

**आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER  
AND  
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.568/Ind/2017  
Assessment Year: 2012-13**

Shri Bharat Bhushan Gupta, HUF 4, Honey Farm House, Near Allahabad Bank, Nemawar Road, Indore (Appellant)	<b><u>बनाम/</u></b> Vs.	ACIT-5(1) Indore (Revenue)
PAN: AAGHB7561R		
Appellant by	Shri Anil Kamal Garg & Arpit Gaur, CAs	
Revenue by	Shri R.S. Ambedkar Sr. DR	
<b>Date of Hearing:</b>	<b>11.03.2019</b>	
<b>Date of Pronouncement:</b>	<b>13.03.2019</b>	

**आदेश / O R D E R**

**PER MANISH BORAD, A.M:**

This appeal by Assessee pertaining to A.Y. 2012-13 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II Indore, (in short 'CIT(A)'), dated 01.05.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on

30.01.2015 by ACIT, 5(1) Indore. The assessee has raised following grounds of appeal:

*“1. That the Ld. CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.9,03,132/- made by the AO in the appellant’s income by restricting the commission expenses to 3% of total sales as against 5% of the total sales as claimed by the appellant.*

*2. That the Ld. CIT(A) grossly erred in holding that (i) the payees of the commission were relatives of the appellant or directly related to the Gupta family, which is not factually correct; and (ii) the appellant failed to establish the necessity of the expenditure for advancing his business.*

*3. That, the Ld. CIT(A) grossly erred in not considering and appreciating the material fact that in the preceding assessment years too, the commission at the similar rate was paid to the various persons and the entire commission was duly allowed.”*

2. From perusal of the above grounds we find that the sole grievance of the assessee is against the finding of Ld. CIT(A) confirming the disallowances of commission expenses of Rs.9,03,132/-.

3. Brief facts of the case pertaining to the issue raised before us are that the assessee is a Hindu Undivided Family engaged in the business of Repacking of Synthetic Organic Colour. Income of Rs.14,19,264/- declared in the e-return of income filed on 29.09.2012. Case was selected for scrutiny followed by notices duly served u/s 143(2) & 142(1) of the Act. During the course of assessment

proceedings Ld. assessing officer observed that assessee had claimed commission expenses of Rs.22,57,830/- paid to 8 parties @ 5% of the turnover achieved by them. Ld. AO was not convinced with the rate of commission of 5% and he disallowed 2% of the commission as excessive amounting to Rs.9,03,132/-. Apart from the disallowance of commission Ld. AO also made other disallowances of Rs.2,29,699/- assessing income at Rs.25,52,095/-.

4. Aggrieved assessee preferred an appeal before the ld. CIT(A) but partly succeeded.

5. Now the assessee is in appeal before the Tribunal against the disallowances of commission expenses by the Ld. CIT(A) of Rs. 9,03,132/-.

6. The ld. counsel for the assessee relying on the judgment of Hon'ble High Court of Delhi in the case of CIT vs. Dalmia Cement (Bharat) Ltd. (2002) 254 ITR 0377 submitted that the alleged amount of commission has been incurred for the purpose of business. In the past as well as subsequent assessment years similar type of commission has been claimed and allowed by the revenue authorities. Genuineness of the commission expenses has not been doubted. Payments have not been made to related parties as provided u/s 40A(2)(b) of the Act. Commission expenses

have been paid through account payee cheque and tax has been deducted at source and payees of commission have offered the same for taxes in their respective return of income.

7. Per contra Ld. DR vehemently argued supporting the order of both the lower authorities.

8. We have heard the rival contentions and perused the record placed before us. The assessee's sole grievance revolves round of the disallowance of commission of Rs.9,03,132/-. We observe that the assessee has been claiming such type of commission expenditure consistently in the past as well as in the subsequent years. No disallowances have been made in the past by the revenue authorities. Commission expenditures have been claimed @ 5% of the turnover achieved by the respective agents. Both the lower authorities have not doubted the genuineness of commission expenses but made the disallowance of 2% as against 5% holding it to be excessive in nature. Though both the lower authorities have taken a basis that the payments have been made to related parties however from the perusal of the tax audit report u/s 44AB of the Act placed at pages 4 to 28 of the paper book, we find that none of the parties receiving the alleged commission are

coming under the category of relatives of the assessee. Further for making disallowances for excessive commission nothing has been brought on record by the Ld. AO to prove that the assessee had paid lower rate of commission to other parties in the very same year nor has given a finding that in such kind of business, rate of commission is less than the rate of commission paid by the assessee in other words more than the fair market rate.

9. Hon'ble High court of Delhi in the case of CIT vs. Dalmia Cement (Bharat) Ltd.(supra) adjudicating the similar issue relating to commercial expediency of the commission paid has decided in favour of assessee holding that in order to qualify for deduction u/s 37(1) of the Act. It has to be seen that expenses were paid out or expend wholly and exclusively for the purpose of the business and the reasonableness of the expenditure has to be judged by the point of the view of the businessmen and not of the revenue.

10. Respectfully following the above referred judgments of Hon'ble High Court of Delhi and in the given facts and circumstances of the case, we are of the considered view that no disallowance of commission expenses is called for as the revenue authorities have not doubted the

genuineness of the commission expenditure which has not been paid to any related parties of the assessee and have been incurred exclusively for the purpose of business by making payment through account payee cheque after deducting tax at source. We accordingly set aside the finding of Ld. CIT(A) and delete the disallowance of commission of Rs.9,03,132/-.

11. In the result, appeal of the assessee is allowed.

*Order was pronounced in the open court on 13.03.2019.*

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 13/03/2019

*Patel P.S./नि.स.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order  
**Assistant Registrar**