

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 2244/DEL/2016 (A.Y 2012-13)

JCIT (OSD) Circle-1(2), Room No. 368, C. R. Building I.P. Estate New Delhi (APPELLANT)	Vs	ACL Mobile Ltd. (Earlier known as ACL Wireless Ltd.) 104-107, Hemkunt Tower, 98, Nehru Place New Delhi AACCA7370G (RESPONDENT)
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Appellant by	Sh. Surender Pal, Sr. DR
Respondent by	Sh. R. S. Singhvi, CA

Date of Hearing	05.02.2019
Date of Pronouncement	07.02.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 29/02/2016 passed by CIT(A)-1, New Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

"1. On the facts and in the circumstances of the case, the Ld.CIT (A) has erred in deleting addition of Rs.91,73,003/- made on a/c of disallowance of commission.

3. The assessee company is engaged in the business of mobile application software services. It offers a range of SMS, IVR and GPRS based applications and services to mobile operators, enterprises and consumers. For the assessment year under consideration, assessee company filed its return of

income on 29.09.2012 declaring an income of Rs.6, 29,25,720/-. Assessment u/s 143(3) was made on 19.01.2015 determining total income of Rs.7, 31,38,070/-. In the assessment order, Assessing Officer disallowed commission payment of Rs.91,73,003/- and also disallowed expenses pertaining to earning exempt income u/s 14A of Rs. 10,39,356/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in deleting addition of Rs.91,73,003/- made on account of disallowance of commission and relied upon the Assessment Order.

6. The Ld. AR submitted that the issue contested by the Department in the present assessment order is already decided by the Tribunal in assessee's own case for Assessment Year 2009-10 & 2010-11 being ITA No. 1135/Del/2013 order dated 31/1/2014 & ITA No. 4420/Del/2014 order dated 6/3/2018.

7. The Ld. DR could not refute or distinguish the facts of the present assessment year with the facts of earlier Assessment Years.

8. We have heard both the parties and perused the material available on record. The CIT(A) held as under:-

“DECISION

I have considered the submission of the appellant and observation of the Assessing Officer, It is seen that appellant company is engaged in the business of mobile application software. It is also exporting these services to various countries and for that appellant has paid commission to the foreign agents. Assessing Officer treated the above claim of commission as of contingent nature and not incurred for the purpose of appellant's business. The AO has also mentioned that the appellant was asked to produce the copy

of the bills raised by the agents to whom commission is paid. The AR of the appellant submitted that commission is payable as per agreement and there is no need for separate invoices. The appellant has shown revenue from operations of Rs.54,18,53,347/- in A.Y. 2011-12 and Rs.55,09,91,211/- in A.Y. 2012-13. The AO has also mentioned that appellant has not submitted any details of the services rendered by those parties. The expenditure claimed by the appellant is not at all commensurate with the turnover shown by the appellant. The appellant submitted that claim of commission expenses is squarely covered by the appellant order in appellant's own case for earlier years for A.Y. 2009-10, 2010-11 and 2011-12. The appellant has further submitted that facts of the present year are identical to the facts of earlier years and nature of payment made and parties to whom commission payments have been made are same and genuineness of the same cannot be disputed. The AR further submitted that commission payment is directly linked with the revenue booked by the appellant and the observation made by the AO that same is in the nature of contingent liability is highly irrelevant and misplaced. The appellant submitted that commission has been paid in terms of the agreement made by the appellant with the foreign agents. The AR also submitted that foreign agents are integral part of the foreign business and expenses incurred for the commission purposes are wholly and exclusively for the business purposes. Vide its submission dated 18.01.2016, the appellant submitted copies of agreement made with various parties with respect to commission payment and also Form 15CA submitted to RBI for remittance of commission to the foreign agents. The appellant submitted that these foreign agents provided services to the appellant regarding introduction of the customers, negotiation for export considerations, collection of dues and other related services. Appellant also submitted that these agents do not have any other PE or business connections in India, therefore, the commission is fully allowable to these agents.

Vide its submission dated 26.02.2016, appellant submitted that the major

commission has been paid to M/s M-Novations and M/s Arab Asia Trade. The commission to M/s M-Novations is payable at fixed percentage of net revenue received by the appellant through its agents. The copy of the agreement of the said party has been filed by the appellant vide its submission dated 18.01.2016. The appellant submitted the details of the transactions undertaken or revenue booked by M/s M-Novations which is as under:

Operator	Revenue booked	Rate of Commission	Expense expense
Claro (Americell S/A)-SMS CHAT	20,765,148	20%	4,153,030
Telecel, Paraguay	793,505	25%	198,376
Tigo Bolivia-SMS	5,071,020	25%	1,267,755
Grand Total	26,629,673		5,619,161

From the above details, it is seen that agents has worked for various companies. The appellant also submitted that commission made to this party has been allowed in earlier years.

As regards the Arab Asia Trade, the appellant submitted that it has entered into an agreement with the said party on 01.04.2011 for providing liasoning arrangement with Telecom operator STC Saudi in Saudi Arabia. The payment of commission has been made to said party as per agreement.

All these facts establish that commission payment have been made by the appellant for promoting its sales by the agents in the foreign market and same is corroborated from the copies of the agreements filed before me made with different agents. The appellant has also filed copies of Form 15CA submitted to the RBI for remittance of commission to the foreign agents who do not have any PE or business connection in India. It is also observed that commission payment has been allowed in the earlier years to the very same parties for rendering services, therefore, the Assessing Officer was not justified in disallowing the commission payments which have been incurred wholly and exclusively for the business purpose by the appellant. Hence, the disallowance of commission payment is deleted.

Thus, the CIT(A) has relied upon the decision of the Tribunal in Assessment Year 2009-10 & 2010-11 & 2011-12 wherein the Tribunal has decided this issue in favour of the assessee. Thus, there is no need to interfere with the findings of the CIT(A). Hence, appeal of the Revenue is dismissed.

9. In result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 07th FEBRUARY, 2019.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 07/02/2019
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	05.02.2019
Date on which the typed draft is placed before the dictating Member	06.02.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	7.02.2019
Date on which the final order is uploaded on the website of ITAT	7.02.2019
Date on which the file goes to the Bench Clerk	7.02.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	