

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 220/Rjt/2018 &
C.O. No. 29/Rjt/2018
Assessment Year: 2014-15**

The D.C.I.T., Junagadh Circle, Junagadh (Appellant)	Vs	M/s. Mahasagar Travels Ltd., Jayshree Talkies Road, Kalwa Chowk, Junagadh PAN: AABCM4403H
M/s. Mahasagar Travels Ltd., Jayshree Talkies Road, Kalwa Chowk, Junagadh PAN: AABCM4403H (Appellant)	Vs	The D.C.I.T., Junagadh Circle, Junagadh (Respondent)

**Assessee Represented: Shri Samir Bhuptani, A.R.
Revenue Represented: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 02-03-2023
Date of pronouncement : 02-03-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue against the Appellate order dated 22.03.2018 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot, arising out of the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2014-15. The Cross Objection is filed by the assessee as against the above Revenue appeal.

2. The brief facts of the case is that the assessee is a Public Limited Company engaged in the business of undertaking transportation by way of plying buses and taxis. For the Assessment Year 2014-15, the assessee filed its Return of Income declaring an income of Rs. 93,97,181/-. The return was selected for scrutiny assessment, the Assessing Officer found that the assessee has incurred commission expenses of Rs.2,78,47,431/-. Out of the said commission expenses of Rs. 1,64,77,275/- is paid to related parties namely M/s. Mahashakti Tours & Travels Pvt. Ltd. of Rs. 87,56,278/- and M/s. New Shakti Tours & Travels Pvt. Ltd. of Rs. 77,20,997/-. Thus the Assessing Officer invoked Section 40A(2)(b) of the Act and disallowed the commission expenditure of Rs. 1,64,77,275/-. The A.O. also made other disallowances and completed the Assessment.

3. Aggrieved against the Assessment order, the assessee filed an appeal before Ld. CIT(A). The Ld. CIT(A) following the earlier year order passed in the assessee's own case for the Assessment Years 2007-08 and Others deleted the additions as follows:

“...Strongly refuting observation of A.O. it has been argued by the appellant that party-wise' details of commission paid was submitted during the assessment proceedings along with the ledger account of the of the concerned parties. It was argued that appellant has submitted copies of case memo issued by the various agents including the related parties. During the appellate proceedings it was explained by the appellant that it receives services from agents in the form of passengers booking, management of passengers on breakdown etc and for these services commission is paid to these agents at the rate ranging from 5% to 15%. Out of total commission paid of Rs. 27847431/-, AO had disallowed only the commission paid to two related parties of Rs. 16477275/-. AO had pointed out the fact that these related parties were paid commission @ 15% whereas some of the agents were paid at 10% but he had disallowed entire commission paid to these related parties on the ground of insufficient evidences to support this claim. Claim of commission paid to these related concerns with the same rate of 15% in early years have been accepted by department in AY 2013-14. Moresoever disallowance made of only part of commission paid to these sister concern u/s 40A(2)(b) had been fully deleted by CIT(A) & ITAT in AY 2007-08,08-09, 11-12 and AY 2012-13. In present year, the modus operandi of the appellant is same i.e. getting tickets booked by its agents. For these services, appellant is bound to make payments to the agents. AO had not doubted this modus operandi; he had also not doubted the commission paid to non related parties computed on percentage basis of the amount booked but had proceeded to disallow the commission paid to related parties for the same services, these concerns generated more than 55% of the turnover of the appellant; clearly this disallowance is in total disregard of the facts of the case. Appellant had claimed of having submitted before the AO the ledger a/c of all agents, cash memos issued by its agents (including related parties) to the customer, and basis of computation of such commission. In its paper book also appellant had enclosed all these details. Cash memos are clearly suggesting collection against seats booked by the agents and handing over the same to appellant. Cash memos belongs to Mahasagar group i.e. appellant. It is apparent from the cash memos itself. Detailed breakup of entire booking agent-wise and commission paid agent wise was also submitted to the AO. Assessment folders were called for and it reflects that these items were submitted before the AO also. During appellate proceedings appellant brought entire set of cash memos in original for verification. In such circumstances, the only conclusion which can be drawn is that appellant had submitted enough evidences to substantiate its claim of commission paid to the related agents. Moresoever historical acceptance of such expenses as well as no adverse fluctuation in GP/NP for the parent year also support appellant's claim of these expenses being genuine. Hence I do not find any rationale or logic behind the impugned disallowance, the same is deleted. Ground 1 is allowed.”

4. Aggrieved against the same, the Revenue is in appeal before us raising the following Grounds of Appeal:

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of disallowance u/s.40(A)(2)(b) of the I.T. Act, 1961 in respect of commission payment made to related parties.*

1.1 *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition made on account of commission payment, which is nothing but payment by arrangement of passing profit of public limited company to family members of directors and related parties.*

1.2 *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition made on account of commission payment relying on documentary evidences prepared by the assessee the authenticity of which has been doubtful.*

1.3 *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting addition made on account of commission payment, in spite of the fact that the genuineness of the services said to have been rendered by the related parties in procuring business for the assessee had not been proved.*

2. *On the facts of the case and in law, the Ld, C.I.T.(A) ought to have upheld the assessment order of the A.O.*

3. *It is, therefore, prayed that the order of the C.I.T.(A) may be set aside and that of the A.O. be restored to the above extent.*

5. The Ld. D.R. appearing for the Revenue strongly supported the additions/disallowances made by the Assessing Officer and pleaded to uphold the same.

6. Per contra, the Ld. A.R. appearing for the assessee taken us through the Paper Book filed by him and a comparison chart of the related parties rendering services to the assessee as follows:

AY.	Total Turnover	Booking Collection		Commission		% age	
		Mahashakti	New Shakti	Mahashakti	New Shakti	Mahashakti	New Shakti

14-15	2218.66	643.39	569.63	97.29	85.90	15%	15%
13-14	2194.65	405.23	568.73	59.57	85.21	15%	15%
12-13	2148.36	690.24	556.18	103.52	82.75	15%	15%

6.1. Further he brought to our attention to the Co-ordinate Bench decision in assessee's own case in ITA Nos. 385 & 384/Rjt/2011 relating to the Assessment Year 2007-08 wherein the 15% commission paid to M/s. Mahashakti Tours and Travels Pvt. Ltd. were been accepted as per market rate and thereby deleted the disallowance made by the Assessing Officer. Thus the Ld. A.R. pleaded that the additions made by the Assessing Officer is liable to be deleted.

7. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. The Co-ordinate Bench of this Tribunal considered the above issue of Commission paid to related party and deleted the same observing as follows:

13. On appeal, the CIT(A) deleted the disallowance made its Asstt. Year 2008-09 by observing that the AO had called for the memos of Mahashakti Tours and Travels P. Ltd. from the assessee during the assessment proceedings, from where, the rate of commission paid to Mahashakti Tours and Travels P. Ltd. He observed that the assessee was paying commission of 12% to 15% to various booking agents. He also observed that the assessee was paying higher commission to those agents, who carried out substantial booking of tickets for assessee. The assessee paid 15% commission to Newshakti Travels, whose contribution to assessee's business may be compared with M/s. Mahashakti Tours & Travels P. Ltd., and therefore, the AO held the market rate of commission for booking tickets to be considered at 15% where the booking agent had carried out substantial booking. The assessee paid booking commission of Rs.2,07,94,513/- including commission payment of Rs.72.75 lakhs to Mahashakti Tours & Travels P. Ltd. for booking amount of Rs.16.24 crores for the assessment year under appeal. The average rate of commission paid by the assessee, which includes substantial amount of commission paid to Mahashakti Tours & Travels P. Ltd., was about 12% to 13%, and

within the market rate of 15%. Hence, he deleted the addition made by the AO.

14. For the Asstt. Year 2008-09, the CIT(A) observed that the assessee had paid 15% commission to Newshakli Travels, whose contribution to assessee's business may be compared with the contribution of Mahashakti Tours & Travels Pvt. Ltd. He observed that Mahashakti Tours & Travels Pvt. Ltd. was charging the same commission of 15% from unrelated parties like R.K. Travels and Srinath Travels, therefore, the market rate of commission for booking tickets can be considered at 15% where the booking agent has carried out substantial booking. The assessee paid commission of Rs. 75,12,177/- to Mahashakti Tours & Travels Pvt. Ltd, at the rate of 15% in the assessment year under appeal, which was as per the market rate. Therefore, he deleted the disallowance of Rs. 53,71,411/- made by the AO.

15. The D.R. relied on the order of the A.O.

16. The A.R. of the assessee supported the order of the CIT(A).

17. We find that as per the provision of section 40A(2)(b) of the Act, the AO has been empowered to disallow those payments made to relatives, which are found to be in excess of fair market value of services, for which, the payments were made. We find that the CIT(A) has correctly applied the law and gave a categorical finding that the rate at which the commission was paid by the assessee to M/s. Mahashakti Tours & Travels P. Ltd, was within the prevailing market rate. No defect in the finding of the CIT(A) could be pointed out by the DR. Therefore, we do not find any good reason to interfere with the order of the CIT(A) on this issue, which is confirmed and the ground of the appeal of the Revenue is dismissed.

8. Respectfully following the above decision of the Co-ordinate Bench, we have no hesitation in upholding the order passed by the Ld. CIT(A) who deleted the additions of Rs. 1,64,77,275/- made by the Assessing Officer u/s. 40A(2)(b) of the Act, which are not found to be in excess of fair market value of services made by third parties.

9. Thus there is no merits in the grounds raised by the Revenue, therefore the same are liable to be rejected.

10. In the result, the appeal filed by the Revenue is hereby dismissed.

11. The Ld. Counsel for the assessee submitted that the only issue in the Cross Objection is late payment of ESI and PF, which is now settled by the Hon'ble Supreme Court against the assessee. Therefore he is not pressing the Cross Objection filed by the assessee.

11.1. Recording the same, the C.O. filed by the Assessee is hereby dismissed.

12. In the result, the appeal filed by the Revenue and the Cross Objection filed by the Assessee are dismissed.

Order pronounced in the open court on 03-03-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 03/03/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट