

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

**Before Sh. Challa Nagendra Prasad, Judicial Member
And
Shri Anadee Nath Misshra, Accountant Member**

**ITA No. 8906/Del/2019
Assessment Year: 2016-17**

Manuj Khanna, C-15, Green Park Extention, New Delhi	Vs	ITO, Ward-32(4), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AGUPK8701A		

**Assessee by : Sh. S. K. Gupta, CA
Revenue by : Sh. Anuj Garg, Sr. DR**

Date of Hearing: 28.06.2022	Date of Pronouncement: 30.06.2022
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ORDER

Per Anadee Nath Misshra, Accountant Member:

(A) This appeal has been filed by the Assessee against the impugned appellate order dated 31.10.2019 of the Ld. Commissioner of Income Tax (Appeals)-11, New Delhi (for short the Id CIT(A). The grounds of appeal are as under:-

- "1. That the order of the learned appellate authority is arbitrary and against law and facts of the case.
2. That the Ld. Commissioner of Income Tax (Appeals)-11 has wrongly, arbitrarily and against the law and facts of the case, confirmed the addition of Rs 10,93,940/- out of total addition of Rs 54,69,699/- being 20% of total expenses on adhoc basis without assigning any reason thereof."

(B) In this case the assessment order dated 19.12.2018 was passed wherein total income was assessed at Rs. 62,46,335/- as against the returned income of Rs. 7,76,640/-. In the aforesaid assessment order, an addition of Rs. 54,69,699/- was made on

account of disallowance of commission expenses amounting to Rs. 54,69,699/-.

(B.1) The Assessee filed appeal against the aforesaid assessment order before the Id CIT(A). Vide impugned appellate order dated 31.10.2019 of the Id CIT(A), an amount of Rs. 43,75,759/- was deleted out of aforesaid addition of Rs. 54,96,699/- and the remaining amount of Rs. 10,93,940/- was confirmed. The relevant portion of the order of the Id CIT(A) wherein she has justified the confirmation of addition of Rs. 10,93,940/-; is reproduced as under:-

"....., it is also noted that appellant has not submitted copy of any of .the agreements neither has explained how the commission has been charged. It is seen that sales commission charged by e-commerce companies are on account of sales commission fee charge, fixed fee charge, collection fee charge, shipping fee charge, Reserve Shipping fee charge, Return and Replacement charges. However, no bifurcation of the commission expenses under the various categories has been given neither the same has been justified by filing copy of any of the agreements. Therefore, in view of the facts of the ease, appellant has not fully justified the claim of commission expenses. As a result, disallowance is restricted to 1/5" of the expenditure made on account, of commission payment. As a result, addition of Rs. 10,93,940/- is sustained and balance amount of Rs.43,75,759/- is deleted. Accordingly, ground no. 2 is partly allowed."

(C) The present appeal has been filed by the Assessee against the aforesaid order dated 31.10.2019 of the Id CIT(A) wherein, the aforesaid addition of Rs. 10,93,940/- was confirmed. In the course of appellate proceedings before ITAT a paper book containing the following particulars was filed from the Assessee's side:-

S. No.	PARTICULARS
1	Assessment Order dated 19.12.2018
2	Order of Commissioner of Income Tax (Appeals)

	<i>-11, New Delhi</i>
3	<i>Copy of Form No. 35 filed before CIT (Appeals) - 11, New Delhi</i>
4	<i>Copy of acknowledgement of ITR filed for A.Y. 2016-17</i>
5	<i>Copy of audited accounts of assessee for the A.Y. 2016-17</i>
6	<i>Copy of Ledger Account of "Commission Expenses" of Rs. 64,72,831/- in the books of account of the assessee</i>
7	<i>Copies of submissions made before CIT(A)-11 dated 16.10.2019 along with copies of Invoices raised by various service providers for commission etc. during the A.Y. 2016-17 (F.Y. 2015-16)</i>
8	<i>Copies of submissions made before CIT(A)-11 dated 31.10.2019</i>
9	<i>Power of Attorney in our favour</i>

(C.1) At the time of hearing before us, the Id Authorised Representative (for short, "the Id AR") for the Assessee submitted that the allegation leveled by the Id CIT(A) that certain details were not furnished, is incorrect. He drew out attention to the contents of the paper book to show that all the relevant details have already been filed before the Id CIT(A). In particular he drew our special attention to the copies of the invoices raised by the service provider to highlight that all the relevant details were made available to the Id CIT(A) and to the Id AO in the form of the invoices. He submitted that the Id CIT(A) has overlooked the details that were already before her in the form of the invoices, in the course of appellate proceeding before the Id CIT(A). The Id AR for the Assessee submitted that issue in dispute regarding the aforesaid amount of Rs. 10,93,940/- may be set aside to the file of the Id CIT(A) for fresh order in accordance with law after considering the relevant materials and after providing reasonable opportunity to the Assessee.

(C.2) The Id Sr. Departmental Representative (for short, "the Id DR") for Revenue was in agreement with the aforesaid submissions of the Id AR of the Assessee.

(C.2.1) We have heard both sides. We have perused the materials on record. We find that the materials available before the Id CIT(A) have not been fully considered by her before passing the impugned appellate order dated 31.10.2019; and that the order has been passed by Id CIT(A) overlooking the relevant details filed from the Assessee's side, in the form of invoices. In view of the foregoing, and as representatives of both sides; the Id AR for the Assessee and the Id Sr. DR for Revenue; are in agreement with this, we set aside the issue regarding aforesaid amount of Rs.10,93,940/- to the file of the Id CIT(A) for fresh order in accordance with law after due consideration of all relevant materials and after providing reasonable opportunity to the Assessee.

(D) In the result, the present appeal before us is considered as partly allowed for statistical purposes.

Order Pronounced in the Open Court on 30/06/2022.

-Sd/-
(Challa Nagendra Prasad)
Judicial Member

-Sd/-
(Anadee Nath Misshra)
Accountant Member

Dated: 30/06/2022

Ajay Kumar Keot, Sr. PS
Copy forwarded to:

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

ASSISTANT REGISTRAR