

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 8448/Del/2019
Assessment Year: 2016-17**

Ajay Sharma,
C/o
Kunal Aggarwal & Associates,
226, Second Floor, JMD
Megapolis, Sohna Road,
Sector-48, Gurgaon.
PAN: AEUPS5846J
(Appellant)

Versus ACIT, Circle 61(1),
New Delhi.

(Respondent)

Appellant by : None
Respondent by : Sh. Kanav Bali, Ld. Sr. DR

Date of hearing : 13.10.2022
Date of order : 21.10.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 27.09.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-20, New Delhi (in short "Ld. Commissioner"), u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2016-17.

2. In the instant case, the Assessee, being a general commission agent, had claimed business promotion expenses to the tune of Rs.38,69,675/- @ 12.71% of his total receipts of commission. The Assessing Officer by comparing the claim with the preceding assessment years 2014-15 and 2015-16 and succeeding assessment years 2017-18 and 2018-19, found that the business

promotion expenses claimed were within 1.87% of the gross commission receipts in all those four years whereas in the current year, the same is claimed at the rate of 12.71% and accordingly issued the show cause notice to the Assessee to explain such increase in business promotion expenses along with documentary evidences substantiating the nexus between the business promotion expenses and the commission earned.

2.1 The Assessee in response to show cause submitted as under:

It is neither a general reply to the Assessing Officer to the effect that it is not necessary nor criteria to compare a business promotion expense with the commission earned in a network marketing business when the commission income grows and the person incurred such promotion expenditure to earn such huge amount of commission. The Assessee also claimed that he had been promoted to the post of the President of the company and consequently received some valuable gifts along with appreciation letter from the Chairman and CEO of the Company, therefore, incurred such promotion expenses claimed.

2.12 The Id. Assessing Officer by considering the submission of the Assessee and noticing the fact that the Assessee has failed to furnish any documentary evidence or explanation regarding the increase in business promotion expenses which the Assessee incurred and comparing the percentage of business promotion expenses claimed in the previous and subsequent assessment years, allowed the business promotion expenses at 1.87% of the commission earned, the percentage which was allowed by the then Assessing Officer in assessment year 2015-16. Consequently, the Assessing Officer disallowed a sum of Rs.33,00,283/-.

3. The Assessee being aggrieved challenged the said addition before the Id. Commissioner and claimed that the business promotion expenses cannot be disallowed merely on the basis of surmises and conjectures. Further, the turnover of the Assessee in comparison to the previous years has increased. As the Assessee is engaged in network marketing business, it has to give free gifts to customers and others to get more and more business. The Assessee in support of its claim also submitted decisions of higher Courts.

3.1 The Id. Commissioner rejected the said claim of the Assessee and affirmed the action of the Assessing Officer in allowing the business promotion expenses to the tune of 1.87% being the highest percentage claimed by the Assessee in other years from the commission earned, mainly on the grounds reproduced below:

That in the impugned year, the total commission earned was Rs.3,04,48,786/- whereas in A.Y. 2018-19, the total commission earned was Rs.3,12,65,211/- which is higher and in that assessment year, the Assessee has claimed promotion expenses at 1.58% on the commission earned. The promotion of the Assessee did not indicate or explain the increase in the business promotion expenses by the Assessee. The Assessee has also not furnished any documentary evidence or explanation regarding the increase in the business promotion expenses which he had to incur consequent to such promotion. That the Assessing Officer found that the Assessee submitted long list of several home appliances like toaster, heater and blender to have been purchased by him for business promotion. The Assessee could not establish a direct nexus between such items and the commission earned. During the hearing of appeal also, the Assessee could not explain the reasons for such relatively very high claim of expenses and the nexus between such expenses with the commission earned. The Assessee could not substantiate such inappropriately high business promotion expenses.

4. In spite of issuing notice for hearing on 13.10.2022, the Assessee neither appeared nor filed any adjournment application, hence, in the constrained circumstances, we decided to proceed with the matter as ex parte.

5. We have given thoughtful consideration to the observations and analyzations made by the authorities below in making and sustaining the business promotion expenses at the rate of 1.87% by comparing with four assessment years and taking the maximum percentage claimed. From the orders passed by the authorities below, it clearly appears that the Assessee not only failed to substantiate its claim by furnishing any documentary evidence but also failed to give reasonable and plausible explanation regarding the increase in the business promotion expenses, which he had to incur consequent to such promotion. It is a matter of fact that the Assessee in A.Y. 2018-19 has earned total commission to the tune of Rs.3,12,65,211/- which is absolutely higher than the commission of Rs.3,04,48,786/- earned in the assessment year under consideration, and claimed the promotion expenses at 1.58% only. In the absence of documents, we also failed to understand, as to how the Assessee's business promotion expenses in a particular year jumped to 12.71% instead of 1.58%, 0.89%, 1.87% and 1.87% in A.Ys. 2018-19, 2017-18, 2015-16 and 2014-15 respectively and therefore in our view, percentage claimed @ 12.71% is not justifiable and rightly been disallowed by the authorities below. Hence, in cumulative effect, we are of the considered view that impugned order does not suffer from any perversity, impropriety or illegality and thus inclined not to interfere with the same.

6. In the result, the appeal filed by the Assessee stands dismissed.

Order pronounced in the open court on 21/10/2022.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-

Copy forwarded to:

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

Assistant Registrar
ITAT New Delhi