

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री डॉ. मनीष बोराड, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष  
**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER**

आयकर अपील सं./ITA No.: **3339/Chny/2019**

निर्धारण वर्ष / Assessment Year: 2011-12

Pharma Edge  
No. 25/12, Canal Road,  
Kilpauk, Chennai – 600 010.  
**[PAN: AAHFP-7196-H]**

Joint Commissioner of Income  
Tax,  
Business Circle –VII,  
Chennai-600 034.

अपीलार्थी की ओर से/Appellant by : Shri. Uttamchand Jain, CA  
प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 19.04.2023  
घोषणा की तारीख/Date of Pronouncement : 21.04.2023

**आदेश / O R D E R**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER:**

This appeal at the instance of assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-12, Chennai, dated 30.09.2019 which is arising out of the order u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") dated 31.03.2014 framed by Id. JCIT, Range-VII, Chennai.

2. The grounds of appeal raised by the assessee reads as follows:

1 For that the order of the learned Commissioner of Income tax (Appeals) and Assessing Officer is contrary to law, facts and circumstances of the case and in any case is opposed to the principles of equity, natural Justice and fair play.

2 For that the Learned Commissioner of Income Tax (Appeals) has erred in confirming the additions made by the Assessing officer under the facts and circumstances of the case.

3 For that the Learned Commissioner of income Tax (Appeals) has erred in confirming the addition made for proportionate Interest out of the Interest paid under the facts and circumstances of the case as a correct Computation

4 For that the Learned commissioner of Income Tax (Appeals) has erred in confirming the addition made out of the Commission paid for want of Deduction of Tax under the facts and circumstances of the case

5. For that the Learned commissioner of Income Tax (Appeals) has erred in confirming the addition made out of the Commission paid under the facts and circumstances of the case

6. For that the Learned commissioner of Income Tax (Appeals) has erred in confirming the addition made out of the Sales promotion Expenses under the facts and circumstances of the case

7. For that the Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition made out of the Sales promotion Expenses under the facts and circumstances of the case

8 for that the Learned commissioner of Income Tax (Appeals) has erred in confirming the addition for service Tax under the facts and circumstances of the case

9 For that the Learned commissioner of Income Tax (Appeals) has erred in confirming the addition made out of

*the Travelling Expenses under the facts and circumstances of the case*

*10. For that the Learned Commissioner of Income Tax (Appeals) has erred in not passing a speaking order on all the grounds of appeal raised.*

3. Further, the assessee has raised the following additional grounds of appeal:

*The Appellant craves the leave of the Hon'ble Appellate Tribunal to file the following additional ground of appeal. The appellant submits that the failure to raise this ground was due to inadvertence. The appellant further submits that this omission is not intentional and craves the leave of the Hon'ble Appellate Tribunal to admit this additional ground.*

*2. For that the order passed by the Joint Commissioner of Income Tax U/s.143(3) is bad in law, illegal and without jurisdiction and / or in excess of / jurisdiction under the facts and circumstances of the case.*

*3. For that the Joint Commissioner of Income erred in passing an order U/s. 143(3) as he lacked jurisdiction to pass such order in the absence of an order U/s. 120(4)(b) conferring such jurisdiction under the facts and circumstances of the case.*

*4. For that the Notice U/s. 143(2) was issued by the Assistant Commissioner of Income Tax and in the absence of order U/s. 127, the order passed by the Joint Commissioner of Income Tax is without jurisdiction and needs to be squashed under the facts and circumstances of the case*

*5. For that the assessment proceedings are initiated by one officer and assessment order is passed by another officer is bad in law and illegal under the facts and circumstances of the case*

*The existing ground Nos.2 to 10 may be renumbered as ground Nos. 6 to 14 respectively.*

4. Facts in brief are that the assessee is a partnership firm engaged in the business of marketing and commission agent and is an All India Marketing Agent for generic division of lupin limited. Income of Rs. 2,33,72,772/- declared in the return filed electronically on 29.09.2011 for AY 2011-12. The case was selected for manual scrutiny followed by serving of notice u/s. 143(2) and 142(1) of the Act. In the course of assessment proceedings, the Id. AO called for various details to examine the expenditure claimed by the assessee and noticed that assessee has borrowed funds on higher interest rate, but has given loans and advance at lower rate which calls for disallowance of interest payment. As regards commission payment, Id. AO noticed that commission has been paid to the partner without deduction of tax at source and in case of commission paid to some other persons no details were available. Further, Id. AO noticed that the assessee has claimed sale promotion expenditure of Rs. 75,73,160/-, which were incurred towards giving gold coins/articles to the distributors, but the bills produced were for purchase of gold jewellery, and the reply called from the various vendors was also not found to be satisfactory. Other than this, Id. AO also examined travelling expenses and the claim of service tax

penalty and made various disallowance computing the income of the assessee in the following manner:

**Business:**

<i>Total Income as per assessee computation</i>		<i>23372772</i>
<b>Add:</b> <i>As discussed above</i>		
<i>Proportionate interest payment on borrowed fund</i>	<i>1685987</i>	
<i>Out of commission payment</i>	<i>575000</i>	
<i>Out of sale promotion</i>	<i>7573160</i>	
<i>Service Tax Penalty</i>	<i>20702</i>	
<i>Out of travelling expenses</i>	<u><i>2439039</i></u>	<u><i>12296888</i></u>
<i>Assessed Total income</i>		<i>35669660</i>

5. Aggrieved, assessee preferred an appeal before the Id. CIT(A) on all the disallowances made by the Assessing Officer, but failed to get any relief on any of the issues and Id. CIT(A) dismissed the appeal of the assessee.

6. Aggrieved, assessee is now in appeal before this Tribunal raising grounds on merit as well as raising additional grounds challenging validity of the assessment proceedings being bad in law, illegal and without jurisdiction.

7. Ld. Counsel for the assessee firstly made submission regarding the additional ground stating that the notice u/s. 143(2) was issued by the Id. ACIT, Business Circle-7, Chennai, but the assessment order is signed by the Id. JCIT, Range-VII,

Chennai and there is no order u/s. 120(4)(b) of the Act conferring said jurisdiction from ACIT to JCIT and therefore, the assessment proceedings should be held as invalid and bad in law and without jurisdiction.

8. As far as merits of the case are concerned, it is submitted that assessee did not get fair opportunity to plead before the Id. CIT(A) and on most of the issues information was called for at the fag end of completing the assessment proceedings and further, the assessee did not had sufficient opportunity to place the documents before the Id. CIT(A) and therefore, the order of Id. CIT(A) is opposed to the principles of equity, natural justice and fair play. It was also submitted that the borrowed funds have been consistently taken at 15% in the past and funds are given in advance at 12% interest and the same depends upon the market rates as well as financial strength of the borrower. As regards commission payment, it is submitted that the alleged sum has been offered to tax by the recipients and due taxes have been paid. Therefore, disallowance u/s. 40(a)(ia) of the Act is un called for and also the commission paid to Anusya Jain is for carrying out sales. So far as sale promotion expenses disallowed at Rs.

75,73,160/-, it was submitted that the payment have been made through the banking channels to all the vendors and bills has been issued by those parties in the name of the assessee and the sale promotion of Rs. 75,73,160/- has been incurred in the course of business. Similarly, claim made for travelling expenses have been duly incurred through credit cards and banking channels and since, partners also accompany in various foreign travels, it cannot be treated as personal expenses. Finally, once again request was made that in case the assessee is unable to get any relief on the legal issue, then opportunity may be given to go back to the Id. CIT(A) or the Id. AO for the necessary adjudication of the issue on merits, since, fair opportunity was not provided by the lower authorities.

9. On the other hand Id. DR firstly stated that the assessee's legal grounds deserves to be dismissed since the jurisdiction was transferred from Id. ACIT to Id. JCIT vide order dated 26.08.2013 and therefore, notice u/s. 143(2) of the Act as well as the completion of assessment proceedings both have been carried out by the Assessing Officer having jurisdiction for the assessee. So far as merits of the case are

concerned, Id. CIT-DR vehemently argued relying strongly on the findings of both the lower authorities and further stated that the claim of sale promotion expenditure should not be allowed since the bills provided by the assessee towards sale promotion expenses are for purchase of gold and diamond jewellery which *prima facie* looks to be the purchase made for the family members of the assessee's firm partners and expenditure have been claimed in the books to reduce the tax liability.

10. We have heard rival contentions and perused the records placed before us. So far as additional grounds raised by the assessee challenging the validity of assessment proceedings on the ground that the notice u/s. 143(2) was issued by the Id. ACIT, Business Circle-7, Chennai, but the assessment order was finalized by Id. JCIT, Range-VII, Chennai and there being no order u/s. 120(4)(b) of the Act, conferring the jurisdiction from ACIT to JCIT the assessment proceedings are bad in law, we noticed that during the course of hearing Id. DR submitted a copy of notification no. 02/2013-14 dated 26.08.2013 issued by Government of India, Income Tax Department, Office of the Commissioner of Income Tax-VII, bearing C.No.

7071(Scrutiny)/CIT-VII/2013-14 and the power have been exercised u/s. 120(2) of the Act by way of which Commissioner of Income Tax-VII, Chennai assigned the jurisdiction and assessee's name is appearing in the schedule containing 10 names wherein jurisdiction has been transferred from ACIT , Business Circle-VII, Chennai to JCIT, Business Range-VII, Chennai. Thus, there remains no dispute to the fact that the jurisdiction was transferred from ACIT to JCIT vide order dated 26.08.2013 and therefore, notice issued u/s. 143(2) of the Act is a valid notice, issued by the Assessing Officer having jurisdiction over the assessee and similarly the assessment proceedings has also been carried out by the Assessing Officer having jurisdiction over the assessee. Therefore all the additional grounds raised by the assessee challenging the validity of assessment proceedings are dismissed.

11. So far as merits of the assessee are concerned, assessee has merely requested to restore the issue to the lower authorities since the fair opportunity was not granted to explain the merits of the assessee. From perusal of impugned order, we notice that Id CIT(A) has merely reproduced the

observations of the Assessing Officer and has not given any specific finding with reasoning on each of the issue. We also notice that the addition has been made towards disallowance of interest payment, but there is no discussion about the market rates prevailing at that point of time and whether the loans taken and given in question are took place during the year or brought forward from preceding years. Thus, issue needs to be examined, for which necessary details of the preceding years and subsequent year has to be filed by the assessee, in support of its claim of interest income on the advance given.

12. We also notice that the commission payment of Rs. 5,75,000/- has been disallowed, which includes the payment to the partners Sri Narendra Sri Srimal of Rs. 4,50,000/- and the same has been disallowed for non-deduction of tax at source u/s. 40(a)(ia) of the Act. It is submitted by the assessee that tax was not required to be deducted for the payment made to the partners and even otherwise the partners has duly disclosed the commission income in their return of income and paid due taxes for which necessary verification can be carried out. As regards commission

expenditure of Rs. 1,25,000/- given to Ms. Anusya Jain, the assessee failed to furnish any details to explain the genuineness of the commission expenditure. Except providing name and address of the commission agent, no other details has been provided. However, it is seen that address has been provided, then the Id. AO could have enquired directly from Ms. Anusya Jain about the alleged commission payment, the nature of service provided by her and whether the same has been offered to tax. Therefore, this issue also needs further examination and verification.

13. Further, we notice that the issue of disallowance of sale promotion of Rs. 75,73,160/- has been challenged. The total sale promotion expenses incurred by the assessee is Rs. 1,30,03,479/-, out of which disputed expenditure is Rs. 75,73,160/-, which have been given to six parties. The assessee is claiming it to be business expenditure and utilized for the purpose of giving gifts and incentives to its distributors as a part of sale promotion scheme and has been consistently carried out in the past also. Further, it was submitted that documentary evidence are not available with them and only few are being called through RTI from the assessment records

only. A request was made for providing one more opportunity to explain the genuineness of the said explanation.

14. Similarly, regarding the disallowance of travelling expenses, it is stated that they all have been incurred towards business purpose. However, the Id. AO has observed that the persons who have gone on foreign travel, are not the representatives or employees of the assessee. However, Id Counsel for the assessee again requested for restoring the matter to the lower authorities.

15. Next is the issue of service tax penalty of Rs. 20,702/-, for which the Id. Counsel for the assessee, did not make any specific mention. Therefore, we hold that that the alleged sum being penalty in nature is not allowable as expenditure u/s. 37 of the Act and deserves to be disallowed.

16. We therefore, under given circumstances of the case and in order to conclude hold that so far as the details relating to proportionate interest payment on borrowed funds at Rs. 16,85,987/-, commission payment of Rs. 5,75,000/-, sale promotion disallowance of Rs. 75,73,160/-, and travelling

expenses of Rs. 24,39,039/-, the issues relating to disallowance of all these expenses is hereby restored to the file of the Id. CIT(A), who shall call for remand report on all these issues for which a fair opportunity shall be provided to the assessee, who shall not take unnecessary adjournments unless otherwise required for and furnish necessary details and in absence thereby, Id. CIT(A) can decide in accordance with law by way of passing a speaking order. So far as expenses claimed towards service tax penalty at Rs. 20,702/- is concerned, the disallowance is confirmed.

17. In the result, additional grounds raised by the assessee are dismissed and the grounds raised on merits are partly allowed for statistical purposes.

Order pronounced in the court on 21<sup>st</sup> April, 2023 at Chennai.

**Sd/-**  
**(मनोमोहन दास)**  
**(MANOMOHAN DAS)**  
न्यायिकसदस्य/**JUDICIAL MEMBER**

**Sd/-**  
**(मनीष बोराड)**  
**(MANISH BORAD)**  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 21<sup>st</sup> April, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy 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