

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.7824/Del/2017
Assessment Year: 2014-15

Gulshan Kumar Mehdiratta,
C/o M/s Bhagwati Trading Co.,
1, Kishanpura,
Saharanpur,
Uttar Pradesh.

Vs. ITO,
Ward-3(2),
Saharanpur.

PAN: AHBPM5404A

(Appellant)

(Respondent)

Assessee by	:	Shri Pratiyush Jain, CA
Revenue by	:	Shri S.L. Anuragi, Sr.DR
Date of Hearing	:	21.02.2019
Date of Pronouncement	:	26.02.2019

ORDER

This appeal by the assessee is directed against the order dated 1st September, 2017 of the CIT(A), Muzaffarnagar, relating to Assessment Year 2014-15.

2. Facts of the case, in brief, are that the assessee is an individual and derives income from the business of distribution of telecom and FMCG products in city and rural areas of Saharanpur. He filed his return of income on 30th November, 2014 declaring the total income at Rs.7,91,350/-. The case of the assessee was selected for scrutiny and the Assessing Officer completed the assessment u/s 143(3) on 21st

December, 2016 determining the total income at Rs.12,14,125/- wherein the Assessing Officer made certain disallowances/additions. The assessee preferred an appeal before the CIT(A) and the Id.CIT(A) deleted the addition of Rs.2,12,775/-, but, sustained an addition of Rs.60,000/- on account of disallowance of expenses. However, while passing the order, Id.CIT(A) observed that the assessee has not shown receipt of Rs.31,61,205/- on account of commission/incentives received from telecom operators and has not shown any payment made on this account to the retailers/sub-dealers in the Profit & Loss Account. He, therefore, issued enhancement notice to the assessee as per the provisions of section 251(1) of the Act. Rejecting the various explanations given by the assessee and after considering the amount of Rs.7,97,230/- paid by the assessee to sub-dealers/retailers as incentives, made an addition of Rs.23,63,975/- in the hands of the assessee. Thus, he enhanced the income of the assessee by Rs.23,63,975/- u/s 251(1) of the Act.

3. Aggrieved with such order of the CIT(A), the assessee is in appeal raising the following grounds:-

“1. The Ld. CIT (A) has grossly erred in law and on facts by enhancing the assessment after assuming an amount of Rs 31,61,205/- as the business income of the appellant.

2. The Ld. CIT (A) has erred in law and on facts by enhancing the assessment after restricting the deduction for payment of 31,61,205/- to retailers/ dealers to only Rs 7,97,230/-

3. The Ld. CIT (A) has erred in enhancing the assessment on conjectures and surmises and without considering the submissions of the appellant.

4. The appellant craves for leave to add, amend, modify or withdraw any of the grounds of appeal.”

4. The ld. counsel for the assessee filed two paper books containing total 521 pages and submitted that the authorities below have not properly appreciated the facts of the case. He submitted that the assessee, no doubt, has received the incentives/commission from the telecom operators. However, these were passed on to the retailers as per the policy of the principals as well as that of the assessee. He submitted that the income enhanced by the CIT(A) is not proper and is liable to be deleted. In his alternate contention, he submitted that he has no objection if the matter is restored to the file of the Assessing Officer with a direction to give another opportunity to the assessee to substantiate his case that whatever incentive/commission has been received has been duly transferred to the retailers/customers and the surplus, if any, has been offered to tax.

5. The ld. DR, on the other hand, heavily relied on the order of the CIT(A). He submitted that the assessee has not disclosed the amount of incentive/commission received in the P&L Account and has also not shown the payment to any such incentive/commission to the retailers/customers. Therefore, the order of the CIT(A) being in accordance with the law should be upheld and the grounds raised by the assessee should be dismissed.

6. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. It is an admitted fact that the assessee in the Profit & Loss Account has not disclosed the amount of Rs.31,61,205/- received by him on account of commission/incentive from the telecom operators and has also not shown

any payment made on this account to the retailers/sub-dealers in the Profit & Loss Account. The Id.CIT(A), therefore, issued enhancement notice and made addition of Rs.23,63,975/- after allowing Rs.7,97,230/- as business expenses on account of amount paid to sub-dealers/retailers for incentive. It is the submission of the Id. counsel for the assessee that whatever commission/incentive has been received have been passed on to the customers and, therefore, there was no necessity of enhancing the income of the assessee. It is also his submission that the voluminous documents filed in the paper book were not considered by the CIT(A) while enhancing the income of the assessee. Considering the totality of the facts and circumstances of the case and in the interest of justice, I deem it appropriate to restore this issue back to the file of the Assessing Officer with a direction to verify the various details furnished by the assessee and decide the issue afresh and in accordance with the law, after giving due opportunity of being heard to the assessee. I hold and direct accordingly. The grounds raised by the assessee is accordingly allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 26.02.2019.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 26th February, 2019

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi