

ITA No. 118/KOL/2022
Assessment Year: 2011-2012
Shri Purna Chandra Chakraborty
L/H (son) of Smt. Uma Chakraborty

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C(SMC)' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Manish Borad, Accountant Member**

**I.T.A. No. 118/KOL/2022
Assessment Year: 2011-2012**

Shri Purna Chandra Chakraborty,.....Appellant
L/H (son) of Smt. Uma Chakraborty (Deceased),
C/o. Shri Ranjan Kumar Ghosh,
Vill. & P.O. Basulia,
Mahioshadal, Dist. Purba Medinipur-721628
[PAN: AEPPC7708C]
-Vs.-

Income Tax Officer,.....Respondent
Ward-40(2), Kolkata,
3, Government Place (West),
Kolkata-700001

Appearances by:

Shri Siddarth Agarwal, Advocate, appeared on behalf of the assessee
Shri Anindya Kumar Bandopadhyay, Addl. CIT, appeared on behalf of the Revenue

Date of concluding the hearing : July 21, 2022
Date of pronouncing the order: August 25, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals) dated 17.12.2021 passed for the assessment year 2011-12.

2. The assessee has taken nine grounds of appeal, but her grievance revolves around a single issue, namely Id. CIT(Appeals) has erred in confirming the disallowance of commission payment amounting to Rs.19,15,000/-.

3. Brief facts of the case are that Smt. Uma Chakraborty was running a business of publishing of books. She filed her return of income for A.Y. 2011-12 on 05.03.2012 disclosing total income of Rs.3,55,233/-. The case of the assessee was selected for scrutiny assessment and notices under section 143(2) as well as 142(1) were issued upon the assessee. On scrutiny of the accounts, it revealed to the ld. Assessing Officer that the assessee has debited a sum of Rs.19,15,000/- towards on account of commission, rebate, discounts etc. He directed the assessee to justify such claims. The assessee submitted that the books published by her are being sold at different places, namely village libraries, country side clubs, book fairs particularly in rural areas and she had paid commission to roughly 794 persons /entities. A complete list of all these persons was given to the ld. Assessing Officer. According to the ld. Assessing Officer, he issued notices under section 133(6) to twenty persons and these notices were handed over to the assessee for obtaining the confirmation or other things from the recipients of commission. But the assessee failed to submit such replies and accordingly he disallowed the claim of assessee. He made an addition of Rs.19,15,000/- in the total income of the assessee.

4. During the pendency of proceeding, Smt. Uma Chakraborty died and her son Shri Purna Chandra Chakraborty has been impleaded as the legal heir. He reiterated the stand taken by her mother during the assessment proceedings. The ld. CIT(Appeals) called for a remand report from the ld. Assessing Officer, which was submitted on 13.09.2019. In response to this remand, the assessee has filed written submission, which is available on pages no. 29 to 33 of the paper book. The ld. Commissioner did not accept the contention of the assessee and confirmed the addition.

5. With the assistance of ld. Representatives, we have gone through the record carefully. We find that the assessee is in the business of

publishing books from last many years. She has been claiming commission payment regularly. The Id. Counsel for the assessee placed on record a comparative chart of commission on sales, which reads as under:-

Sl. No.	A.Y.	Sales	Commission	Commission as percentage of sales
1	2009-10	21,981,644	1,815,000	8.26
2	2010-11	25,133,845	1,485,000	5.91
3	2011-12	21,875,268	1,915,000	8.75
4	2012-13	20,647,355	1,866,870	9.04
5	2013-14	14,237,242	869,300	6.11

6. In A.Y. 2012-13, a scrutiny assessment has taken place and commission as percentage of sales at 9.04% was allowed. In this year, this rate of commission on the sales is lower than A.Y. 2012-13. Apart from the above, on perusal of the assessment order would reveal that the Id. Assessing Officer himself did not carry out any exercise. It is not discernable when he served notice under section 143(2) upon the assessee. When he put the assessment machinery in motion? On 07.01.2014, he observed that the notices under section 133(6) were issued on some 20 persons on sample test check basis and these notices were handed over to the assessee. His expectation that the assessee should collect information from all the parties spread over across the Bengal and submitted to him within a short span of time. On the other hand, the stand of the assessee was that it is the Assessing Officer, who should made an enquiry. A perusal of the list of the recipients of commission would indicate that this commission amount is running in between 1,000/- to 4,000/-. This total commission of Rs.19,00,000/- was given to 794 persons/entities. The details of all such customers were submitted to the revenue. It is very difficult for an individual to collect information from the persons, for example, 2,350 /- was paid to Joy Durga

Book Stall, Panchla, Howrah. It is not difficult for the Id. Assessing Officer to find out M/s. Joy Durga Book Stall. Instead of exercise of his power timely and collect information, he put the burden upon the assessee. This type of exercise of the powers can never be appreciated at the end of higher appellate authority. We also find that whole approach of both the revenue authorities is a mechanical instead of conducting any substantive specific enquiries. The Id. Assessing Officer has reproduced the list of twenty parties to whom commission was paid on page no. 4 of the assessment order and observed that notices were issued to these parties under section 133(6) of the Income Tax Act. This finding is factually incorrect. He himself has not issued any notice rather at the fag end of the assessment proceedings. He handed over copies of the notices to the assessee for compliance. This is not the right way to exercise the powers. At serial no. 11 of the list, the address of Principal Officer, Gangadharti Pustakalaya, Sangrampur, Polba, Hooghly is there, he could written a letter to it. If it was written in time, reply may come. On the basis of this sample test check, which was carried out through the assesese, it is not justifiable to make the total disallowances. Therefore, we allow the appeal of the assessee and delete the disallowances of commission amounting to Rs.19,15,000/-.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on August 25, 2022.

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 25th day of August, 2022

*Copies to : (1) Shri Purna Chandra Chakraborty,
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(2) *Income Tax Officer,
Ward-40(2), Kolkata,
3, Government Place (West), Kolkata-700001*

(3) *Commissioner of Income Tax(Appeals), National Faceless
Appeal Centre (NFAC), Delhi*

(4) *The Departmental Representative*

(5) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.