

आयकर अपीलीय अधिकरण 'सी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.514/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Ayngaran Business Chits Pvt. Ltd. No.51, Kotrampalayam Street, First Floor, Kanchipuram-631 501.	बनाम/ Vs.	ITO Corporate Ward-6(2), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAPCS-1446-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri A. Suraj Nahar (CA) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT) – Ld. DR
सुनवाई की तारीख/ Date of Hearing	:	21-07-2022
घोषणा की तारीख / Date of Pronouncement	:	21-07-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2017-18 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 26-04-2022 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 31-12-2019. The grounds taken by the assessee are as under:

1. The Commissioner of Income-Tax (Appeals) erred in not considering the order passed by the Honble Appellate Tribunal for the Asst. year-2016-17 in ITA NO.3164/CHNY/2019 dated 30/08/2021, in the same case of the assessee on same subject of disallowance of Canvassing commission. If the same was

considered the adhoc disallowance of 10% of Commission paid to canvassing commission made by the CIT (Appeals) does not arise.

2. The Commissioner of Income-Tax (Appeals) considered the Order passed in ITA NO.3164/CHNY/2019 by the Honble Tribunal for the Asst. year-2013-14 and 2018-19 and fully allowed the appeal, whereas on the same issue and subject, the CIT (Appeals) erred in not considering the Order of the Honble Tribunal for the Asst. Year-2017-18.

3. The CIT (Appeals) is erred in not given an opportunity for the Appellant to represent the case and passed the order based on the submissions made on 14/01/2022 and without considering the Order passed by the Honble Tribunal in ITA No.3164/CHNY/2019 for the Asst. Year-2016-17 on the same issue on hand.

4. On the basis of the Above Grounds, it is prayed that the Honble Tribunal, may delete the additions of Rs.9,44,015/- made by the CIT (Appeals) vide his Order dated 26/04/2022 and render justice to the Appellant Company.

2. As evident, the sole grievance of the assessee is adhoc disallowance of commission payments to the extent of 10%. The Ld. AR, at the outset, relied on the decision of this Tribunal in assessee's own case for AY 2016-17 in ITA No.3164/Chny/2019 order dated 30.08.2021. A copy of the same has been placed on record. However, Ld. Sr. DR sought distinction in the facts of this year. The Ld. Sr. DR submitted that in earlier year, it is the finding that rendering of services was not under doubt. However, in this year, Ld. AO has doubted the rendering of the services. Accordingly, Ld. Sr. DR submitted that the aforesaid order is not applicable to this year and the appeal deserve to be dismissed. Having heard rival submissions, our adjudication would be as under.

Assessment Proceedings

3.1 The assessee being resident corporate assessee is stated to be engaged in chit fund business. The assessee paid commission to 23 chit canvassing agents out of which 14 were female agents and rest 9 were male agents. Total of 20 commission agents were close relative of the directors of the assessee company. To verify

the genuineness of payments, summons u/s 131 were issued to few agents and statement was recorded on oath on various dates. However, Ld. AO doubted rendering of services by the agents since the agents did not have past work experience and there was difference in their educational qualifications. No advertisement was given to recruit the agents and no training was given to the agents. All the agents were close relatives and the subscribers introduced by the agents were not known to the agents but they were friends / relatives of the directors. Therefore, Ld. AO held that the contribution of agents in fetching the subscribers was negligible. There was no necessity to pay the commission. In the absence of commission agents, the subscribers would have otherwise also participated in the chits. The commission was not for services but only for the fact that they were close relatives of the directors.

3.2 It was also noted by Ld. AO that similar disallowance was made in AY 2016-17 which was reduced to 10% by first appellate authority. However, the verdict was not accepted by the department. To disallow the same, reassessment proceedings were initiated for AY 2013-14 also. The recorded statement revealed that the agents lacked knowledge of chit business. Accordingly, the commission payment of Rs.68.63 Lacs as paid to female agents was disallowed.

3.3 Proceeding further, Ld. AO also disallowed commission paid to male agents also on the ground of excessive payments disregarding the Board Resolutions furnished by the assessee. The same resulted into another disallowance of Rs.25.76 Lacs out of commission payment of Rs.27.11 Lacs.

Appellate Proceedings

4. During appellate proceedings, the assessee assailed the impugned additions and controverted the findings of Ld. AO. The Ld. CIT(A), taking note of assessee's submissions, examined the supporting documents submitted by the assessee which include Income Tax Returns of all the commission agents, bank statement evidencing payment to the agents, copies of agreement signed with the agents, board resolutions with regard to commission payments, affidavit of all 23 canvassing agents etc. The Ld. CIT(A) concurred that the commission appear to be genuine and fully accounted. However, the payments would fall u/s 40A(2) of the Act. Accordingly, Ld. CIT(A) restricted the addition to 10% which worked out to be Rs.9.44 Lacs. This estimation was in line with the estimation made in first appellate order for AY 2016-17. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. Upon careful perusal of orders of lower authorities, we find that the disallowance as made by Ld. AO and partly confirmed by Ld. CIT(A) is primarily guided by the disallowance made in AY 2016-17. It is undisputed fact that all the agents have offered the commission in their respective tax returns and paid due taxes thereon. All the agents filed affidavit in support of the transaction. The quantum of payment is supported by the board resolutions. The assessee furnished the copies of agreement with agents. As against this, except for mere allegation, there is nothing in the kitty of revenue to establish that the agents did not render the services. The reasons advanced by Ld. AO to doubt the rendering of services have no

sound basis. The reasoning of Ld. AO presume that the agents should be highly qualified, should have adequate experience and they should be well trained before they can earn commission. Another factor to doubt the rendering of services is the fact that most of the agents are close relatives of the directors of the assessee-company. This reasoning overlooks the fact that there are independent agents also which have been paid such a commission. Therefore, Ld. AO, in essence, has invoked the provisions of Sec.40A(2) to make this disallowance. However, no comparable cases have been brought on record to demonstrate that the payments were excessive in nature. In the light of all these facts, the arguments advanced by Ld. Sr. DR that the services were not rendered could not be accepted. Few of the agents were summoned by Ld. AO and all the agents have confirmed the transaction. It is trite law that no addition could be made merely on the basis of allegations, suspicion or mere doubt.

6. Proceeding further, we find that the adjudication of Ld. CIT(A) is primarily guided by first appellate order for AY 2016-17 wherein similar disallowance was estimated at 10%. However, this adhoc disallowance has already been deleted by the coordinate bench of this Tribunal in assessee's appeal ITA No.3164/Chny/2019 order dated 30.08.2021, a copy of which is on record. Therefore, considering the entirety of facts and circumstances including our observation in para-5 above as well as the decision of Tribunal in assessee's own case, we would hold that the adhoc disallowance of 10% is unsustainable in law. We order so. The Ld. AO is directed to re-compute the assessee's income.

7. The appeal stand allowed.

Order pronounced on 21st July, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 21-07-2022
EDN/-

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

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF