

*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "VIRTUAL COURT A" KOLKATA*

Before **Shri P.M.Jagtap, Vice-President** and  
**Shri S.S.Godara, Judicial Member**

**ITA No.1383/Kol/2017**  
Assessment Year:2013-14

Sri Nabarun Kanti Saha Parulia Bazar, P.O. Parulia, P.S. Purbasthali, Dist. Burdwan-713513 [PAN No.CCWPS 8624 Q]	बनाम/ V/s.	ACIT, Circle-2, Burdwan Ayakar Bhawan, Court Compound, Burdwan- 713101
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Soumitra Choudhury, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Dhrubajyoti Ray, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	06-10-2020
घोषणा की तारीख/Date of Pronouncement	09-10-2020

**आदेश /O R D E R**

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (Appeals)-Burdwan's order dated 31.03.2017, passed in case No.16/CIT(A)/ACIT/Cir:2/Bwn/2016-17 u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance raised in the instant appeal seeks to reverse both the lower authorities action disallowing / adding 15% of the sub-agent commission involving payments of ₹2,35,11,268; coming to ₹35,26,690/-; in the course of assessment framed on 08.03.2016 and affirmed in the CIT(A)'s order under challenge.

3. We advert to the relevant facts and find that the assessee / individual is a distributor and commission agent in telephone / mobile services. He runs his proprietorship business in the name and style of M/s Saha Communication in Parulia. The assessee had claimed the impugned sub-agent of ₹2,35,11,268/- to have been paid to various sub-agent(s) whilst carrying out distribution and commission agent business in communicative services. The Assessing Officer *inter alia* noted in his assessment order that he had failed to file the corresponding books of account regarding the impugned sub broker re-charges payments despite having being afforded various opportunities on 19.11.2015, 18.12.2015, 13.01.2016 25.01.2016 08.02.2016, 16.02.16 as well as on the date of assessment (supra). This made the Assessing Officer to invoke the impugned *ad hoc* disallowance @ 15% coming to ₹35,26,690/-.

4. The CIT(A) has affirmed the same vide its following detailed discussion:-

*“3. Discussions and Findings:-*

*At the very outset it may be mentioned that the appellant has not shown much of an alacrity in complying with statutory requirements. In the case of filing of this appeal, the appellant order appealed against has been passed on 08.03.16. The demand notice has been issued on 08.03.2016 – the AO has also supplied a copy of the postal envelop showing the date of 08.03.2016, on which the notice was duly sent to the appellant, despite this, the appellant has tried to suggest that he received the notice for demand on 18.03.2016, after which he filed the appeal on 18.04.2016. He has not produced any evidence to establish that the notice was received on the date on which he says it was received. As per records, the appeal has been filed late, without any reasons being offered for this delay. The appeal, in the absence of any reason for this delay, cannot be condoned automatically and stands **dismissed**.*

*Without prejudice to the above, it is found, upon a study of the grounds of appeal that:*

*Ground 1:*

*This ground agitates the lack of opportunity being given to the appellant and therefore it being prejudicial to him on account of deprivation of natural justice.*

*As study of the am order belies all such contentions as the AO has sufficiently documents, in the body of the order itself, the number of times the appellant has been afforded opportunities and which he has not availed of. The appellant has been variously asked to produce books of account, supporting material, documents in support of expenses debited in the profit and loss account, show cause notice etc. The appellant, it is documented, has not availed of any opportunity and has been trying to procrastinate in order to avoid submitting evidence, which, it can only be inferred, he does not possess. In view of this, it cannot be understood how and on what basis the ape is suggesting that he was not afforded ample opportunity. This ground therefore stands **dismissed**.*

*Ground 2:*

*The appellant has suggested that the order was made without application of intellect and mechanically without proper justice. The appellant has not elaborated upon this issue. As per record and a study of the assessment order, there is nothing that seems to support this claim of the appellant. The appellant has also not clarified this issue during appeal. The only contention that the appellant has made in this context is that he produced all the documents before the AO but the latter did not consider them while drafting the order of assessment.*

*In the documents that he has submitted, it is however found that there is no evidence that these documents had indeed been submitted before the AO. The latter, on the other hand, has clearly brought out in his order that despite repeated opportunities, the appellant did not bring forth any evidence with regard to his return of income.*

*The appellant was engaged in the business in the trade name of Saha Communication. He worked as commission agent and distributor of mobile SIMs, recharge vouchers etc. for Reliance Telecom Ltd and also in the trading of mobile sets and accessories.*

*It transpires that during assessment, the appellant after several non-compliances, submitted an audit report, profit and loss account and bank statement. Despite the AO asking for them, the books of account were not produced. No vouchers, supporting documents etc. were produced. Finally, he was asked by the AO to substantiate the sub-broker point re-charges amounting to Rs.2,13,57,878/- debited in his profit and loss account. The only submissions that the appellant made in this context was that in the profit and loss account the commission amount of Rs 2.35,11,268/-, was paid to sub agents from the original commissions which he received from the company amount to Rs.2,60,45,250/- as per bank transactions. The AO once against records that no supporting documents were produced by the appellant. Even in these circumstances of the appellant steadfastly not producing any details, the AO was more than lenient and moderate, in disallowing only 15% of these expenses. In these circumstances, the basis for the appellant's agitation cannot be understood. The order of the AO is hardly excessive or arbitrary, but in fact is in conformity with the principles of natural justice. This ground is therefore **dismissed**."*

This leaves the assessee aggrieved.

5. We have given our thoughtful consideration to rival pleadings against and in support of the impugned *ad hoc* disallowance. There is hardly any issue between the parties that this taxpayer has acted as distributor / commission agent in telephone / mobile services and paid the impugned re-charge sum(s) to the sub-agents working in the field. Learned departmental representative vehemently sought to highlight the fact that assessee had failed to file the relevant detailed evidence before both the lower authorities which formed the sole reason for the impugned estimated disallowance. (The assessee on the other hand has invited our attention to his detailed paper book(s) running into 128 pages duly certified that all the corresponding documents formed part of the assessment record. Mr. Choudhury next took us to a certificate dated 18.02.2016 (***much before the assessment order dated 08.03.2016***) coming from the cellular operator M/s Reliance Telecom Limited making it clear that the corresponding e-re-charges amount involved a sum of ₹235,11,268 including commission of ₹113,06,268/- and re-charge(s) figure of ₹122,05,000/-; respectively as per the relevant understanding between the parties. There is no rebuttal to this clinching fact coming from the Revenue's side. The assessee has also placed on record the relevant details of all the corresponding re-charge transactions his pages 2 to 96 of

the paper book. There is no prayer coming from the department side that the assessee's certificate having placed on record all these documents is factually incorrect.

6. We proceed further to note that the assessee has also placed on record profit and loss account at page 104 in the paper having disclosed net profit on turnover @ 6.92% not identify any abnormal trend vis-à-vis earlier and latter assessment years. This tribunals co-ordinate bench order in **ITA No.1464/Kol/2014** Gouranga Sundar Mondal vs. Income Tax Officer Ward-2(1) Burdwan decided on 07.09.2018 also appears to have deleted identical disallowance in similar telephone income / mobile services distribution and commission business on the basis of cellular operators certificate as under:-

“4. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the assessee is a proprietor of Disha Communications and was a distributor under M/s. DWL (Aircel) Mobile networking for the areas Burdwan town, Bud Bud, Kalna, Katwa and Memari. The Aircel allowed incentive to retail shop for activation charges through distributors, the assessee Disha Communications. From a perusal of the P&L Account filed before us, we find that the total turnover of the assessee was to the tune of Rs.2,24,22,061/- and the commission received from Aircel is shown as Rs.3,17,699/-. According to the assessee, the Aircel has paid retail incentive commission of Rs.65,12,658/- directly to the retailers in the form of recharging commission, activation charges on behalf of the assessee. However, the TDS credit was reflected on assessee's account and, therefore, the confusion has happened, though the fact is that the assessee has been paid as commission only Rs.3,17,699/-. According to the assessee, the AO issued letter dated 23.12.2010 to the Principal Officer of Aircel and since the AO did not receive any reply from the Aircel made the addition of Rs.62,27,292/- and concluded the assessment vide order dated 31.12.2010. On appeal, the Ld. CIT(A) taking note of the letter date 28.12.2010 of Aircel was pleased to make an enhancement of Rs.2,85,366/- as well as confirmed the action of the AO in making addition of Rs.62,27,292/-. The Ld. AR drew our attention to the letter of the Aircel dated 08.02.2012 wherein the Aircel has clarified the fact that it had paid commission of only Rs.3,17,699/- to the assessee and Rs.65,12,658/- was remitted to the retailers in the form of recharge commission, activation charges by Aircel on behalf of the assessee. That letter dated 08.02.2012 of the Aircel to the assessee explaining the facts is reproduced below:

3

ITA No. 1464/Kol/2014  
Gouranga Sundar Mondal, AY 2008-09



Date : 08.02.2012

To  
Sri Gouranga sundar Mondal  
(Proprietor of Disa Communication)  
Baronlipur Road  
P.O.- Sripally  
Burdwan

Sub : Your assessment for A.Y 2008-09 (F.Y 2007-08)

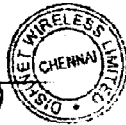
Sir,  
Please refer to the above

As regards your submission to the I T Department regarding the commission payable to you as Distributor and payment thereof to your retailers, we have to inform you that commission/ incentive of Rs. 68,30,357/- payable to you during F.Y 2007-08, the company has made payment of Rs. 3,17,699/- to you and Rs. 65,12,658/- to your retailers in the form of recharge commission, activation charges on your behalf as per understanding between us.

This letter is issued at your express request for the purpose of your assessment for A.Y. 2008-09 (F.Y 2007-08)

Thanking you

  
Yours sincerely



Copy to income Tax Officer, Ward 2(1)/ Bwn

Aaykar Bhaban, Court compound  
Burdwan - 713101

Dis'net Wireless Limited

Regd. Office: Spencer Plaza, 5<sup>th</sup> Floor, 769, Anna Salai, Chennai- 600062  
Ph : 91-44-28490849 Fax : 91-44-28495769

  
Advocate

5. We have crossed checked the figures and find it to tally with the figures of P&L Account and other letters earlier on record. From a perusal of the P&L Account, we note that the assessee has shown the commission received from Aircel to the tune of

Rs.3,17,699/- which is the same figure as reflected in the letter dated 08.02.2012, which is stated in the letter written by Aircel pursuant to the notice of AO. We note from page 3 para 5 of the impugned order of the Ld. CIT(A) wherein the Ld. CIT(A) has referred to the letter dated 28.12.2010 from M/s. DWL (Aircel) wherein it has confirmed the payment of Rs.65,12,658/- which also tallies with the figure of Rs.65,12,658/- as referred to in letter dated 08.02.2012 which has been reproduced above. Taking into consideration the aforesaid facts and the aforesaid letter, the commission attributable to the assessee as his income is only Rs.3,17,699/- and , therefore, assessee cannot be saddled with the addition of amount which has not been disbursed to the assessee by Aircel. So, we are inclined to **allow** the appeal of the assessee.

We adopt the above detailed reasoning mutatis mutandis and more so in the light of corresponding certificate coming from the M/s Reliance Communication Limited in assessee's case to hold that both the lower authorities have erred in law and on facts in making the impugned ad hoc disallowance @ 15% of ₹235,11,268/-.The same stands deleted.

7. This assessee's appeal is allowed.

Order pronounced in open court on 09/10/2020

Sd/-  
(उपाध्यक्ष)  
(P.M.Jagtap)  
Vice President  
\*Dkp-Sr.PS

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
Judicial Member

दिनांक:- 09/10/2020 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Sri Nabarun Kanti Saha Parulia Bazar, P.O. Parulia, P.S. Purbasthali, Dist/. Burdwan-713513
2. प्रत्यर्थी/Respondent-ACIT, Cir-2, Ayakar Bhawan, Court Compound, Burdwan-713101
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
कोलकाता ।