

आयकर अपीलीय अधिकरण, 'ए', न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' (SMC) BENCH : CHENNAI

श्री महावीर सिंह, उपाध्यक्ष के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपीलसं./I.T.A Nos.1286 & 1287 /CHNY/2023
निर्धारण वर्ष/Assessment year : 2016-2017 & 2017-2018.

Shri Venkatachalam Ganesh Shankar,
146, G3, Ranga Avenue,
Sambanthar Street
Fairlands,
Salem 636 016.

Vs. The Income Tax Officer,
Ward 1(6)
Salem.

[PAN ACQPG 3770R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri ARV Sreenivasan, Addl CIT

सुनवाई की तारीख/Date of Hearing : 19.02.2024

घोषणा की तारीख /Date of Pronouncement : 19.02.2024

आदेश/ ORDER

These appeals by assessee are arising out of different orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in orders No.ITBA/NFAC/S/250/2023-24/1055959381 (1) and No.ITBA/NFAC/S/250/2023-24/1055957494 (1) both dated 11.09.2023. The assessments were framed by the Additional/ Joint/Deputy / Assistant Commissioner of Income Tax, National Faceless

Assessment Centre, Delhi for the assessment years 2016-2017 and 2017-2018 u/s.147 r.w.s. 144B of the Income Tax Act, 1961 (hereinafter 'the Act') vide orders of even date 28.03.2022.

2. At the outset, it is noticed that these two appeals filed by the assessee are barred by limitations by six days. Assessee has filed affidavit stating reasons in para 4 which reads as under:-

'That the delay in filing the appeals is on account of the fact that the Appellant / Petitioner was not well, due to the sudden change in climate and continuous rains and was advised rest by the doctor and'

It was not seriously contested by the Id. Senior Departmental Representative and going by the reasons, the small delay of six days is condoned and the appeal is admitted for adjudication.

3. The only common issue in these two appeals of assessee is with regard to the order of the Id. Commissioner of Income Tax (Appeals) confirming the action of the Id. Assessing Officer in making adhoc disallowance of 75 percent of expenses claimed in respect of commission income earned through general insurance. For both the years, assessee has raised identical worded grounds and relevant ground raised in assessment year 2016-2017 in ITA No.1286/Chny/2023 reads as under:-

'Without prejudice, the Learned Commissioner (Appeals) erred in not considering the nature of business of the Appellant and in affirming the Assessing Officer's adhoc disallowance of 75 per cent on the expenses claimed in respect of earning commission income. [[Reliance is placed on ITA No.556/Mds/2012, dated 12.06.2012]]'.

4. I have heard the rival contentions and gone through the facts and circumstances of the case. The facts and circumstances in both the cases are exactly identical except the quantum and hence I take up the fact in assessment year 2016-2017 and decide the issue.

5. The brief facts of the case are that assessee is an individual being an general insurance agent earning commission income through general commission and assessee has earned total insurance commission as under:-

a)	Chola Insurance distribution services Pvt Ltd	Rs.21137/-
b)	United India Insurance Company Ltd	Rs.4902095/-
c)	Total	Rs.4923232/-

Assessee has claimed expenses to the tune of Rs.33,20,392/- and declared net income of Rs.16,02,840/-. The Assessing Officer disallowed expenses of Rs.20,89,584/- and added to the returned income of the assessee by stating that assessee has shown gross receipts from insurance business

of Rs.49,23,232/- from which the assessee has reduced expenses of Rs.33,20,392/- and shown net income from insurance business of Rs.16,02,840/- only. However, the assessee has not furnished any supporting document for the expenses claimed which is very much on the higher side as the expenses form 67% of the total receipts which is not accepted. Considering that the assessee must have incurred certain expenses to earn the income, an estimate of 25% which works out to Rs.12,30,808/- was considered to be reasonably fair. Hence, the balance expenses claimed of Rs.20,89,584/- was added to the total income of the assessee. Aggrieved, assessee preferred an appeal before the Id. Commissioner of Income Tax (Appeals).

6. Before the Id. CIT(A) assessee filed comparative details of income and expenses and ratio of income as under:-

<i>Assessment year</i>	<i>Net Income/ Gross Income</i>	<i>Ratio</i>	<i>Refund</i>
1) 2014-2015	903153/3659537	=24.68%	210970
2) 2015-2016	864052/4160878	=20.82%	294060
3) 2018-2019	632140/2821410	=22.41%	59390
4) 2019-2020	492763/2653580	=18.57%	95310
5) 2020-2021	496261/2425896	=20.46%	50750
6) 2021-2022	776430/2822575	=27.51%	Nil

Ld. Counsel for the assessee in view of the above requested that only profit that can be earned at the maximum is 30% rather in 2021-2022 it was only 27.51%. Ld. Counsel for the assessee requested that a fair estimate of disallowance can be restricted to 10% of the expenses claimed at Rs.33,20,392/-.

7. On the other hand, Id. Senior Departmental Representative supported the orders of the lower authorities.

8. I have heard rival contentions and gone through facts and circumstances of the case. I noted that assessee being a general insurance agent is earning general insurance commission for that the same cannot be compared with life insurance commission because there is a high difference between the two. I note that in life insurance once the customer joined as policy holder he will pay regularly for the agreed term of 12 years, 15 years or 20 years. Reminder about the premium due is sufficient. The whole efforts should be made in the First year itself. Maximum expenses incurred only in the First year of Commission income. Then there is no considerable expense during remaining Term period. But, in General Insurance the term is only one year. Every year it should be renewed on inspection of vehicles, Godowns to assess the condition of vehicles and Stock position, Buildings, Factory etc., on claim of loss it also

need huge followups. Hence in General insurance agency vocation it need huge efforts, follow ups, employees and expenses. The following are the regular activities incurring huge expenses.

1.Regular Staff Salary to them, incentives and travelling expenses and other benefits to them.

2. Being the nature of policy is renewable every year it is common to give gift or partial rebate for bulk business such as a tour operator having number buses and goods mover having number of heavy vehicles goods.

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3. Business Promotional camp conducted/organized through Staff at junctions of roads, Festivals and exhibitions

4. Family get together among high value customers.

5. Hospitality expenses etc.,

In view of the above, I am estimating the disallowance at 25% of the expenses claimed at Rs.33,20,392/- and direct the Assessing Officer to recompute the income accordingly. The appeal of the assessee in ITA No.1286/Chny/2023 for assessment year 2016-2017 is partly allowed.

9. Coming to ITA No.1287/Chny/2023 for assessment year 2017-2018 the commission income earned is Rs.58,46,960/- and expenses claimed are at Rs.43,97,587/-. The decision taken in assessment year 2016-2017 restricting disallowance @25% will applicable in this

assessment year also. Hence, the Assessing Officer is directed to recompute the income accordingly. The appeal of the assessee in in ITA No.1287/Chny/2023 for assessment year 2017-2018 is partly allowed.

10. In the result, the appeals of the assessee in ITA Nos.1286 and 1287/CHNY/2023 for assessment years 2016-2017 and 2017-2018 are partly allowed.

Order pronounced in the open court at the time of hearing on 19th day of February, 2024, at Chennai.

Sd/-
(महावीरसिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/VICE PRESIDENT

चेन्नई/Chennai

दिनांक/Dated: 19.02.2024.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2.प्रत्यर्थी/Respondent

3..आयकर आयुक्त/CIT

4.विभागीय प्रतिनिधि/DR

5.गार्ड फाईल/GF