

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "F", NEW DELHI ]  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
&  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 6635/Del/2016  
Assessment Year: 2013-14**

Sh. Raman Sethi B-3/58, Janak Puri, New Delhi, Pin: 110058	Vs.	ACIT Circle-2, Aayakar Bhawan, Bhainsali Ground Delhi Road, Merut
PAN: ACVPS2535F		
(Appellant)		(Respondent)

Assessee by : Sh Rohit Tiwari, Adv.  
Department by : Shri Surender Pal, Sr. DR  
Date of hearing : 06-06-2019  
Date of pronouncement : 06-06-2019

**ORDER**

**PER DR.B.R.R. Kumar, AM:**

This appeal arises out of the order of the Ld. CIT (A) ,Meerut dated 08-11-2016. The assessee has taken the following grounds:

*"1.1 That on the facts and in the circumstances of the case and in law, the impugned order of the Id. CIT (A), confirming the disallowance of commission amounting to Rs.60,21,397/-made by the AO, is liable to be quashed, being cryptic and nonspeaking, violating the principles of natural justice and having been passed without analyzing the evidence regarding services rendered by each of the 13 agents in terms of the respective agreements entered in to by the assessee with them and recording his specific findings thereon.*

*1.2 That on the facts and in the circumstances of the case and in law, the Id. CIT (A), erred in confirming the disallowance of commission amounting to Rs.60,21,397/-, holding the same to be bogus and non genuine, especially when each of the agent confirmed before the AO in respect of services rendered by*

them in terms of the respective agreement and receipt of commission by account payee cheques paid after deducting the TDS and paying the service tax as applicable as per law.

1.3 That on the facts & in law, the Ld. CIT (A) erred in upholding the disallowance of the aforesaid commission expenses, ignoring the evidence on record, including the statements of agents recorded by the AO ^specially when the said expenses include an amount of Rs. 18.5 lacs appx. under the rate contract agreement, incurred by the appellant towards earning of commission of Rs. 25 lacs appx., taxed by the AO.

1.4 That on the facts & in law, the Ld. CIT (A) erred in ignoring the evidence on record and the case law cited by the appellant while observing, inter alia, that the assessee failed to file the copy of ITR alongwith computation of income of the persons to whom the aforesaid commission has been paid by the appellant ^specially when the CIT(A) himself recorded in para 7 and page 9 of the impugned order, the factum of these documents filed before the AO.

1.5 That on the facts & in law, the Ld. CIT (A) grossly erred in upholding the disallowance of aforesaid commission expenses, ignoring the fact that but for the agents to whom commission has been paid turnover of the appellant would not have increased three fold vis a vis preceding year and the aforesaid expenses were incurred wholly and exclusively for the purpose of its business by the assessee. Here it may be pointed out that the AO himself allowed similar claim of commission in the succeeding assessment year in a scrutiny assessment.”

The issue revolves around the disallowance of Commission paid to thirteen parties as listed below:

S.No.	Name of Commission agent	Amount of sale claimed	Commission amount	% Commission	Service Tax
1	Mohit Sethi	93,97,963/-	4,70,679/-	5%	NIL
2	Rajiv Bhasin	37,42,887/-	2,70,839/-	7.23%	NIL
3	Renu Sethi	45,20,6177-	2,59,7217-	5.75%	NIL
4	Pramod Chander Sapra	41,04,820/-	2,62,413/-	6.39%	NIL
5	Jyoti Bhasin	63,96,882/-	3,24,657/-	5.08%	NIL
6	Prashant Sethi	1,00,00,951/-	5,06,671/-	5.06%	NIL
7	Saurabh Sapra	1,00,16,338/-	5,00,000/-	4.99%	NIL
8	Bharat Bhushan Goel	1,69,81,541/-	9,24,617/-	5.44%	NIL
9	Pankaj Sachdev	45,37,854/-	2,00,000/-	4.41%	NIL

10	Sandeep Sahni	29,57,719/-	1,59,456/-	5.39%	NIL
11	Darpan Sahni	29,66,473/-	1,62,990/-	5.49%	NIL
12	Risabh Dhawan	59,93,566/-	3,01,086/-	5.02%	NIL
13	Nav Ganesha Sales Corporation	NIL	16,79,791/-	Not calculated as sales is not available	1,26,500/-

2. The Ld. CIT(A) while dealing with the issue has held that the Assessee has failed to file the copy of ITR along with computation of income of above persons to prove that they all have earned commission income from other persons apart from assessee. It was held that the Assessee has paid commission from 4.41% to 7.23 , while G.P. of assessee is only 6.58% and net profit is 1.93% and the commission on sales is disproportionate. Ld.CIT (A) also held that the Commission paid to female members has also not been established that these commission payments are genuine and so as to claim an expenditure it must be real and expended for the purpose of business and the utilization of that expenditure has to be demonstrated to show to the assessing authority that it has been utilized for the business purpose alone.

3. The matter has been argued by the respective representatives. The Assessee's claim is that the total sales was Rs. 15,22,67,310/- and out of total sales Rs. 8,31,11,796/- was made through commission agents and rest of sale of Rs. 6,91,55,514/- was made by proprietor of firm. Contrary to the findings of the Ld. CIT(A), we find on record that all the thirteen parties except two have complied to the notices issued by the Revenue u/s 133(6). The parties at Sl. No. 1 and 2 have also attended personally and deposed before the Revenue

authorities. It was also found from the record that the services have been rendered by the agents on the following areas of business.

*a) To take the tenders & to keep a watch for the requirement/ supply & other issues related to tenders.*

*b) The necessary steps relating to the listing, providing the necessary details/ requirements of the companies who are producing the medicines under their license and even marketing on their own & on their drug license.*

*c) Payment of the tender fee and obtaining of the tender.*

*d) Negotiation with the pharmaceutical companies who are going to supply that material on our behalf specially in relation to the prices.*

*e) Submission of the tenders and necessary documents.*

*f) Opening of the tender i.e. mainly represented by the commission agents in the different states and offices of the Ministry of Defence on behalf of our assessee.*

*g) Procurement of the medicines and supply of the same specially is directly under the control of the commission agents. The timely procurement of the medicines is being governed & strictly monitored by the commission agents as it is the sole responsibility of commission agents.*

*h) To pursue the matter relating release of Bank Guarantee duly furnished for the supply of the orders according to the tenders conditions. This is the most dignified, delegated work to be pursued by the commission agents otherwise it will be a direct loss to the assessee and it requires the communication as well as personal visits & pursuing to the authorities for the release of payments.....*

*j) Coordinating with departments/institutions for dispatches and ensuring timely supply and receipt of medicines and other products at the institutions. Specific attention is required for cold chain products where the allowable transit time window is limited.*

*k) They are handling the concerned follow-up, documentation, handling problems related to the procurement, supply on behalf of the assessee by their own ends & free hands under the guidelines of the assessee as seems suitable & required. The necessary updates related to the supply, tender, procurement of material, realization of payments, bank guarantees is directly controlled & monitored through these commission agents for the facilitation of the services to the assessee.*

*l) The commission agents are authorized and having the responsibility to pursue the departments for the release of the payments from the department on the basis of the goods supplied by the assessee from time to time. It is worthwhile to mention over here that in spite of the best efforts being put by the commission agents, the payments are always delayed for which excellent services are required. The supply if not made in time, according to the tenders terms & conditions, then "the LD charges @ .50% of the price of store which the contractor has failed to deliver within the stipulated time, for each week or part thereof, maximum DP-Twice the original DP with LD charges".*

*The commission agents have played important vital role in growth of business of assessee and their significant role cannot be denied after pursuing the complete details in comparison to previous assessment years.*

The detailed comparison with the assessment year is as narrated below:

S. No.	Particulars	A.Y. 2012-13	A.Y.2013-14
I	Sales(in lacs,)	575.15	1522.67
II	Net Profit (%)	1.45	1.93
III	Gross Profit (%)	6.47	6.58
IV	Salary in comparison to the sales (%)	2.30	1.93

4. On hearing the parties and on perusal of material on record, we find that all the payments have been made by cheque by deducting the TDS while making the payment of the Commission as per the provision of the Income Tax Act. All parties have shown their income in their returns of income which have been duly filed before the Revenue authorities in response to the notices issued as against the Ld. CIT(A)'s observation that the assessee failed to file the copy of ITR of the commission parties. Infact all parties have replied to revenue notices along with ITRs. Out of the thirteen commission agents, only three people namely, Mohit sethi, Renu Sethi and Prashant Sethi are related parties. The Commission by Mohit sethi was Rs. 3,79,800/- and he has personally attended before the Revenue authorities and the authorities could not prove that he has not extended any services. Similarly, Shri Prashant Sethi has earned income of Rs. 4,50,000/- and has complied to all the notices issued by the Revenue. No adverse inference was brought by the Revenue in this case. Out the entire thirteen persons the reply of Renu Sethi could not be obtained as she was no more alive. In the case of Rishav Dhawan who has been paid Rs. 2,70,000/- and has not complied to the notice no further action has been taken by the Revenue regarding the non-

compliance by this person. It was also found that the late delivery charges deducted by the hospitals pertaining to the supplies done through their agents has been duly deducted from the commission paid to the Commission agents. The mode of payment of commission to various agents has been continued as a business practice in the subsequent years by the company which was accepted by the revenue .

5. Hence, keeping in view the fact that, there has been marked increase in the turnover of the assessee owing to the services of the Commission agents, all the payments have been duly made as per the provisions, the nature of the services rendered have been mentioned in detail, the TDS has been deducted as per the provisions, the Commission agents have replied and filed their ITRs before the Revenue and no adverse inference was brought out by the Revenue except that the services have not been proved to have extended without bringing any cogent material, we hereby hold that the expenditure on account of the Commission needs be obliterated.

6. As a result the appeal of the assessee is hereby by allowed.

The order pronounced on the open court 06/06/2019.

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**  
Dated: 06/06/2019  
*Bidhan*

Sd/-  
**(DR. B.R.R. KUMAR)**  
**ACCOUNTANT MEMBER**

**Copy forwarded to:**

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

ASSISTANT REGISTRAR

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