

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

**BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.4124/Del/2015  
Assessment Year: 2011-12**

DCIT, Rohtak Circle,  
Rohtak.

Vs Sh. Satya Prakash Aggarwal,  
45- Arcadia, 195,  
Nariman Point, Mumbai.  
PAN: AALPA5384L

**Assessee by: Shri U.S. Aggarwal, Advocate  
Revenue by: Ms Ashima Neb, Sr. DR**

**Date of Hearing 30.4.2019  
Date of Pronouncement 13.5.2019**

**ORDER**

**PER K. NARASIMHA CHARY, JM**

Challenging the order dated 24.4.2015 in Appeal No.37/14-15 passed by the Id. Commissioner of Income-tax (Appeals), Rohtak (for short 'Ld. CIT(A)'), revenue preferred this appeal.

2. Brief facts of the case are that the assessee is a dealer in bullion i.e. gold, silver, dealing in future trading and real estate by maintaining regular books of accounts which have been audited as per the provisions of the Income-tax Act, 1961 ("the Act"). Assessee had filed his return of

income on 30.9.2011 for the Asstt. Year 2011-12 declaring a total income of Rs.8,46,420/-. Assessment was completed by an order dated 28.3.2014 u/s 143(3) of the Act assessing the income of the assessee at Rs.1,70,69,305/- by making four additions, namely, Rs.1,42,58,987/- by disallowing the trading loss, Rs.3,07,642/- on account of disallowing the commission expense, Rs.14,35,276/- being the estimated interest on an old advance and Rs.1,38,600/- by disallowing 20% of the car expenses, depreciation and interest on car loan.

3. In appeal, learned CIT(A) deleted all the additions except the addition of Rs.1,38,600/- on account of car expenses, depreciation and interest on car loan.

4. Hence, the revenue is in this appeal before us challenging the deletion of two additions, namely, Rs.1,42,58,987/- made by the learned AO by disallowing the trading loss and Rs.3,07,642/- made by the Id. AO by disallowing the commission expense.

5. In so far as the first addition of Rs.1,42,58,987/- is concerned, learned AO made the said addition stating that the gross profit for the current year is far less than the gross profit of the preceding year, no stock register is maintained, stock was not reported in the audit report and there was a difference in weight of silver bars purchased and the silver bars sold.

6. Impugned order speaks that Id. CIT(A) called for the remand report during the first appellate proceedings and after considering the same thought it fit to delete the addition. It is the argument of the learned AR that during the first appellate proceedings the entire record is

produced before the learned CIT(A) who called for the remand report from the AO. It is his further submission that after considering the books of accounts of the assessee, AO satisfied herself about the correctness of the claim of the assessee and accepted the same. Learned AR, therefore, submits that it is not open now for the revenue to contend that the findings of the learned CIT(A) basing on such remand report are untenable.

7. Per contra, it is the submission of the learned DR that the Id. CIT(A) is not justified in simply relying upon the submissions of the assessee and to ignore the fact that the gross loss of Rs.1,42,58,987/- has never been adjusted against other income of the assessee under different heads and thereby there is a failure on the part of the Id. CIT(A) in proper exercise of the co-terminus power vested in him to reach the correctness of the disallowance.

8. Page 4 & 5 of the paper book are the copy of the remand report submitted by the Id. AO pursuant to the letter dated 7.1.2015 of the Id. CIT(A) seeking remand report. In this report, learned AO while referring to the different additions made, stated in respect of the addition of Rs.1,42,58,987/- on account of disallowance of gross loss in trading account that the details filed by the assessee were test checked and no adverse inference was drawn regarding the defects in the books of accounts. Id. CIT(A) while relying upon this remand report reached a conclusion that the disallowance cannot be sustained and it has to be deleted.

9. In this set of circumstances, we are of the considered opinion that it is not open for the Id. AO to report in the remand report that on test

check of the details filed by the assessee, no adverse inference could be drawn and now to contend that Id. CIT(A) is not justified in relying upon the same. This appeal is preferred by the AO representing Revenue and, therefore, the Id. AO is bound by the contents of the remand report and cannot approbate or reprobate. We, therefore, do not find any infirmity in the findings of the Id. CIT(A) in deleting this disallowance. We accordingly dismiss Ground Nos. 1 & 2 of revenue's appeal.

10. Now turning to Ground No.3 relating to the disallowance of Rs.3,07,642/- on account of commission paid by the assessee, the facts are that the Id. AO found an amount of Rs.1,79,28,222/- credited on account of gain on bullion in the profit and loss account of M/s AD Overseas (Ahmedabad) and out of this amount a sum of Rs.45,68,878/- was received from one M/s R.P. Jewellers net of commission paid to them to the tune of Rs.3,07,642/-. Learned AO is of the opinion that since no commission was paid by the assessee in respect of the remaining trading margin on account of bullion gain through other entities, there was no justification for the assessee to pay the same to R.P. Jewellers. Learned AO further recorded that assessee failed to produce bills raised by the said R.P. Jewellers and, therefore, such payment of commission cannot be considered for business expenditure.

11. It could be seen from the remand report that learned AO had taken a plea that the assessee made this commission payment to his related party and when there is no such payment to the non related parties, this payment to the related parties cannot be taken a bonafide or genuine one. Id. AO reported that this payment was in contravention of Section 40A(2)(b) of the Act.

12. In the impugned order, Id. CIT(A) while referring to the submission of the assessee that the payment of commission of Rs.3,07,642/- was spent to earn the profit of Rs.48,45,756/- and such payment is also at low rate when compared to the prevailing market rates. We do not find any abnormality in payment of Rs.3,07,642/- by the assessee to earn the profit of Rs.48,45,756/- and to offer to tax a sum of Rs.45,68,878/- merely because the commission was paid to M/s R.P. Jewellers. Further the confirmation at page no.14 of the paper book shows that during the period between 1.4.2010 and 31.3.2011, the sales were to the tune of Rs.2,83,10,63,457/- and the commission charges were Rs.3,07,642/- whereupon TDS @ 10% was deducted. There is no reason for us not to believe this document and the AO did not take any steps to examine this entity. We, therefore, do not find any justification to interfere with the finding of the learned CIT(A) on this aspect and the finding of the Id. CIT(A) perfectly fits in the order of things and probability of business events. We, therefore, dismiss Ground No.3 of the appeal.

13. In the result, appeal of the revenue is dismissed.

**Order pronounced in the Open Court on 13<sup>th</sup> May, 2019.**

Sd/-  
**(G.D. AGARWAL)**  
**VICE PRESIDENT**  
Dated: 13<sup>th</sup> May, 2019  
VJ

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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