

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.2214/Del/2019
Assessment Year: 2015-16

Union Rubber Mills Plot No. 716, Sector- 37, Part-2, Gurgaon Haryana -122001 PAN No.AAAFU3332K (APPELLANT)	Vs	ACIT Circle – 4 (1) Gurugram (RESPONDENT)
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Appellant by	Sh. Vinod Kumar Garg, CA Ms. Kavita Gupta, CA
Respondent by	Sh. Umesh Takyar, Sr. DR

Date of hearing:	28/03/2022
Date of Pronouncement:	30/03/2022

ORDER

PER N. K. BILLAIYA, AM:

This appeal filed by the assessee is preferred against the order of the CIT(A)-1, Gurgaon dated 11.01.2019 for A.Y.2015-16.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.17,78,188/- on account of commission paid to partner's relatives.

3. Briefly stated the facts of the case are that the assessee is a manufacturer of rubber and plastic components which are used in the Automobile industry and White Goods industry. The return for the year was filed electronically on 30.09.2015 declaring total income of Rs.37,49,310/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee.

4. During the course of the scrutiny assessment proceeding and on perusal of the tax audit report the AO noticed that the assessee has made payments to persons specified u/s. 40A(2)(b) of the Act. and have claimed these payments as allowable expenses. The details of such payment is as under :-

"1. From perusal of the tax audit report of the assessee for A.Y. 2015-16, it is observed that the assessee company has made the following payments to persons specified u/s 40A(2)(b) –

Name of Related party	Relation	Payment made (Rs.)	Nature of transaction
Preeti Jain	Partner's Wife	2,81,193	Commission
Preeti Jain	Partner's Wife	66,536	Interest
Shashi Jain	Partner's Wife	2,81,193	Commission
Shashi Jain	Partner's Wife	1,93,431	Interest
Sandeep Jain HUF	Partner's HUF	2,26,883	Interest
Sandeep Jain HUF	Partner's HUF	2,28,149	Interest
Sambhav Jain	Partner's Son	6,07,901	Interest - Compt
Sambhav Jain	Partner's Son	5,10,000	Salary
Jinesh Jain	Partner's Son	6,07,901	Commission
Jinesh Jain	Partner's Son	5,40,000	Salary

5. The assessee was asked to furnish details of commission payments and details of the work carried out by the various parties thereby earning the commission. The details were

submitted vide reply dated 07.11.2017. On perusing the details the AO was of the opinion that the assessee has failed to furnish /justify the allowability of commission and accordingly made the disallowance of Rs.1170287/- on account of commission paid.

6. The assessee agitated the disallowance before the CIT(A) but without any success.

7. Before us the counsel for the assessee stated that the correct figure is Rs.1778188/- as considered by the CIT(A). It is the say of the counsel that the assessee has been paying commission in earlier years also but no adverse inference has been drawn in respect of the payment of the commission. The Counsel further stated that the assessee has deducted the tax at source on quarterly basis and it cannot be said that the payments have been made at the end of the financial year. The counsel further stated that the recipients are tax payers and have paid taxes on the commission earned by them and there is no loss to the revenue.

8. Per contra the DR strongly supported the findings of the AO.

9. We have carefully considered the orders of the authorities below. The undisputed fact is that the disallowance has been made invoking the provisions of section 40A (2)(b). It is also not in dispute that the AO has not brought any evidence/ comparable

case to show that the payment of commission is excessive or unreasonable. Without bringing any comparable case on record the action of the AO is not justified. All the recipients are taxpayers and have paid taxes on the commission earned by them which is evident from their respective income tax returns filed in the paper book. The Hon'ble High Court of Delhi in the case of Dr. R. N. Goyal 177 taxman 0374 on identical situation have upheld the order of the Tribunal wherein the Tribunal has deleted the disallowance on the ground that the payments were neither excessive or unreasonable.

10. Considering the facts of the case in totality we do not find any merit in the additions made by the AO we accordingly direct the AO to delete the impugned addition.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 30.03.2022.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

NEHA

Date:-30.03.2022

Copy forwarded to:

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

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	28.03.2022
Date on which the typed draft is placed before the dictating Member	28.03.2022
Date on which the typed draft is placed before the Other member	28.03.2022
Date on which the approved draft comes to the Sr.PS/PS	28.03.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	28.03.2022
Date on which the fair order comes back to the Sr. PS/ PS	28.03.2022
Date on which the final order is uploaded on the website of ITAT	31.03.2022
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	