

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “D” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. No: 443/Ahd/2019  
(Assessment Years: 2010-11)**

<b>Sagar Powertex Private Limited Sagar House, Opp. Indian Red Cross Society, Near Vadaj Circle, Vadaj, Ahmedabad-380013</b>		<b>DCIT, Circle-4(1)(1), Ahmedabad</b>
<b>PAN No. AADCS0473P</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**Appellant by : Shri M.J. Shah, A.R.  
Respondent by : Shri Shyam Prasad, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 29-04-2021  
Date of Pronouncement : 30-04-2021

**PER MAHAVIR PRASAD, J.M.**

1. This appeal filed by the Assessee is directed against the order of levy of penalty u/s 271(1)(c) on disallowance of commission expenses.

2. Brief facts of the case are that the assessee company engaged in the business of agency, trading in textile items, power generation, technical services etc.
3. During the period, assessee claimed expenses on account of commission at Rs. 6,58,680/-. However, assessee could not submit copy of agreement before the Assessing Officer though payments were made through banking channels and similar commission payments were made in preceding year and subsequent year.
4. In quantum proceeding, assessee came before the ITAT which granted relief to the assessee with following observations:

*11. We have considered the arguments of both the parties and perused the materials available on record. The issue in the instant case relates to the disallowance of the commission made by the AO of ₹ 6,58,680/-. The AO made the disallowance on the ground that the assessee failed to furnish the basis for the payment of the commission and details of the services rendered by the commission agents. The observation of the AO was based on the fact that the assessee does not have an agreement with the commission agents.*

*11.1 The learned CIT (A) subsequently confirmed the order of the AO by observing that the commission agents were not produced either before the AO or before him. Therefore, the CIT(A) was of the view that the services rendered by these commission agents could not be ascertain.*

*11.2 From the preceding discussion, we note that the assessee has filed certain documents justifying the amount of commission as detailed under:*

*1. The copies of the ledgers for the commission expenses which are placed on page 1 of the paper book.*

*2. The commission paid to Gurukrupa cotton broker and Shah Chimanlal Premchand was also allowed by the learned CIT (A) in the immediately preceding assessment year. The details are placed on page 2 of the paper book. The copies of the learned CIT (A) orders are placed on pages 23 to 27 of the paper book.*

*3. The copies of the form 16A issued to all the commission agents are placed on pages 3 to 6 of the paper book.*

*4. The debit note issued by the commission agents along with the details of the purchases made by the assessee are placed on pages 7 to 12.*

5. *The copy of the debit advice issued by the assessee to the commission agents acknowledging the commission to be paid to the commission agents is placed on pages 13 to 22 of the paper book.*

11.3 *In view of the above, we note that the commission expenses have been disallowed by the authorities below merely on the ground that there was no agreement between the assessee and the commission agents. There is no dispute that there was no agreement as pointed out by the authorities below. However, we note that none of the authorities below has pointed out any iota of defects in the submissions filed by the assessee. Besides this, in case of any doubt the authorities below could have taken the confirmation/clarification from the commission agents about the nature of the commission paid to them by way of issuing notice under section 131/ 133(6) of the Act.*

11.4 *We also note that the assessee has paid the commission in the earlier assessment year and succeeding assessment year which was deleted by the learned CIT (A). The learned DR in this regard has not brought any evidence suggesting that the Revenue has filed an appeal against those orders.*

11.5 *We also note that the basis of commission expenses has been duly specified in the debit notes issued by the commission agents. The assessee also specified the details of the purchases made through the involvement of commission agent. The said details were also annexed with the debit notes.*

11.6 *The AO to verify the genuineness of the expenses could have issued the notices under section 133(6)/131 of the Act to the parties from whom the assessee has purchased cotton with the assistance of the commission agents. But the AO has not done such exercise.*

11.7 *The learned AR also argued before us that the learned CIT (A) never directed the assessee to produce the commission agents. Therefore, no commission agent was produced before the learned CIT (A). However, in this regard, we note that in case of any clarification is required from the 3<sup>rd</sup> party, the Revenue has ample power to take necessary steps for getting the desired information from them directly and independently without the involvement of the assessee. But the authorities below have not exercised their powers.*

11.8 *We also find support and guidance from the judgment of High court of Karnataka in case of Ritz hotel (Mysore) Ltd. vs. CIT (196 ITR 614) wherein it was held as under:*

*“The burden in the instant case, having regard to the circumstances of the case, is quite heavy on the revenue to establish that no services were rendered and the payment of commission was unauthorised or not*

*warranted by any business considerations. We have, no doubt, in our mind that the commission in the instant case should have been paid and accordingly the Board resolved to make the payment in September 1978."*

*11.9 In view of the above, we hold that the genuineness of the commission expenses incurred by the assessee cannot be doubted without bringing any tangible material on record. There was also no allegation by the Revenue that the money has come back to the assessee from the parties (commission agents) in unaccounted form.*

*11.10 Hence, we are not impressed with the finding of the authorities below. Thus we set aside the order of the learned CIT (A) and direct the AO to delete the addition made by him. Thus the ground of appeal of the assessee is allowed.*

5. Since in quantum proceeding, ITAT has granted relief to the assessee. Now there is no basis left for confirmation of penalty. Thus, in view of the above said judgment, penalty is deleted.
6. In the result, appeal filed by the Assessee is allowed.

Order pronounced in Open Court on 30-04-2021

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Ahmedabad: Dated 30/04/2021

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

True Copy

**Sd/-**  
**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad