

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.303/Ind/2023
(Assessment Year: 2015-16)

Pharma Corp INC Private Ltd. Plot No.49, MR-11 SK compound -1, Lasudia Mori Dewas Naka, Indore (Appellant / Assessee)	Vs.	AIT, Circle 4(1) Indore (Respondent/ Revenue)
PAN: AAEC8775E		
Assessee by	Shri Rajendra Khandelwal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	25.01.2024	
Date of Pronouncement	30.01.2024	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the Assessee is directed against the order dated 14.06.2023 of Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC) for A.Y.2015-16. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the addition on account of part

disallowance of commission expenses . the appellant prays that the said addition be deleted..".

2. The solitary issue raised by the assessee in this appeal is regarding disallowance made by the AO on account of commission expenses.

3. The assessee is a Private Ltd. company engaged in the business of trading of Pharmaceutical Products. During the scrutiny assessment the AO noted that the assessee has claimed commission expenses which are increased 181% during the year whereas the turnover of the assessee is increased only 26% year on year. The AO asked the assessee to explain the abnormal increase in the commission payment during the year. In reply the assessee submitted that the assessee has changed its marketing policy to increase the turnover and appointed C& F agents. The commission has been paid to the C & F agents on the basis of the turnover. The AO issued notices u/s 133(6) to the commission agents to whom the commission was paid calling for confirmation and information. Out of 14 notices only two responses were received by the AO who confirmed the amount paid to them. Thereafter the assessee provided new addresses of commission agents and AO issued fresh notices to them. Out of four notices only two agents responded and no response was received from other two agents namely Gopi Mohan Drug Distributors (Assam) and Ridhi Sidhi Associated (Raipur). The AO further noted that the other eight agents also not responded including Vyali International (Bhiwandi) to whom the assessee has claimed to have paid Rs.3,96,042/- as commission.

Further the AO noted that one of the agents, Krishna Pharma, responded to the notices and admitted that it has received Rs.9,02,861/- as commission from the assessee whereas the assessee debited Rs.9,98,373/-. Thus the AO found the difference of Rs.95,512/- as higher claim made by the Assessee. By considering all these facts the AO finally made addition of Rs.5,96,933/- on account of commission payments. The assessee challenged the disallowance made by the AO before the CIT(A) but could not succeed.

4. Before the Tribunal the Ld. AR of the assessee has submitted that the assessee company has changed its marketing policy and appointed C & F agents for increase of turnover. The commission was paid to the C & F agents and relevant details were filed before the AO as well as the before the CIT(A). He has submitted that the AO has disallowed part commission for want of confirmation from the commission agents as they did not response to the notice issued by the AO u/s 133(6) of the Act. However, the assessee produced all the relevant details and even the ledger account of assessee in the books of the commission agents which itself is confirmation of payment of commission by the assessee. Thus, Ld. AR has submitted that when the expenditure was incurred for the purpose of the business of the assessee then the same cannot be disallowed merely, on the ground that the commission agent has not responded to the notice issued by the AO. In support of his contention he has relied upon the following decisions:

1. *J.K. Woollen Manufactures vs. CIT 72 ITR 612*
2. *Tirumala Seven Hills Pvt. Ltd. vs. JCIT Kolkata ITANo.782/Kol/2016*
3. *CIT vs. M/s Inbuilt Merchants Pvt. Ltd. GANo.3825 of 2013 (Cal)*
4. *Cheil India Pvt. ltd. vs. ITO in ITANo.6183/Del/2014*

5. Thus, Ld. AR has submitted that when the assessee produced all the relevant details showing the payment of commission to the agents as well as sales made by these agents then the disallowance made by the AO is not justified. He has further contended that the assessee has produced the ledger account of the assessee in the books of the agents in support of his claim but the CIT(A) has not considered the same and confirmed the disallowance made by the AO.

6. As regard the discrepancy of Rs.95,512/- in respect of Krishna Pharma. The Ld. AR has submitted that this difference is only on account of TDS deducted by the assessee and the commission agent has sent the information to the AO of net commission receipt whereas the assessee has shown in the books the commission paid to the agent inclusive of TDS. Thus, the discrepancy is only on account of TDS amount which was deducted by the assessee and paid to the account. Hence, the Ld. AR has submitted that the matter may be remanded to the record of the AO for verification of the relevant details and then allowed the claim of the assessee.

7. On the other hand, Ld. DR has fairly submitted that the matter required a proper verification and examination of the

relevant record to be filed by the assessee in support of the claim and therefore, may be remanded to the record of the AO for fresh adjudication.

8. Having considered the rival submission as well as relevant material on record we note that the AO disallowed the commission paid to C & F agents for want of confirmations from the commission agents in response to the notice issued u/s 133(6) of the Act. Further the AO has also made disallowance of Rs.95,512/- on account of discrepancy of the claim of commission of the assessee and reply filed by M/s Krishna Pharma admitting receipt of commission of Rs.9,02,861/- as against the claim of the assessee of Rs.9,98,373/-. Ld. AR has clarified that this discrepancy is only due to the TDS amount and the commission agent has shown only net amount of commission instead of the total commission payment. Thus, the said difference is not an excess claim made by the assessee. We further note that the assessee has subsequently filed ledger account of the assessee in the books of account of the commission agents along with details and record showing sales made by them. The said relevant record filed by the assessee before the CIT(A) is required to be verified and examined. Similar difference in case of Krishna Pharma as claimed by the assessee is only on account of TDS is also required to be verified at the level of the AO. Accordingly in the facts and circumstances of the case this issue of disallowance of commission payment is set aside to the record of the AO for proper verification and examination of the relevant record as well as difference on account of TDS in case of

Krishna Pharma and then decide the same as per the law and by considering various case laws relied upon by the assessee. It is made clear that if the AO desires to call for confirmation from the parties then the assessee shall furnish the same from the commission agents.

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

Order pronounced in the open court on 30.01.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 30.01.2024

Patel/Sr. PS

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*