

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.1660, 1659, 1658, 1657, 1656, 1655, 1654, 1653, 1652 & 1651/M/2021  
Assessment Years: 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13,  
2013-14, 2014-15 & 2015-16**

M/s. JK Files (India) Ltd., 101, New Hind House, N.M. Marg, Ballard Estate, Mumbai – 400 001 <b>PAN: AAACH9523J</b>	Vs.	Dy. Commissioner of Income Tax, Central Circle – 8(1), 6 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Madhur Agrawal, A.R.  
Revenue by : Shri Prabhat Kumar Gupta, D.R.

Date of Hearing : 15 . 07 . 2022  
Date of Pronouncement : 20 . 07 . 2022

**ORDER**

**Per Amarjit Singh, Accountant Member:**

All these 10 appeals are filed by the assessee against the different orders of the Commissioner of Income Tax (Appeals)-15, Mumbai on identical facts and similar issues. Therefore, for the sake of convenience all these appeals are adjudicated together by taking the ITA No.1660/M/2021 for A.Y. 2006-07 as lead case and its findings will be applicable mutatis mutandis to all the other appeals of the assessee.

2. Grounds taken by the assessee are reproduced as under:

***“On the facts and in the circumstances of the case, the Ld. CIT(A) erred, in law, by upholding the action of the AO, wherein additions were made by the AO to the income of the appellant u/s 153C in absence of any incriminating material found during the course of search action taken u/s 132 of the Act, The action of the CIT(A) suffers from legal infirmity and therefore the appellant prays that the total income be restored as it existed immediately prior to the search action.*”**

**Ground No. 2:**

***On the facts and circumstances of the case and in law, the H'ble CIT(A) erred by confirming the disallowance of commission paid to M/s Lokesh Enterprises amounting to Rs. 66,000. The appellant prays that the said action of H'ble CIT(A) may please be held as bad-in-law and be deleted.***

**Ground No. 3:**

***Without prejudice to Ground 2 above, on the facts and circumstances of the case and in law, the H'ble CIT(A) erred in sustaining the disallowance of commission paid to M/s Lokesh Enterprises when the Ld. A.O. himself allowed commission paid to M/s Lokesh Enterprises during the Assessment Proceedings for AY 2016-17. The appellant prays that the said action of H'ble CIT(A) may please be held as bad-in-law and be deleted.***

**Ground No.4:**

***On the facts and circumstances of the case, the H'ble CIT(A) erred by confirming the disallowance of commission paid to M/s Goyal Enterprises amounting to Rs. 36,000. The appellant prays that the said action of H'ble CTT(A) may please be held as bad-in-law and be deleted.***

**Ground No. 5:**

***Without prejudice to Ground 4 above, on the facts and circumstances of the case and in law, the H'ble CIT(A) erred in sustaining the disallowance of commission paid to M/s Goyal Enterprises when the Ld. A.O. himself allowed commission paid to M/s Goyal Enterprises during the Assessment Proceedings for AY 2016-17. The appellant prays that the said action of H'ble CIT(A) may please be held as bad-in-law and be deleted.***

***The appellant craves leave to add, omit or alter ground of appeal before or during the hearing of the appeal."***

3. Facts in brief are that search and seizure action was carried out under section 132 of the Act in the case of M/s. Raymond Ltd. on 30.11.2011. A notice under section 153C of the Act was also issued in the case of the assessee stating that certain documents belonging to the assessee were found from the search premises. On the basis of evidence gathered during search and survey proceedings of M/s. Raymond Ltd. enquires were made by the AO in the case of M/s. Raymond Ltd. and its group concerns in order to verify the genuineness of commission payment made by the assessee company. The AO has sent letters to the Director of Investigation Wing to carry out investigation

on the selling agents. After verification of the claim of the assessee and findings of the Directorate of Investigation, services rendered by the selling agents have been examined. The AO observed that rendering of services in respect of the agents M/s. Lokesh Enterprise, Delhi and M/s. Goyal Enterprise, Delhi could not be proved. The AO further stated that replies have been received from the Director of Investigation Wing, Delhi stating that summons were sent by courier and by hand through inspector to these two parties, however, these parties neither attended the office nor filed submission with the Assistant Director of Income Tax, Investigation, Delhi. In response, the assessee has submitted before the AO that the notices were sent to these two agents at a very short period and also they were not given enough time to make responses to the query asked by the Assistant Director of Income Tax, Investigation, Delhi. The assessee has also submitted that just because agents were unable to file the detail it did not prove that services were not rendered by them to the assessee company. The assessee has also filed documents in support of its claim of services rendered by the selling agents. However, the AO stated that assessee failed to produce sufficient evidences to prove the services rendered by the selling agents and in the absence of detail filed by the agents, commission payment debited by the assessee was disallowed. Accordingly, the commission payment made to M/s. Lokesh Enterprise, Delhi and M/s. Goyal Enterprise, Delhi of Rs.0.66 lakhs and Rs.0.36 lakhs respectively for the year under consideration was disallowed and added to the total income of the assessee.

4. Aggrieved assessee filed appeals before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeals of the assessee reiterating the facts stated by the AO.

5. During the course of appellate proceedings before us the Ld. Counsel has vehemently contended that M/s. Lokesh Enterprise, Delhi and M/s. Goyal Enterprise, Delhi were the selling agents of the assessee for the last more than 30 years. The Ld. Counsel also submitted that during the assessment proceedings in A.Y. 2016-17 the AO had made the enquiries from these two agents and allowed the claim of deduction of commission expenses. The Ld. Counsel has also submitted that the AO has not brought on record any incriminating material found pertaining to the assessee to establish that no services were rendered by the commission agents. The Ld. Counsel has also submitted that assessee is not making any direct sale to the parties and all the sales are only made through the del-credere commission agent. In this regard, the assessee has referred the various pages of paper book showing sample invoices as evidence of making sale through only the agents of the assessee company. The Ld. Counsel has also submitted that the AO has not disproved the information submitted by the assessee during the assessment proceedings. The Ld. Counsel also submitted that a very short notices were given to these parties to make response to the summon issued by the Assistant Director of Investigation Wing. Therefore, merely on that basis, making disallowance of commission expenses is not justified.

6. On the other hand, the Ld. D.R. has supported the order of lower authority and contended that if the commission expenses were allowed by the AO in the assessment year 2016-17 that cannot be taken as a basis for allowing the commission expenses for the other years.

7. Heard both the sides and perused the material on record.

8. The solitary issue in the grounds of appeal of the assessee is the disallowance of commission expenses made by the assessee in respect of M/s. Lokesh Enterprise, Delhi and M/s. Goyal Enterprise, Delhi on the ground that

assessee failed to produce sufficient evidences to prove the services rendered by the selling agents. It was also stated that these two agents have failed to make compliance with the summons issued by the Assistant Director of Income Tax, Investigation, Delhi. During the appellate proceedings before us the assessee has filed paper book comprising copies of documents and details of submissions made before the authority below at the time of assessment and appellate proceedings. It is explained that assessee company has been dependent on the services of indenting agents and most of the agents have been associated with the company since many years. During the course of appellate proceedings assessee has given the detail of commission payment to different agents for the different assessment years and it was also explained that these agents perform the function of del-credere agents. If a customer fails to pay the goods ordered the same is recovered/recoverable from the agents. These agents increase the reach in the market by appointing suitable new dealers, implementation of the sales policies of the company and communicating professional scheme etc. to the dealers. They also secure deposits from the dealers and make repayment of the same on closure to the dealers. The assessee has set up a multi tier marketing, selling and distribution function. The dealers, based on the market demand, place an order of the goods required with the indenting agents. After collection of the orders, the indenting agents either forward the orders or email or insert these requirements in the SAP system of the assessee company through a web portal connection given to him. The indenting agents not only follow up on the dispatch of goods but also co-ordinate and actively involve in the collection of payment either through cheques or RTGS. The commission is paid by the assessee company to the selling agents only after collection of payment from the dealers and collection of C-forms. The assessee has also filed selling agency agreement entered into between the assessee company and M/s. Lokesh Enterprise for the territory of Haryana and also filed the similar agreement entered with M/s. Goyal

Enterprise for the territory of Rajasthan. It is also noticed as per clause 9 of the agreement with the agent M/s. Lokesh Enterprise, the agent has to keep a deposit of Rs.20.15 lakhs with the assessee company as a security deposit and the agent has also to maintain minimum credit balance in current account with the assessee company. We have also gone through the copies of invoices placed in the paper book and it is noticed that it is categorically mentioned in the sale invoices that the sales are made through agents M/s. Lokesh Enterprise and M/s. Goyal Enterprise respectively. This is also undisputed fact that the AO has made enquiries for assessment year 2016-17 for payment of commission to selling agents and accepted the claim of the assessee of payment of commission to M/s. Lokesh Enterprise and M/s. Goyal Enterprise during assessment year 2016-17. The assessee has also submitted detail of payment made to these agents on sample basis along with particulars of invoice number and name of the party to whom the sales were made. It is observed that without disproving the aforesaid material facts and information provided by the assessee the AO has disallowed the claim of commission simply on the basis that these two agents have not made compliance to the summons issued by the ADIT. The AO and the CIT(A) have also not controverted the submissions of the assessee that very short time was given to the agents for making response to the summons issued by the Assistant Director of Investigation Wing, Delhi. Even there is a no reference to any show cause notice or any penal action initiated to compel the attendance of the agents on failure to make compliance with the summons issued. Regarding the claim of the assessee that no incriminating material found during the course of search, it is noticed that AO has not specifically made any reference of any incriminating material found during the course of search related to the impugned disallowance of commission in respect of aforesaid two parties. Even during the course of appellate proceedings before us the Revenue could not demonstrate that there was any incriminating material found during the

course of search action which substantiate the addition made during the course of assessment proceedings. Looking into the above facts and circumstances, we consider that the decision of the Ld. CIT(A) is not justified after taking into consideration the volume of information and documents as supra submitted by the assessee which remained uncontroverted by the AO. Therefore, all the grounds No.1, 2, 3, 4 & 5 of the assessee are allowed. Accordingly, the appeal of the assessee is allowed.

**ITA Nos.1659, 1658, 1657, 1656, 1655, 1654, 1653, 1652 & 1651/M/2021 for Assessment Years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 & 2015-16 respectively**

9. Since the facts and issue involved in these appeals are identical to the issue decided above in ITA No.1660/M/2021 for A.Y. 2006-07, therefore the findings of ITA No.1660/M/2021 for A.Y. 2006-07, mutatis mutandis, would apply to these appeals as well. Accordingly, the appeals of the assessee are hereby allowed.

10. In the result, all the appeals filed by the assessee are allowed.

**Order pronounced in the open court on 20.07.2022.**

**Sd/-  
(ABY T VARKEY)  
JUDICIAL MEMBER**

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 20.07.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.