

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1044/MUM/2023
(Assessment Year: 2009-10)**

Shri Sunil Chimanlal Shah,

4/402, - Odessy - I,
Hiranandani Garden, Powai,
Mumbai - 400076
[PAN: ABFPS0623M]

..... **Appellant**

Income Tax Officer,

Ward - 26(3)(3), Mumbai,
Kautilya Bhavan, Bandra Kurla Complex,
Bandra (East), Mumbai - 400051

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Ketan L. Vajani
For the Respondent/Department : Shri Virabhadra S. Mahajan

Date : 19.06.2023
Conclusion of hearing : 30.06.2023
Pronouncement of order

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 31/01/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2009-10, whereby the Ld. CIT(A) had dismissed the appeal of the Appellant against the Assessment Order, dated 01/07/2019, passed under Section 143(3) read with Section 254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Appellant has raised following grounds of appeal:

- "1. The Commissioner of Income-tax (Appeals)-NFAC, hereinafter referred to as the CIT(A), has erred in confirming and the assessing officer has erred in disallowing Rs. 11,40,008/- on account of commission paid by the appellant during the year ignoring various factual aspects of the matter.*
- 2. Both the authorities have erred in not appreciating the fact that the claim of the appellant has been allowed in subsequent years in regular assessment and accordingly the principle of consistency needs to be applied in the case of the appellant.*
- 3. The CIT(A) has erred in confirming and the assessing officer has erred in disallowing an amount of Rs. 16,804/- on account of depreciation on Motor-car for alleged personal use."*
3. The relevant facts in brief are that Appellant is a proprietor of M/s C.J. Jewellers and engaged in the business of trading in gold and diamond jewellery. The Appellant has filed return of income for the Assessment Year 2009-10 on 21/0/.2009 declaring total income of INR 18,97,450/-.
4. In the first round, the Assessing Officer completed the assessment under Section 143(3) of the Act vide order, dated 26/12/2011, at total income of INR 30,54,260/- after making, inter alia, disallowance of INR 11,40,008/- in respect of commission payments and disallowance of INR 16,804/- being 1/5th of motor car depreciation claimed by the Appellant. The Appellant preferred appeal before CIT(A), who confirmed the aforesaid additions/disallowances vide order dated 03/10/2013. However, in appeal preferred before the Tribunal against the aforesaid order passed by CIT(A), the Tribunal granted relief to the Appellant vide order, dated 25/09/2018 by setting aside both the aforesaid disallowance with the following directions:

"4. Under these issues the assessee has challenged the confirmation of the disallowance of commission in sum of Rs.11,40,008/-. The contention of the Ld. Representative of the assessee is that the claim

of the assessee has not been examined properly because the evidence given in support of the claim was not examined by the AO as well as the CIT, therefore, in the said circumstances and in view of the evidence adduced before them as well as before the ITAT, the claim of the assessee is liable to be allowed in the interest of justice. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. We have heard argument and advanced by the Ld. Representative of the parties and perused the record available on the file in connection with the payment of commission. The assessee has produced the debit notes before the AO which lies at page no. 25 to 33 of the paper book. The assessee has also produced the confirmation letter of the parties who received the commission which lies at page no. 43 to 53 of the paper book. The assessee has also deducted the TDS upon the payment and in this regard the copy of Form no. 16A has been produced on record which lies at page no. 34 to 42 of the paper book. On appraisal of the order passed by the authority below, we nowhere find any discussion about these documents for the consideration of the claim of the assessee. Further, we noticed that the claim of the assessee has been allowed in the subsequent assessment year i.e. 2010-11. The evidence given by the assessee nowhere verified and considered, therefore, in the said ITA. No.59/M/2014 A.Y. 2009-10 5 circumstances, we are of the view that the finding of the CIT(A) is not justifiable, therefore, we set aside the same and restore the issue before the AO to decide the matter afresh in view of the evidence discussed above and by giving an opportunity of being heard to the assessee in accordance with law. Accordingly, these issues are decided in favour of the assessee against the revenue."

5. In the second round, the Assessing Officer again made a disallowance of commission expenses of INR 11,40,008/- and 1/5th of depreciation on motor car amounting to INR 16,804/-.
6. Being aggrieved, the Appellant preferred appeal before CIT(A) which was dismissed vide order, dated 31/01/2023.
7. As a result, the Appellant is again before us in the present appeal on

the grounds reproduced in paragraph 2 above.

8. Ground No. 1 pertains to disallowance of commission expenses aggregating to INR 11,40,008/-.
- 8.1. The relevant facts in brief are that during the assessment proceedings in the second round, the Appellant had claimed deduction for commission expenses amounting to INR 11,40,008/-, as per the directions of the Tribunal, the Appellant filed before the Assessing Officer paper book containing
 - (i) computation of income of the Appellant for the Assessment Year 2009-10,
 - (ii) Audited Accounts of the Appellant and Tax Audit Report of the Appellant for financial year 2008-09 related to Assessment Year 2009-10,
 - (iii) Details of commission paid,
 - (iv) copies of all the debit notes for commission paid to various parties,
 - (v) copies of TDS certificate for TDS deducted on commission paid to various parties and
 - (vi) copies of replies filed by following parties in response to notice under Section 133(6) of the Act issued by the Assessing Officer - (a) Shree Balaji Diamonds (b) Naina D. Mehta, (c) Deepak D. Mehta, (d) Sonal D. Mehta and (e) Ankit R. Mehta.
9. However, the Assessing Officer disallowed the commission expenses and concluded that the Appellant had failed to share a link between sales made by the Appellant and the expenditure incurred on account of commission paid. According to the Assessing Officer, the Appellant had failed to produce any written agreement to support the transactions. Though the payments have been made through

banking channel, the same is not sufficient and the commission payments were made at the end of the relevant previous year (i.e. between 19/03/2009 to 24/03/2009) and soon thereafter, the commission agents had made withdrawals. The Assessing Officer was of the view that there was no reason why the commission would be paid at the end of the previous year with the sales were made by the Appellant throughout the year.

10. In appeal, the CIT(A) also confirmed the findings of the Assessing Officer observing that there was no justification for payment of commission which was supported by merely details of tax deducted at source. According to CIT(A), no evidence was furnished by the Appellant to prove that expenditure was incurred wholly and exclusively for the purpose of business.
11. However, on perusal of record, we find that the findings returned by the Assessing Officer and the CIT(A) are contrary to the material placed before them by the Appellant. On perusal of paper book filed by the Appellant it emerges that Appellant had filed details of commission paid to various parties, the details provided the amount of commission, the name of the commission agents the party to whom sale have been made as well as the rate of the commission. The details furnished by the Appellant were as under:

Commission agent	Amt Commission paid	Client	Sales	Commission Rate
Shree Balaji Diamonds	1,05,633	Lachchmandas Jewellers (Agra)	7042203	1.50%
Marudhar Jewellers	3,80,731	Manufacturing Commission	3807.122 grams	Rs. 10 per gram
Nalin Mehta	44,360	Nikkamal Baburam Jewellery Arcade (Akhil)]	4436000	1%

Naina Mehta	1,01,755	Nikkamal (JJ group)	10175500	1%
Deepak Mehta	87,367	Talwar Jewellers	14561310	0.60%
Sonal Mehta	58,245	Talwar Jewellers	14561310	0.40%
Ankit Mehta	59,461	Nikkamal Baburam (Kamal Jain)	11892250	0.50%
Rushabh Mehta	59,461	Nikkamal Baburam (Kamal Jain)	11892250	0.50%
Mintu B Shah	2,42,995	Tribhovandas Bhimji Zaveri & Bros	11436116	2%

12. Thus, the Appellant was able to link to commission paid to the sales made during the relevant previous year. The Appellant had filed before the Assessing Officer copy of audited accounts for the financial year ended 31/03/2009, wherein the payments of commission of INR 11,40,008/- was reflected. The details of commission paid along with name of the commission agents, their address, PAN details, total commission paid and tax deducted along with copy of debit notes and TDS certificate were filed before the Assessing Officer.
13. We find that during the original assessment proceedings, the Assessing Officer had issued notice under Section 133(6) of the Act. In response to which five parties; (i) Shree Balaji Diamonds (ii) Naina D. Mehta, (iii) Deepak D. Mehta, (iv) Sonal D. Mehta and (v) Ankit R. Mehta. had replied and confirmed that commission was received by such parties from the Appellant.

14. Vide Letter, dated 01/12/2012, filed by the Appellant before CIT(A), the Appellant had explained that due to changing business environment the Appellant wanted to expand its business into different areas in order to survive in the market. The Appellant did not have sufficient workforce therefore the Appellant decided to outsource the serving of existing clients to commission agents so that the Appellant could get time to explore new markets and products. Since the business involved high volume and low margins, the agents selected by the Appellant were old acquaintances. The agents entertained the clients when they visited Mumbai for making purchases. Agents would show the client new designs and fast selling products and obtained confirmation of design quality and quantity from the clients. The agents also helped in assistance in getting the products manufactured as per the requirement of the clients. The agents would follow up with the manufacturers to get the goods ready as per specification of the clients. Thus, the Appellant had provided explanation regarding the work performed by the agents. It was further explained that the commission paid by the Appellant was in the nature of sales commission or manufacturing commission. Generally, the sales commission was paid at the end of the year on the basis of sales made at various points during the relevant previous year whereas the manufacturing commission was paid when the manufacturer goods/products were received. The payments of commission were made after withholding tax through banking channel. The fact that some of the commission agents withdrew the commission paid by the Appellant immediately after receiving the same cannot be the basis of making disallowance in the hands of the Appellant. It was pointed out that withdrawals were made by only three parties namely Marudhar Jewellers, Shree Balaji Diamonds and

Mintu Shah. Further, the amount of withdrawal made was more than the commission received in case of Marudhar Jewellers and Shree Balaji Diamonds.

15. In our view, the findings returned by the Assessing Officer and the CIT(A) are contrary to the record. It would not be pertinent to note that despite directions having been issued by the Tribunal to examine the issue of facts, no effort was made by the Assessing Officer or the CIT(A) to conduct any enquiry both the authorities below simply brushed aside the documents/explanation furnished by the Appellant. We hold that the Appellant had submitted relevant details/information to substantiate the claim for deduction of commission and provided reasonable explanation on the issues raised by the Assessing Officer. Therefore, the disallowance of deduction of INR 11,40,008/- made by the Assessing Officer cannot be sustained. Accordingly, we delete the disallowance of commission expenses and direct the Assessing Officer to allow claim of the deduction of INR 11,40,008/- to the Appellant. Ground No. 1 raised by the Appellant is allowed.
16. Ground No. 2 pertains to the claim of disallowance of INR 16,804/- being 1/5th of motor car depreciation claimed by the Appellant. We find that disallowance has been made by the Assessing Officer on the ground that the 1/5th of the motor car expenses were disallowed by the Appellant for personal use. The contention of the Appellant is that the motor car was used wholly and exclusively for the purpose of business and therefore, disallowance of depreciation was not warranted. However, there is nothing on record to controvert the concurrent findings given by the Assessing Officer and the CIT(A) which are based upon voluntary disallowance of 1/5th of car running

and maintenance expenses made by the Appellant as per the audit report. Therefore, we do not find any infirmity in the order passed by the CIT(A). Accordingly, Ground No. 2 raised by the Appellant is dismissed.

17. In result, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 30.06.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.06.2023
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai