The Ld. D.R submitted that mere payment by cheque and deduction of TDS would not *per se* establish genuineness where the assessee has failed to meet the relevant parameters such as rendition of services. The Ld. D.R also contended the CIT(A) has wrongly sought to shift the onus to the Assessing Officer whereas the initial onus lay upon the assessee to establish the *bona fide* as well as the business purposes. The Ld. D.R contended that a mere general averment towards claim of obtaining services from such agents with reference to increase in turnover etc. is not sufficient to hold inference in favour of the assessee. It was submitted that the onus squarely lay upon the assessee which was not discharged at any stage of the proceedings. The Ld. D.R accordingly

urged that the appellate order of the CIT(A) on the issue involved required to be set aside and the action of the Assessing Officer requires to be restored.

7. The Ld. Authorized Representative for the assessee, on the other hand relied upon the order of the CIT(A) and submitted that the assessee on its part had given complete party wise details showing payments made and deduction of TDS thereon and also the nature of services were provided. The Ld. A.R submitted that many of the parties have been paid commission in the earlier years also and many parties have been paid commission in the subsequent years also for similar the services availed. The Ld. A.R accordingly submitted that no interference with the order of the CIT(A) is called for.

8. We have carefully considered the rival submissions and materials placed on record. The solitary issue that confronts us in the present appeal is maintainability of commission expenses.

9. In this regard on navigation through facts we notice that the Assessing Officer has attempted to make enquiries by issuing statutory notices to the recipients of the commission. The Assessing Officer observed that only 04 parties out of 18 parties have responded and filed partial un-vouched details without showing any nexus

towards services and the corresponding business. The Assessing Officer has refused to accept the payment by cheque and deduction of TDS as determinative factor for establishing genuineness of such expenses and rightly so. The initial onus is always of the assessee to establish the *bona fide* of commission expenses when called upon to do so. A mere furnishing of basic details of parties and mode of payment does not necessarily shift the onus on the Revenue. It was always for the assessee to come out with the details of services obtained against the expenses claimed. The increase in turnover by itself is not conclusive although may somewhat indicate need for presence of such services. It is very surprising that CIT(A) has accepted the case made out by the assessee as a gospel truth without making any enquiry on lack of response from majority of parties and inadequacy in important details called for from those recipient parties. It is manifest that CIT(A) has incorrectly appreciated the facts and wrongly shifted the onus on the Assessing Officer to establish that the payment of commission was not for the purposes of business and further shifted the responsibility on the Assessing Officer to prove that services were not rendered by the commission agents. The onus on the fact that the expenses were incurred for the purposes of business and services were actually rendered always lay on the assessee. Thus the action of the CIT(A) does not stand to reason. The Hon'ble Supreme Court in the case of Laxminarayan Madanlal

(*supra*) squarely applies to the facts of the case. The rendition of services must be proved as a matter of fact when called for. The fact that the commission expenses were allowed in a different year was found to be irrelevant by the Hon'ble Supreme Court in the case of Ganapathy and Company vs. CIT 381 ITR 363 (SC). The mere payment by cheque does not tie down the Assessing Officer to hold that the payment was exclusively for the purposes of business. It is true that the assessee, at times has no command over the parties who have rendered services to push them for compliance of the statutory notices. However at the same time the assessee is expected to bring on record some material (viz correspondences, e-mails, pattern of commission payments and its nexus to corresponding services or business garnered, qualification and experiences of commission agents showing their expertise and capabilities etc. to list a few) which may corroborate with the supply facilitated owing to such services by parties with some particulars/details.

10. The CIT(A) in our view has wrongly accepted the contentions of the assessee perfunctorily without making or causing to make any requisite enquiry in this regard. Therefore, we find merit in the plea raised on behalf of the Revenue that action of the CIT(A) is not in tune with the facts and circumstances of the case. We accordingly set aside the order of the CIT(A) and restore the issue back to the file of

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the Assessing Officer for determination of issue afresh after making such enquiries as he may consider expedient to ascertain the genuineness of the claim towards commission expenses and its nexus in relation to the business of the assessee. Needless to say, the Assessing Officer shall determine the issue in accordance with the law after giving proper opportunity to the assessee in this regard.

11. In the result, appeal of the Revenue is allowed for statistical purposes.

This Order pronounced in Open Court on 15/05/2018

Sd/-

(राजपाल यादव)

न्यायिक सदस्य

(RAJPAL YADAV)

JUDICIAL MEMBER

Ahmedabad; Dated 15/05/2018

Mukul

Sd/-

(प्रदीप कुमार केडिया)

लेखा सदस्य

(PRADIP KUMAR KEDIA)

ACCOUNTANT MEMBER

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)-5, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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