

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1439/M/2017  
Assessment Year: 2013-14**

M/s. Magoxy Infra Pvt. Ltd., 105, Sagar Pallazio,, Sakinaka, Mumbai - 400 072 <b>PAN: AAECM7914L</b>	Vs.	Deputy Commissioner of Income Tax, Circle - 10(2)(2), Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Rakesh Joshi, A.R.  
Revenue by : Shri Saurabhkumar Rai, D.R.

Date of Hearing : 04.07.2018  
Date of Pronouncement : 17.07.2018

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 24.01.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The only issue raised by the assessee in this appeal is against the confirmation of disallowance of commission expenses of Rs.8,30,000/- as made by the AO qua unsubstantiated payment.

3. At the outset, the Ld. A.R. submitted before the Bench that the Ld. CIT(A) has decided the issue without considering

the evidences furnished by the assessee in support of its claim and merely relying on the fact that the assessee has not challenged the similar additions in the preceding year where the assessee failed to prove the genuineness of the commission payments. The Ld. A.R. contended that the Ld. CIT(A) has dismissed the appeal by passing a very cryptic order and requested the Bench to restore the issue to the file of the AO so that all these evidences which the assessee filed may be considered and matter is decided accordingly on merits of the case.

4. The Ld. D.R., on the other hand, relied on the order of Ld. CIT(A).

5. After hearing both the parties and perusing the relevant material placed before us and also the perusal of the impugned order, we find that the Ld. CIT(A) has just relied on the preceding year order of the Ld. CIT(A) where the assessee has not challenged the order of Ld. CIT(A) on similar issue. On the same analogy, the Ld. CIT(A) dismissed the appeal of the assessee in the current year also without taking into account the evidences which were filed by the assessee in support of its claim. Under these circumstances, we are of the view that the issue at hand needs to be decided *denovo* after appreciation and examination of the evidences which the assessee has filed before the first appellate authority. Accordingly, we restore the issue back to the file of the AO with the direction to decide the same after taking into account

the evidences which the assessee may file in support of its claim of commission expenses as per facts and law.

6. Accordingly, appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 17.07.2018.**

**Sd/-  
(Mahavir Singh)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 17.07.2018.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.