

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

**माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI VIKAS AWASTHY, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
 (Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No. 6619/Mum/2019  
 (निर्धारण वर्ष / Assessment Year: 2013-14)

<b>Laxmi D. Gupta</b> <b>(formerly known as Anita D. Gupta)</b> D 1/10, Ujala Building, St. Pious X CHS Ltd. , Nahur Road, Mulund(W), Mumbai-400 080	<b>बनाम</b> <b>/ Vs.</b>	<b>ITO – 29(1)(1)</b> C/10 Bandra Kurla Complex, Mumbai-400 051
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AKCPG-1506-B</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Chetan Karia – Ld. AR
<b>Revenue by</b>	:	Shri Brajendra Kumar – Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	30/09/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	08/10/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of order of learned Commissioner of Income-Tax (Appeals)-40, Mumbai [CIT(A)], dated 29/07/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) on 22/02/2018. The grounds raised by the assessee read as under: -

1. The Learned Commissioner of Income Tax (appeals) erred in confirming addition/disallowance of Rs.40,98,192/- made by the Assessing Officer.

- 2) The Learned Commissioner of Income Tax erred in holding that the assessee has failed to establish identity genuineness and business expediency of commission paid.
- 3) The Learned Commissioner of Income Tax (Appeals) erred in holding that the assessee has not deducted TDS on commission payment as required by section 40(a)(ia).

As evident, the sole grievance of the assessee is disallowance of Rs.40.98 Lacs.

2. Having considered factual matrix and rival arguments, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3.1 The material facts are that the assessee being resident individual is stated to be engaged in distribution of SIM cards and mobile recharge coupons of M/s Unitech Wireless India Pvt. Ltd. (Uninor) under proprietorship concern namely M/s Drishti Enterprises. During assessment proceedings, upon perusal of financial statements, it was noted by Ld. AO that the assessee debited commission of Rs.40.98 Lacs. The assessee explained that she was purchasing the SIM cards and recharge vouchers from Uninor and selling them to around 250 retailers. Uninor was providing incentive to retailers to achieve sale target. However, Uninor would credit the account of the assessee with incentive and deduct TDS u/s 194H. Upon actual payment to the retailers, the account of the assessee would be debited. Thus, the amount of incentive was merely routed through the ledger of the assessee. However, no incentive or commission was received from the company to be paid to the retailers. The same was merely book entries for incentive paid by Uninor directly to the retailers.

3.2 However, noticing that the assessee claimed the TDS credit of Rs.5.99 Lacs on commission received from Uninor, the explanation was

rejected. Since the assessee failed to establish the identity of the person to whom the commission was paid, the same was to be disallowed u/s 37(1). The same would also be disallowable u/s 40(a)(ia) for want of deduction of tax at source (TDS). The stand of Ld. AO, upon confirmation by Ld. CIT(A), is in further challenge before us.

4. The prime arguments of Ld. AR are that the assessee works as distributor for telecom service provider. The telecom service provider remunerates the assessee distributor and scores of retailers by way of commission and incentives. However, the commission paid by telecom service provider directly to retailer is first credited to ledger account of the assessee in the books of accounts and payment made by the telecom service provider is debited to the account of the assessee distributor. The amount is paid to retailers directly and the assessee has no control or say in the matter. The assessee only receives commission or incentive due to it as distributor. To match the ledger account of the assessee with the telecom service provider, the assessee has created mirror image of the ledger and passed similar entries. The entries of commission paid to retailers were mere book entries and no actual transactions were carried out by the assessee. We find that as per confirmation letter of Uninor (page no.29 of the Paper Book), Uninor has paid commission to retailer for Rs.39.57 Lacs, the working of which has been given on page no.15 of the paper book. It could be seen that the commission paid by Uninor to retailers was Rs.35.61 Lacs which was further marked-up by TDS of 10% so as to arrive at gross amount of Rs.39.57 Lacs. It could be noted that the commission has directly been paid by Uninor to the retailers but the same is routed through the ledger account of the assessee. The assessee's account is first credited by the

amount of incentive payable to the retailers and thereafter, the account is debited upon actual payment by Uninor to the retailers. Uninor would credit the amount with gross amount and debit the account with actual amount paid to the dealer, balance being deduction of tax at source from the account of the assessee. To match the ledger of Uninor in books of account, the assessee has created mirror image and recorded the transactions in similar manner. Therefore, the amount is credited as well as debited to the Profit & Loss Account. However, the assessee had no control over such payment and reflected the transactions in a manner so as to match the same with the ledger of Uninor. The incentive was directly paid by Uninor to the retailers. Therefore, the disallowance as made by Ld. AO u/s 37(1) as well as alternatively u/s 40(a)(ia) do not meet our acceptance. By deleting the same, we allow the appeal.

5. The appeal stand allowed in terms of our above order.

*Order pronounced on 8<sup>th</sup> October, 2021.*

**Sd/-**

**(Vikas Awasthy)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 08/10/2021  
Sr.PS, Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**