

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.896/Del./2020
Assessment Year: 2015-16

Shri Kunwar Tuli, 41A, A-1A, Chanakya Place, Uttam Nagar, New Delhi	Vs.	ITO, Ward-43(4), New Delhi
PAN :AIPPT3913Q		
(Appellant)		(Respondent)

Appellant by	Shri Jai Sethi, CA
Respondent by	Shri Ved Prakash Mishra, Sr. DR

Date of hearing	16.02.2021
Date of pronouncement	18.02.2021

ORDER

PER O.P. KANT, AM:

This appeal by the assessee is directed against the order dated 04.02.2019 passed by the learned CIT(A)-15, New Delhi [in short 'the CIT(A)] for assessment year 2015-16, raising the following grounds of appeal:

“With reference to the Assessment order dated 04th February, 2019 issued u/s 250 of the Income Tax Act, 1961 and statement of facts, we humbly request you to resolve the following:-

1. Whether the contention of Ld. CIT (A) is justified in being completely ignorant and rejecting the appeal despite of the fact that:

- 1- The revenue model upon which business is based on.
- 2- The usual market practice of the industry in which assessee is dealing with.
- 3- Agreed Contract between the assessee and his marketing channel.

2. Wherein extract of the CIT (A) order states that:-

“Appellant has filed written submissions, the relevant portion of which is reproduced as under:-

The revenue model of the assessee is such that it is using the digital platform of Homeshop 18 (hereinafter referred as HS18) for which HS18 collects the amount of sales consideration from customers directly and remit the same to the assessee after deducting commission and other agreed charges such as taxes, refunds, shipping & freight charges as per the Agreement with HS18. Copy of the agreement had already been submitted by us”.

2. Whether the learned CIT (A) is justified in stating that:-

“No justification of such high commission paid has been offered except that TDS was deducted on such payments “

And being disallowed expenditure was laid out or expended wholly and exclusively for the purpose of business in lieu of which sufficient evidence has been provided by the assessee.

While it was quite clear fact in the case that as per the agreement with the seller of the assessee, the payments were collected from the third parties and remitted thereafter to the assessee after deduction of commission and other agreed charges.

“Section 37(1) states any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

In the case of J.K. Woollen Manufacturers Vs CIT (1969) 72 ITR 612 (SC), the Apex court held that in applying the test of commercial expediency for determining whether an expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the expenditure has to be adjudged from the point of view of the businessman and not of the Income-tax Department. It is, of course, open

to the Appellate Tribunal to come to a conclusion either that the alleged payment is not real or that it is not incurred by the assessee in the character of a trader or it is not laid out wholly and exclusively for the purpose of the business of the assessee and to disallow it.

THE HONOURABLE SUPREME COURT DECIDED TO ALLOW THE GENUINE BUSINESS EXPENDITURE OF THE ASSESSEE U/S 37 OF THE ACT.

Reference of Case Law - CRYSTAL Chemie (P) Ltd versus Assistant Commissioner of Income Tax. 42 DTR (Ahd) (Tribunal) 197 where it was held that Commission payable to another company based on the quantity specified products sold by assessee, for various services rendered by that company to the assessee is revenue expenditure and Commission was held to be allowable.

THE TRIBUNAL DECIDED TO ALLOW THE GENUINE REVENUE BUSINESS EXPENDITURE U/S 37 OF THE ACT.

Whether the contention of the learned AO has been justified wherein he had erred in law and on facts while making an ad-hoc estimated addition of Rs. 18, 58, 100.00./- @ 30% of total commission expenses claimed. The addition is bad in law and is liable to be cancelled. The entire addition admittedly has been made arbitrarily and on presumptions, suspicion and conjectures only.

Reference of case law- Commissioner of Income Tax Versus The Lakshmi Vilas Bank Ltd. Tax Case (Appeal) No.896 of 2013 Dated - 16 April 2014 (4) TMI 827 - MADRAS HIGH COURT.

Whether the order of Ld. AO is not bad in law as it has been ruled time and again by the honorable Courts and the Tribunal that any addition on ad-hoc/estimate basis cannot be without invoking Section 145(3) and rejecting the books of accounts. The Ld. AO has not rejected the books of accounts, but goes on to make an addition on purely estimate basis. He has therefore acted in the most mechanical manner without any application of judicious mind.

The assessee has maintained complete and correct books of accounts and his financial statements have duly undergone financial and tax audit, and therefore must be relied on unless AO rejects them on the basis -of some cogent material indicating their unreliability.

Reliance is placed on judgments in case of Amit Verma, New Delhi vs Department Of Income Tax (ITAT), where the Tribunal ruled that:

"Assessing Officer has not pointed out any specific defects in the books/records. Moreover, the books of accounts have been duly audited;

the details were submitted before the Assessing Officer. The Assessing Officer has not invoked section 145(3) and he has not rejected the books of account. Under the circumstances, adhoc disallowance is without any basis and do not stand the test of judicial scrutiny."

Similar judgment was passed in case of M/s Vijay Infrastructure Limited Vs ACIT (ITAT, Lucknow) and various other cases.

Whether the contention of the Ld. AO that assessee could not substantiate the commission expenses to his satisfaction, he has neither listed in any of the notices, nor mentioned orally to the AR, his specific requirements in this regard. The Notice dated 05.12.2017 which was titled as the 'final show cause' merely called for the assessee to 'substantiate the commission expenses'.

The details and explanations furnished by the assessee through his AR were as per best of his understanding. While the onus of proving genuineness of the expenses is on the assessee, he cannot be expected to be a mind-reader and foresee exactly what would satiate the assessing authority without the AO stating his requirements expressly. Moreover, the assessee was required to establish the genuineness of the incurred expenditure, not rationalize its reasonableness as the same is not relevant for its allowance under Income Tax law.

Whether the contention of the Ld. AO and the Ld. CIT ' (A) was justified in disallowing the genuine business expenditure u/s 37 of the Act?"

2. Briefly stated facts of the case are that the assessee was engaged in the business of electrical home appliances under the proprietorship firm, namely, M/s. Golden Sparrow Industries through online trading from a platform, namely, Home Shop 18. The assessee filed return of income on 23.10.2015, declaring income of Rs.3,16,350/-. In the assessment completed on 27.12.2017 under Section 143(3) of the Income-tax Act, 1961 (in short 'the Act'), out of the commission expenses of Rs.61,93,667/- paid by the assessee during the year under consideration, 30% of the commission expenses which were worked out to Rs.18,58,100/-, was disallowed by the Assessing Officer in view of

the non-production of documentary evidences to support high commission paid. The learned CIT(A) also upheld the disallowances. Being aggrieved, the assessee is before the Tribunal raising the grounds as reproduced above.

3. Before us, the parties appeared through Video Conferencing facility and filed documents electronically.

4. The learned counsel for the assessee submitted that the commission was paid to the digital platform company i.e. Homeshop 18, who sold goods of the assessee through their digital platform. The learned counsel for the assessee further submitted that the commission has been paid as per the agreement entered into with the digital platform company which included charges such as taxes, refunds, shipping & freight charges etc. According to him, in view of the services rendered by the digital platform company, the commission paid was justified. He prayed that the assessee is willing to produce all documentary evidences, if one more opportunity is provided.

5. On the contrary, the learned DR relied on the order of the lower authorities.

6. We have heard the rival submissions of the parties on the issue in dispute. We find that the Assessing Officer has disallowed the part of the commission expenses paid on the ground that the assessee failed to produce the requisite evidences, including contract agreement between the parties and the assessee sought to justify the commission expenses only in view of the tax deducted at source by the assessee.

6.1 Before us, the learned counsel for the assessee has submitted that the commission deducted by the digital platform company,

namely, Homeshop 18 also included taxes, refunds, shipping and freight charges etc. as per the agreement with the said company. The learned counsel for the assessee has undertaken before us that the relevant document shall be filed before the Assessing Officer and, therefore, one more opportunity may be provided to the assessee.

6.2 In view of the submissions of the assessee and in the interest of substantial justice, we feel it appropriate to restore this issue back to the file of the Assessing Officer for deciding afresh in the light of the documentary evidences including, agreement with the digital platform company to whom the commission has been paid. Accordingly, the order of the learned CIT(A) is set aside and the issue in dispute is restored back to the file of the Assessing Officer for deciding afresh in the light of the above direction, after affording adequate opportunity of being heard to the assessee.

7. In result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18th February, 2021

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 18th February, 2021.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR