

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B'अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 3337/Ahd/2016

(निर्धारण वर्ष / Assessment Year :2012-13)

ShriVinod M Shah - HUF 117, New Cloth Market, O/s. Raipur Gate, Raipur Ahmedabad- 380001	बनाम/ Vs.	ITO, Ward-5(3)(3), Ahmedabad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAH HS4 124 G		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Hardi K Vora, AR
प्रत्यर्थीकीओरसे / Respondentby:	Mudit Nagpal, Sr. DR

सुनवाईकीतारीख/Date ofHearing	26/04/2019
घोषणाकीतारीख /Date of Pronouncement	21/05/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal has been filed by the assessee for A.Y. 2012-13, arise from order of the CIT(A)-5, Ahmedabad dated 16.09.2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The assessee has raised following grounds of appeal:-

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming ad-hoc disallowance or Rs. 16,986/- being 1/20th part of vehicle exp., vehicle maintenance exp., conveyance exp., depreciation on motor car and telephone exp.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming the addition of Rs. 55,914/- being interest income ignoring the fact that it is already offered for tax in A.Y. 2013-14.

3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming the addition of Rs. 41,41,034/- being commission exp.”

3. In this case there are three ground of appeal. The Ld. Counsel has not pressed ground no. 1 and 2. Therefore, these grounds of appeal are dismissed as not pressed. The Ld. Counsel has pressed the ground no. 3 which is against the decision of Ld. CIT(A), Ahmedabad-5 in confirming the addition of Rs. 41,41,034/- being commission expenses.

4. The fact in brief is that the return of income declaring income of Rs. 15,93,670/- was filed on 30.09.2012. Subsequently the case was selected under scrutiny by issuing of notice u/s. 143(2) of the Act on 08.08.2013. In respect of the issue in appeal pertaining to commission expenses the AO has noticed that assessee has debited commission expenses to the amount of Rs. 41,41,034/-. The AO has asked the assessee to furnish the supporting detail of the recipient and details of services rendered by them for the assessee. On verification of the detail furnished the AO has noticed that assessee has furnished vouchers for commission expenses to the amount of Rs. 24,57,478/- only. The AO has further noticed that the voucher were not contained the details of the address of the agents, services rendered/sales made by their efforts etc. The assessee has explained that assessee paid the commission by cheque and they have also deducted necessary TDS from such expenses. The AO has not accepted the explanation of the assessee stating that the assessee has not submitted complete information i.e. contra account from the person, detail of address etc. The AO has stated that assessee has also not furnished the copy of return of income from which it can be confirmed that the recipient has offered the commission income from the assessee. Therefore, the AO

has treated the commission expenses as unexplained and added to the total income of the assessee.

5. Aggrieved assessee has filed appeal before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal of the assessee reiterating the same reason cited by the AO while disallowing the commission expenses.

During the course of appellate proceedings before us the assessee has furnished paper book containing detail/information furnished before the AO and CIT(A) during the course of assessment proceedings and appellate proceedings. The Ld. Counsel has also contended that the AO has not considered the specific evidences furnished by the assessee and made disallowance on estimation basis.

6. On the other hand the Ld. DR has relied on the order of the lower authorities.

7. We have heard both the sides and perused the material on record. The assessee has claimed an amount of Rs. 41,41,034/- under the head of commission expenses. The AO has disallowed the commission expenses stating that certain detail has not been furnished as a result the genuineness of the expenditure could not be verified. With the assistance of Ld. Representatives we have gone through the material placed in the paper book submitted by the assessee during the course of appellate proceeding and it is noticed that at Sr. No. 7 from Page No. 37 to 101 the assessee has given summary of commission ledger along with confirmation, addresses, bank statement and copy of income tax return filed by the commission recipient parties. After perusal of the aforesaid information we considered that the AO has failed to controvert the aforesaid information provided by the assessee with any specific finding, therefore, we are not inclined with the decision of Ld. CIT(A). Accordingly, we restore this case to the file of AO to verify and

examination the specific information furnished by the assessee as referred above and decide the issue in appeal with specific findings afresh after affording adequate opportunity to the assessee. Therefore, the appeal of the assessee is allowed for statistical purposes.

8. In the result, this appeal of the assessee is allowed for statistical purposes.

This Order pronounced in Open Court on 21/05/2019

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Ahmedabad: Dated 21/05/2019

TANMAY

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।