

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri Siddhartha Nautiyal, Judicial Member
And Shri Makarand V. Mahadeokar, Accountant Member**

**ITA No. 225/Ahd/2020
Assessment Year : 2016-17**

Teamex Retail Ltd., 26, Nr. Mandakini, Opp. Tejad-2, Ghatlodiya Ahmedabad PAN: AAECT5486C (Appellant)	Vs	The ITO, Circle-4(1)(1), Ahmedabad (Respondent)
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**Assessee by: Shri Rajneesh Mulick, A.R.
Revenue by: Shri Ramesh Kumar, Sr. D.R.**

Date of hearing : 29-05-2024
Date of pronouncement : 12-06-2024

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax, CIT(A)-11, Ahmedabad, in proceeding u/s. 250 vide order dated 13/07/2022 passed for the assessment year 2016-17.

2. The assessee has taken the following grounds of appeal:-

- “1. The Appellant prays that the Assessment Order of passed by respected AO and appeal to CIT(A)-VIII dismissed by respected CIT(A) needs to cancel and deleted as respected AO was satisfy about the genuineness of the transactions and issued show cause notice stating disallowance of 50% of Rs. 50,33,810/ only i.e. 25.10.905/ however in final assessment order respected AO has disallowed all expenses amounting to Rs. 50,33,810/ was disallowed. The expenditure was genuine and for the business purpose only and needs to allow to the*
- 2. Onus to cross examine third parties or calling information from third parties shifted to respected AO on submission of the details about Name PAN and commission amount by assessee, however instead of cross examine the transactions, respected AO has disallowed whole commission expenses amounting to Rs. 50,33,810/- even though all the payment was made through account payee cheque or net banking only. As per fact of the case and legally the expenditure should be allowed to the Assessee.*
- 3. The Appellant craves leave to add, amend, alter vary and / or withdraw any or all the above grounds of Appeal.”*
3. The brief facts of the case are that appellant has debited a sum of Rs. 1,01,37,996/- towards commission expenses including reward expenses in its P&L A/c. During the course of assessment proceedings, AO required the appellant to furnish the details vide various notices in the format prescribed by the AO. The details required by the AO included PAN, Addresses and nature of services rendered in detail by the persons to whom commission was claimed to have been paid. However, appellant furnished only Name & PAN of the persons along with the commission paid and TDS deducted. As per Ld. Assessing Officer, neither the addresses of the persons to whom commissions above Rs.2,50,000/- was paid as required by the AO were furnished nor details of services rendered were provided. The assessee has

not furnished any supporting evidences like bill/voucher etc. from where the details of services rendered by these people can be ascertained. Hence, AO disallowed the commission expense above Rs.2,50,000/- to which comes to Rs.50,33,810/- claimed towards commission payments by the appellant.

4. In appeal, the Id. CIT(A) dismissed the appeal of the assessee with the following observations:

“4.2 In the Statement of Facts, appellant has contended that they had provided the PAN as well as amount of payments made above Rs.2,50,000/-. Hence, it was for the AO to carry out inquiries u/s. 133(6) and examine those parties to whom commissions were paid. On careful consideration, it is seen that on facts appellant has not furnished the addresses of the persons as well as the nature of specific services provided by persons to whom commission above Rs.2,50,000/- is statedly paid despite being given ample opportunities by the AO which is evident from the details of notices narrated in the impugned Assessment Order. The first notice u/s. 142(1) of the Act was issued on 30.01.2018.

4.3 In the course of appellate proceedings also appellant has not furnished any details of the specific services provided by such persons as well as the addresses of these persons. Onus is on the appellant to prove that the expense claimed is laid out wholly and exclusively for its business. Appellant has not furnished any details whatsoever of services rendered by the recipients but has simply stated that AO is free to carry out enquiries with those persons at the fog end of the scrutiny assessment process. It was incumbent upon the appellant to furnish these basic details i.e. nature of services and addresses of those persons. Hence, it is not proved that the commission paid is laid out wholly and exclusively for the purposes of appellant's business as well as the veracity of the expenses also remain unproved. It is settled law that onus is on the appellant to prove that expenses claimed is laid out wholly and exclusively for the purpose of its business. Since appellant has not been able to prove the same, AO has correctly

*disallowed the commission paid individually above Rs.2,50,000/- as claimed. The disallowance of Rs.50,33,810/- is confirmed and Ground No.1 and 2 of the appeal are **dismissed.**”*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A). The counsel for the assessee submitted that the assessing officer has completely erred in facts and in law in not appreciating the business model followed by the assessee. The assessee, it was submitted is following a multilevel marketing model (akin to Amway), in which a chain of persons is formed, who market the products of the assessee. This chain of persons are given commission based on the sales which have been made by these persons. The business model of the assessee is such that it does not have any retail store and nor is the assessee engaged in any sort of marketing of products through the print media etc. The entire business model the assessee is through the chain of these persons, who are engaged in marketing the products of the assessee through personal interaction/word-of-mouth. Therefore, for the marketing/actual sales done by these persons/chain of marketing agents, they are paid commission on the basis of actual sales which have been done by them. The counsel for the assessee submitted firstly, there was a substantial mismatch between the show cause notice dated 07-12-2018, in which the assessing officer proposed to disallow 50% of amount of Rs.50,33,810/- , whereas in the final assessment order, 100% i.e. entire commission payments was disallowed by the assessing officer, without appreciating the fact that in the multilevel marketing business model followed by the assessee, the assessee would not be able to make any sales unless and until the chain of persons carry out the actual sales and therefore, since commission is directly linked to the sales, the same cannot be

disallowed in the first instance. Secondly, the counsel for the assessee submitted that the assessee had provided certain details like name, PAN number, the amount of commission income paid to the various persons etc. In addition, the entire payment of commission was paid through banking channels and only after deduction of tax at source at applicable rates. However, the assessing officer did not carry out any further enquiry/issue notice under section 133(6) to the concerned persons and proceeded to disallow the entire amount of commission paid by the assessee, above ₹ 2.5 lakhs. Further, Ld. CIT(A) also erred in not appreciating the business model of the assessee and confirmed the additions made by the assessing officer, for no justifiable reason.

6. In response, Ld. DR placed reliance on the observations made by the assessing officer Ld. CIT(A) in their respective orders.

7. We have heard the rival contentions and perused the material on record. Before us, the counsel for the assessee submitted that as directed by the ITAT Bench, during the course of hearing, the assessee in addition to the earlier details has also submitted the complete address for each of the parties to whom commission was paid, has furnished PAN of all parties, and for 7 out of the 11 parties to whom the commission income was paid the assessee has also furnished their income tax returns for the relevant year under consideration. In respect of the balance four persons involved to whom commission was paid, the income tax return of these persons is not available with assessee. Accordingly, since the assessee has now furnished complete address of all the 11 parties concerned, their respective PAN numbers, the

amount of commission paid and the TDS deducted thereon and income tax returns of 7 out of 11 parties, the matter may kindly be restored to the file of assessing officer for carrying out the necessary verification and allow relief to the assessee, in accordance with law.

8. In our considered view, looking into the facts of the instant case, we observe that the assessee is following multilevel marketing business model in which the commission is paid to various persons who marketing the products of the assessee company. The assessee is not involved in direct advertisement in the print media, but the market of the products of the assessee is done by forming a chain of person/agents, who market the product of the assessee by word of mouth/personal meetings etc. Therefore, the commission earned by such persons/agents is directly connected with the sales done by them. Therefore once the figure of sales is accepted by the tax department, then, subject to necessary verification, the entire amount of commission income cannot be disallowed by the Department, looking into the business model of the assessee company. In the instant case, a sum of Rs.50,33,810/- being 100% of the commission paid over and above ₹ 250,000/- has been disallowed by the assessing officer on the basis that assessee has failed to furnish complete details of persons to whom such commission, was paid. However, we observe that the counsel for the assessee has been able to furnish substantial details with respect to the persons to whom the commission was paid including their address of communication, their PAN numbers and income tax returns of 7 out of 11 persons/agents. Accordingly, looking into the details furnished by the counsel for the assessee before us, in the interest of justice the matter is

restored to the file of the assessing officer for de novo consideration, to carry out the necessary verification, and thereafter, pass appropriate order in accordance with law, keeping in view the business model followed by the assessee.

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

Order pronounced in the open court on 12-06-2024

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad : Dated 12/06/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद