

आयकर अपीलीय अधिकरण  
कोलकाता 'बी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

श्री राजपाल यादव, उपाध्यक्ष (कोलकाता क्षेत्र)

एवं

डॉ. मनीष बोरद, लेखा सदस्य

के समक्ष

Before

**SRI RAJPAL YADAV, VICE PRESIDENT**

&

**DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 2582/KOL/2019**

**Assessment Year: 2013-14**

***Eximcorp India Private Limited.....Appellant***  
**[PAN: AAACE 7115 P]**

**Vs.**

***DCIT, Circle-5(2), Kolkata.....Respondent***

**Appearances:**

***Assessee represented by: Sh. Arnab Chakraborty, A/R.***

***Department represented by: Sh. P.P. Barman, Addl. CIT.***

Date of concluding the hearing : January 24<sup>th</sup>, 2024

Date of pronouncing the order : February 9<sup>th</sup>, 2024

**ORDER**

**Per Rajpal Yadav, Vice-President (KZ):**

The assessee is in appeal before the Tribunal against the order of the Commissioner of Income Tax (Appeals)-2, Kolkata [in short Id. 'CIT(A)'] dated 17.10.2019 passed for AY 2013-14.

2. The assessee has taken four grounds of appeal. However, its grievances revolve around a single issue namely, whether the assessee is entitled to expenditure incurred on commission payments to the HUF or not. It emerges out from the record that earlier this appeal was heard *ex-parte* by the Tribunal and vide its order dated 30.03.2022 it was dismissed. The assessee has filed

a Miscellaneous Application for recall of the *ex-parte* order and deciding it again after hearing the assessee. But this Miscellaneous Application was also rejected by the Tribunal vide its order dated 11.11.2022.

3. Dissatisfied with the orders of the Tribunal, assessee carried the matter in appeal before Hon'ble High Court and the Hon'ble High Court has set aside both the orders of the Tribunal, restored this appeal to the Tribunal for deciding it afresh.

4. The brief facts of the case are that assessee has filed its return of income on 28.11.2013 declaring total income at Rs. 4,55,18,897/-. Its case was selected for scrutiny assessment and a notices u/s 143(2) of the Act as well as u/s 142(1) of the Act were issued and served upon the assessee. On scrutiny of the accounts, it revealed to the Assessing Officer (in short ld. 'AO') that assessee has paid commission of Rs. 9,39,434/- & Rs. 2,40,561/- to Asish Kumar (HUF) and Pradip Kumar Patawari (HUF), respectively. He directed the assessee to explain why commission to HUF entities be allowed to it. In response to the query of the AO, assessee has filed a written submission which read as under:

*“Our sales policy is not to lose a customer to the best of our ability and reward the person who develops or introduces a business for the life time of a relationship with such customer regardless of whether such introducer has a regular role in day to affairs or not. This secures a trust and we are known in a market for such trust and reliability of our commitment. The management of sales requires expert skill to identify of our commitment. The management of sales requires expert skill to identify and determine the product in our range that actually fits the suitability for the end application of the user.*

*With regard to the specific query concerning the accounts of (i) Aashish Kumar, (ii) Aashish Kumar, HUF and Chaitali Tibrewal we would like to state and submit that all the three accounts belong to Sri Aashish Kumar and he has only managed his commission receipts in a manner that minimizes his tax burden and we believe he is entitled to it. He together with Abhishek Rajgaria manages the entire sales of the company including office management, administration. Aashish Kumar is also an attorney of the company holding a power of attorney to discharge all the functions as may arise while managing the day to day affairs.*

*Until the FY 2014-15, the company has been rewarding them by way of a commission on selected sales taking in to consideration the quantum of such commissions in totality vis-a-vis the need of commensurate remuneration for the contribution to the growth and development of business. Taking the established remunerations by way of commission during the past periods, health of company's own financial position, the rewards to both Aashish Kumar & Abhishek Rajgaria has been compounded in to a monthly salary of Rs. 3.00 Lakh per month with effect from 01-04-2015 plus such other benefits and productivity bonuses as the company may consider necessary upon review of its own business health during the last month of the fiscal year.”*

5. The ld. AO took note of this submission and thereafter, recorded following finding:

*“The explanation of the assessee confirms that the assessee had resorted to diverting commission payments to HUF entities as per the concerned Karta’s request. The same does not prove rendering of services by the said HUF entities. Accordingly, the payment of commission totalling Rs. 11,79,995/- as above is added back to the total income of the assessee company.*

*On the basis of the above discussions, the total income of the assessee is assessed as under:”*

6. Dissatisfied with the finding of the AO, assessee carried the matter in appeal before ld. CIT(A) and ld. CIT(A) concurred with the AO. The brief finding recorded by ld. CIT(A) read as under:

*“I have considered the grounds of appeal, statement of facts and submission of the authorized representative of the appellate company as well as the order of the assessing officer framed in the light of the materials available on record before the assessing officer during the assessment proceedings.*

*In find that the AO has disallowed the expenses in absence of evidences for providing the proof of service by the HUF. The AR during the appellate proceeding admitted that the payment was made on the basis of direction of Individual (Karta) who asked for the same.*

*I further find that in absence of proof of service, actually rendered by the HUF, it can be held that the expenses were incurred wholly and exclusively for the purpose of the business. Keeping in view of the facts as mentioned above, in the absence of any cogent material evidence, I do not find any infirmity in the order of the assessing officer and the same is hereby upheld. In view of above, this ground of appeal is dismissed.”*

7. Before us, ld. Counsel for the assessee submitted that there is no bar under the Rules that HUF cannot claim commission in lieu of rendering services. Therefore, the AO has erred in disallowing the claim of the assessee.

8. On the other hand, ld. D/R relied upon the orders of Revenue authorities.

9. We have duly considered the rival contentions and gone through the record carefully. It is pertinent to observe that HUF is an independent identity which is taxable under the Income Tax Act. Its affairs are to be looked into by the Karta of the HUF. A perusal of the finding of the AO would reveal that assessing officer has nowhere pointed out the defects about the services rendered by the Karta, Sh. Asish Kumar and Sh. Pradip Kumar Patawari. The AO was under some misconception and by misconstruing the whole affair come to a conclusion that request of the Karta in his individual case to partly make payment in the capacity of a Karta of HUF would suggest that there is no evidence of rendering services. It is pertinent to note that assessee has debited Rs. 1.19 Crore towards commission payment. It has returned an income of more than Rs. 4.55 Crore. There was no occasion for the assessee to indulge in diverting a small amount to an entity which has not performed the services. No doubt it is difficult to draw a line when Karta was working in his individual capacity *vis-à-vis* working as a Karta of the HUF. But this aspect has not been examined in the assessment order. We have reproduced the finding of the AO. It is not based on any scientific analysis of the total commission payment *vis-à-vis* benefit availed by the assessee. Rather, the AO only misconstrued the nomenclature of the service provider *vis-à-vis* the commission payment. If the case of the payee is for scrutiny then in his case it could be examined whether he has diverted his taxable income towards his HUF or not. But, for the purpose of payer i.e. the assessee, it has debited the expenditure for the services availed from both these Kartas. Therefore, there is no justification to disallow the alleged commission payment in the hands of the assessee because it has been diverted by its service provider in the hands of HUFs. The AO in the case of payee would examine whether under an overriding title, this income is to be assessed in the hands of individual or in

the hands of HUF. But, in the case of assessee, the expenditure cannot be disallowed. In view of the above discussion, we allow this appeal and delete the disallowance.

10. In the result, appeal of the assessee is allowed.

**Kolkata, the 9<sup>th</sup> February, 2024.**

Sd/-

**[Manish Borad]**

Accountant Member

Dated: 09.02.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. Eximcorp India Private Limited, 25, R.N. Mukherjee Road, 4<sup>th</sup> Floor, Suite C, Kolkata-700 001.**
- 2. DCIT, Circle-5(2), Kolkata.**
3. CIT(A)-2, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

Sd/-

**[Rajpal Yadav]**

Vice President

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata