



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE**

**BEFORE S/SHRI C.M. GARG, JUDICIAL MEMBER AND  
MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.97/Ind/2020**  
Assessment Year : 2012-13

Mushtak Khan, 98, Nandanvan, Indore.	Vs.	ITO 2(3), Indore
PAN/GIR No.ACTPK 0068 R		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

**ITA No.98/Ind/2020**  
Assessment Year : 2012-13

Anamta Mushtak Khan, 98, Nandanvan, Indore.	Vs.	ITO 2(3), Indore
PAN/GIR NoAXFPK 3006 N		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri Niranjan Purender, CA  
Revenue by : Shri P.K.Singh, SR DR

**Date of Hearing : 29 /7/ 2021**  
**Date of Pronouncement : 29/ 9 /2021**

**ORDER**

**Per Bench**

Both the appeals filed by the assessee against the separate order of the CIT(A)-III, Indore dated 15.11.2019 for the assessment year 2012-13.

2. Facts and issue in both the appeals are identical. Therefore, as a lead case, we take up for adjudication ITA No.97/Ind/2020 for the

assessment year 2012-13 in the case of Mushtak Khan and the decision will apply mutatis-mutandis in the case of Anamta Khan in ITA No.98/Ind/2020.

3. The only effective issue for adjudication in the grounds of appeal is that the Id CIT(A) erred in restricting the relief upto 75% of the expenses claimed, resulting to addition of Rs.3,85,125/- under the head discount expenses.

4. The facts of the case are that the assessee is a licensed stamp vendor. The assessee filed the return of income on 23.9.2012 declaring business income of Rs.8,04,664/-. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed commission/discount payment to the tune of Rs.15,40,500/-. It was submitted before the AO that the purchaser generally approaches the stamp vendor through advocates or consultant to get discount and for this process, the assessee allowed discount about 50% to the clients to generate high turnover. The Assessing Officer did not find the submission of the assessee acceptable as the claim of the assessee is not supported by documentary evidence. The AO, accordingly, disallowed the commission expenditure of Rs.12,24,600/-.

5. On appeal, the Id CIT(A) following the decision of this Bench in the case of the assessee for A.Y. 2010-11, restricted the disallowance to 25%. Still aggrieved, the assessee is in appeal before us.

6. Ld counsel for the assessee submitted that the books of accounts of the assessee are audited and same are verified by the AO. The AO did not reject the books of accounts but made the addition on the basis of surmises and suspicion. He submitted that before making addition, the Assessing Officer could not verify the confirmations furnished by the assessee as to the rebates given by the assessee to various clients. He submitted that besides this, the Id CIT(A) has restricted the disallowance to 25%, which is not proper.

7. Replying to above, Id DR supported the order of the Id CIT(A).

8. We have heard the rival submissions and perused the record of the case, inter alia, paper book filed by the assessee. We find that the Id CIT(A) after considering the decision of the Tribunal in assessee's own case for the assessment year 2010-11, on similar facts and issue, restricted the disallowance to 25% and confirmed balance 75% disallowance. We find that the Tribunal has discussed the issue at length and allowed 25% disallowance, by observing as under:

"8. We have heard rival contentions and perused the records placed before us. Though the assessee has raised multiple grounds running from Ground No. 1 to 7 but the sole grievance is against the finding of Ld. CIT(A) confirming the disallowance of commission expenditure of Rs. 10,10,287/- claimed by the assessee to have been paid to various customers/registry consultants purchasing the stamp papers.

9. We observe that the assessee is into this business as stamp vendor since last many years. For the year under appeal i.e. financial year 2009-10 the gross receipt from sale of non judicial stamp papers stood at Rs.12,76,87,770/- and gross revenue from sale of judicial stamps at

Rs.46,05,000/- . Gross profit of Rs.20,20,574/- have been disclosed and after claiming various indirect expenses including the impugned commission expenses of Rs.10,10,287/- the net profit of Rs.5,29,897/- has been disclosed and offered to tax. Ld. A.O has not pointed out any mistake/error in the figures of purchase, sales, stock, indirect income and other indirect expenses except the commission expenditure of Rs.10,10,287/-. Books of accounts are duly audited by a Chartered Accountant.

10. Now as far as the expenditure for commission of Rs.10,10,287/- is concerned assessee's claim is that the growth in this line of business solely depends on adopting commercial trade practice and to follow the system prevalent in this line of business of selling the stamp papers with requires that in order to retain and attract the customers, commission/discount to be passed on to customers and clients through registry consultants, since these professionals are the back bone limbs of this business. Ld. Counsel for the assessee also pleaded before us that the licencing rules does not prohibit the vendor to lower the stamps face value, however sale of stamps above the face is prohibited and complete records of stamp purchased and sold are maintained.

11. We also observe that the Ld. Counsel for the assessee while referring to the paper book mentioned about tax returns, computation of income of around 10 registry consultants showing such discount/ commission as their income in their returns which is further supported by few affidavits.

12. Now before us two facts are placed. On one hand the assessee has placed all financial statements, stamp sale registers showing the claim of commission expenditure along with financial statements, income tax returns, affidavits of various registry consultants and also showing the register entering date wise entry of commission paid as and when the stamps are sold. On the other hand the only allegation made by the Ld. A.O is that the claim of commission is not supported by any documentary evidence. It is true that each and every entry of commission payment the assessee has not provided the details and the same seems to be impractical because the entries of commission payment are multiple times in a day and it is not practically possible to take a receipt from each and every person who may be either a registry consultants or the customer actually using the stamp for himself. However one cannot deny the fact that the person who is coming to purchase the stamp from a stamp vendor is conscious of the fact that the stamp vendors are earning some commission/income from sale of stamp paper. There being multiple stamp vendors, the customer has a liberty/option to purchase stamp paper from the stamp vendor who gives maximum commission or parts with maximum profits embedded in the stamp value. One of the well known business principle is that for increasing the gross revenue the profit margin needs to be reduced and same seems to be the situation of the assessee.

13. We therefore in the given facts and circumstances of the case and being fair to both the parties are of the considered view that out of the

total disallowance of Rs.10,10,287/-, disallowance of commission to the extent of 25% i.e. at Rs.2,52,572/- shall be justified to cover the deficiency of not maintaining necessary vouchers and acknowledgement receipts at the end of the assessee for paying commission to the persons purchasing the stamp from him. We accordingly order so and set aside the finding of both the lower authorities and partly allow assessee's appeal by sustaining disallowance of commission expenditure at Rs.2,52,572/-.

15. In the result appeal of the assessee is partly allowed. "

9. Ld A.R. could not controvert the findings of the Tribunal by submitting that the decision is varied by any higher forum. In view of above, we find that the Id CIT(A) has restricted the disallowance after considering the decision of the Tribunal. Hence, we find no reason to interfere with the order of the Id CIT(A), which is hereby upheld.

10. In the case of Abnamta Khan, the AO has disallowed commission of Rs.12,24,600/- and the Id CIT(A) has restricted the disallowance to Rs.3,06,150/-. In line with our decision in the case of Musthan Khap, we uphold the findings of the Id CIT(A) and dismiss the ground of the assessee.

11. In the result, both the appeals of the assesses are dismissed.

Order pronounced u/s.34(4) of I.T.Rules, 1963 on 29/09/2021.

Sd/-  
**( MANISH BORAD )**  
**ACCOUNTANT MEMBER**

Sd/-  
**( CHABNDRA MOHAN GARG )**  
**JUDICIAL MEMBER**

Indore ; Dated 29/ 09 /2021  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellants: Mushtak Khan, 98, Nandanvan,  
Indore/ Anamta Mushtak Khan, 98, Nandanvan,  
Indore
2. The Respondent. ITO 2(3), Indore
3. The CIT(A)-III, Indore,
4. Pr.CIT- III, Indore
5. DR, ITAT, Indore
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**