

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.113/RPR/2021

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Mahendra Singhania
121/3, Sector-3, Geetanjali Nagar,
Raipur (C.G.)-492 001
PAN : ATEPS2487G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(1),
Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sumit Jain, CA
Revenue by : Shri Gitesh Kumar, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.12.2022

घोषणा की तारीख / Date of Pronouncement : 28.12.2022

आदेश / ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 01.09.2021, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 28.03.2016 for assessment year 2013-14. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. The Id. CIT(A), NFAC has erred on facts & in the circumstances of the case in confirming the addition made in the assessment order u/s.143(3) by ITO-2(1), Raipur, CG with respect to commission paid for Rs.27,60,000/- on the grounds that the whole amount was outstanding at the end of the year. Therefore, the order confirming the addition made by the Id. CIT(A) on this issue is unjustified on facts and in law.
2. The Id. CIT(A), NFAC has not appreciated the documents submitted during the course of the appellate proceedings and denied the appellant the principle of natural justice.
3. The Id. CIT(A), NFAC erred on the facts that the appellant had earned commission income (after deduction of TDS) during the year but the actual payment was received in the following year. Therefore, the appellant has discharged its liability of commission payable in the following year on receipt of actual income.
4. The appellant craves to leave, add, amend, alter or modify any of the grounds of appeal either before or at the time of hearing of the case.”

2. Ostensibly, on a perusal of the records it transpires that the appeal filed by the assessee is time barred by 61 days. As per the application filed by the assessee appellant the impugned delay had occasioned because of the nation wide lockdown that was clamped on account of second outburst of covid-19. It is the claim of the assessee that the impugned delay in filing of the appeal was due to circumstances which could neither be attributed to any deliberate conduct or lackadaisical approach on his part. The Ld. DR did not raise any objection to the seeking of condonation of delay by the assessee appellant. After hearing the parties, I am satisfied with the reasons leading to the impugned delay, and considering the order of the Hon'ble Supreme Court of India in Suo Moto Writ Petition (Civil) No.3 of 2020 dated 23.03.2020, which thereafter, had from time to time been modified by the Hon'ble Apex Court vide its order(s) dated 08.03.2021, 27.04.2021, 23.09.2021 and 10.01.2022 admit the present appeal.

3. Succinctly stated, the assessee had e-filed his return of income for A.Y.2013-14 on 02.10.2013, declaring an income of Rs.9,95,530/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

4. During the course of the assessment proceedings, it was observed by the A.O that the assessee during the year under consideration had

against his commission income of Rs.52,27,446/- claimed deduction of commission expenses of Rs.27.60 lac. On a perusal of the records, it was observed by the A.O that not only the assessee had booked the commission expenses against the names of 11 persons on the last date of the accounting year i.e on 31.03.2013, but also the entire amount stood payable in his balance sheet for the year under consideration. Also, it was observed by the A.O that the assessee had in the immediately preceding year i.e. A.Y 2013-14 accounted for a commission income of Rs.2,59,700/- without raising any claim for deduction of any expenditure against the same. On the basis of his aforesaid observations, the A.O holding a conviction that the assessee had booked commission expenses of Rs.27.60 lac (supra) for the purpose of suppressing his real income, thus, disallowed the same and vide his order u/s.143(3) dated 28.03.2016 determined his income at Rs.37,55,530/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.
6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

7. I have heard the ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record.

8. Ostensibly, the assessee had against his commission income of Rs.52,27,446/- raised a claim for deduction of commission expenses of Rs.27.60 lac (supra). Admittedly, it is a matter of fact borne from record that the entire amount of commission expenses claimed by the assessee was outstanding as payable in his balance sheet for the year under consideration. Observing that not only the entire amount of commission expenses booked by the assessee in the name of 11 persons on the last date of the financial year i.e. on 31.03.2013 was payable in his balance sheet for the year under consideration, but also that the assessee had employees to whom salary of Rs. 61,000/- per month was being paid, the A.O was of the view that there was no need for the assessee to have engaged any other person to work on commission basis for him. On the basis of his aforesaid observations the A.O held the entire amount of the assessee's claim for deduction of commission expenditure of Rs. 27.60 lac (supra) as bogus and disallowed the same.

9. On appeal, the CIT(Appeals) observed that as the assessee had failed to prove the identity, capacity and genuineness of the transactions under consideration, therefore, no infirmity did emerge

from the order of the A.O who had rightly disallowed his claim for deduction of commission expenditure of Rs. 27.60 lac (supra). Although, it was observed by the CIT(Appeals) that not only the assessee both in the course of the assessment proceedings as well as before him had failed to establish the identity, capacity and genuineness of the transactions, but as stated by the Ld. Authorized Representative (for short 'AR') for the assessee, the said observation was totally perverse and incorrect. My attention was drawn by the Ld. AR towards a letter dated Nil that was filed by the assessee with the CIT(Appeals), Raipur requesting for admission of certain "additional evidence" under Rule 46A of the Income Tax Rules, 1962, Page 45 of APB. It was averred by the Ld. AR that the assessee had sought for admission of confirmations of all the 11 commission agents in the course of the proceedings before the CIT(Appeals), Page 34-44 of APB. The Ld. AR in order to fortify his aforesaid claim had taken me through the acknowledgement of the Income Tax Department, wherein, it was, inter alia, stated that the confirmations i.e. Annexure-3 (size 1616515 bytes) were uploaded on 19.08.2021 in the course of the proceedings before the CIT(Appeals) vide acknowledgement No. 316223351180821. It was submitted by the Ld. AR that as the assessee was at no stage called upon by the A.O to place on record the confirmations of the 11 commission agents, therefore, for the said reason the same could not be filed before him. In order to fortify

his aforesaid contention my attention was drawn by the ld. A.R to the copy of the “order sheet”, Page 19-20 of APB. Taking me through the said order sheet, it was submitted by the ld. A.R, and, rightly so, that at no stage the assessee was directed to file the aforesaid confirmations. Also, it was submitted by the ld. A.R that there was nothing discernable therefrom, which would reveal that the assessee in the course of the assessment proceedings ever directed by the A.O to place on record the confirmations of the parties concerned. On the basis of his aforesaid contentions, it was averred by the ld. A.R that as the assessee had remained divested of an opportunity to file before the A.O the confirmations of the 11 persons to whom commission of Rs. 27.60 lac (supra) was paid during the year, therefore, he had vide an application under Rule 46A of the Income Tax Rules, 1962 sought for admission of the same before the CIT(Appeals). It was submitted by the Ld. AR that the CIT(Appeals) had not only failed to deal with the application filed by the assessee under Rule 46A, but had in fact came up with a perverse observation that the assessee who was obligated to have filed the confirmations of the commission agents a/w. their PAN had even failed to do so in the course of the proceedings before him. In sum and substance, it was the claim of the Ld. AR that the CIT(Appeals) had grossly erred in not dealing with the assessee’s application under Rule 46A of the Income Tax Rules, 1962.

10. On merits, it was submitted by the Ld. AR that the commission income had accrued to the assessee, a real estate agent, for the services which were rendered by him to M/s. Ultratech Cement Ltd. Raipur for facilitating acquisition of 235 acres of land by the said company. It was submitted by the Ld. AR that as the assessee had for executing the aforesaid work availed the services of 11 persons on a commission basis, therefore, the corresponding commission expenditure that was wholly and exclusively incurred in the course of his business was validly claimed by him as a deduction under Sec. 37(1) of the Act. On the issue that as to why no part of the commission expenses was paid during the year itself, it was submitted by the Ld. AR that though the assessee who was maintaining his accounts as per the mercantile system of accounting had booked the commission expenditure, however, in the absence of having received any part of the commission income of Rs. 52.27 lac (approx.) from M/s Ultratech Cement Ltd. the assessee in absence of any liquid funds could not discharge any part of his outstanding liability towards the commission agents. Elaborating on the aforesaid issue, it was submitted by the Ld. AR that the entire amount of commission expenditure that was payable to the aforesaid persons, was thereafter, on receipt of the amount in the immediately succeeding year from M/s. Ultratech Cement Ltd. was paid by the assessee to the commission agents. On the basis of his aforesaid contentions, it was

averred by the Ld. AR that as the assessee had duly substantiated the factum of having incurred the commission expenditure which was claimed by him as a deduction during the year under consideration, therefore, the disallowance of his claim for deduction of expenditure made/sustained by the lower authorities was liable to be vacated.

11. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities.

12. I have given a thoughtful consideration to the issue in hand, i.e., sustainability of the disallowance of the assessee's claim for deduction of commission expenses u/s. 37(1) of the Act. I find substance in the claim of the Ld. AR that the CIT(Appeals) had grossly erred in not dealing with the assessee's application for admission of the confirmations of the 11 commission agents as an additional evidence under Rule 46A of the Income Tax Rules, 1962. Admittedly, it is a matter of fact borne from record that the assessee had vide his letter dated Nil filed with the CIT(Appeals)-1, Raipur requested for admission of confirmations of the 11 commission agents under Rule 46A(1)(c) and (d) of the Income Tax Rules, 1963, Page 45 of APB. On a perusal of the confirmations of the 11 commission agents against whom the assessee had during the year under consideration booked commission expenditure of Rs. 27.60 lac (supra), I find that the said persons had

duly admitted of having received commission/brokerage from the assessee vide A/c. payee cheques against the land deed that was executed by the assessee during the year under consideration, and had also in their respective confirmations provided their respective PAN nos, Page 34 to 44 of APB. Considering the fact that the CIT(Appeals) had failed to deal with the application filed by the assessee under Rule 46A of the Income-tax Rules, 1962, I am of the considered view that the matter in all fairness requires to be restored to his file, with a direction to re-adjudicate the same after considering the confirmations of the 11 persons that were filed by the assessee before him as additional evidence, Page 34-45 of APB. Accordingly, I set-aside the order of the CIT(Appeals) and restore the matter to his file for re-adjudication in terms of the aforesaid observations. Needless to say, the CIT(Appeals) in the course of set-aside proceedings shall afford a reasonable opportunity of being heard to the assessee.

13. In the result, appeal of the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced under Rule 34(4) of the Appellate Tribunal Rules, 1963 by placing the details on the notice board.

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 28th December, 2022

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur