

THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 4654/DEL/2016  
[Assessment Year: 2010-11]

M/s Goyal Sons Zaveri [P] Ltd  
SCF - 97, Rajguru Market  
Distt. Hisar, Haryana

Vs. The Dy. C.I.T  
Hisar

PAN: AACCG 8213 A

[Appellant]

[Respondent]

Date of Hearing : 08.04.2021  
Date of Pronouncement : 20.04.2021

Assessee by : Shri K. Sampath, Adv

Revenue by : Ms. Kirti Sankratyayan, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

With this appeal, the assessee has challenged the correctness of the order of the Id. CIT(A), Hisar dated 27.07.2016 pertaining to Assessment Year 2010-11.

2. The grievance of the assessee is two-fold:-
  - a. Firstly, the assessee is aggrieved by the disallowance of Rs. 7,91,634/- on account of commission paid to 5 persons;
  - b. Secondly, the assessee is further aggrieved by the addition of Rs. 4,88,592/- on account of alleged under valuation of closing stock of gold and silver coins.
  
3. Briefly stated, the facts of the case are that the assessee is engaged in trading in gold, silver and diamond jewellery. The assessee company has franchisee of Tanishq. Return for the year was electronically filed on 30.09.2010 declaring income of Rs. 42,04,380/-. Return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has paid commission on sales amounting to Rs. 7,91,364/- as under:

NAME	ADDRESS	AMOUNT
Silky Aggarwal D/o Vijay Gawaria	Mandi Road, Hisar	Rs. 1,70,599/-
Sangeeta W/o Viya Gawaria	1793/2, Rampura Mohalla, Hisar	Rs. 1,79,500/-
Ayushi Goyal D/o Shri Pardeep Goyal	SCF-99, Rajguru Market, Hisar	Rs. 1,39,204/-
Sonu Goyal D/o Shri Satish Goyal	SCF-99, Rajguru Market, Hisar	Rs. 1,45,335/-
Priyanka Goyal D/o Shri Satish Goyal	SCF-99, Rajguru Market, Hisar	Rs. 1,56,726/-

5. The assessee was asked to explain the genuineness of the transactions with supporting evidences.

6. In its reply, the assessee explained that commission has been paid to ladies who had procured customers and executed sales. Copies of their bills were filed. It was explained that all the payments have been made through

cheques and tax has been deducted at source, wherever applicable.

7. In so far as production of the ladies for examination is concerned, the assessee explained that it needs some time to contact them and know about their availability.

8. Reply of the assessee was considered by the Assessing Officer but did not find any favour.

9. The Assessing Officer observed that three ladies, namely, Ayushi Goyal, Sonu Goyal and Priyanka Goyal are relatives/family members of the Director and are residing at the same address, namely, SCF-97, Rajguru Market, Hisar, which is adjacent to the business premises of the assessee.

10. According to the Assessing Officer, since all the ladies are residing nearby to assessee's business place, the assessee could easily produce them for examination. The Assessing Officer further observed that the assessee has not mentioned

the rate of commission paid to the ladies and the basis of such commission.

11. The assessee has been consistently harping upon the fact that the payments have been made through account payee cheques subject to TDS.

12. Being not convinced with the explanation of the assessee, the Assessing Officer made an addition of Rs. 7,91,364/-

13. Proceeding further, the Assessing Officer asked the assessee to furnish the basis of valuation of the closing stock. The assessee furnished the details explaining that the stock was valued at cost or net realizable value whichever is less and since the purchase cost was lower, therefore, the stock has been valued at purchase cost.

14. The Assessing Officer, after perusing the details, found that the value of closing stock of gold/silver coins has been valued at average value of opening stock + purchases +

closing stock as not correct. The Assessing Officer recalculated the value of closing stock on the basis of average of opening stock and cost price and made addition of Rs. 4,88,592/-.

15. Aggrieved by the aforementioned two additions, the assessee agitated the matter before the ld. CIT(A) but without any success.

16. Before us, the ld. counsel for the assessee vehemently stated that in the remand proceedings, two ladies, namely, Ayushi Goyal and Sangeeta Aggarwal were examined and they have categorically confirmed the transactions of receipt of commission @ 1.5%. It is the say of the ld. counsel for the assessee that in their respective statements, they have explained that they have introduced 25-30 customers on which they have received commission. In so far as other three ladies are concerned, the ld. counsel for the assessee stated that since they are now married, it was not possible to contact them.

17. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

18. We have given thoughtful consideration to the orders of the authorities below. It is true that all the five ladies are residents of Hisar and three ladies live at the adjacent building of the business premises of the assessee. It is also a fact that the two ladies, namely, Ayushi Goyal and Sangeeta Aggarwal did appear before the Assessing Officer whose statements were recorded by him and they have confirmed the receipt of sales commission. Their statements are exhibited at pages 69 to 76 of the paper book.

19. Since the two ladies have confirmed the transactions by statements recorded by the Assessing Officer, we do not find any reason why addition should be made. We, accordingly, direct the Assessing Officer to delete the addition of commission paid to Ayushi Goyal and Sangeeta Aggarwal.

20. In respect of the other ladies, namely Silky Aggarwal, Sonu Goyal and Priyanka Goyal, they may have been married,

but nothing prevented them to furnish their statements by way of affidavits. Merely because the payments have been made through account payee cheques would not justify the rendition of services since no evidences have been furnished before us except for the bald statement that the ladies are now married and do not reside in Hisar.

21. The contention of the ld. counsel for the assessee that since out of the 5 ladies, 2 have confirmed the transactions, therefore by preponderance of probabilities it can be safely presumed that the transactions with other 3 ladies were also genuine is not acceptable. Since no evidence has been furnished towards rendition of services by Silky Aggarwal, Sonu Goyal and Priyanka Goyal, disallowance of commission paid to them is hereby confirmed which means Ground No. 1 is partly allowed.

22. Coming to the second grievance, we find that the Assessing Officer has valued the closing stock on the basis of average of opening stock and cost price whereas it the say of the ld. counsel for the assessee that the assessee has been

consistently following the cost or market price, whichever is lower method of accounting for valuation of closing stock. However, we find that the ld. CIT(A), in his order, has mentioned that the assessee itself has claimed in the appellate proceedings that it is valuing closing stock at average cost.

23. Before us, the ld. counsel for the assessee vehemently stated that the observations of the ld. CIT(A) are against the facts and the assessee has never made such submission. Since there are conflicting submissions emanating from the orders of the authorities below, we deem it fit to restore this issue to the file of the Assessing Officer. The assessee is directed to demonstrate that the stock has been valued at cost price which is in consistence with its practice in earlier year and the Assessing Officer is directed to examine the details afresh and if satisfied that the assessee has been consistently valuing its stock at cost or market price, whichever is less, then no addition needs to be made on this account.

23. However, if the Assessing Officer is not satisfied with the details of the assessee, he may decide the issue afresh as per provisions of law. Accordingly, Ground No. 2 is allowed for statistical purposes.

24. In the result, the appeal of the assessee in ITA No. 4654/DEL/2016 is partly allowed for statistical purposes.

The order is pronounced in the open court on 20.04.2021.

Sd/-  
[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER

Sd/-  
[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 20<sup>th</sup> April, 2021

VL/

Copy forwarded to:

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

Asst. Registrar  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other 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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	