

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.394/Ind/2014
Assessment Year: 2009-10**

M/s Jajoo Surgicals P. Ltd., 401, Rakdhakrishna Complex, 10/1, Manoramaganj, Indore (Appellant)	<u>बनाम/</u> Vs.	ACIT 2(1) Indore (Revenue)
PAN:AAACJ7196B		
Appellant by	Shri Kailash Agrawal & Prakash Gupta, CAs	
Revenue by	Shri V.J. Boricha Sr. DR	
Date of Hearing:	29.04.2019	
Date of Pronouncement:	07.05.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal at the instance of Assessee pertaining to A.Y. 2009-10 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-I, Indore, (in short 'CIT(A)'), dated 26.02.2014 which is arising out of the order

u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 22.12.2011 by ACIT,2(1) Indore.

2. Brief facts of the case as culled out from the records are that the assessee is a Private Limited Co. engaged in Manufacturing & Trading of Absorbent Cotton & Gauge and Trading in Medicines. Income of Rs.1698170/- declared in the e-return of income filed on 30.09.2009 for A.Y. 2009-10. Case selected for scrutiny through Computer Assisted Scrutiny Selection (CASS). Notices u/s 143(2) & 142(1) of the Act were duly served upon the assessee. Financial statement and books of accounts were examined. Learned Assessing Officer (in short Ld. AO) called for information relating to claim of expenses including commission expenses of Rs.48,19,026/-. Details were filed by the assessee. Ld. AO completed the assessment after making various additions including disallowance of interest expenses of Rs.74,098/- and disallowance of commission expenses of Rs.36,73,850/- thereby assessing the income at Rs.58,06,003/-.

3. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) and partly succeeded.

4. Now the assessee is in appeal before the Tribunal.

5. At the outset, Ld. counsel for the assessee requested for not pressing ground no.1 relating to disallowance of Rs.2,89,786/- for prior period expenses.

6. Ld. counsel for the assessee with regard to disallowance of interest of Rs.74,098/- submitted that the assessee had sufficient interest free funds in the form of share capital and reserve and surplus which was used to provide interest free loans and advances. Further with regard to the disallowance of commission expenses partly sustained by the ld. CIT(A). Ld. counsel for the assessee while referring to the submissions made before the ld. CIT(A) and various details filed in the paper book submitted that the sales of the assessee has almost doubled during the year. All supporting evidences to explain genuineness of commission expenses has been filed. The alleged commission expenses have been shown as income by the commission agents and tax have duly been paid. He also referred to the respective finding of the assessing officer and Ld. CIT(A) wherein they have partly accepted the commission expenditure which itself prove that genuineness is not doubted.

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 and gone through the details filed in the paper book submitted by the assessee.

9. Ground No.1:

“Disallowance made at Rs.2,89,786/- by treating the same as related to earlier years, whereas the same are allowable during the year in question and hence, it is prayed that the amount may kindly be directed to be allowed as claimed.

10. As Ld. counsel for the assessee has requested for not pressing this ground, therefore, ground No.1 is dismissed as not pressed.

11. Ground no.2.

ii. Disallowance made at Rs.74,098/- on account of notional interest disallowed on advances granted at Rs.5,48,877/- whereas nothing is liable to be disallowed and hence it is prayed that the disallowance so made may kindly be directed to be allowed.

12. As regards the disallowance of interest at Rs.74,098/- notional interest was computed by the Ld. AO on the interest free loans and advances of Rs.5,48,877/- given to 5 related parties. There were also loans taken by the assessee on which interest @13.5% was paid. From perusal of the audited balance sheet we find that at year end share capital is at Rs. 36,60,000/- and accumulated reserve and surplus stood at Rs.60,61,737/- which in total makes

interest free funds available with the assessee at Rs.94,21,737/-.

13. Ld. Assessing officer objected for the interest free loans of Rs.5,48,877/-. There is no specific finding of the Ld. assessing officer which could prove that interest bearing funds were directly used to pay to the related parties as interest free loans and advance.

14. We, therefore, in the given facts and circumstances of the case and on observing that sufficient interest free funds of Rs.94,21,737/- were available with the assessee which were sufficient enough to cover up the interest free advances of Rs.5,48,877/- given to the related parties, in our view both the lower authorities erred in confirming the disallowances of interest of Rs.74,098/- and the same deserves to be deleted. We accordingly order so and allow the assessee's ground no.2

15. Now we take ground No.3 which reads as under:

iii. Disallowance made at Rs.14,45,707/- out of total disallowance made by the Ld. Assessing officer at Rs.36,73,850/- being the amount of commission paid, whereas the said commission is paid for the purpose of business of the petitioner and allowable and hence, it is prayed that the disallowance so maintained at Rs.14,45,707/- may kindly be directed to be allowed.

16. Perusal of records show that commission expenses of Rs. 48,19,026/- was paid to 16 parties during the year. Turnover of the assessee increased to Rs.6,73,60,694/- in comparison to the turnover of immediately preceding financial year at Rs.3,02,59,687/-, which means that the turnover has almost doubled whereas the commission expenditure which was at Rs.56,736/- in the preceding financial year increased to Rs.4819026/- which almost increased by 85 times. Ld. AO categorized commission expenditure into three categories:

Particulars	Amount
i. No details made available by the assessee about the nature and services rendered	Rs.17,13,766/-
ii. Identity and confirmation filed but details of services not provided	Rs.7,13,888/-
iii. 50% of commission expenses of Rs.24,92,372/- disallowed being excessive	<u>Rs.12,46,186/-</u>
	<u>Total:Rs.36,73,840/-</u>

17. When the issue came up before the ld. CIT(A), he sustained the addition at Rs.14,45,707/- by making ad hoc disallowance of 30% of the total commission expenses of Rs.48,19,026/- observing as follows:

Ground No.4 of appeal is against disallowance of claim of commission expenses of Rs.36,73,850/-. The AO has disallowed such commission for various reasons. The facts of the case are that the turnover of appellant has increase from Rs.3.02 crore last year to Rs.6.73 crore this year and appellant has claimed commission expenses of Rs.48,19,026/- in this year, whichw as negligible last year. The AO has admitted in his order reproduced in para 8.8 of this order that business of assessee of sale of medical products is such that for procurement of orders and for supply of material agents are required. This is also supported by decisions in cases of Bharat Medical Stor (P&H) 185 Taxmann 54, LaxmiEngg. Ind. (Rajasthan High Court) 298 ITR 203, and Microtax Separators Ltd. (Kar.) 209 CTR 62.

8.1. Now we discuss specific cases of commission agents and those three categories in which AO has divided all 16 commission agents. Various shortcomings which need mentioned are that when AO wrote enquiry letters to many of these commission gents, no reply was received from Fairdeal Enterprise and Javed Khan. Details of educational qualification and competence to conduct such business was not given. None of the agents was produced before AO, despite being specifically asked. The reason for giving commission to a finance company namely M/s Ascent leasing and Finance Co. ltd. was not explained. Appellant could not even provide address of one of the commission agents namely ShriShrirish Kothari. An amount of commission expense of Rs.1,01,000/- was debited without even mentioning any name of commission agent. Appellant completely failed to explain huge difference in rate of commission paid from 2% in case of Synergy International to as high as 15% in case of SeemaJatav,

Ascent Leasing & finance Co. Ltd. and Jamma Devi Sanghvi and also failed to explain as to what special and extra services were rendered by those commission agents, to whom higher rate of commission is paid. Therefore disallowance of a part of commission expenses is fully justified.

8.2 However, in medical appliances business services of agents prior to allotment of tender for submitting documents and subsequently for supply of order and getting payment from clients including government, is not established norm as held in case of Bharat Medical Store (Supra). This is also a fact that turnover of appellant has just doubted from last year. Appellant has also tried his level best to furnish requisite information to the extent possible about such commission agents in form of their confirmation letter, nature of their work, copy of their return of income showing such commission income etc.

8.3 Considering the submissions of appellant as well as various unexplained issues related to commission agents as discussed in para 8.1, as disallowance of 30% of the commission expenses claimed i.e. Rs.14,45,707/- (30% of Rs.48,19,026/-) will serve the end of justice. As a result out of commission disallowance made by AO of Rs.36,73,850/-, as disallowance of Rs.14,45,707/- is confirmed and appellant gets a relief of Rs. 22,28,142/-. As a result this ground of appeal is partly allowed.

18. On perusal of the above finding of Ld. CIT(A) as well as in the given facts and circumstances of the case and documentary evidences places on record, we observe that

as regards the disallowance of commission @ 50% of Rs.24,92,372/- made by the Ld. AO there is no specific finding by Ld. AO about questioning the genuineness of the expenditure and as Ld. AO has himself allowed 50% of the commission expenses. Identity proof and details including confirmation and income tax return submitted. Ld. AO also accepted that for procurement of orders services of agents is required but on the other hand, he questioned the quantum of the commission paid being excessive.

19. In our considered view the finding of the Ld. AO is not specific and seems to be half hearted before making disallowance. When the assessee has placed necessary details and genuineness of the commission expenditure at Rs. 24,92,372/- has not been doubted then in such circumstances no disallowance was called for. We, therefore, set aside the finding of Ld. CIT(A) and delete the disallowance of commission of Rs. 12,48,186/- made by the AO.

20. As regards the commission expense of Rs. 7,13,888/- disallowed by the Ld. AO we find that the assessee filed identity proof and confirmation of account for the three parties, Income Tax returns have also been filed and the

commission income has been duly offered to tax. No specific inquiry has been made by the AO to the concerned parties to verify the genuineness of claim. In these given facts no disallowance of commission was called for. We accordingly set aside the finding of Ld. CIT(A) and delete the disallowance of commission expenses made by the AO at Rs.7,13,888/-.

21. Now coming to the third category of disallowance of Rs.17,13,766/- which is claimed to have been paid to following six parties:

I. SeemaJatav	Rs.2,96,728/-
II. Fairdeal Enterprises	Rs.6,38,188/-
III. Nine Fore	Rs. 3,77,850/-
IV. Shrish Kothari	Rs.1,00,000/-
V. Javed Khan	Rs.2,00,000/-
VI. Misc. Commission	<u>Rs.1,01,000/-</u>
	<u>Rs. 17,13,766/-</u>

In respect of the above parties in the case of Seema Jatav, Fairdeal Enterprises, Nine Fore the Ld. AO issued notice u/s 133(6) of the Act but satisfactory reply was not received. In some cases notice u/s 133(6) could not be served. In the case of Misc. commission expenses of Rs.1,01,000/- , no details were filed. Rates of commission also varied from 2% to 15 % but no proper explanation was given.

22. In these given facts and circumstances where the assessee is unable to satisfy the lower authorities about commission expenditure claimed, we find no reason to interfere in the well reasoned finding of the Ld. CIT(A) disallowing the commission expenditure of Rs. 5, 14,133/- computed @ of 30% of the commission expenditure of Rs.17,13,776/-.

23. We, therefore, in view of our above finding sustain the disallowance of commission expenses of Rs.5,14,133/- as against commission disallowance of Rs.14,45,707/- sustained by the Ld. CIT(A). Accordingly ground no.3 of the assessee's appeal is partly allowed.

24. In the result, appeal of the assessee is partly allowed.
Order was pronounced in the open court on 07.05.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated :07/05/2019

Patel, P.S./नि.स.

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

By order
Assistant Registrar