

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No. 29/RPR/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Arun Agriculture,  
New Dhamtari Road,  
Deopuri, Raipur (CG)  
Pin-492015  
PAN : AAKFA1408J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax 1(1),  
Civil Lines , Raipur (CG)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B. Doshi  
Revenue by : Smt. Anubhaa Goel

सुनवाई की तारीख / Date of Hearing : 16.01.2019  
घोषणा की तारीख / Date of Pronouncement : 17.01.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of the  
Ld. CIT(Appeals)-1, Raipur dated 04.11.2015 for the assessment year  
2011-12 as per following grounds of appeal on record:

*“1. In the facts and circumstances of the case, Commissioner of Income Tax (Appeals) erred in confirming disallowance of Rs.10,07,000/- made out of “ Commission on sales” by the Assessing Officer by ignoring explanation of the appellant and without considering the facts of the case properly and judicially.*

*2. In the facts and circumstances of the case, Commissioner of Income Tax (Appeals) erred in confirming disallowance of Rs.4,65,000/- made out of “ Travelling Expenses” by the Assessing Officer by ignoring the explanation of the appellant and without considering the facts of the case properly and judicially.*

*3. In the facts and circumstances of the case, Commissioner of Income Tax (Appeals) erred in confirming disallowance of Rs.5,64,926/- made out of “ Vehicle Maintenance and repairs Expenses” by ignoring the explanation of the appellant and without considering the facts of the case properly and judicially.*

*4. In the facts and circumstances of the case, Commissioner of Income Tax (Appeals) erred in confirming disallowance of Rs.41,500/- made out of “ Repairs and Maintenance Expenses” by ignoring the explanation of the appellant and without considering the facts of the case properly and judicially.*

*5. In the facts and circumstances of the case, Commissioner of Income Tax (Appeals) erred in confirming total disallowance of Rs.20,78,426/- is totally unjustified and uncalled for. The CIT(Appeals) should have deleted the entire disallowance of Rs.20,78,426/-*

*6. The appellant reserves the right to add, amend, or alter any ground or grounds of appeal at the time of hearing.”*

2. The Ld. AR of the assessee at the time of hearing apprised the Bench that he is not pressing the **ground No. 5 which is, therefore, dismissed as ‘not pressed’**.

3. The ground No.6 is general in nature and hence, requires no adjudication.

4. The ground Nos. 2, 3 and 4 relate to the ad-hoc disallowance on various heads and ground No.1 relates to disallowance made out of commission on sales.

5. With regard to ground No.1, it is observed by the Assessing Officer in his order that the transactions have not been proved to be carried out by the HUF. Neither the funds of the HUF were utilized nor can personal efforts of a HUF be imagined to have taken place. The brokerage exercise is one which needs personal efforts of a person. Therefore, the Assessing Officer was of the opinion that the transactions were not proved to have been done and there was no explanation as to how the HUF can carry out the profession of commission. It is impossible to imagine that a HUF can carry out the detailed exercise of contacting the buyers and sellers and then act as a link between them until the transaction is over. A HUF is an abstract entity which is not capable of carrying out such activity. The commission work in the capacity of Karta is accomplished as a personal effort which should be booked in the books of Karta not in the books of HUF. HUF was a device for siphoning off profits of assessee in the form of commission. Thus, in view of the facts and the position of law discussed in detail, the commission payment to the HUFs is disallowed and the commission to the extent paid to HUF of Rs.10,07,000/- was added to the total income of the assessee.

6. The Ld. CIT(Appeals) has upheld the decision of the Assessing Officer as per reasons appearing in his order which is on record.

7. The Ld. AR of the assessee vehemently argued that the proper and extensive details of commission are maintained and the copies of which are placed at page 13 to 26 of the paper book. The commission paid by the assessee reflected in their return which is annexed at page No. 14, 17, 21 & 26 of the paper book. The Ld. AR of the assessee further submitted that Revenue Authority has not accepted the commission payment stating that HUF cannot function to earn commission on its own but at the same time Revenue Authority has not brought any material on record that the agents did not render services. The genuineness of the claim is established by the assessee since turnover increased by about 37%. This evidence on study of commission in the past years, since the commission has been paid, was accepted in A.Y. 2008-09 and 2009-10 which are annexed at page 10-12 of the paper book.

7.1 The Ld. AR of the assessee has placed reliance on the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang Vs. Commissioner of Income Tax, reported as 193 ITR 321 (SC) and submitted that rule of consistency and status quo is to be maintained so far as the tax proceedings are concerned.

8. On the other hand, the Ld. DR has placed reliance on the orders of the lower Authorities.

9. We have perused the case record and analyzed the facts and circumstances of the case. We find that Revenue Authority has accepted total turnover of the assessee and turnover is increased by 37%. The commission has been paid also in the past years and assessment was completed u/s.143(3) of the Act for assessment years 2008-09 and 2009-10 on which no additions have been made on payment of commission.

In this regard, we take the guidance from the decision of the Co-ordinate Bench of the Tribunal , Mumbai in the case of Shri Sunil Kumar Ganeriwal Vs. DCIT, in ITA No. 4276/Mum./2008 has held that the assessee has followed a consistent practice in regard to the nature of activities, the manner of keeping records and the presentation of shares as investment at the end of the year, in all the years. The position that the principle of res-adjudicata is not attracted since each assessment year is separate in itself. The Tribunal further held that there ought to be uniformity in treatment and consistency when the facts and circumstances are identical particularly in the case of the assessee. The Assessing Officer cannot take a different view for the assessment year under consideration where the facts and circumstances are identical.

Furthermore, the Hon'ble Supreme Court of India in the case of The Hon'ble Supreme Court of India in the case of Radhasoami Satsang Vs.

Commissioner of Income Tax, reported as 193 ITR 321 (SC) has held that res-judicata does not apply to the income tax proceedings. Again each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasoning in the absence of any material change justifying the Revenue to take a different view of the matter and if there was not change it was in support of the assessee.

Further, the Hon'ble Delhi High Court in the case of CIT Vs. Neo Poly Pack ( P.) Ltd. reported as 245 ITR 492 ( Del.) has held that it is true that each assessment year being independent of each other, the doctrine of res-judicata does not strictly apply to the income tax proceedings, but where an issue has been considered and decided consistently in a number of earlier assessment years, in a particular manner for the sake of consistency, the same view should continue to prevail in the subsequent assessment years unless there is some material change in facts.

10. Therefore, in assessment years 2008-09 and 2009-10, no addition has been made and in the present year under consideration, in the similar facts and circumstances, any disallowance in the present year is unwarranted, unjustified and arbitrary. Therefore, we are of considered

opinion that once the Revenue has accepted the payment of commission in the case of the assessee in past years and there has been neither any bifurcation of the functions of the assessee nor the Revenue has brought out any material on record or evidence to prove that there have been new development in the transactions of the assessee. In absence of these, addition on this issue cannot be sustained. Further, we observe that there has been no enquiry conducted by the Revenue Authority. The Assessing Officer should conduct further about the matter through proper verification which he has not done. In view of the matter, we set aside the order of the Ld. CIT(Appeals) on this issue and allow the ground No.1 of the assessee. Hence, **Ground No. 1 of the assessee is allowed.**

11. The ground No. 2, 3 and 4 are the ad-hoc disallowance made by the Assessing Officer @20% under the heads of i) Travelling Expenses ii) Vehicle Expenses and iii) Repair and Maintenance Expenses.

12. The Ld. CIT(Appeals) on this issue has held as under :

*“Regarding the disallowance of expenses, Ground No.3, 4 and 5 relate to the disallowance of part claim on account of travelling , vehicle maintenance & repair and repair and maintenance expenses. The AO has noted that the expenses were not verifiable and some of these were vouched by self made vouchers. Personal component cannot be ruled out but it could not be distinguished. Appellant has contended that GP and NP of business are comparable to last years results therefore the AO should not have disallowed these claims. In this regard, the AO has noted that similar disallowances were made in the last years also. Appellant in his submissions has not addressed the observation of the AO that some of the expenses are supported by the self-made vouchers and are not verifiable. In view of this the disallowance of part of the expenses is hereby sustained.”*

13. We have perused the case record, analyzed the facts and circumstances of the case. On perusal of the order of the Ld. CIT(Appeals) on this issue, we find that he is simply accepted the version of the Assessing Officer. The Ld. CIT(Appeals) has not come out with specific findings as to why this disallowance should be sustained. We also find that the Assessing Officer has not conducted any specific enquiry or given any specific findings as to why this amount should be disallowed and added to the total income of the assessee. The Revenue Authorities have stated that certain bills and vouchers were unverifiable and therefore, these disallowances have been made to check possible leakage of Revenue. At the same time we also note that the Assessing Officer has not resorted to section 145(3) of the Act. Meaning thereby, he has not rejected the books of account. The assessment was completed u/s.143(3) of the Act relying on the books of account of the assessee whereas these disallowances were made by stating that from those books of accounts certain amounts were not matched. Therefore, in totality, on examination of the facts, we are of the opinion that the Revenue Authority has not come out with any cogent reason for these disallowances. We had put a question to the Ld. AR of the assessee, what is the position in the earlier year's regarding additions under these heads, it is stated that 10% disallowance has been made. In following the rule of consistency and status quo as decided in the cases laws herein above mentioned, we set aside the order of the Ld.

CIT(Appeals) and confirm the additions @ 10% on each of these heads.

**Hence, ground Nos. 2, 3 and 4 of the assessee are partly allowed.**

14. In the result, appeal of the assessee is partly allowed.

Order pronounced on 17th day of January, 2019.

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

रायपुर/ RAIPUR ; दिनांक / Dated : 17<sup>th</sup> January, 2019.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur(CG)
4. The Pr. CIT-1, Raipur (CG)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / The DR, ITAT, Raipur Bench, Raipur.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	16.01.2019	Sr.PS/PS
2	Draft placed before author	17.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		

