

आयकर अपीलीय अधिकरण न्यायपीठ रायपुरमें।  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
RAIPUR BENCH, RAIPUR**

**(Through Virtual Court)**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER  
AND  
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No. 258/RPR/2017**

**निर्धारण वर्ष / Assessment Year : 2013-14**

M/s. Porwal Industries  
Porwal House, C-11, Sector-2,  
Devendra Nagar, Raipur (C.G.)  
PAN : AAGFP0530J

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer-3(3),  
Raipur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, AR  
Revenue by : Shri Gitesh Kumar, DR

सुनवाई की तारीख / Date of Hearing : 07.03.2022  
घोषणा की तारीख / Date of Pronouncement : 05.04.2022

**आदेश / ORDER****PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals)-1, Raipur, dated 29.06.2017, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act'), dated 06.03.2016 for assessment year 2013-14. Before us the assessee has assailed the impugned order on the following solitary ground of appeal:

"1. Ld. CIT(A) erred in confirming disallowance of Rs.8,29,120/- made by the AO on account of commission to agents, without appreciating the facts of the case properly. The disallowance was made by the AO on extraneous reasons. The disallowance made by the AO and confirmed by the CIT(A) is arbitrary, illegal and not justified."

2. Succinctly stated, the assessee firm which is engaged in the business of wholesale trading of crude coal tar and other tar products, had e-filed its return of income for the assessment year 2013-14 on 27.09.2013, declaring an income of Rs.7,93,570/-. The return of income filed by the assessee was processed as such u/s. 143(1) of the

Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. During the course of the assessment proceedings, it was, inter alia, observed by the Assessing Officer that the assessee's "Net Profit" rate (NP rate) had witnessed a decline as in comparison to those for the last two preceding years. On being queried as regards the comparative decline in the profit, it was submitted by the assessee that the same was, inter alia, due to higher commission outgo to its agents, as during the year under consideration they had also undertaken marketing activities. Observing, that the commission expenses paid by the assessee during the year under consideration i.e, Rs. 10.40 lac had witnessed manifold increase of more than 5 times as in comparison to that of Rs. 2 lac for the immediately preceding i.e, A.Y 2012-13, the Assessing Officer did not find favor with the steep rise in the aforesaid expenditure. It was observed by the Assessing Officer that the increase in the commission expenditure was not commensurate with the miniscule increase of 5.44% of its sales during the year under

consideration. On the basis of his aforesaid observations, the Assessing Officer rejected the explanation of the assessee that the comparative increase in the commission expenses during the year was primarily for the reason that marketing activities were also undertaken by the agents to secure sales/business. After rejecting the aforesaid claim of the assessee the Assessing Officer restricted the increase in the commission expenditure in the same ratio i.e, in which the sales for the year under consideration had increased as in comparison to those of the immediately preceding year i.e., A.Y 2012-13. Accordingly, the Assessing Officer restricted the assessee's claim for deduction of commission expenditure to Rs. 2,10,880/- and disallowed its claim for deduction of the balance amount of Rs. 8,29,120/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT (Appeals), but without any success.

5. The assessee being aggrieved with the order of the CIT (Appeals) has carried the matter in appeal before us.

6. We have heard the Ld. Authorized Representatives of both the parties, and perused the orders of the authorities below and the material available on record. Admittedly, it is a matter of fact borne from record that the GP/NP rates of the assessee had witnessed a fall as in comparison to those of the immediately two preceding years. As regards the increase in the commission expenditure during the year under consideration i.e, in comparison to that claimed by the assessee in the immediately preceding year i.e., A.Y.2012-13, the assessee on being queried had categorically stated before the AO that the same had occasioned, for the reason, that in order to secure its sales /business it had during the year got the marketing done through its agents. We find that the aforesaid explanation of the assessee had summarily been rejected by both the lower authorities i.e., without referring to any such material which would substantiate that the assessee's claim for deduction of commission expenditure was either found to be bogus; or was not incurred wholly and exclusively for the purpose of its business. On the contrary, we find that it is observed by the CIT (Appeals) that there is no doubt as regards the payments

made by the assessee firm to the aforementioned parties i.e., the agents, but the expenditure had been disallowed by the Assessing Officer for the reason that no evidence of service received by the assessee which would have resulted in improvement of its business is discernible from records.

7. We have given a thoughtful consideration to the aforesaid issue in hand, and are unable to persuade ourselves to subscribe to incongruous basis adopted by the lower authorities for disallowing the assessee's claim for deduction of commission expenses. As is discernible from the record, the assessee in the course of the proceedings before the CIT(Appeals) had placed on record confirmations of the commission agents as 'additional evidence', which were admitted by him. On a perusal of the orders of the lower authorities, we find that the genesis of the disallowance by the lower authorities of the assessee's claim for deduction of commission expenses is that the increase in the said expenditure did not satisfy the "benefit test" i.e, is not accompanied with a corresponding increase in

the sales. At this stage, we may herein observe, that as per the mandate of law the allowability of an assessee's claim for deduction of an expenditure which may had witnessed an increase as in comparison to that of the preceding year is not dependant upon a corresponding increase in the sales/profits during the year, but solely on the fact that as to whether or not the same had been incurred by the assessee wholly and exclusively for the purpose of its business and; that the same is not in the nature of a capital expenditure; nor an expenditure incurred in the personal field; nor an expenditure incurred for any purpose which is an offence or prohibited by law. Interestingly, we find that not only both the lower authorities had by erroneously referring to the "benefit test" disallowed the assessee's claim for expenditure, but most surprisingly and rather beyond comprehension had restricted the said claim for deduction in the same ratio i.e., 5.44% in which sales for the year under consideration had witnessed an increase as in comparison to that of the immediately preceding year. We are unable to comprehend much the less subscribe to the aforesaid novel method adopted/subscribed to by the lower authorities, which we would not

hesitate to observe is nothing short of an arithmetical formula adopted by the Assessing Officer for partly declining the assessee's claim for deduction of commission expenses. Although a steep rise of an expenditure during a year would raise serious doubts as regards the genuineness of the claim for deduction of the same by the assessee, but then, as observed by us hereinabove, the allowability or not of the same has to be tested as per the mandate of Section 37 of the Act; and not on the touchstone of satisfaction of the "benefit test" as had been done by the A.O in the present case. Backed by our aforesaid observations, we are of the considered view that as the disallowance of the assessee's claim for deduction of commission expenses is not based on any material or observations which would lead to an irrefutable conclusion that the said expenditure was either not genuine or; was not incurred wholly and exclusively for the purpose of assessee's business within the meaning of section 37(1) of the Act, therefore, we set-aside the order of the CIT(Appeals) and delete the addition of Rs.8,29,120/- (supra) made by the Assessing Officer.

8. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 05<sup>th</sup> day of April, 2022.

Sd/-  
**JAMLAPPA D BATTULL**  
**(ACCOUNTANT MEMBER)**

Sd/-  
**RAVISH SOOD**  
**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 05<sup>th</sup> April, 2022  
SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,  
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

**// True Copy //**

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	25.03.2022	Sr.PS/PS
2	Draft placed before author	25.03.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		