

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A NO. 932/Del/2017
(Assessment Year : 2012-13)**

Harish Kachroo Prop. M/s. Rotoffset Corporation, A-1, MOD Apartments, Plot No.61, Vasundra Enclave, Delhi – 110 092. (PAN : AETPK 4285 J) (APPELLANT)	Vs	ITO, Ward – 60(4), Vikas Bhawan, New Delhi. (RESPONDENT)
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Appellant by	Shri K. V. S. R. Krishna, C.A.
Respondent by	Shri S. N. Meena, Sr. D.R.

Date of Hearing	03.12.2019
Date of Pronouncement	04.12.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 01.11.2016 passed by Commissioner of Income Tax (Appeals) – 19, New Delhi for Assessment Year 2012-13.

2. The Grounds of appeal are as under:-

1. *“The order of assessing officer is bad in law and against the facts of the case.*
2. *AO has wrongly added and CIT(A) has wrongly upheld a sum of Rs.9,58,796/- by increasing the gross profit rate which needs to be deleted.*

2. *The AO has wrongly disallowed and CIT(A) has wrongly upheld a sum of Rs.13,00,000/- being commission paid which needs deletion.*
3. *The above grounds are independent and without prejudice to one and another. The appellant also prays to add, amend, alter to forgo any of the grounds at the time of hearing.”*

3. The assessee is an individual and started his business of Fabrication / Manufacturing of offset printing machines. The return declaring gross total income of Rs.5,01,053/- was filed on time on 29.09.2012 and after claiming rebate u/s 80C of the Income Tax Act for Rs.24,876/-, tax on taxable income of Rs.4,76,180/- was deposited. The assessee's turnover was Rs.88.74 Lac. The case was taken up for scrutiny and the assessee attended the proceedings from time to time and submitted both written submissions as well as oral submissions. The assessment in this case was made u/s 144 of the Income Tax Act, 1961 at total income of Rs.69,65,610/- as against the return income of Rs.5,01,053/- (4,76,180/-) after making various additions as under:

(1)	Addition due to enhancement of GP rate	:	9,58,796/-
(2)	Disallowance of unverifiable expenses	:	21,28,973/-
(3)	Disallowance of Sundry Creditors	:	10,24,681/-
(4)	Disallowance of Sundry Debtors	:	8,00,739/-
(5)	Disallowance of Commission paid	:	13,00,000/-
(6)	Addition of account of low household withdrawals	:	2,73,624/-

4. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that Ground No.1 is general in nature and Ground No.2 is not pressed. Therefore, Ground No.1 and 2 are dismissed.

6. As regards Ground No.3, the Ld. AR submitted that the Assessing Officer as well as CIT(A) was not correct in upholding a sum of Rs.13 lac being commission paid which needs deletion. The assessee has proved its

genuineness of commission paid to the assessee as the TDS was duly deducted before the Revenue authorities. The Ld. AR further submitted that name and address as well as bank statement of recipient were filed during the assessment proceedings. The Ld. AR filed the computation of gross loss / net profit which is as under:

Particulars	Amount
Gross Sales	14,657,786
Net profit as per Trading profit and loss account – Declared	501,055
% Net Profit to sales	3.42%
Additions due to rejection of accounts and applying GP rate of 25%	958,796
Net Profit after considering the addition	1,459,851
Resultant % of Net Profit after addition	9.96%

The Ld. AR further submitted that even under presumptive basis of taxation a sum equal to 8% of total turnover of the assessee is considered as profit and gains of business chargeable to tax under the head PGBP. The Ld. AR, therefore, submitted that having rejected the books of accounts, the addition made by the Assessing Officer and sustained by the CIT(A) results in taxable income of 9.96%. Thus, no further disallowance of commission which is based on books of accounts should be made. The Ld. AR submitted that the Assessing Officer has rejected the books of accounts and despite that allowed some expenses which is contrary to the stand of the Revenue. The Ld. AR further submitted that no estimation is allowed under these circumstances and commission should not be disallowed specifically in consequence with gross profit. Therefore, the Ld. AR prayed that this addition may be deleted.

7. The Ld. DR relied upon the assessment order as well as the order of the CIT(A). The Ld. DR further submitted that during the assessment proceedings as well as appellate proceedings, the assessee did not co-operate and no evidence whatsoever was filed. Therefore, the Assessing Officer rightly rejected

the books of accounts as the same was not filed. The Ld. DR further submitted that the GP in trading expenses was rightly allowed by the Assessing Officer.

8. We have heard both the parties and perused all the relevant materials available on record. It is pertinent to note that the books were rejected by the Assessing Officer without giving any proper reasons and has not at all verified the books of accounts despite the same was before the Assessing Officer. The CIT(A) has observed that the assessee through speed post sent computation of income of Mrs. Ruby Rani Jha and Shri Pankaj Jha evidencing receipt of commission. The CIT(A) has rightly observed that the expenses construed the trading expenses of the assessee and despite rejecting the books of accounts estimated the gross profit as a part of assessee's trading expenses since it will amount to double addition. The CIT(A) as well as the Assessing Officer themselves are contradicting the pertinent material placed before both the Revenue authorities by assessee. The findings of the CIT(A) pertinently state that there was a trading and it is properly reflected in books of accounts which was rejected without any substantial reason by the Assessing Officer. Therefore, the disallowance of commission was not rightly made by the Assessing Officer and confirmation by CIT(A) on the same issue was on a wrong footing altogether. Therefore, the order of CIT(A) is set aside and this addition does not sustain. Thus, Ground No.3 is allowed.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Open Court on the 4th day of December, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER
Dated: 04/12/2019
*Priti Yadav, Sr. PS **

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	03.12.2019
Date on which the typed draft is placed before the dictating Member	04.12.2019
Date on which the typed draft is placed before the Other Member	04.12.2019
Date on which the approved draft comes to the Sr. PS/PS	04.12.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	04.12.2019
Date on which the fair order comes back to the Sr. PS/PS	04.12.2019
Date on which the final order is uploaded on the website of ITAT	04.12.2019
Date on which the file goes to the Bench Clerk	04.12.2019
Date on which the file goes to the Head Clerk	