

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

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**In ITA No.8980/Del/2019  
Assessment Year: 2011-12**

Smt. Sheetal Prop. Of MNC Propmart, Q-5/12, DLF City- II, Gurgaon – 122 010 Haryana-131001	<b>Vs.</b>	JCIT, Range-2, Gurgaon
<b>PAN :BCPPS1799N</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Shantanu Jain, Adv.
Department by	Shri Anuj Garg, Sr. DR

Date of hearing	31.10.2023
Date of pronouncement	24.01.2024

**ORDER**

**PER CHALLA NAGENDRA PRASAD, JM**

This appeal is filed by the assessee against the order of the learned Commissioner of Income-Tax (Appeals)-1, Gurgaon dated 02.09.2019 for the assessment year 2011-12. The assessee in her appeal has raised the following grounds:

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in sustaining the action of Ld. AO in making aggregate disallowance of Rs.1,02,07,422/- (Rs.1,32,86,519 – Rs.30,79,097/-) on account of commission expenses claimed by the assessee and that too by recording incorrect facts and findings and without observing the principles of natural justice and disregarding the submissions, evidences and material placed on record by the assessee.
2. That in any case and in any view of the matter, action of Ld. CIT(A) in sustaining the action of Ld. AO in making aggregate disallowance of Rs.1,02,07,422/- (Rs.1,32,86,519 – Rs.30,79,097/-) on account of commission expenses, is bad in law and against the facts and circumstances of the case.
3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in not deleting the disallowance of Rs.7,39,131/- fully as made<sup>3</sup> by Ld. AO on account of business promotion expenses and further erred in directing the Assessing Officer in this regard.
4. That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the disallowance of Rs.7,39,131/- fully as made by Ld. AO on account of business promotion expenses, is bad in law and against the facts and circumstances of the case.
5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not considering the evidences filed by assessee.
6. That in any case and in any view of the matter, action of Ld. AO in passing the impugned assessment order and disallowance made is illegal, void ab initio, contrary to law and facts, beyond jurisdiction and without observing the principles of natural justice and deserves to be quashed.
7. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not

reversing the action of the Ld. AO in charging interest u/s 234B and 234D of the Income-Tax Act, 1961.

2. The learned counsel appearing for the assessee at the outset submits that the learned Commissioner of Income-Tax (Appeals) had disposed of the appeal without providing adequate opportunity to the assessee to rebut the information received by the learned Commissioner of Income-Tax (Appeals) from the Assessing Officer of the persons to whom the assessee paid commission/brokerage. The learned counsel for the assessee submits that in course of appeal proceedings, assessee filed additional evidences in support of the claim of the assessee that the commission/brokerage was paid to various persons and is an allowable deduction while computing the income of the assessee. Learned counsel further submits that the additional evidences furnished by the assessee were admitted and the learned Commissioner of Income-Tax (Appeals) called for information from the respective Assessing Officer to whom the assessee paid commission/brokerage and the Assessing Officer appears to have issued notices under Section 133(6) of the Income-Tax Act,1961 and obtained information and based on the information

said to have been received the appeal of the assessee was decided without providing any opportunity to the assessee. The learned counsel submits that as the inquiries were conducted behind the back of the assessee and the outcome of the inquiries were not put to the assessee for rebuttal the matter may be restored to the file of the learned Commissioner of Income-Tax (Appeals) for fresh adjudication.

3. Learned Departmental Representative has no objection in restoring the matter to the file of the learned Commissioner of Income-Tax (Appeals).

4. We have heard rival contentions and perused the orders of the authorities below.

5. On perusal of the order of the learned Commissioner of Income-Tax (Appeals), we observe that the assessee filed additional evidences which were admitted to verify the genuineness of the assessee's claim. The learned Commissioner of Income-Tax (Appeals) called for information from the respective Assessing Officers of the persons to whom the assessee paid commission/brokerage. It appears that the Assessing Officer has issued notices under Section 133(6) of the Act

to various parties and gathered information and based on such information the learned Commissioner of Income-Tax (Appeals) disposed of the appeal without providing the information gathered by the Ld. CIT(A) to the assessee for rebuttal. From the reading of the learned Commissioner of Income-Tax (Appeals)'s order, we find that no where learned Commissioner of Income-Tax (Appeals) had put the information gathered from the Assessing Officer to the assessee for her rebuttal, therefore, in the interest of justice, we are of the considered view that this appeal should go back to the file of the learned Commissioner of Income-Tax (Appeals) for fresh adjudication after providing adequate opportunity of being heard to the assessee. Needless to say, learned Commissioner of Income-Tax (Appeals) shall provide all the information gathered from the respective Assessing Officers to the assessee for her rebuttal. Thus, this appeal is restored to the file of the learned Commissioner of Income-Tax (Appeals) for fresh adjudication in accordance with law.

7. We observe that the assessee also raised one more ground in respect of confirming the disallowance of Rs.7,39,131/- incurred on account of business promotion expenses. This ground is also restored

to the file of the learned Commissioner of Income-Tax (Appeals) for fresh adjudication.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on 24.01.2024.

*Sd/-*  
( G.S. PANNU )  
VICE-PRESIDENT

*Sd/-*  
(CHALLA NAGENDRA PRASAD)  
JUDICIAL MEMBER

**Dated: 24<sup>th</sup> January, 2024**  
**Mohan Lal**

Copy forwarded to:

1. Applicant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi