

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'B'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.2254/Ahd/2017

निर्धारण वर्ष/Asstt. Year: 2014-15

Mehendrabhai M. Ajmera Prop. of Rushabh Industries Plot No.137/20, GIDC Estate Road No.29 Next To Meera Metal Odhav, Ahmedabad 382 415. PAN : ABHPA 9937 E	Vs.	ACIT, Cir.6(1) Ahmedabad.
--	-----	------------------------------

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
------------------------	--	--------------------------

Assessee by :	Shri Parin Shah, AR
Revenue by :	Shri Jayant Jhaveri, Sr.DR

सुनवाई की तारीख/Date of Hearing : 09/04/2019

घोषणा की तारीख/Date of Pronouncement: 24/04/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-6, Ahmedabad dated 24.8.2017 passed for the Asstt.Year 2014-15.

2. The assessee has taken five grounds of appeal. Its grievance revolves around a single issue, whereby it has pleaded that the Id.CIT(A) has erred in confirming the disallowance out of commission paid by the assessee.

3. Brief facts of the case are that the assessee has filed its return of income on 5.9.2014 declaring total income at Rs.31,40,036/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) of the Act was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that the assessee has paid commission to the following parties:

SN	Name	Total Commission paid (Rs.)	Detail of service Rendered	Rate of Commission
1	Batliboi Ltd.	8084	Selling Agent	10 %
2	Deepak Trikha	18362	Selling Agent	3%
3	Sachin R. Patel	203000	Selling Agent	5%
4	Shailendra Sahay	200000	Selling Agent	5%
5	Shalin M Ajmera	499113	Selling Agent	5%
	Total Amount	9,44,145	.	

4. Out of the total commission paid, the Id.AO disallowed Rs.1,50,000/- on an *ad hoc* basis. On appeal, the Id.CIT(A) gave notice for enhancement of income. The Id.CIT(A) has observed that commission of Rs.4,99,113/- was given to son of the assessee, which deserves to be disallowed under section 40A(2)(b) of the Act as well as on account of non-providing of any services. After hearing the assessee, the Id.CIT(A) disallowed total sum of Rs.4,99,113/- which included a sum of Rs.1.50 lakhs already disallowed by the AO. In other words, the Id.CIT(A) enhanced the disallowance by a sum of Rs.3,45,113/-

5. With the assistance of the Id.representatives, we have gone through the record. In response to the show cause for enhancement of income, the assessee has contended that his son, Shalin M. Ajmera is Electrical Engineer aged about 24-25 years. He has helped the assessee to take care of sales made to three concerns, viz. Arise India, R.S. Enterprise, Gaya and Shalin Pump Agency, Patna. Total orders worth Rs.99.82 crores were procured from these concerns. The Id.CIT(A) did not accept the contentions of the assessee on the ground that these are the old customers of the assessee. Hence, Shri Shalin M. Ajmera has not provided any specific service to the assessee. To our mind, the Id.CIT(A) failed to appreciate the nature of assessee's business, and also business realities. If in the firm, assessee's son, who is Electric Engineer, joined business by providing his services, then those service cannot be ignored simply for the reasons that he has taken care of old customers. It is pertinent to note that total orders worth of Rs.99.82 crores pertaining to three parties were required to be processed. Somebody must have to devote energy for taking care of this order and implementation of these orders. Goods must have been dispatched to them. Simply because they are old customers that does not mean that orders will be processed automatically, and no personal care would be required. There are so many factors even for catering old customers also viz. delivery of goods, receipt of payments, complaints about the goods, all these things are necessary part of day-to-day business. Thus, the Id.CIT(A) has erred in enhancing the income by making disallowance out of commission paid to the son. However, as far as disallowance of Rs.1,50,000/- is concerned that was disallowed on an estimate basis out of total commission paid by the assessee.

The range of the payment is being made from 3% to 5% and 10% to the parties. The assessee failed to give any rationale about this variation and exact nature of services rendered by the persons who have been given higher rate of commission. When the assessee failed to give these details, then the AO made disallowance on *ad hoc* basis. Considering his orders, we confirm the disallowance to the extent of Rs.1,50,000/-. However, the enhanced amount disallowed by the CIT(A) is deleted. In other words, the disallowance of commission expenses at Rs.1,50,000/- lakhs is confirmed, and further disallowance made by the Id.CIT(A) at Rs.3,49,113/- is concerned, it is deleted.

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

Order pronounced in the Court on 24th April, 2019.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER