

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC-2” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 6832/DEL/2019**

**[Assessment Year: 2014-15**

Raj kumar Singh, F-25A, Gali No. 19, Laxmi Nagar, Mangal Bazar, New Delhi-92 PAN- AVDPS9138B	<u>Vs</u>	Asstt. Commissioner of Income Tax Circle-58(1), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	<b>None</b>	
<b>Respondent by</b>	<b>Sh. Om Prakash, Sr. DR</b>	
<b>Date of hearing</b>	<b>11.01.2022</b>	
<b>Date of pronouncement</b>	<b>19.01.2022</b>	

**ORDER**

**PER KUL BHARAT, JM:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-37, New Delhi, dated 29-05-2019, pertaining to the assessment year 2014-15. The assessee has raised following grounds of appeal:

- “(i) The Ld. Commissioner of Income Tax (Appeals) has done injustice by dismissing the appeal against the order of Assessing Officer u/s 143(3) of the Income-tax Act, 1961.*
- “(ii) The information was called up by the ACIT from the company as per the provisions of the Section 133(6) of the Income-tax Act, 1961. In response, the company claimed that the commission is paid by it but there is no details available with them to whom the commission*

*ispaid. The statement is contradictory in itself as if the company pays the commission then it must have the details.*

- (iii) Moreover, Ld. ACIT has issued Remand Report as similar to cases u/s 144 (Ex-parte Decision). He has neither informed us about the information called up, nor gave us reasonable opportunity to present the case before him. The Decision was made in haste.*
- (iv) The CIT(A) failed to recognize the facts presented before him after issuance of Remand Report. And, passed the order in hastiness & eventually resulted in injustice with the Assessee.”*

2. No one appeared on behalf of the assessee at the hearing. It is seen from the record that the notices sent by way of speed post have been returned with the remark “left” by the postal authorities. Under these circumstances the appeal was taken up for hearing in the absence of the assessee.

3. The facts giving rise to the present appeal are that in this case the assessee filed his return of income declaring income at Rs. 22,06,188/- on 30.11.2014. The case was selected for scrutiny assessment and the assessment u/s 143(3) of the Income-tax Act, 1961, hereinafter referred to as “the Act”, was framed vide order dated 30.1.2016. The Assessing officer, during the course of assessment, observed that the assessee had claimed commission expenses of Rs. 22,67,618/- and incentives and gift items for retailers expenses of Rs. 4,06,469/-. The Assessing Officer asked the assessee to furnish the details of the parties who have been paid commission and the incentives and gift items. However, the assessee failed to

furnish the requisite details. In the absence of the details, the Assessing Officer made addition of Rs. 26,74,150/- and assessed the income at Rs. 48,80,340/-.

4. Aggrieved against the order of Assessing Officer the assessee preferred appeal before the learned CIT(Appeals). The learned CIT(Appeals) after considering the submissions sustained the addition. Now the assessee is in appeal before this Tribunal.

5. Learned Sr. D.R. supported the orders of authorities below and submitted that the assessee failed to furnish supporting evidence in respect of his claim regarding commission expenses and incentives and gift items for retailers expenses. He submitted that it was incumbent upon the assessee to provide supporting evidences.

6. I have heard the learned DR, perused the material on record and gone through the orders of the authorities below. The only effective ground raised in this appeal is against sustaining the addition relating to commission expenses and incentives and gift items for retailers expenses. The contention of the assessee is that he was not provided sufficient opportunity to represent his case and also the authorities below have misdirected themselves in appreciating the facts of the case.

7. From the record it is seen that the learned CIT(A) had sought remand report from the Assessing Officer in respect of the submissions made by the assessee.

After considering the remand report, the learned CIT(Appeals) has given a finding of fact by observing as under:

*“7.1 The copy of the remand report received handed over to the appellant for rejoinder. The Ld. AR of the appellant submitted the reply vide letter dated 24.05.2019. I have carefully examined the finding of the AO in the assessment order as well as in the remand report, the submission of Ld. AR. The first submission of the AR in which the explanation about the modus operandi of payment of commission to retailers are explained. The Ld. AR stated that there is no role of distributor in paying commission to retailer. I find that so far as payment of commission is concerned, this fact has been accepted by the AO after making enquiry from Vodafone Idea Ltd. However, Vodafond Idea Ltd. submitted in response to 133(6) that the appointment of retailers are done by the distributors. The issue involved in this case is genuineness of the commission, incentive and gift items paid to retailers. The appointment of retailers is done by the appellant therefore the appellant should have name and addresses of the retailers. On making eququiries during the assessment proceeding on the list submitted by the appellant, the AO has provided these name and addresses of retailers as bogus and non-genuineness. For claiming of any deduction in this case expense in the nature of commission, incentive and gift items paid to retailers, the onus lies on the appellant to prove that the expenses claimed are genuine. The appellant grossly failed on this front. No reply against the enquiries made by the AO is submitted at the assessment stage or appellate stage. The submission of the Ld. AR is general and does not speak anything about the enquiries made by the AO. Nothing has been brought on record by the appellant to controvert the finding of the AO in the assessment order as well as in the remand report.*

*7.2. In view of the aforesaid discussion, I find the finding of the AO is in order and do not find any reason to interfere in the order of the AO. Therefore, the addition made by the AO of Rs. 26,74,150/- (Rs. 2,26,7681+ Rs. 4,06,469/-) on account of commission expenses and incentives and gift items for retailers, is confirmed. Therefore, these grounds of appeal are dismissed.”*

8. The finding recorded in para 7.1 of the order of learned CIT(A) is not rebutted by the assessee by placing contrary material before me. Under these facts and in the absence of the supporting evidences, I do not see any reason to interfere in the finding of the authorities below. The same is hereby affirmed. The grounds in this appeal are devoid of any merit.

9. The appeal of the assessee is dismissed.

Sd/-  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*Madan PalVerma\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

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