

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "F": NEW DELHI ]**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA No. 1525/Del/2018  
(Assessment Years: 2014-15)

Shri Pramod Goyal, M-217, Shastri Nagar, Gali No. 13, Delhi - 110 052. <b>PAN: AAOPG1186D</b>	Vs.	ACIT, Circle : 35 (1) New Delhi.
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(Appellant)	(Respondent)
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Assessee by :	Ms. Rano Jain, Advocate;
Department by:	Ms. Kirti Sankratyayan, Sr. D.R.;
Date of Hearing :	08/09/2021
Date of pronouncement :	08/09/2021

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

01. This appeal is filed by the assessee against the order passed by the Id. Commissioner of Income Tax (Appeals)-12, New Delhi, dated 17.11.2017 for assessment year 2014-15 raising the following grounds of appeal:-

*"1. That on the facts and circumstances of the case and in law, the Ld. CIT (Appeals) has grossly erred in confirming the addition u/s 68 of the I.T Act, 1961 on account of commission Rs. 2,47,912/- paid to Mrs. Nirmala Shukla on the basis of her statement made in fear and turmoil and ignoring the business model of appellant, evidence and documents placed on record.*

*2. That on the facts and circumstances of the case and in law, the Ld. CIT (Appeals) has grossly erred in confirming the addition u/s 68 of the I.T Act, 1961 on account of commission Rs. 8,60,034/- as she failed to appear before the AO to record statement and ignoring the business model of appellant, evidence and documents placed on record.*

3. *That on the facts and circumstances of the case and in law, the Ld. CIT (Appeals) has grossly erred in confirming the addition of Rs. 1,31,735/- being depreciation claimed on entire block of land and building ignoring the explanation and reasons placed on record.*

4. *That on the facts and circumstances of the case and in law, out of total additions on account of freight and cartage Rs. 159,575/- made by Ld. AO, the Ld. CIT (Appeals) has erred in confirming the addition of Rs. 50,000/- and restricting the relief to Rs. 109,575/-.*

5. *That the appellant craves for leave to amend, alter or take up any additional ground of appeal before or at the time of hearing. “*

02. Brief facts of the case shows that assessee is an Individual engaged in the trading of linen bed-sheets, toys and gift items. The assessee is a proprietor of two different concerns. Assessee filed its return of income on 28.11.2014 at Rs.93,75,210/-. The case of the assessee was picked up for scrutiny. The ld. Assessing Officer found that assessee has incurred commission expenditure and, therefore, assessee was asked to produce the persons to whom the commission was paid. The assessee produced certain persons and, therefore, the payment of commission was accepted as genuine in those cases. However, in the case of two persons, namely, Mrs.Nirmala Shukla to whom commission of Rs.2,47,912/- and Mrs. Swati Gupta to whom commission of Rs.8,60,034/- is made were disallowed. Mrs. Nirmala Shukla was produced before the ld. Assessing Officer and her statement was also recorded. In the case of Mrs. Swati Gupta was not produced before the Assessing Officer. The assessee was also asked to show that how the depreciation of land is allowable which was claimed by the assessee of Rs.1,31,735/-. The Assessing Officer held that depreciation of land is not allowable and, therefore, the disallowance of depreciation of Rs.1,31,735/- was made. Certain other disallowances were also made. However, they are not agitated before us and, therefore, same do not deserve the mention. Consequently assessment order under Section 143(3) of the Income Tax Act, 1961 (the Act) was passed on 29.03.2016 determining total income of the assessee at Rs.1,24,40,350/-against the returned income of Rs.93,75,210/-.
03. The assessee preferred an appeal before the ld. CIT (Appeals) wherein all the above three disallowances were confirmed. Therefore, assessee is in appeal before us.
04. Ground No. 4 of the appeal was not pressed and, therefore, same is dismissed.
05. Ground No. 1 of the appeal is against disallowance of commission of Rs.2,47,912/- paid to Mrs. Nirmala Shukla. The brief facts of the case

shows that the Id. Assessing Officer at the time of examining the details of the commission expenditure asked the assessee to produce Mrs. Shukla. The statement of Mrs. Shukla was recorded and the Id. Assessing Officer was of the view that while going through the statement of Mrs. Shukla it was not at all supportive of the claim of the assessee that she has been working as a commission agent of the assessee. Assessing Officer noted that she had forgotten the names of the parties. At the time of recording of the statement she was also cross-examined by the AR of the assessee and, therefore, the addition was made. Before the Id. CIT (Appeals) the arguments of the assessee were rejected and he held that assessee should fulfill the conditions prescribed under Section 37 of the Act. If the commission expenses are genuine it has to be proved by the assessee by producing the details that the agent had actually rendered the services. Mrs. Shukla could not elaborate her efforts to satisfy the Assessing Officer that she had genuinely put in efforts to contact the buyers. He further held that the payment by account-payee cheque or tax deduction at source made thereon does not prove the genuineness of the services rendered by the agents. Therefore, he confirmed the disallowance. Ld AR submitted that On examination of statement of Mrs. Nirmala Shukla placed at page No. 46 of the paper-book it is clear that she has done her work through her son being an old lady, she is aware of the product sold, the name of the sellers, percentage of commission and intricacies of the business and, therefore, the Id. Assessing Officer has incorrectly drawn adverse inference. She referred to the history of the assessment of the assessee and submitted that the assessee is paying commission to this lady. Starting from the assessment year 2009-10 till assessment year 2015-16 and most of the assessments have been framed under the provisions of Section 143(3) of the Act wherein commission paid to this lady Mrs. Nirmala Shukla has been allowed by the Assessing Officer as deduction. Therefore, she submitted that the inference drawn by the AO for the solitary assessment year 2014-15 could not have disallowed the commission payment. She further referred to each of the assessment years and the amount of commission expenses paid to Mrs. Nirmala Shukla for those years. She also submitted the copy of the commission expenditure for those years where the name of Mrs. Nirmala Shukla appears. Therefore, she supported that the disallowance made by the Id. Assessing Officer deserves to be deleted.

10. The ld. DR vehemently supported the order of the ld. lower authorities and submitted that when the commission agent does not know the address of the parties and further the amount of commission paid was also explained in vague manner and further the nature of services rendered by the commission agent and rendering of service is in itself doubt, the lower authorities have rightly disallowed the same.
11. In the rejoinder the ld. AR reiterated the same facts and submitted that for assessment year 2010-11 the ld. Assessing Officer has issued notice under Section 133(6) to Mrs. Nirmala Shukla, which was replied by her and accepted by the Assessing Officer in subsequent year could not have taken a different view.
12. We have carefully considered the rival contentions and perused the orders of the lower authorities. We find that Mrs. Nirmala Shukla was produced before the ld. Assessing Officer. In her statement, she confirmed that she is working as a commission agent for the assessee and selling the goods mainly in Kirti Nagar and Tri Nagar. She also referred the name of the parties to whom she has sold the goods as the commission agent. She also explained the nature of the business of the assessee as well as also explained the details of the fabric used as well as the quantum of the fabric. She also confirmed that she has received the payment by cheque. She answered to question No. 12 and o gave the address of one party to whom the goods are sold. In the cross examination she also correctly stated the percentage of the commission received by her. However, she could not give the address of some of the parties. She also said that she is doing this activity with support of her son. Importantly the commission is paid to this lady for assessment years 2009-10 to 2016-17 and out of these assessment years, for four years the assessment has been made under Section 143(3) of the Act where no disallowance has been made on this count. Furthermore, for assessment year 2016-17 the Assessing Officer issued notices under Section 133(6) of the Act to this lady, who replied and the AO was satisfied and did not make any disallowance while passing assessment order under Section 143(3) of the Act. Therefore, it is apparent that in earlier years as well as in subsequent years the payment of commission made to this lady was accepted by the ld. AO as allowable expenditure. Therefore, minor inconsistencies in the statement when the commission recipient has explained broadly the nature of services, goods dealt with in , rate of commission and the buyer and the seller, the

statement is required to be read as a whole. In view of this, we do not find any reason to sustain the orders of the lower authorities. Accordingly, we direct the Id. Assessing Officer to delete the disallowance of Rs. 2,47,912/- on account of commission paid to Mrs. Nirmala Shukla. Accordingly, ground No. 1 of the appeal is allowed and the orders of the lower authorities are reversed.

13. The second ground of appeal is against the disallowance of commission of Rs.8,60,034/- paid to Mrs. Swati Gupta. The Id. Assessing Officer has disallowed the same as assessee could not produce her before the Id. AO. Assessee has produced the confirmation of the above lady. The Id. CIT (Appeals) for the similar reasons as mentioned on commission payment to Mrs. Nirmala Shukla confirmed the disallowance.
14. The Id. AR referred to page No. 61A of the paper-book where confirmation of Mrs. Swati Gupta about the receipt of commission is mentioned. Reiterating the similar arguments as were advanced in the case of disallowance of commission to Mrs. Nirmala Shukla, she submitted that in assessment years 2015-16 and 2016-17 the commission was paid to Mrs. Swati Gupta and the Id. Assessing Officer for both these years in assessment proceedings under Section 143(3) of the Act did not make any disallowance.
15. The Id. DR submitted that Mrs. Swati Gupta was not produced before the Assessing Officer, therefore, the identity of this lady was not confirmed and further merely because the payment has been made through account payee cheque and tax has been deducted thereon does not make any expenses allowable under Section 37 of the Act.
16. We have carefully considered the rival contentions and find that in the subsequent assessment proceedings for assessment years 2015-16 and 2016-17 when the Id. Assessing Officer has accepted the commission payment made to Mrs. Swati Gupta amounting to more than Rs.8 lakhs approximately for both the years and no disallowance has been made, merely because the assessee could not produce her before the Id. Assessing Officer the disallowance cannot be made. It is not the case of the Revenue that in subsequent years also the assessee was asked to produce her and did not produce. In view of this, we do not find any merit in the disallowance of commission paid to Mrs. Swati Gupta of Rs.8,60,034/-. Accordingly, we reverse the orders of the lower authorities and direct the

Assessing Officer to delete the above disallowance. Ground No. 2 of the appeal is allowed.

17. Ground No. 3 of the appeal is with respect to the confirmation of disallowance of depreciation of Rs.1,31,735/-.
18. Brief facts shows that the assessee has claimed depreciation of Rs.1,35,175/-, which was examined by the Id. Assessing Officer and it was found that it is claim on land. Hence, this disallowance was made. Before the Id. CIT (Appeals) the assessee submitted that after erection of the building land does not remain land and becomes building. The assessee has claimed depreciation on factory building, which may have the cost of land. The Id. CIT (Appeals) confirmed the above disallowance holding that assessee could not submit any details about the component of the land and the factory building separately and, therefore, he confirmed the disallowance.
19. Before us the Id. AR referred to page 4 of the paper book which is the computation of the total income filed by the assessee and submitted that the assessee has only claimed depreciation on factory building and not on the portion of the land. On the specific question by the Bench to show where the cost of land is shown and how I is stated that no depreciation is claimed on cost of land on which factory building is constructed, it was not confirmed by the Id. AR that the amount of factory building shown in the statement of depreciation no cost of land is included. In view of this, we set aside this issue back to the file of the Id. Assessing Officer with direction to the assessee to show what is the cost of land included in the block of factory building and then allow depreciation only on the written down value of the factory building at prescribed percentage. It is clear that no depreciation on land is allowable under the Income Tax Act. Accordingly, ground No. 3 of the appeal is allowed, for statistical purposes.
20. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 08/09/2021.

-Sd/-

**( KULDIP SINGH )**  
**JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: 08/09/2021.

\*MEHTA\*

Copy forwarded to:

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi