

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A": HYDERABAD  
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 1137/H/2019 Assessment Year: 2015-16		
Blend Colours Pvt. Ltd., Hyderabad.  PAN - AACCB 2492 A  (Appellant)	Vs.	Dy. Commissioner of Income-tax, Circle - 1(2), Hyderabad.  (Respondent)
ITA No. 1185/Hyd/2019 Assessment Year: 2015-16		
Dy. Commissioner of Income-tax, Circle - 1(2), Hyderabad.  (Appellant)	Vs	Blend Colours Pvt. Ltd., Hyderabad.  PAN - AACCB 2492 A  (Respondent)
Assessee by:		Shri Sidharth Toshnival
Revenue by:		Shri A. Sitarama Rao
Date of hearing:		05/07/2021
Date of pronouncement:		22/07/2021

**ORDER**

**PER L.P. SAHU, A.M.:**

These are cross appeals filed by the assessee as well as revenue directed against CIT(A) - 1, Hyderabad's order

dated 13/05/2019 for AY 2015-16 involving proceedings u/s 143(3) of the Income- Tax Act, 1961; in short “the Act”.

2. Briefly, the facts of the case are that the assessee company engaged in the business of manufacturing, e-filed its return of income for the AY 2015-16 on 19/10/2015 admitting an income of Rs. 2,55,87,581/- under normal provisions and book profit of Rs. 2,36,82,588/- under the provisions of section 115JB. Subsequently, the case was taken up for limited scrutiny under CASS and notices u/s 143(2) and 142(1) were issued and duly served on the assessee. In responses to the notices, the AR of the assessee furnished the details.

2.1 During the scrutiny proceedings, on perusal of P & L Account, the AO noticed that under the head Administrative and selling Expenses, assessee claimed 'commission expenses' of Rs. 2,74,76,118/-. The AR of the assessee was asked to submit the details of the name of the persons to whom commission is paid, their address, PAN No. and amount of commission paid to each of them. In response to this, the AR of the assessee submitted the details of commission paid to various persons along with their addresses. On verification of details, the AO noticed that during the f. Y. 2015-16 assessee paid commission to the below mentioned persons:

- a) Sri. Ashish Bharat Shah
- b) Sri. Borule Narsing Tulsiram
- c) Ms. Deepa Rathi
- d) Sri. Java Prakash K
- e) Lalith Kumar Rathi, HUF
- f) Manivanan
- g) Megtlraj
- h) Renuka polymersm
- m) Santhosh Genu Mardhekar
- j) Sachin Prakash Trivedi
- k) Sandip Sharma
- l) Sangamesh B
- i) S.N. suvitha
- o) Srinivas
- p) subramanyam
- n) Sapthagiri polymers and Inks
- q) sudesh Kumar Mehta
- r) sumit Kabra
- s) Meenakshi Rathi
- t) Riddhi enterprises - Rajesh rathl:
- u) Shreeya International-Manish Rath

2.2. To verify the authenticity of the services provided by the commission agents, on test check basis randomly some companies were selected and letters were issued to the companies who placed orders whether the commission agent acted to get contract/order from that particular company to the assessee company. Status of replies received, is given below:

S.No.	Name and address of the company	Agent through whom orders placed (as per assessee)	Reply received	Gist of reply
1	Bharat Woven Polymers Pvt. Ltd.	Sri Lalith Kumar Rathi	No	No response

2	Surya Polymers	Sri Lalith Kumar Rathi	Received back the letter	In correct address
3	Pramila Plastics	Sri Lalith Kumar Rathi	Yes	No transactions with the assessee
4	Bhandari Plastics Industries	Mrs. Deepa Rathi	Received back the letter	In correct address
5	Adinath Plastics	Mrs. Deepa Rathi	Received back the letter	In correct address
6	AP Coop., Oilseeds Growers Federation Ltd.	Mrs. Deepa Rathi	Yes	No transactions with the assessee
7	Shree Sai Ganesh Enterprises	Sri Borule Narsing Tulsiram Ramanjaneya	No	No Response
8	Haier Appliances India Pvt. Ltd.	Sri Borule Narsing Tulsiram	Yes	No transactions with the assessee
9	Vikas Plastics Pvt. Ltd.	Sri Ashish Bharat Shah	Received back the letter	In correct address

2.3 The AO issued a show cause letter to assessee as to why commission expenses claimed of Rs. 2,74,76,118/- should not be treated as expenditure not related to business and added to the returned income. In response to the said letter, the assessee submitted that the debtors where address is not mentioned are not current debtors and these debtors were represented by the respective commission agents in the past. Since there were hundreds of debtors, a list as generated by the computer was

submitted, which included past and present debtors. Further, it was stated that they have deducted TDS and for many years they were claiming commission and in previous years no disallowances were made on commission expenses and the listed parties have provided names of all commission agents including previous years and completed particulars of agents, therefore, asked to call for information that has been sought from agents itself.

2.4 After considering the submissions of the assessee, the AO observed that in most of the cases, complete postal addresses of the debtors were still not available and the AR of the assessee did not discharge the burden of proof to produce the commission agents with the information sought for. Further, he observed that the AR failed to provide details of services provided by parties to whom commission payments were made. In view of the above observations, he held that since the company has completely failed in discharging its burden in establishing the business expediency for payment of commission, disallowed the whole commission payments of Rs. 2,74,76,118/- incurred by the assessee.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A).

4. Before the CIT(A), the assessee, inter-alia, submitted that the appellant case selected for scrutiny only for the AY 2014-15 and in no year the disallowance of commission was made. In fact in some years the scrutiny selection was only for verification of commission expenditure. No addition of commission expenditure was made in earlier years because the expenditure was incurred absolutely for the purpose of business of appellant. The assessment so made is in violation of CBDT instructions No.20 of 2015 dated 29.12.2015 and 5 of 2016 dated 14.07.2016 regarding limited scrutiny. The six points for which Limited scrutiny was undertaken duly explained by appellant. With reference to foreign commission, appellant submitted copy of form 15CA filed with IT Department before making payment to foreign agents. It was there contended that making the addition in AY 2015-16 is against the Rule of Consistency and hence not sustainable. The assessee relied on various cases in support of its case, which were extracted by the CIT(A) in his order at page 8.

5. After considering the submissions of the assessee, the CIT(A) allowed the commission paid by the to the extent of Rs. 1,95,07,448/- and sustained the addition to the extent of Rs. 68,68,670/- on the ground that the assessee was not proved either by returns or by any justification of evidence, by observing as under:

*4.3 With regard to the above ground, I have carefully considered the facts of the case, assessment order and submissions of the appellant. On verification of the details, it is found that the appellant filed returns of income for the AY 2015-16 of the following parties :*

*S.No. Name*

- 1. Ms. Deepa Rathi*
- 2. Manivanan*
- 3. Meghraj*
- 4. Renuka Polymers*
- 5. S.N.suvitha*
- 6. Subramanyam*
- 7. Riddi Enterprises - Rajesh Rathi*

*The returns of the above parties were filed before the due date and before the completion of scrutiny assessment of the appellant. Therefore, when once the other parties have disclosed the income in their respective returns, the disallowance of the same in the appellant's case is not justified. Hence the submissions of the appellant in this regard, is accepted. Hence, the commission paid to this extent i.e., Rs.1,95,07,4481- remains explained and the same is allowed.*

*Out of the balance of Rs.79,68,670/-, Rs.11 lakhs was paid to the commission to the foreign agents and due to the detailed reasons explained by the appellant, the same is accepted and it is allowed. Therefore, remaining balance amount of Rs.68,68,670/-, the explanation of the appellant is not accepted since it was not proved either by returns or by any justification of evidence, hence the amount of Rs.68,68,670/- is confirmed."*

6. Aggrieved by the order of CIT(A), both the assessee and revenue are in appeals before the ITAT on the following grounds:

6.1 Grounds of appeal raised by the assessee in its appeal:

*"1) The learned CIT(Appeals) erred in sustaining a part of the disallowance of commission expenditure instead of fully allowing the expenditure.*

*2) That the learned CIT(Appeals) erred in ignoring the fact that Appellant had submitted complete details of the Agents including their Permanent Account Number and full address and details of customers represented by Agents and further the payments to agents were made by account payee cheques and TDS was also deducted and in such circumstances no disallowance should have been made.*

*3) That the commission expenditure was incurred wholly and necessarily for the purpose of Business and the services of Agents are vital for the Business of Appellant as there are thousands of customers and Agent is a vital link between customers and Appellant.*

*4) That the learned CIT(Appeals) erred in not considering the contention of Appellant that addition of Commission expenditure is against rule of consistency as every year commission was being paid and appellant case was selected for scrutiny but no disallowance of commission expenditure was made.*

*5) That the scrutiny assessment made is invalid as it was made in violation of Board Instruction on Limited Scrutiny and the learned CIT( appeals) erred in not deciding the Ground of Appeal No.8 pertaining to this issue.*

*6) The reasons assigned by the learned CIT(Appeals) are wrong, insufficient and illegal.*

*7) Any other Ground of Appeal that may arise at the time of hearing of Appeal."*

6.2 Grounds of appeal raised by the revenue in its appeal:

*1. The order of Ld. CIT(A) is erroneous on facts as well as in law.*

*2. The Ld. CIT(A) erred in directing the A() to delete the disallowance or Rs.2.06.07'--IX towards commission paid to some parties without examining commission agreements. correlation between sales made and commission paid, sales actually made by concerned commission agents, reasonableness or commission paid.*

*3. The Ld.CIT(A) has erred in law in not providing the opportunity to AO to examine the evidences filed by the assessee before the Ld. CIT(A) under Rule 46A."*

7. Before us, the ld. AR of the assessee filed written submissions, which are as under:

*"7. The Appellant submits that the commission expenditure is wholly and necessarily incurred for the Business of Appellant. The service of Agents is absolutely necessary for the Business of Appellant. There are thousands of customers spread across India and Agents are the link between Appellant and the customers. The Appellant had submitted list of customers represented by the agents with address of the customers (Paper Book page 85 to 119). The Appellant had submitted complete details of agent including their Permanent Account Numbers and full address. The payments to agents were by account payee cheques and TDS was also deducted. Ledger extract of Agents are enclosed in paper Book (Page Nos. 47 to 84). With reference to three agents who were selected for*

*random enquiry the appellant submitted details of sales with invoice number name of party, and its address product sold and rate of commission and full address of the agents. With reference to foreign commission Appellant submitted the copies of Form 15CA and 15CB (form for foreign remittance) evidencing payment of foreign commission and also the details of sales done. In the show cause notice Assessing Officer required production of Agents with their Income Tax Return copies failing which he will presume that there is no genuine evidence for expenditure but he totally ignored the evidence submitted by Appellant in the previous hearings.*

*8. 'The Appellant therefore submits that the Commission expenditure was incurred wholly and necessarily for Business and Appellant humbly prays the Honorable Tribunal to allow the claim of commission expenditure in full.*

*9. Another important aspect of the case is that the assessment so made is in violation of CBDT instructions regarding limited scrutiny. The Appellant's case was selected for limited scrutiny vide Notice issued u/s. 143(2) dated 18.03.2016 (paper Book page 33). The six issues for which Scrutiny was taken was communicated vide Notice issued u/s 142(1) dated 15.02.2017 (Paper Book at Page 34).*

*10. The Appellant vide letter dated 20.03.2017 (Paper Book page 35) submitted its clarification on each of the six issues. With reference to the issue of large commission expenses and low net profit Appellant explained due to high depreciation expenditure the profit was low and the low profit cannot be attributed to commission expenditure. In fact there was increase in Profit before Depreciation by 480/0. A chart of commission expenditure and net profit for asst. years 2014-15 & 2015-16 is enclosed in Paper Book at Page 212. Thus so far low net profit was concerned it was not*

*relatable to commission expenditure. Hence this Point relating to limited scrutiny was duly explained. The Appellant was again asked to submit clarification on points I reasons for limited scrutiny ~U1d on 24.07.2017 (Paper Book page 41) the clarification was again submitted. Apart from this other details asked in the last hearing was also submitted. Further information was asked on 24.07.20 J 7 and the same was submitted on 02.08.2017 (Paper Book page 43),*

*11. The explanation of Appellant that high depreciation expenditure resulted in low net profit and the low net profit was not at all attributable to commission expenditure was not disputed by Assessing Officer. Hence the Assessing Officer ought to have completed Limited Scrutiny assessment but instead he expanded the scope of the Limited Scrutiny by asking Appellant to produce Agents with the copies of their Income tax Returns, Bank Statements, etc. The Assessing Officer travelled beyond the realm of scrutiny jurisdiction i.e. limited scrutiny was converted into complete scrutiny. This apparently was done without seeking approval from Principal Commissioner of Income Tax. Therefore the assessment made was in violation of limited scrutiny norms issued by Board Instruction No.20 of2015 dated 29.12.2015 and 5 of2016 dated 14.07.2016 (Copy enclosed in Paper Book at Page 208 & 210). Such an assessment is liable to be quashed as held in the following decisions:*

*(i) Suresh Jugraj Mutha v Addl. CIT, Range-3, Dhule, ITA No. 5/Pun/20 16, ITAT Pune*

*(ii) MIs Nitin Killawala & Associates V ITO 11(3)(1) ITA No.1611/M/2013, I TAT Mumbai*

*(iii) CBS International Projects P Ltd Vs The ACIT, Circle 5(2), Delhi, ITA No. 144/De112019*

*Copy of above decisions are enclosed in Paper Book at Pages 262 to 294. The Appellant submits that though this issue was raised before CIT(Appeals) in Ground of Appeal No.8, but learned CIT(Appeals) did not adjudicate this Ground of Appeal.*

*12.1n view of the above submissions, the Appellant humbly prays Honorable Tribunal that Honorable Tribunal may be pleased to allow the relief sought in the Appeal."*

8. The Id. DR, on the other hand, relied on the order of CIT (A) in case of assessee's appeal and in case of Revenue's appeal, relied on the order of the assessing officer. He further submitted that the commission agents did not respond to the notice of the assessing officer, therefore, there is doubt in regard to the existence of the recipients. He further submitted that Ld. CIT (A) has deleted the addition only on the basis of return filed by the agents without examining as to whether the agents have rendered any services or not

9. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. On perusal of the paper books filed by the assessee containing page no. 01 to 294 and written submissions, it has been observed that the commission is being paid regularly and scrutiny assessment was also made for the previous years. The assessee has enclosed assessment orders from AY 10-11 to 13-14. The

details of commission paid to the agents has also been filed from the AY 10-11 to 14-15 . There is no dispute that the commission has been paid every year and no disallowance was made on this count. Facts for the impugned AY are the same to that of earlier AYs but, only there is a change in the names of the recipients. We find substance in submissions of the Id. AR that the principle of consistency should be followed. In support of our decision, we rely on the decision of co-ordinate bench of Mumbai ITAT in the case of Apne Aap Women Worldwide (India) Trust Vs. ITO (Exemptions), order dated 3<sup>rd</sup> October, 2018 reported in [2019] 102 taxmann.com 400 (Mumbai - Trib.), wherein it has been held as under:

*“3. Aggrieved, the assessee contested the same without any success before Ld. CIT (A) vide impugned order dated 20/10/2016 wherein the matter was concluded in the following manner: —*

*5.2 I have considered the facts and circumstances of the case, gone through the assessment order of the A.O and the submissions of the appellant and also discussed the case with the AR of the appellant. The contentions and submissions of the appellant are being discussed and decided here in under:*

- i. The appellant stated that in preceding years' department has accepted its return and hence AO should have been consistent and allowed exemption u/s. 11 in this year also. In this regard it is mentioned that, in the case of M.M. Ipoh & Ors v. CIT (SC) 67 ITR 106 Hon'ble Apex court has observed that *res judicata* is not applicable as each assessment year is a separate proceeding. Similar observations were made by Hon'ble Supreme Court in the case of *New Jehangir Vakil Mills Co Ltd. v. CIT (SC) 49 ITR 137*, and *Bharat Sanchar Nigam Ltd. v. Union of India [2006] 282 ITR 273*. Further in the case of *CIT v. Seshasayee Industries Ltd. (Madras) 242 ITR 691*, It was held by the Hon'ble Madras High Court that the fact that if*

*claim was questioned in earlier years does not entitle the assessee to contend that the law would not be applied during the course of assessment year. Further it is noted that there is a legal issue involved regarding non-availability of exemption u/s. 11 on account of violation of provisions u/s. 13(1)(c)/13(2)(c) r.w.s 13(3). It has been held by Hon'ble Courts that where legal issue arises, the principle of resjudicata does not apply. In the case of Oswal Agro Mills [313 ITR 24], the Hon'ble Supreme Court has held that where question of law is involved, the rule of consistency will not prevail. Similar observations were made by Hon'ble apex court in 313 ITR 363; 307 ITR 338; 300 ITR. Further, in the case of British Paints [188 ITR 44], the Hon'ble Supreme Court has held that there cannot be estoppel against the law. Similar view was held that there cannot be estoppel against the law. Similar view was held in the cases of Luchi Ram Puranmal [177 CTR 640 (MP)]; Foss Electric 263 ITR 125] and Distributors of Baroda [118 ITR 243]. The Hon'ble Delhi High Court in CWT v. Meattles (P.) Ltd. 156 ITR 569 has held that the revenue authorities cannot be stopped from taking a view of statutory provisions in the later year. Contention of the appellant is therefore not acceptable*

*5.1 We have carefully heard the rival contentions and perused relevant material on record including judicial pronouncements as cited before us. The prime contention of the assessee revolves around the rule of consistency. It has been submitted that the assessee has been granted exemption u/s. 11 since AY 2005-06 and the activities & manner of functioning including expenditure incurred by the assessee Trust are on similar pattern and the same has been accepted by the revenue over several years in scrutiny assessments u/s. 143(3). The Ld. DR has controverted the same by submitting that the principle of res-judicata do not apply to Income Tax proceedings and each year is independent unit of assessment and therefore, the rule of consistency could not absolve the assessee to justify his claim in the impugned AY. Nevertheless, we find that the fact that the assessee has been granted exemption u/s. 11 in earlier years and claimed expenditure on similar pattern remains un-rebutted. Nothing on record suggest that there was any change in the activities being carried out by the assessee. The copies of scrutiny Assessment orders for AYs 2010-11 & 2011-12 as placed on record vouch for the fact that the assessee has been granted deduction u/s. 11 by Ld. AO and its claim has not been doubted by the revenue. The Hon'ble Bombay High Court, in a recent decision of Pr. CIT v. Quest Investment Advisors (P.) Ltd. [2018] 96*

taxmann.com 157/257 Taxman 211, after considering judicial pronouncements of higher authorities, held as under:—

7. We note that the impugned order of the Tribunal records the fact that the Revenue Authorities have consistently over the years i.e. for the 10 years years prior to Assessment Years 2007-08 and 2008-09 and for 4 subsequent years, accepted the principle that all expenses which has been incurred are attributable entirely to earning professional income. Therefore, the Revenue allowed the expenses to determine professional income without any amount being allocated to earn capital gain. In the subject assessment year, the Assessing Officer has deviated from these principles without setting out any reasons to deviate from an accepted principle. Moreover, the impugned order of the Tribunal also records that the Revenue was not able to point out any distinguishing features in the present facts, which would warrant a different view in the subject assessment year from that taken in the earlier and subsequent assessment years. So far as the decision of Radhasoami Satsang (supra) is concerned, it is true that there are observations therein that restrict its applicability only to that decision and the Court has made it clear that the decision should not be taken as an authority for general applicability. 8. However, subsequently the Apex Court in Bharat Sanchar Nigam Ltd. v. Union of India 282 ITR 273 has after referring to the decision of Radhasoami Satsang (supra) has observed as under :

"20. The decisions cited have uniformly held that *res judicata* does not apply in matters pertaining to tax for different assessment years because *res judicata* applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of *res judicata* but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision of where the earlier decision is *per incuriam*. However, these are fetters only on a coordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength

*or in some cases to a Bench of superior jurisdiction."*

*(Emphasis Supplied)*

*9. The principle accepted by the Revenue for 10 earlier years and 4 subsequent years to the Assessment Years 2007-08 and 2008-09 was that the entire expenditure is to be allowed against business income and no expenditure is to be allocated to capital gains. Once this principle was accepted and consistently applied and followed, the Revenue was bound by it. Unless of course it wanted to change the practice without any change in law or change in facts therein, the basis for the change in practice should have been mentioned either in the assessment order or at least pointed out to the Tribunal when it passed the impugned order. None of this has happened. In fact, all have proceeded on the basis that there is no change in the principle which has been consistently applied for the earlier assessment years and also for the subsequent assessment years. Therefore, the view of the Tribunal in allowing the respondent's appeal on the principle of consistency cannot in the present facts be faulted with, as it is in accord with the Apex Court decision in Bharat Sanchar Nigam Ltd. (supra).*

*10. Accordingly, the question as proposed do not gives rise to any substantial question of law. Thus, not entertained.*

*We have no reason to deviate from the conclusion that there being no change in material facts or circumstances, the revenue is debarred from taking flickering stands on the same issue taken in assessee's own case in earlier years. In the present case in hand, the revenue is unable to point out any change in facts or circumstances which warrant taking a different view in the impugned AY. Therefore, we find force in arguments as made by Ld. AR, in this regard.*

9.1 Respectfully following the above decision and considering the rule of consistency as there is no change in the facts of the case on hand to the earlier AYs, we dismiss the appeal of the revenue and allow the appeal of the assessee.

11. In the result, the appeal of the revenue in ITA No. 1185/Hyd/2019 is dismissed and the appeal of the assessee in ITA No. 1137/Hyd/2019 is allowed in above terms. Copy of this common order be placed in the respective case files.

Pronounced in the open court on 22<sup>nd</sup> July, 2021.

**Sd/-  
(S.S. GODARA)  
JUDICIAL MEMBER**

**Sd/-  
(L. P. SAHU)  
ACCOUNTANT MEMBER**

Hyderabad, Dated: 22<sup>nd</sup> July, 2021.

*kv*

*Copy to :*

1	<i>Blend Colours Pvt. Ltd., C/o Sidharth Toshnival, Advocate, 3-5-144/5, Eden Garden, Hyderabad.</i>
2	<i>DCIT, Circle -1(2), 7<sup>th</sup> Floor, A-Block, IT Towers, AC Guards, Hyderabad.</i>
3	<i>CIT(A) - 1, Hyderabad.</i>
4	<i>Pr. CIT - 1, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

S.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	