

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. KUL BHARAT, JUDICIAL MEMBER
AND
SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.2564/Del/2019
(Assessment Year : 2015-16)

Shree Star Carrying Company 10394/1, Gali No.13, Multani Dhandra, Paharganj, New Delhi-55 PAN No. ABQFS 6800 F (APPELLANT)	Vs.	ITO Ward – 62(5) New Delhi (RESPONDENT)
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Assessee by	--None--
Revenue by	Shri Anuj Garg, Sr. D.R.

Date of hearing:	17.07.2023
Date of Pronouncement:	21.07.2023

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-20, New Delhi ('CIT(A)' in short) dated 19.02.2019 arising from the assessment order dated 28.12.2017 passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2015-16 in question.

2. As per the grounds of appeal, the assessee has challenged disallowance of Rs.14,26,480/- on account of expenses incurred by way of 'Commission to Booking Agent'.

3. Briefly stated, the assessee firm filed return of income at Rs.2,70,670/- for the A.Y. 2015-16 in question. In the course of scrutiny proceedings, the Assessing Officer *inter alia* noticed claim of expenditure towards commission expenses amounting to Rs.26,87,160/-. Notices u/s 133(6) of the Act were issued to the persons to whom the commission had been stated to be paid. In response to notice u/s 133(6) of the Act so issued, the Assessing Officer received reply from some of the beneficiaries. However, in some instance, the notice could not be served and in some other cases, no reply was received despite service of notice. The assessee also furnished new addresses on being asked by the AO but however, the compliance of Section 133(6) of the Act could not be achieved. Consequently, the Assessing Officer disallowed commission expenses to the extent of Rs.14,26,480/- owing to lack of compliance u/s 133(6) of the Act.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) after recording the detailed contentions of the assessee in its defence, however, agreed with the action of the AO on the ground that notice u/s 133(6) of the Act has remained unattended and un-complied.

5. Further aggrieved, the assessee preferred appeal before the Tribunal. When the matter was called for hearing, none appeared for the assessee. Having regard to the fact that several opportunities were given in the past, the matter was proceeded ex parte.

6. We have heard the submissions on behalf of the Revenue and also perused the assessment order as well as the CIT(A) order. It is noticed that the assessee, a partnership firm, is engaged in the business of Goods Transport for several years having its field of operation in Delhi-Bihar region and multiple stations falling in between. It is noticed that an enquiry was made towards commission expenses by issuing notices u/s 133(6) of the Act sent to agents at Sasaram, Vikramganj, Bhabua, Buxar and Panipat etc. The latest address of the booking agents were provided to the AO for the parties stationed at far flung places. Copy of ITR and confirmation for receipt of commission from various parties as tabulated in the statement of facts were provided. The calculation of commission payments determined were also provided. The commission payments were found to be subjected to TDS provisions at an appropriate rate.

7. Needless to say, the transport business covering such distinct area is quite challenging and commission agents are strategically important persons whose absence has a potential to dent the business prospects of such type severely. The small time delivery agents at various locations in the state of Bihar and booking agents stationed at various far-off places have been paid commissions for generating freight revenue of Rs.9.31 crores. The commission payment stands at 2.88% or about which it cannot be regarded as abnormal. Having regard to the fact that necessary TDS against the payment of commission to agents have been deducted, confirmation along with return of income of such commission agents were placed before the AO, non-compliance of notice u/s 133(6) in the peculiar circumstances requires to be viewed benignly. The assessee has no

control over such independent agents and non compliance of such notices at their end should not operate conclusively to the detriment of the assessee. The assessee has reasonably established the nexus between the expenditure and the purpose of business. Besides from the return of income of the commission agents placed before the AO, it is ostensible that such parties are identifiable and receipt of commission has been accepted. The absence of cross verification u/s 133(6) of the Act thus should not be taken as sole and conclusive basis to disregard the nature and expediency of such expenses. Looking holistically, we find reasonable merit in the contentions put forth by the assessee before the lower authorities. We thus consider just and proper to set aside the action of the lower authorities and delete the disallowance.

8. We thus direct the AO to reverse the disallowance in question and restore the position taken by the assessee.

9. In the result, appeal of the assessee is allowed *ex parte*.

Order pronounced in the open court on 21.07.2023

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Date:- 21.07.2023

*Priya Yadav**

Copy forwarded to:

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

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI