

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No. 8449/DEL/2019 (A.Y 2011-12)

Shri Gaurav Bahl, C/o. Kunal Aggarwal & Associates, 226, 2 nd Floor, JMD Megapolis, Sohna Road, Sector : 48, Gurgaon, Haryana - 122 001. PAN No. AEVPB5362H (APPELLANT)	Vs.	ACIT, Gurgaon. Haryana. (RESPONDENT)
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Assessee by :	N o n e
Department by:	Md. Gayasuddin Ansari, Sr. D. R.;

Date of Hearing	18.07.2022
Date of Pronouncement	19.07.2022

ORDER

PER YOGESH KUMAR US, JM

This appeal is filed by the assessee for assessment year 2011-12 against the order of the Id. Commissioner of Income Tax (Appeals)-1, Gurgaon, dated 10.07.2019.

2. The assessee has raised the following substantive ground of appeal:-

“ That on the facts and in the circumstances of the case the ld. CIT (A) was not justified in sustaining the addition of Rs.7,84,073/- on account of disallowance of commission. “

3. Brief facts of the case are that, the assessee filed return of income on 16/11/2011 declaring in the total income of Rs. 87,71,570/- for Assessment Year 2011-12. The Ld. A.O found that, the assessee debited an amount of Rs. 58.84 lacs towards commission in its P & L Account and to verify the same, asked the assessee to file the names and address of the parties to whom the commission was given and the reason for such payments. The assessee filed list of names and address of such parties. Finally, the assessment order came to be passed treating the amount of Rs. 7,84,073/- has not genuine in the absence of any confirmation being available on record out of total amount of Rs. 58.84 lacs.

4. The assessee has preferred an appeal before the CIT(A). Since, the assessee has not produced any documents, the Ld.CIT(A) dismissed the Appeal ex-parte. Aggrieved by the same, the assessee preferred an appeal in ITA No. 191 (ASR)/2017, the Tribunal has vide order dated 27/07/2017 remanded the matter to the file of CIT(A) to decide the matter on merits after giving opportunities to the assessee. During the course of second round of appellate proceedings before the CIT(A) the assessee filed a request for admission of additional evidence vide letter dated 30/01/2019 by proposing to produced the confirmation of Mr. Vijay Maira and Sh. Anjali Kumar, but the Ld.CIT(A) without satisfying with the documents provided by the assessee, even in respect of two persons, i.e. Mr. Vijay Maira and Sh. Anjali Kumar dismissed the assessee appeal by confirming the disallowance made by the A.O.

6. We have heard the parties, perused the material on record and gave our thoughtful consideration. The total disallowance made by the A.O is Rs. 7,84,073/- out of which the commission expenses paid to Mr. Vijay Maira and Sh. Anjali Kumar which totally constitutes a sum of Rs. 63,90,32/-. The details of the same are hereunder:-

S. No.	Name	PAN	Commission Paid	Ch. No/Date	TDS deducted & deposited
1	Anjali Kumar	AQAPA6477H	429900	000442/04.03.2011	42990
2	Vijay Maira	AALPM7812R	209132	000377/10/07.2017	20913

7. The assessee has provided the confirmation of the above two persons, it is seen that the payments have been made by cheques and the TDS has also been deducted while making those payments. Therefore, the Ld.CIT(A) while dealing with additional evidence produced by the assessee, should have excluded the above two payments.

8. The remaining three commission expenses claimed by the assessee are made in thousands which is as under:-

i.	Sh. Sunil Jain	Rs. 85,500/-
ii.	Sh. Shyam Basu	Rs.27,600/-
v.	Smt. Rashmi Gupta	Rs. 31,941/-
	Total	<u>Rs. 145,041</u>

Looking into the quantum of the amount, this being the second round of litigation before the Tribunal, by taking lenient view on the above three commission entries, we delete the disallowance made by the A.O.

9. Accordingly, the Grounds of Appeal of the assessee are allowed and the disallowance made by the A.O which was confirmed by the CIT(A) is hereby deleted.

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

Order pronounced in the open court on 19th July, 2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 19 07/2022

*R.N**

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI