

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

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

ITA No. 3018 /Ahd/2013  
Assessment Year 2010-11

M/s. R.K. Industries, Plot No. 3411/1, GIDC, Phase-IV, Vatva, Ahmedabad-382445 PAN: AADFR4268A (Appellant)	Vs	The ACIT, Circle-6, Ahmedabad (Respondent)
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Revenue by: Shri Prasoon Kabra, Sr. D.R.  
Assessee by: Shri B.T. Thakkar, A.R.

Date of hearing : 04-06-2018  
Date of pronouncement : 27-06-2018

**आदेश/ORDER**

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

This assessee's appeal for A.Y. 2010-11, arises from order of the CIT(A)-XI, Ahmedabad dated 01-11-2013, 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:-

"01. The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming disallowance made by the Assessing Officer of claim of Selling Commission expenses Rs.13,50,599/- in respect of following selling agents.

SR. NO.	Agent's Name	Amount Rs.
(i)	Ajay R. Pandhi HUF	Rs.5,55,802/-
00	Bhagwandas H. Patel	Rs.1, 24,562/-

(Hi)	Dharmishthaben Pandya	Rs. 1,09,470/-
(iv)	Nilay C. Dani	Rs. 62,545/-
(v)	Ambalal H. Patel	Rs. 97,524/-
(vi)	Vandna 3. Mehta	Rs.2,19,835/-
(vii)	Sejal R. Patel	Rs. 1,80,861/-
TOTAL Rs.		Rs.13,50,599/-

02. The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming disallowance made by the Assessing Officer of Labour Expenses of Rs.9,05,930/-.

03. The learned Commissioner of Income Tax (Appeals) erred in law and on facts in confirming disallowance made by the Assessing Officer of Rs.3,66,500/- claim of Donation u/s.80G of the Act.”

3. The brief fact of the case is that assessee has filed return of income declaring income of Rs. 83,71,700/- on 13<sup>th</sup> Sep, 2010. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 25<sup>th</sup> August, 2013. The assessee is engaged in manufacturing and dealing in dyes, intermediate and chemicals. Further, facts of the case are discussed under different grounds of appeal.

**Disallowance on selling commission expenses of Rs. 13,50,559/-**

4. On scrutiny, the assessing officer noticed that assessee has debited an amount of Rs. 26,65,313/- under the head commission expenses. To prove the genuineness of commission expenses the assessing officer has issued notices u/s. 133(6) to the recipients of commission requiring them to furnish the details and evidences of services rendered. However, no compliance was made by them. Therefore, the assessee was directed to produce these parties for personal examination. However, the assessee responded that he had furnished the details of commission recipients therefore summons u/s. 131 may be issued to the parties. The assessing officer has issued summons but no compliance was made. On further scrutiny the assessing officer observed that the assessee

has also made payment of commission on transactions with persons covered u/s. 40(A)(2)(b) of the IT act. Consequently, the assessing officer has disallowed the commission expenses of RS. 26,65,313/-.

5. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal of the appeal by observing as under:-

*“3.2 The A.O. has made commission-agent-wise discussion. Therefore I proceed to discuss the correctness of the disallowance on the basis of each commission agent.*

*a. Disallowance of commission Payment to M/s. Organica Products*

*The disallowance has been made on the ground of bills having been raised without the stock availability with the appellant of 2 Pyridone. This aspect has already been considered by me while deciding the first and second ground relating to rejection of books of accounts. It has been held that the mistake is purely a typographical mistake and the same has been acknowledged by the commission agent also with appropriate supporting evidences. Therefore, I do not find merit in the disallowance made by the A.O. with regard to commission payment.*

*b. Disallowance of commission to Bhagwandas H. Patel*

*It is seen that an amount of Rs. 1,24,562/- has been paid by the, appellant to Shri Bhagwandas H. Patel for sales made to M/s. Jainik Industries. The A.O. has pointed out that one of the partners of the appellant firm Shri Karsanbhai Patel was also partner of M/s. Jainik Industries till 1/4/2009 i.e. the beginning of the assessment year under consideration. Similarly Shri RasiKbhai Patel who was partner of the appellant firm retired from the firm and joined as partner in M/s. Jainik Industries. Although both the firms cannot be classified as coming under the category of the related concerns within the meaning of sec. 40A(2) but it is not understood as to why an outsider commission agent would be required for transaction between the parties who were closely interlinked till the beginning of the year. The A.O. has also found that commission has been paid at a very high rate of 13 to 20% of the transaction price which is not justifiable keeping in view the contemporary trends. The appellant has not submitted any specific details of the services provided by Shri Bhagwandass H. Patel, therefore, I agree with the contention of the A.O. that the payment to Shri Bhagwandas H. Patel has been made not for any business angle but only with a view to reduce the profits. The stand taken by the A.O. with regard to disallowance of commission of Shri Bhagwandas H. Patel is hereby confirmed.*

*c. Payment of commission to Smt. Dharmishtaben Pandva*

*The A.O. had sent specific letters to the above named recipients of commission, however the letters remained un-served. Thereafter the appellant was asked to produce Smt. Dharmishtaben Pandya for personal examination. She has been paid a commission of Rs. 109470/-. However, the same was also not done. The same lady has been paid an amount of Rs. 1 lac towards labour expenses for the period January to March, 2010. The A.O. has noticed that the commission has been paid on transactions made with M/s. Prashant Industries which is the business concern of son and wife of the partner Shri Karsanbhai Patel of the appellant firm. This commission payment clearly indicates a bogus transaction without any business link and its sole purpose is reduction of taxable income. Therefore, I agree with the stand of the A.O. of the disallowance of commission to Smt. Dharmishtaben Pandya who has not proved rendering of any kind of services nor has appeared for personal examination. She has merely submitted a letter to the A.O. However, in absence of the personal examination especially when the same was specifically required by the A.O. , the commission payment cannot be held as genuine and for the purpose of business of the appellant.*

*d Payment of Commission to Shri Ajay R. Panthi HUF*

*The appellant has paid a total amount of Rs. 5,55,802/- to Ajay R. Panthi HUF. The A.O. has noticed that the commission has been paid on supply of material to M/s. Prashant Industries which is the business concern of son and wife of the partner Shri Karsanbhai Patel. The appellant has submitted that the said agent has been given commission of Rs. 3,09,802/- on supply to M/s. Prashant Industries and commission of Rs. 2,46,000/- has been paid on sales made to M/s. Litan & Co. which is not related to the appellant. In this regard I find that Ajay R. Panthi HUF is a legal entity in the form of HUF and it is not clear as to how services like commission agency can be provided by an HUF since it involves the service of professional nature. Further it is also seen that*

the said HUF belongs to the Chartered Accountant of the appellant firm. The appellant has not proved as to what services have been rendered by Shri Ajay R. Panthi HUF for procuring business with M/s. Littal & Co. Therefore, I agree with the action taken by the A.O. and the disallowance of commission to M/s. Ajay R. Panthi HUF is confirmed.

e. Payment of Commission to Shri Ambalal H. Patel and Nilav C. Dani

The A.O. has pointed out that both the parties have been paid commission on the transactions with the same party i.e. M/s. Ambuja Intermediates. Once again it is seen that no proof has been submitted in respect of the services rendered by these parties on account of business transactions with M/s. Ambuja intermediates. In such a situation, the disallowance of commission payment to the two parties of Rs. 62,545/- and Rs. 97,524/- is justified and confirmed.

f. Commission payment to Vandana J. Mehta and Sejal R. Patel

The A.O. had specifically asked to produce both the parties and subsequently on the request of the appellant summons u/s.131 were also issued to both. However, they did not attend in response to the summons, therefore the A.Os approach of disallowing commission to Mrs. Vandana J. Mehta of Rs. 2,19,835/- and Sejal R. Patel of Rs 1,80,861/- is justified. Since the appellant has not evidenced any services rendered by them, therefore, I am of the opinion that disallowance of the commission paid to both the above persons deserves to be confirmed.

3.3 I agree with the contention of the A.O. that the appellant has to prove the fact of rendering of services also in addition to proving the genuineness of transactions and the deduction of tax thereon. The fact that the commission payments were claimed in the earlier year also and were allowed is not material, since such discrepancies have come to the light only after enquiries were made by the A.O. during the assessment proceedings for the year under consideration. The assessing officer has discussed specific discrepancies in respect of above eight commission agents. The appellant has during the year paid commission to a total of 18 parties. One of the parties namely M/s Organic Products, out of 8 agents discussed above has not been accepted to be bogus by me. In absence of any kind of evidence submitted by the appellant to prove rendering of services, I hold that the commission expenses disallowed by the A.O. deserves to be confirmed in respect of following seven parties.

Sr. No.	Name	Amount of commission disallowed
1	Shri Bhagwandas H. Patel	Rs. 1,24,562/-
2	Smt. Dharmishtaben Pandya	Rs. 1,09,470/-
3	Ajay R. Panthi HUF	Rs. 5,55,802/-
4	Shri Ambalal H. Patel	Rs. 62,545/-
5	Shri Nilav C. Dani	Rs. 97,524/-
6	Mrs. Vandana J. Mehta	Rs. 2,19,835/-
7	Ms. Sejal R. Patel	Rs 1,80,861/-
	TOTAL	13,50,599/-

Since no discrepancy has been pointed out by the assessing officer in respect of other commission agents it would not be prudent to disallow the commission payment claimed by the appellant in respect of such parties. In view of the above discussion, disallowance of commission payment of Rs. 13,50,599/- is confirmed and appellant gets a relief of Rs. 13,14,714/-. The third ground of appeal is accordingly partly allowed.”

6. We have heard the rival contentions and perused the materials on record. The Ld. CIT (A) has restricted the disallowance to the extent of Rs.13,50,599. The recipients of commission have not responded to the summons issued by assessing officer and the assessee has also failed to produce the parties before the assessing for examinations during the course of assessment proceedings. In spite of providing ample opportunities the assessee has failed to generate any evidences to substantiate that orders received from various companies were due to the efforts of the recipient of commission. Even, the assessee had not furnished any confirmation from the sale parties to demonstrate that sales were materialized through the commission agents. In spite of providing adequate opportunities neither the recipients of commission have responded to the summons issued by the assessing officer nor those parties were produced for necessary examination. After considering these facts and findings elaborated in the order of the Id. CIT(A), we do not find any reason to interfere in the decision of the Ld.CIT(A) accordingly this ground of appeal of the assessee is dismissed.

**Disallowance of labour expenses of Rs. 90,05,930/-**

7. During the course of assessment proceedings, the assessing officer noticed that assessee has shown payment of labour charges to Ms. Reshmiben Patel to the amount of Rs. 8,05,930/-. From the copy of a/c of this contractor, the assessing officer has noticed that labour charges were paid for loading and unloading. To verify the genuineness of these expenses, the assessing officer has requested the assessee to produce the parties for examination. However, the assessee has requested the assessing officer to call the party by issuing summons u/s. 131 of the act for personal examination. The assessing officer has issued summons u/s. 131 but no compliance was made to the summons issued by the assessing officer. Consequently, the assessing officer has disallowed the total expenses of labour payment of Rs. 9,05,930/-. The Id. CIT(A) has dismissed the appeal of the assessee by observing as under:-

*“4.1 The A.O. noticed that an amount of Rs. 5 lac was paid on 28/2/2010 as labour expenses. The summons issued to Smt. Dharmishtaben Pandya and Ms. Rashmiben Patel for personal examination remained non-complied and therefore genuineness of expenditure remain unverifiable. As long as the appellant fails to prove the genuineness of expenditure claimed for the purpose of business, the financial transactions do not get qualified for deduction u/s. 37 of the Act. Therefore, I agree with the stand taken by the A.O. The disallowance of Rs. 9,05,930/- is confirmed and 4<sup>th</sup> ground of appeal is accordingly dismissed.”*

### **Disallowance of claim of donation u/s. 80G of the act**

8. During the scrutiny the assessing officer noticed that assessee has claimed deduction u/s. 80G to the amount of Rs. 3,66,500/-. On examination of the details filed, the assessing officer has observed that the donation receipts were not in the name of the assessee. Therefore, deduction u/s. 80G has been disallowed.

9. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee by observing as under:-

*“I have carefully considered the rival contentions. I'm inclined to agree with the stand taken by the assessing officer. There is no reason given by the appellant as to why the donations made by it have not been acknowledged by the recipients in its name only. The correct approach for the appellant in cases of donations made in the name of other parties should have been to debit accounts of such parties. There is no justification to claim the benefit of section 80G by making donations in the name of other persons. If the appellant is making the donations then it is entitled to get the credit as a donor also which has not been done. I therefore confirm the disallowance of Rs. 3,66,500/- made by the assessing officer. The ground number 10 raised by the appellant is accordingly dismissed.”*

10. During the course of appellate proceedings before us, the Id. counsel has filed paper book containing information about the donation statement along with donation receipt, copy of bank statement of borrowed funds, copy of debit note and credit note etc and detail about labour expenses. The Id. counsel has contended that Id. CIT(A) has committed an error in sustaining the disallowance made by the assessing officer. On the other hand, Id. departmental representative has supported the order of CIT(A).

11. We have heard the rival contention and perused the material on record carefully. The assessing officer has disallowed labour expenses of Rs. 9,05,930/- paid for loading and unloading. During the course of appellate proceedings, the assessee has produced copy of ledger a/c along with details of bills/vouchers and other details. It was contended that the assessing officer has disallowed the same without disproving the relevant supporting material. In respect of claim of donation u/s. 80G of the act, it was submitted during the course of appellate proceedings that in some of the donation receipts name of the partner of the assessee firm was mentioned along with name of the assessee firm. It was contended that the payment for the donation was made by the assessee firm through the bank a/c standing in the name of the partnership firm. During the course of appellate proceedings, the assessee had furnished copies of donation receipts, confirmation letters and copy of bank statement in support of its claim. Looking to the nature of expenses, we consider that the claims of the assessee in respect of labour expenses and donations are required to be adjudicated afresh after examination of the bills/vouchers and other material furnished by the assessee. Accordingly these two issues are restored to the file of assessing officer for deciding afresh after affording adequate opportunities to the assessee.

12. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 27-06-2018

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 27/06/2018**

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

**आदेश का प्रतिलिपि भेजा जाता / 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 अपीलालय अधिकरण,  
अहमदाबाद