

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER And
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 2048/Ahd/2017

(निर्धारण वर्ष/Assessment Year : 2014-15)

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| Prataprai G. Rohra Prop: M/s.Shivam Textiles Shop No.1, 1 st Floor, Kishan Dayal Market Nr.New Vijay Mill Fruit Market Naroda Road, Memco Ahmedabad-382345 | बनाम/ Vs. | The ACIT Circle-7 (2) Ahmedabad |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AGIPR 7584 F | | |
| (अपीलार्थी/Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी ओर से/ Appellant by : | Shri S.K. Sathwani, AR |
| प्रत्यर्थी की ओर से/Respondent by: | Ms.Sonia, Kumar, Sr.DR |

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| सुनवाई की तारीख/ Date of Hearing | 09/05/2019 |
| घोषणा की तारीख/Date of Pronouncement | 31/05/2019 |

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-7, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-7/98/16-17 dated 06/07/2017 arising in the assessment order passed under s.143(3) of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 04/11/2016 relevant to Assessment Year (AY) 2014-15.

The assessee has raised the following grounds of appeal:

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1. *The learned ACIT CIR 7(2) has erred in law and unjustified in disallowing incentive commission of Rs.6,86,916/- paid to 4 persons on the ground that these parties are covered u/s.40A(2)(b);*
 - a) *Without giving any finding as to how the expenditure is excessive or unreasonable having regard to fair market value of the services rendered. Ld. CIT(A) order is unjustified and bad in law in confirming this addition;*
 - b) *Ld. ACIT CIR 7 (2) has passed the assessment order, without having the jurisdiction of the case. Ld. CIT(A) is not justified in holding that there is no question of ACIT not having jurisdiction over the case, without appreciating the fact placed on record that DCIT (CO) Ahmedabad has confirmed, that jurisdiction of case vested with ITO WD-1(2)(5) and not with ACIT CIR 7 (2) on date of framing assessment.*

The appellant craves a leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

The main issue raised by the assessee is that the Ld. CIT (A) erred in confirming the addition of Rs. 6,86,916/- paid to certain parties treating them as covered u/s 40A(2)(b) of the Act.

2. The facts of the case are that the assessee is an Individual and engaged in the business of trading & Manufacturing of ladies garments under the name and style of M/s Shivam Textiles.

The assessee in the year under consideration paid commission amounting to Rs. 6,86,916/- to four persons at Rs. 1,71,729/- to each person. The assessee accordingly claimed as incentive sales commission in his books of account. The details of the persons to whom the commission was paid stands as under:

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| <i>“Sr. No.</i> | <i>Name</i> | <i>Amount of Commission (in Rs.)</i> |
|---------------------|--|--|
| <i>1.</i> | <i>Anil Prataprai Rohra – HUF</i> | <i>1,71,729</i> |
| <i>2.</i> | <i>Laxman Prataprai Rohra – HUF</i> | <i>1,71,729</i> |
| <i>3.</i> | <i>Prataprai Gulumal Rohra – HUF</i> | <i>1,71,729</i> |
| <i>4.</i> | <i>Vinod Prataprai Rohra – HUF</i> | <i>1,71,729</i> |
| | <i>Total</i> | <i>6,86,916”</i> |

However, the AO during the assessment proceedings requested the assessee to furnish certain details to verify the claim of expenses. The AO further observed that such parties are covered u/s 40A(2)(b) of the Act as he paid incentive commission to his HUF in which he is as a Karta.

The assessee in support of the claim filed the complete details like PAN, address, nature of services received and also an acknowledgment of income tax return of the parties to whom the commission was paid.

The assessee further submitted that all the payments were made through the banking channel as well as the same amount was reflected in the income tax return of the respective parties. As such, the incentive was on total sales rather than person wise, which works out at 0.65% of total sales, and the same was distributed between the four parties equally. But individually, the incentive sales commission comes to only 0.16% of total sales. Therefore the incentive commission paid to these parties was

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not excessive or unreasonable compared to the fair market value of the services.

The assessee further submitted that such HUF is not covered within the definition of relative as prescribed u/s 40A(2)(b) of the Act. The assessee also claimed that the turnover of his business increased in comparison to the previous year by 16.67% against such services.

However, the AO observed that the assessee did not furnish any evidence in respect of the services received from these HUF's. The assessee also did not explain as how the individual can give the commission to his HUF. As such the assessee did not submit the sufficient and relevant document evidencing that the commission paid was genuine.

Thus, the AO in view of the above disallowed the commission expenses for a sum of Rs. 6,86,916/- and added to the total income of the assessee.

The aggrieved assessee preferred an appeal before the Ld. CIT (A). The assessee before the Ld. CIT (A) reiterated the submissions as made before the AO.

However, the Ld. CIT (A) observed that the assessee paid commission to his own HUF in which he was a Karta, and further, there was no evidence filed by him regarding the activities performed by other HUF.

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The Ld. CIT (A) furthest observed that the assessee did not furnish or comply with the requirement as desired by the AO and also not elaborated the purpose properly for payment of the commission to such HUF. Therefore the Ld. CIT (A) confirmed the addition made by the AO.

Being aggrieved by the order of the Ld. CIT (A), the assessee is in appeal before us.

3. The Ld. AR before us filed a paper book running from pages 1 to 55 and submitted that similar amount of commission expenses was allowed by the revenue in the assessment year 2012-13 and 2013-14. Therefore, the same should be allowed in the year under consideration as per the rule of the consistency.

4. On the other hand, the Ld. DR apprehended that how the assessee can make the payment of the commission to the HUF. The learned DR vehemently supported the order of the authorities below.

5. We have heard the rival contention and perused the material available on record. At the outset, the learned AR for the assessee submitted that he had been instructed not to press the issue regarding the commission expenses paid to the HUF of the assessee.

The issue in the instant case is that the assessee claimed incentive commission paid to the four parties which were HU, including the HUF of which he was the Karta. Thus the AO was of the view that such HUF

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was related party of the assessee and also the commission expenses was not substantiated by the assessee based on the documentary evidence. Therefore, the AO disallowed the commission expenses u/s 40A(2)(b) of the Act. Subsequently, the Ld CIT (A) confirmed the addition made by the AO.

At the outset, we note that the assessee in the earlier assessment years has also paid the commission to the parties above but in their personal capacity and not as Karta of the Huf. This fact can be verified from the assessment order pertaining to the assessment 2011-12, which is placed on pages 52 to 54 of the paper book. The learned DR has also not brought anything on record contrary to the argument advanced by the learned AR for the assessee regarding the deduction of similar expenses in the earlier assessment year. Therefore, the rule of consistency can be applied in the given facts and circumstances as there was no change in the material facts in the year under consideration viz a viz in the earlier assessment years.

Now the issue arises, whether the assessee is entitled to the deduction in respect of the commission paid to the HUF instead of the individual persons. Regarding this, we note that there is no denial under the provisions of the Income Tax Act to make the disallowance of such expenses. In this connection, we also place our reliance on the order of this tribunal in the case of *Ridhi Steels & Tubes Pvt. Ltd. Vs. ACIT* in ITA No. 638/AHD/2015 vide order dated 1/2/2019 wherein it was held as under:

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“18. As far as allegations of commission paid to the HUF are concerned, HUF is a separate legal entity. The ld.CIT(A) did not dispute about the payment of commission to HUF, but recorded a finding against the assessee for statistical purpose, because this payment to HUF is also confirmed because it is part of total commission claim at Rs.53,56,535/- which has been disallowed by the AO and confirmed by the ld.CIT(A). Under these circumstances, the ld.CIT(A) did not deem it necessary to examine this aspect. This finding of the ld.CIT(A) recorded at page no.30 has not been challenged by the Revenue in its appeal. Services on behalf of the HUF could be rendered by Karta, and commission payment merely on account that it is juridical taxable entity, cannot be disallowed. Taking into consideration of overall facts and circumstances, we are of the view that the assessee has brought on record evidence justifying the payment of commission, which is just 0.60% on the total sales. The AO except suspecting incurrance of such expenditure did not make any inquiry. Therefore, we allow this ground of appeal, and delete disallowance of Rs.53,56,535/-.

19. In the result, appeal of the Revenue is dismissed and that of the assessee is allowed.”

In view of the above, we hold that the assessee is entitled to the commission expenses as discussed above. Accordingly, we reverse the order of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is partly allowed.

The learned AR at the time of hearing did not agitate the technical issue raised by the assessee. Therefore we dismissed the same as infructuous.

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6. In the result, the appeal filed by the assessee is partly allowed.

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| This Order pronounced in Open Court on | 31/05/2019 |
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Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 31/05/2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-7, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad