

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.4275/Del/2018
Assessment Year: 2011-12

Anshul Agarwal A-48, Wazirpur Industrial Area Delhi-110052 PAN No.ADCPA3590N (APPELLANT)	Vs	Income Tax Officer Ward 34 (3) New Delhi (RESPONDENT)
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Appellant by	Ms. Aakriti Dhawan, Advocate
Respondent by	Shri S. L. Anuragi, Sr. DR

Date of hearing:	30/07/2019
Date of Pronouncement:	27/08/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 08.03.2018 of the CIT(A)-12, New Delhi relating to A. Y. 2011-12.

2. The assessee in its various grounds of appeal has challenged the order of the CIT(A) in confirming the addition of Rs.21,35,426/- made by the Assessing Officer on account of disallowance of commission.

3. Facts of the case, in brief, are that the assessee is an individual and engaged in the business of trading of polyester. She filed her return of income on 30.09.2011 disclosing total income of Rs.13,74,200/-. During the course of assessment proceedings the Assessing Officer noted that the assessee has paid commission of Rs.21,31,426/- to the following parties, the details of which are as under :-

Sumit Goel	: Rs.117488/-
Parmod Mittal	: Rs.436052/-
Saurabh Garg (HUF)	: Rs.518005/-
Suresh Goel	:Rs. 141725/-
Madhu Basia	: Rs.126170/-
Anuj Jain	: Rs.407359/-
Anuj Jain (HUF)	: Rs.388667/-

4. He issued notice u/s. 133(6) to which the parties confirmed that they have received commission. The Assessing Officer noted from the records that the assessee had not paid any such commission in the immediately preceding assessment year whereas assessee has paid substantial commission during this year to various parties. From the replies received, from various parties to whom commission was paid, the Assessing Officer noted the following :

- i) *M/s Anuj Jain & Anuj Jain (HUF) has claimed commission on a/c of sale effected to M/s Ambika Sales (wrongly written as ambika Industries) & M/s Lalani Industries amongst other parties. It was also seen from the details of the sale furnished by the assessee during scrutiny proceedings that the assessee*

had business transactions with both the parties in the immediately preceding year and no such commission was paid by the assessee company to any broker. The op Bal shown by the assessee against Ambika Sales and M/s Lalani Industries is Rs 9215280/- and Rs - 3137148/- meaning thereby the assessee had good business transactions with both of them and it did not require any broker for introduction of parties or effecting sales or obtaining orders.

ii) *In the case of Saurabh Garg (HUF) the commission was claimed to have been received for effecting sales to Multipac Industries of Rs.27703996/- and Rs.19387385/-. However, the total sales during the year to Multipack is 27703996/- only. There is no sale of Rs.19387385/- against any party as per the sale details filed with this office.*

iii) *Shri Sumit Goel in his reply has stated that he has obtained orders for the assessee from Lalani Industries & other parties. But it has already been stated that M/s Anuj Jain has already claimed that the entire sales of Rs 22888593/- has been effected by him and commission @ 9% has been claimed by him. So, it was never clear as to how Shri Sumit Goel can again claim commission on the same sale.*

iv) *Shri Suresh Goel in his reply has stated that he has received commission for obtaining orders for Ketan Polymers and Shri Ram Traders.*

5. In view of the above the Assessing Officer held that the letters received from the above parties are not reliable for which he issued letters to various parties to whom sales were claimed to have been effected. Most of the letters came back un-served However, replies were received from M/s. Ketan Polymers & M/s. Multipac Industries. M/s. Ketan Polymers stated that the transactions with the assessee took place directly without involvement of any third party and M/s. Multipac Industries also stated that transaction was made with the assessee directly. The Assessing Officer, therefore, confronted the same to

the assessee. It was submitted that TDS has been duly deducted from the commission so paid and the parties have confirmed to have received the commission. So far as the reply of M/s. Ketan Polymers and M/s. Multipac Industries are concerned it was submitted that it may be due to loss memory for which they might have stated so.

6. However, the Assessing Officer was not satisfied with the reply given by the assessee and rejected the same on account of the following :-

- a. Commission is being claimed by more than one broker for obtaining order from the same company.*
- b. Commission is being claimed on an amount which is much more than the sale effected.*
- c. Payment on account of commission has not been made by the assessee company during the whole year in many cases only TDS has been made.*
- d. Lastly the denial of involvement of any third party in the transactions made by M/s. Ketan Polymers and M/s. Multipac Industries has made the whole story clear.*

7. The Assessing Officer accordingly made addition of Rs.21,35,426/- to the total income of the assessee.

8. In appeal the Ld. CIT(A) confirmed the addition made by the Assessing Officer by observing as under :-

6.1 *I have gone through the assessment order, the reasoning advanced by*

the Assessing Officer while disallowing the claim of commission and the written submission filed by the appellant.

6.2 The Assessing Officer has disallowed the claim of commission by making an enquiry from parties to whom sales had purportedly been effected by the commission agents. Most of the letters issued by the Assessing Officer to the parties come back un-served and replies were received from M/s. Ketan Polymer, M/s. Multipac Industries both of whom stated that the transaction with the appellant did not involve any third party and they have made transaction directly with the appellant.

6.3 The Assessing Officer confronted the appellant during the course of assessment proceedings with his findings. The appellant replied in general, vague terms that the parties may have stated that they had direct dealings with the appellant due to loss of memory. The appellant did not furnish any satisfactory reply to the queries of the Assessing Officer and replied in general terms that it had made TDS, paid commission by cheque and the recipient had declared the receipts in their return of income etc.

6.4 I find from the replies and the written submissions made during the course of assessment and appellate proceedings, the appellant has not been able to justify the business exigency of commission paid by him during the year.

6.5 The appellant has not been able to bring on record the justification for payment of commission nor have the purchaser parties confirmed the involvement of commission agents. The Assessing Officer has also pointed out inconsistencies in the claim of commission wherein certain seller parties as per detail furnished in the assessment order seem to have accounted for in order booking by more than one agent, for example, Mr. Anuj Jain is supposed to have received commission on entire sales @ .9% whereas Mr. Sumit Goyal is stated to have been paid commission for sales order received from M/s. Lalani Industries and other parties.

6.6 Similarly, there are differences in the quantum of sales as per party wise detail of sales furnished and amount on which sales commission was claimed by the appellant.

6.7 Keeping in view the totality of the facts and findings of the Assessing Officer, which have not been rebutted by the appellant either in assessment or in appellate proceedings, I find the appellant has not been able to establish the claim of commission for rendering services in furtherance of its business as

claimed by it. I find there is no nexus between payment of commission and the business of the appellant in view of which I sustain the addition of Rs. 21,35,426/- made by the Assessing Officer by disallowing the claim of commission. In the result, the appeal grounds are dismissed and the addition made by the Assessing Office is sustained.

9. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

10. The Ld. Counsel for the assessee strongly challenged the order of the CIT(A) in confirming the addition so made by the Assessing Officer. He submitted that the commission was paid by cheque and due TDS has been deducted from such commission. The parties have confirmed to have received such commission from the assessee before the Assessing Officer. She submitted that the Ld. CIT(A) while sustaining the disallowance made by the Assessing Officer has not applied his independent mind and without appreciating the various submissions made by the assessee. She submitted that assessments in the case of the commission recipients have been completed u/s. 143 (3) and therefore, the same should not have been doubted by the CIT(A). Further the Assessing Officer while making the addition has not issued any show cause notice to the assessee and made the addition at his own whims and fancies. She submitted that no meaningful enquiry was conducted by the Assessing Officer which is sufficient to strike down the additions so made by the Assessing Officer. Further the various documents filed by the assessee on 06.08.2018 on the counter were not appreciated by

the CIT(A) who sustained the addition. She accordingly submitted that the addition so made by the Assessing Officer and sustained by the CTI(A) should be deleted.

11. The Ld. DR on the other hand heavily relied on the order of the AO and CIT(A). He submitted that the Assessing Officer had brought on record clearly as to how the assessee has paid commission to various parties during the year whereas no such commission was paid in the immediately preceding assessment year. Further commission has been claimed by more than 1 broker for obtaining orders from the same party. Some of the suppliers have denied to have any involvement of any third party. He accordingly submitted that the order of the CIT(A) being in accordance with law should be upheld.

12. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I find the Assessing Officer in the instant case disallowed the commission of Rs.21,35,426/- paid by the assessee on the ground that such commission has been claimed by more than 1 broker for obtaining orders from the same company. In certain cases the commission has been claimed on amount which is much more than the sales effected. Further some of the parties have denied to the involvement of any third party. The Assessing Officer has further noted that although TDS has been deducted but the commission has not been paid during the year. He, therefore,

disbelieved the commission so paid during the year since no such commission was paid during the preceding assessment year. It is the submission of the Ld. Counsel for the assessee that the payment has been made through account payee cheque after deduction of TDS and the parties have confirmed to have received commission from the assessee. It is also her submission that the various details furnished by the assessee were not properly appreciated either by the Assessing Officer or by the CIT(A). It is also her submission that neither the CIT(A) nor the Assessing Officer has properly considered the various submissions made by the assessee from time to time. It is the settled proposition of law that for claiming any expenditure as an allowable deduction the onus is always on the assessee to substantiate with evidence to the satisfaction of the Assessing Officer. However, in the instant case the Assessing Officer had made certain observations which according to him could not be explained satisfactorily by assessee. Considering the totality of the facts of the case and in the interest of justice I deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate the allowability of such commission and decide the issue as per fact and law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

13. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 27.08.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 27.08.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	27.08.2019
Date on which the final order is uploaded on the website of ITAT	27.08.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	