

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE "SMC" BENCH, INDORE**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA No.91/Ind/2018
Assessment Year: 1999-2000**

Shri Ramesh Kumar Rajpal Prop. M/s. Ramesh Medical Stores Bagadia Tower Kotwali road Ujjain (Appellant)	बनाम/ Vs.	ACIT-1(1) Ujjain (Revenue)
P.A. No.AADFB3454E		

Appellant by	Shri Sumit Nema & Shri Gagan Tiwari, A.Rs
Respondent by	Shri K.G. Goyal, Sr. D.R.
Date of Hearing:	21.11.2019
Date of Pronouncement:	27.11.2019

आदेश / O R D E R

PER KUL BHARAT, J.M:

This appeal by the assessee is directed against order of the CIT(A), Ujjain dated 13.11.2017 pertaining to the assessment year 1999-2000. The assessee has raised following grounds of appeal:

1. *“That there is no justification in law or on facts for the Ld. CIT(A) to sustain the addition of Rs.4,29,234 made by the Ld. A.O. for alleged low gross profit in Indore Branch of the appellant as compared to Ujjain Head office.*
2. *That the addition in respect of enhancement of gross profit of Rs.4,29,234 by taking it as 3.5% instead of 2.2% shown in the books of the Indore Branch of the appellant has been made without any finding about the correctness or completeness of the books as required u/s 145(3) and thus the entire addition is*
3. *That there is no justification either in law or on facts for the Ld. CIT(A) to sustain the addition of Rs.4,06,142 made by the Ld. A.O. for alleged excess commission paid by Indore branch as compared to Ujjain Head Office.*
4. *That the addition of Rs.4,06,142 as alleged excess commission by Indore Branch is not based on any violation of section 37(1) or on any adverse evidence but is merely on arithmetical jugglery and suspicion of the A.O. and thus such an addition deserves to be deleted.”*

2. A survey action was carried out on the premises of the assessee on 24.2.1999. Subsequently, case was selected for scrutiny assessment. While framing the assessment, the A.O. made addition in respect of estimation of profit amounting to Rs.4,29,234/- and excess commission of Rs.4,06,142/- apart from the other additions on account of excess of closing stock of Rs.7,59,589/-, unsecured loan of Rs.6,60,000/-, interest on loan of Rs.22,289/- and other expenditure disallowed. Against this, the assessee

preferred an appeal before the Ld. CIT(A), who after considering the submissions partly allowed the appeal. Thereby, the addition in respect of estimation of profit was confirmed and also the excess commission. Against these two additions, the present appeal has been filed by the assessee.

3. Ground Nos.1 & 2 are inter-related and are against addition made on account of estimation of gross profit.

4. Ld. Sr. Counsel for the assessee argued that the A.O. has not pointed out any defect in the accounts of the assessee. Moreover, the accounts have not been rejected, therefore, the A.O. was not justified in estimating the profit without rejecting the books of accounts. In support of this contention, Ld. Counsel for the assessee has relied on the decision of the coordinate bench of this Tribunal rendered in the case of Mayank Kumar Natwarlal Soni Vs. Addl. CIT

(2019) 111 Taxmann.com 6 (Ahmedabad-Trib). The Ld. Counsel also placed reliance on the judgement of Hon'ble Madras High Court rendered in the case of PCIT Chennai Vs. Marg Ltd. (2017) 84 taxmann.com 52.

5. The Ld. D.R. opposed these submissions and supported the order of the A.O.

6. I have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. Undisputedly, the A.O. has not rejected the books of accounts and estimated the gross profit. The basis for disturbing the gross profit by the A.O. is that the assessee has disclosed gross profit at Ujjain Office higher than the Indore office. The A.O. adopted the gross profit declared at Ujjain. Hence, estimated gross profit at 3.5% and added a sum of Rs.4,29,234/- i.e. the impugned addition herein. Ld. Sr. Counsel appearing on

behalf of the assessee made two fold submissions that the A.O. has not pointed out any defects in the accounts of the assessee and secondly he contended that G.P. Indore is bound to be lower on account of the high competition, therefore, the A.O. is not justified in increasing the gross profit of the Indore office. Admittedly, in this case, the A.O. has not rejected books of accounts but proceeded to disturb the gross profit. So far the question of estimation by the A.O., there is no quarrel that he is empowered to do so, where the accounts and other material placed before him is not giving true and fair picture of the profit earned by the assessee. In my view, there has to be clear finding in this regard, based upon the material evidence. The A.O. did not verify the fact of cash discounts, which as per the assessee was one of the reason for variance of profit at Indore and Ujjain respectively. Further, the A.O. also failed to make independent enquiry from the market at Indore

and Ujjain. It is settled principle of law that the estimation of profit should be made after considering the factors that influenced the profit. In a given market condition, if competition is high, the natural consequence would be lower profit margins and where there is no such competition, naturally the traders would fetch desired margins. This is the reason why it is expected from the A.O. that he should consider the factor that might influence the margins before making a fair estimation of the profit. In the present case, the A.O. did not make necessary enquiry, which would have enabled him to make a fair estimation of profit. Hence, action of the A.O. cannot be sustained. The A.O. is therefore directed to delete the addition.

7. Ground Nos.3 & 4 are in respect of disallowance of excess commission. Ld. Sr. Counsel to the assessee submitted that the disallowance of commission is purely

based on conjectures and surmises. No adverse material is gathered to contradict the claim of the assessee. He submitted that the A.O. failed to appreciate the fact that there is a tough competition at Indore and hence, the assessee had to part with his margins with the dealers. The expenditure was certainly out of commercial expediency. He further submitted that there is no finding that the payment of commission is not verifiable and also the commission is not treated as bogus. He submitted that the A.O. has not brought any such material on records.

8. Per contra, Ld. D.R. opposed the submissions and supported the orders of the authorities below. He submitted that onus was on the assessee to prove the reasonableness of the commission paid to the dealers. He submitted that the assessee has not furnished such evidences, which could prove that the commission paid by the assessee is as per the prevalent market practice.

9. I have heard the rival submissions, perused the materials available on records and gone through the orders of the authorities below. I find that the A.O. has disallowed the expenditure of commission paid by the assessee to its dealer. For the sake of clarity, the finding of the A.O. is reproduced as under:

	<i>Ujjain Branch Office</i>	<i>Indore Branch Office</i>	<i>Total</i>
1. Sales	Rs.3,21,77,573/-	Rs.3,37,71,430/-	6,59,49,003/-
2. Discount allowed	Rs. 11,01,504/- (3.42%)	Rs. 12,64,877/- (3.74% of sale)	23,66,381/-
Less: Discount received	Rs. 3,22,368/-	Rs. 39,682/-	3,62,050/-
Total Discount allowed	Rs. 7,79,136/- (2.42% of sale)	Rs. 12,25,195/- (3.62% of sale)	20,04,331/-
3. G.P.	20,06,755/- (6.22%)	Rs.7,44,802/- (2.22%)	27,51,557/-

From the table given above, it is seen that on the sale of Ujjain head office the total discount allowed is Rs.7,79,136/-, which constitutes 2.22% of the sale and thereafter G.P. comes at 6.22%. But in the case of Indore branch office on the sale the total discount allowed is Rs.12,25,195/- which constitutes 3.62% of the total sale and thereafter G.P. comes at 2.22%. It mean firstly that the assessee has allowed more discount in the Indore branch office. Even then the sale of Indore branch office and Ujjain head office is shown at the same level. Secondly, the company making the sale allowed the commission of Rs.3,22,368/- to Ujjain head office & Rs.39,682/- to Indore branch office. It means all companies are not allowing commission but some companies are providing commission to the assessee, but the assessee is providing commission to all its dealers. Thirdly, the assessee is not allowing commission at the uniform rate. Fourthly, the assessee is allowing commission to its dealers on the sales in respect of purchases made from the company who is not allowing commission to

the assessee. All this is being done by the assessee in order to reduce the income being earned by him.”

10. From the above finding of the A.O. it is clear that he had disallowed the expenditure without verifying veracity of claim by making proper enquiry. The finding is purely based on guess work and conjectures. There is nothing on record suggesting that the commission was paid excessive of what was prevalent at the time of transactions were executed. The sole ground of disallowance is that assessee paid lower commission at a different location i.e. Ujjain and Indore. In my considered view, the A.O. ought to have arrived at a definite conclusion about the payment of commission. Admittedly, payment of commission is not treated as a bogus. The A.O. has not brought any adverse material suggesting that the commission was not paid or payment so made was received back by the assessee. It is also not the case that the payments have been made to the related parties. The decision in respect of quantum of

commission to be paid would certainly be an issue to be decided by the business men. There is no law regulating the payment of commission or restricting the payment of commission by trader to its dealers. Merely because manufacturing company is not making payment of commission to the assessee cannot be the sole ground for disallowing the claim of expenditure related to payment of commission. At same time, the business men, to have a dominant position in market, makes such kind of commission or discounts, which is not prohibited by any law. It is the businessmen who can decide that what percentage of commission is required to be paid considering the commercial expediency. In the absence of material, merely a statement is made that assessee made excessive commission to reduce its tax liability which is not sufficient to reject claim of the assessee. I therefore, direct

the A.O. to delete addition. Both the grounds raised by the assessee are allowed.

11. In the result, the appeal of the assessee is allowed.

Order was pronounced in the open court on 27.11.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 27/11/2019
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard
file.

By order

Assistant Registrar, Indore