

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
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.552/Ind/2017

Assessment Year 2011-12

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| DCIT-2(1), Indore | Vs. | M/s. CPR Distributors Pvt. Ltd (M.P), 13, Sneh Nagar, Sapna Sangeeta, Indore |
| (Revenue) | | (Respondent) |
| PAN No.AABCC8324M | | |

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|-----------------------|---------------------------------------|
| Revenue by | Shri K.G. Goyal |
| Assessee by | Shri Thribhuvan Sachdeva, Advocate |
| Date of Hearing | 19.06.2019 |
| Date of Pronouncement | 09.07.2019 |

ORDER

PER MANISH BORAD, AM.

The above captioned appeal pertaining to the Assessment Year 2011-12 is filed at the instance of the Revenue for Assessment Year 2011-12 is directed against the order of Ld.

CIT(Appeals)-I (in short 'CIT(A)'), Indore dated 18.05.2017 which is arising out of the order u/s 143(3) of the Income Tax Act 1961 (In short the 'Act') dated 26.02.2014 framed by DCIT-5(1), Indore.

2. Revenue has raised following grounds of appeal;

1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.67,00,000/- on account of commission expenses by ignoring the findings of Assessing Officer in the assessment order.

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.43,27,751/- on account of various expenses by ignoring the findings of Assessing Officer in the assessment order.

3. The appellant craves leave to add, to alter, amend, modify, substitute, delete and or rescind all or any of the grounds of appeal on or before final hearing, if necessity so arise.

3. Brief facts of the case as culled out from the records are that the assessee is a private limited company carrying out the business as dealer of electronic goods. E-return of income filed on 8.9.2011 declaring income of Rs.1,14,58,020/-. Case selected for scrutiny followed by serving of notices u/s 143(2) and 142(1) of the Act. During the course of assessment proceedings Ld. A.O while examining the commission expenses observed that a sum of

Rs.67,00,000/- was paid to various persons covered under the category of relatives u/s 40A(2)(b) of the Act. It was submitted by the assessee that commission paid to employees is directly related to the extra efforts made by them to increase the sales by around 39% in comparison to the earlier years. Ld. A.O was not convinced and did not accepted the genuineness of the commission expenses merely for the failure on the part of the assessee to produce any of the commission payee and disallowed the commission expenses of Rs.67,00,000/-. Ld. A.O also on examining the details of various expenditure relating to general publicity, show room, Diwali festival, insurance disallowed the same as the assessee failed to produce vouchers before him. Accordingly after making disallowance for commission expenses at Rs.67,00,000/- and disallowance of various expenses at Rs.45,90,961/-, income assessed at Rs.2,27,48,981/-.

4. Aggrieved assessee preferred appeal before Ld. CIT(A) and succeeded.

5. Now the revenue is in appeal before the Tribunal challenging the additions/disallowance deleted by Ld. CIT(A).

6. We will first take up Ground No.1 relating to disallowance of commission expenses of Rs.67,00,000/- deleted by Ld. CIT(A). Ld. Counsel for the assessee referring to the detailed submission filed before the lower authorities as well as various documentary evidences placed in the paper book submitted that the commission expenses has been incurred after making due compliances of the necessary formalities which included passing of the Board resolutions, specific work assigned to each of the payee and commission calculated on the basis of sales target achieved. He also submitted that payment of commission has been made through account payee cheque after deducting tax at source and duly offered to tax by respective payees, who were subject to maximum marginal rate of taxation similar to that of the assessee and therefore there cannot be a case of providing accommodation commission in the garb of reducing the tax liability. He further submitted that in the subsequent years the claim of the commission paid to same payees has been allowed by the Ld. A.O in the assessment proceedings and no doubt has been raised on the genuineness of the transaction.

7. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of Ld. A.O submitting that the payment have been made to relatives/directors of the company which are covered under the provisions of Section 40A(2)(b) of the Act and the Ld. A.O has rightly disallowed the expenses.

8. We have heard rival contentions and perused the records placed before us. Revenue's grievance in Ground No.1 is against the finding of Ld. CIT(A) deleting the disallowance of commission expenses of Rs.67,00,000/-. We observe that the assessee is a dealer in electronic goods and running show rooms at various places across Madhya Pradesh for sale of electronic goods. During the year under appeal commission was paid to the following persons;

| S.No. | Name | Commission |
|-------|---------------|--------------|
| 1 | P.K. Chabra | Rs.8,00,000 |
| 2 | Gaurav Pahwa | Rs.8,00,000 |
| 3 | Ashish Raje | Rs.8,00,000 |
| 4 | Sanjay Chabra | Rs.8,00,000 |
| 5 | Deepak Pahwa | Rs.8,00,000 |
| 6 | Hemant Pahwa | Rs.8,00,000 |
| 7 | Megna Raje | Rs.3,00,000 |
| 8 | Rabindra Raje | Rs.8,00,000 |
| 9 | Rajendra Raje | Rs.8,00,000 |
| | Total | Rs.67,00,000 |

9. All the above persons are either Directors or relatives/share holders of the company and falls under the category of relative u/s 40A(2)(b) of the Act. We find that the Ld. CIT(A) deleted the impugned disallowance by giving following finding of fact;

7. Ground No. 1:- This ground of the appellant is directed against the addition of Rs.6700000/ - being disallowance of commission expenses. The detailed facts of the case as per order of the AO are reproduced at Para No. 2 above and the detailed written submissions of the appellant are reproduced at Para No. 3 above. The AO's remand report and comments of the appellant on AO's remand report are reproduced at Para No.4 & Para No. 5 above.

7.1 From the above it is seen that the AO has disallowed the above amount as the commission has been paid to persons specified u/s 40A(2) (b) of The Act and during the assessment proceedings the appellant was not able to produce any details of any extra services rendered by these persons to whom commission was paid although several opportunities were provided.

7.2 During the course of appellate proceedings the appellant contended that adequate opportunity was not provided to file all documentary evidences and therefore filed details of commission payment and the copy of the resolution passed providing the basis for the payment of commission and requested that these be admitted Under Rule 46A of The Rule Act. The documents were forwarded to the AO and the report of the AO dated 03/05/2017

is already reproduced above. A copy of the report was provided to the appellant. The documents filed by the appellant during the course of appellate proceedings have been duly examined. Commission has been paid to the following persons as per the chart given below and from the copy of resolution passed in the meeting of the Board of Directors of the Company held on 10/04/2010 it is seen that the company decided to pay a variable incentive to the top management in addition to the fixed salary accordingly commission was paid as per basis shown in the chart below:-

| S. No. | NAME | COMMISSION | Basis |
|--------|---------------------|------------|---|
| 1 | Shri P.K. Chhabra | 800000 | Overall group sales increasing by 35% |
| 2 | Shri Gaurav Pahwa | 800000 | AB. Road Showroom sales increased by 25%. |
| 3 | Shri Ashish Raje | 800000 | Palasia Show room sales increased by 25% |
| 4 | Shri Sanjay Chhabra | 800000 | Sneh Nagar Show room sales increased by 20% |
| 5 | Shri Deepak: Pahwa | 800000 | Raipur Showroom sales increase by 35% |
| 6 | Shri Hetnant Pahuia | 800000 | Ujjain Showroom sales increase by 20% |
| 7 | Meghna Raje | 300000 | Palasia Showroom sales increased by 25% |
| 8 | Shri Rabindra Raje | 800000 | New Koh-E-Fiza Bhopal showroom sales increased by 33% |
| | Shri Rajen.dra Raje | 800000 | Bhopal Showroom sales increased by 50%, |
| | Total | 16700000 | |

7.3 Further, it is seen that vide Board Meeting dated 31st March, 2011 of which also a copy has been filed payment of commission is approved in view of the stipulated increase in sale. It was also explained by the appellant that on similar basis commission was given for the subsequent financial year also and no addition has been made during the scrutiny proceedings. It has also been stated by the appellant that in all cases where commission has been paid the persons are assessed to tax at the highest rate of 30%;() and hence there wa s no loss on account of payment of commission. Appellant has also submitted a chart detailing the percentage of growth of various showrooms and the overall growth which also shows that there was stipulated increase in the growth. The above details were forwarded to the AO. AO has not given any adverse finding on the facts given by the appellant and has only stated in the report that the appellant has not countered the findings given in the assessment order and instead of providing particulars of customers arid the particular agent linked to the increased sale to such customers has given documents relating to Directors only.

7.4 In view of the above discussion it is thus seen that commission has been paid to Directors/related persons only. Such commission payment has been given as a sale incentive to the management team on the basis of approved resolution by the board of directors of the company. It is not the case that commission has been paid on sale to individual customers brought in by the sales persons. General incentive was decided to be paid on particular sale percentage achieved by the various showrooms. AO has not denied the facts that the stated sale has been achieved and has not doubted the decisions for grant of incentive to the directors and relatives as per the resolution passed. It has also not been held that the payment was bogus.

It is also to be noted that all the persons to whom commission has been paid are assessed to tax and are filing return of income and are at the highest tax bracket of 30. In view of the above, the disallowance of commission of Rs. 6700000/- is therefore directed to be deleted. This ground of the appellant is therefore allowed. Rs. 6700000/- Deleted”

10. Going through the above finding of Ld. CIT(A) and on perusal of the information placed on paper book, we observe that in the meeting of Board of Directors held on 10.4.2010 it was resolved that the commission is to be paid to the various persons as enumerated in the preceding paras with specific mention of various show rooms running across Madhya Pradesh including show room at Palasia, A.B. Road, Indore, Raipur, Ujjain, Bhopal and Sneh Nagar, Indore. It has also specified with reference to each show room about the calculation of the commission par se the figures of sales. Details filed at Paper book page 8 to 11 also provides the information for the nature of work given to each of the commission agent.

11. We also find that the sales grew by 38.95% as the gross turn over for Assessment Year 2011-12 raised to Rs. 182.24 crores from Rs.131.16 crores for Assessment Year 2010-11. It is also observed

that the profits of the company have also increased from Rs.90.63 lakhs during Assessment Year 2010-11 to Rs.123.08 lakhs during Assessment Year 2011-12. So there is a positive co-relation between the payment and commission vis-à-vis increase in sales as well as increase in profits.

12. Ld. Departmental Representative failed to controvert the fact that this action of the assessee of paying commission to Directors/Directors relatives is not for lowering the tax liabilities. All the commission payees listed in the list of commission paid at Rs.67,00,000/- are assessable to tax on maximum marginal rate of taxation except in the case of Megna Rajee who was offered the total taxable income of Rs.9.30 lakhs. All the other persons have offered following income for tax;

| S.No. | Name | Amount in lakhs |
|-------|----------------|-----------------|
| 1. | P. Chhabra | 27.97 |
| 2 | Gaurah Pahwa | 23.92 |
| 3 | Ashish Rajee | 26.15 |
| 4 | Sanjay Chhabra | 28.55 |
| 5 | Deepak Pahwa | 22.10 |
| 6 | Hemant Pahwa | 21.35 |

| | | |
|---|---------------|-------|
| 7 | Ravindra Raje | 14.63 |
| 8 | Rajendra Raje | 22.45 |

13. Since the alleged commission expenditure has been subject to maximum marginal rate tax in the hands of respective payees there is no loss to the revenue with regard to the tax. The alleged amount has been paid through account payee cheques after deducting tax at source. Books of accounts of the assessee are audited. All the commission payees are regularly associated to the business of the assessee and are share holders/Directors of the company. Revenue has also not placed any contrary material to prove that the payment of commission is excessive or not reasonable having regard to fair market value of the services or not for the legitimate need or benefits of the business of the assessee. Rather the records clearly establishes that with the incurring of commission expenses the assessee has been able to achieve growth at 38.5% in its gross turnover and the profits have also increased by around 38.80%, as it reached to 123.08 lakhs during Assessment Year 2011-12 as compared to Rs.90.63 lakhs during Assessment Year 2010-11.

14. We therefore in the given facts and circumstances of the case and in view of our discussion above find no inconsistency in the finding of facts by Ld. CIT(A) which stands uncontroverted by the Departmental Representative by placing any contrary material. In the result finding of Ld. CIT(A) deleting the disallowance of commission expenses of Rs.67,00,000/- is confirmed and revenue's Ground No.1 is dismissed.

15. Now we take up Ground No.2 raised by the revenue against the finding of Ld. CIT(A) deleting the addition of Rs.43,27,751/- on account of various expenses. Ld. Counsel for the assessee submitted that all the necessary details with documentary evidences were placed before the Ld. A.O but for the reason best known to the revenue officer disallowance was made for Rs.45,90,961/-. He also submitted that remand report was called for by Ld. CIT(A) but no adverse rather general remarks have been made. All the relevant material were placed before Ld. A.O and without pointing out any mistake in the claim of expenses disallowances has been made. He also contended that the assessee is into the business of sale of electronic goods and expenditure is incurred for publicity, sales and

promotion, gifts and various schemes to attract the customers.

Therefore he prayed that the finding of Ld. CIT(A) may be confirmed.

16. Per contra Ld. Departmental Representative vehemently argued and supported the orders of Ld. A.O.

17. We have heard rival contentions and perused the records placed before us. Revenue's Ground No.2 challenges the Ld. CIT(A) finding deleting the disallowance of expenses of Rs.45,90,961/-. Assessee incurred various expenditure towards general publicity, show room expenses, diwali festival; and insurance totalling to Rs.45,90,961/-as mentioned in the Ld. A.O in its order at parge 6 & 7. Ld. A.O disallowed these expenses for want of verification of details and vouchers relating to the expenses claimed by the assessee. When the matter came up before Ld. CIT(A) he partly sustained the disallowance ofRs.2,63,210/- thereby deleting the disallowance of Rs.43,27,751/- observing as follows;

8. Ground No. 2:- This ground of the appellant is directed against the disallowance of expenses of Rs.4590961/-. The detailed facts of the case as per order of the AO are reproduced at Para No. 2 above and the detailed written submissions of the appellant are reproduced at Para No. 2 above. The AO's remand report and comments of the appellant on AO's remand report are reproduced at Para No.4 & Para No. 5 above.

8.1 From the assessment order it is seen that certain expenses have been disallowed by the AO on the ground that vouchers in

respect of these expenses were not produced even after several opportunities were provided. During the course of appellate proceedings, the appellant contented that all books of accounts and vouchers were produced and these were also examined and verified by the Income Tax Inspector during the course of assessment proceedings, however AO for no reasons and without providing any opportunity made the disallowance. Appellant therefore filed copies of all bills and vouchers which were forwarded to the AO. AO in the report has stated that these were not produced during assessment proceedings and hence disallowance was justified.

8.2 It is seen that the accounts of the appellant are duly audited and audit report has been filed. No lacunae have been pointed out in the audit report. During the course of appellate proceedings, all the bills have been produced which have been test check and verified. Most of the bills pertain to publicity expenses, showrooms expenses, insurance et.c. and from the bills and vouchers produced it .cannot be said that these are for non business purposes except for expenses of Rs. 94000/- and Rs. 169210/- being shown as Diwali festival expenses consisting of purchase of 400 pieces of bed sheet and 105 pieces of coins. Appellant has not been able to establish the business/commercial expediency/business purpose in incurring such expenses. In view of the above, the disallowance of Rs. 4590961/- is therefore reduced to Rs. 263210/-. This ground of the appellant is therefore partly allowed. **Rs.4327751/- Deleted”**

18. The above finding of Ld. CIT(A) has not been controverted by Ld. Departmental Representative. It is also observed that the

assessee is regularly claiming such expenses. The turnover during the year at Rs.182.24 crores and profit of Rs.123.08 lakhs has been declared, books of accounts are audited and the same are not rejected by the Ld. A.O. In the remand report Ld. A.O failed to point out any specific instances of wrong claim of the expenditure. We therefore in the given facts and circumstances of the case are of the considered view that no interference in the finding of Ld. CIT(A) deleting the expense of Rs.43,27,751/- is called for. In the result Ground No.2 of the revenue's appeal is dismissed.

19. In the result both the grounds of appeal of the revenue for Assessment Year 2011-12 are dismissed.

The order pronounced in the open Court on 09.07.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 09 July, 2019
/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

CPR Distributors Pvt. Ltd (M.P)
ITA No.552/Ind/2017

By order
Asstt.Registrar, I.T.A.T., Indore