

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**ITA No.1498/DEL/2018
(Assessment Year: 2014-15)**

M/s. B.K. Sales Corporation,
D-1, GF 5, Virat Bhawan,
Commercial Complex,
Dr. Mukherjee Nagar,
New Delhi – 110 009.

vs. ACIT, Circle 36 (1),
New Delhi.

(PAN : AAAFB4846K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ashwani Kumar, CA
Shri Ankur Agarwal, CA
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 12.06.2024
Date of Order : 26.06.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-12, New Delhi dated 06.12.2017 for the assessment year 2014-15.

2. Grounds of appeal taken by the assessee read as under :-

“1. Revenue : Disallowance of service charges/commission paid to six HUFs Rs.3196047 –

a. The Ld. Assessing Officer has ignored

i. The basic fact of the assessee being a service recipient getting such services from various unrelated entities.

ii. The nexus of all the specific transactions of services received.

iii. The evidences of bills, Qty, amounts, PAN, TDS and other caution as expected as service recipient in the normal course of business for making any payment for expenses, & therefore it is prayed the addition/disallowance be deleted.

b. The above disallowances having confirmed by the CIT (A) ignoring the facts and supporting case laws presented by appellants in this behalf may please be deleted.

c. Due to unforeseen reasons further additional evidences escaped submissions before the Ld CIT (Appeals).

2. Revenue : Disallowance of deemed Personal Expenses – The unlawful in disallowance of 1/6th of Business Travelling, Conveyance and Vehicle expenses and depreciation on vehicles as personal expenses ignoring the facts of the case & same have been upheld by CIT (A) & the level of business activities be deleted.

3. Re : Initiation of Penalty Proceedings : The Ld Assessing Officer's unlawfully initiated penalty proceedings for concealment of income u/s 271(1)(c) should be withdrawn.

3. The Ld Assessing Officer has been unlawful, unjust, prejudicial against the principles of natural justice, ignoring the facts of the case.”

3. Assessee has further raised an additional ground under Rule 11 of the Appellate Tribunal Rules, 1963 as under :-

“That the order dated 06.12.2017 passed u/s 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’) by the Ld. Commissioner of Income-tax (Appeals)-12, New Delhi, is against law and facts on the file in as much as he was not justified to enhance the income of the Appellant firm by Rs.1,95,39,767/- in respect of commission paid by it by resorting to the provisions of Section 251(1)(a) r.w.s. 251 (2) of the Act.”

4. Upon hearing both the parties, we admit the above additional ground as the same is legal in nature and in this regard, we are following the case

law of Hon'ble Supreme Court in the case of National Thermal Power Corporation Ltd. vs. CIT (1988) 229 ITR 383 (SC).

5. Brief facts of the case are that the assessee is a trader of chemical products. Assessee filed return of income for the year under consideration on 01.12.2014 declaring taxable income at Rs.10,57,03,290/-. Assessment was framed under section 143 of the Income-tax Act, 1961 (for short 'the Act') vide order passed on 30.12.2016 at an income of Rs.10,93,82,367/- by making an addition of Rs.31,96,047/- being commission paid by the assessee to six agents working in the capacity of HUFs and Rs.4,83,000/- being disallowance of 1/6th of travelling conveyance and vehicle maintenance expenses. As regards disallowance of commission expenses, Id. CIT (A) noted the observations of the AO at pages 10 & 11 of his order which are reproduced below :-

“ The Assessing Officer observed that assessee has debited Rs.2,27,35,807/- to the Profit & Loss account towards commission expenses. The list of parties to whom commission was paid was examined by the Assessing Officer. The Assessing Officer noted that the commission paid includes the payment to the HUFs as under:

Sr.No.	Name of the HUFs to whom commission paid	Amount (in Rs.)
01	Deepak Gupta HUF	6,00,000/-
02	Gauri Shankar Gupta HUF	3,00,000/-
03	Sugam Gupta HUF	6,00,000/-
04	Jatin Bhupindra Shah HUF	5,76,000/-
05	Niraj Bhupindra Shah HUF	2,41,966/-
06	K.K. Pahwa & Sons HUF	8,78,081/-
	TOTAL	31,96,047/-

7.2 On being asked to explain the payments to the above HUFs the assessee explained that the HUFs raised the bill for commission against the name of the customers which has the reference in the invoices, with date and quantity supplied to the buyers. The commission was not paid to the individuals but as representatives of HUFs for rendering the services. The Assessing Officer remarked that commission has been paid to these entities for bringing customers or facilitating the sale. Assessee was asked to furnish evidences of correspondence / communication in respect of the services rendered by the HUFs. The Assessing Officer has recorded in the assessment order that such evidences were not furnished. There were no written agreements about the rates of commission. The Assessing Officer also remarked that for the commission agents, individual skills or efforts are required. HUF is not a juridic person for all purposes and cannot enter into an agreement. Question important for the Assessing Officer was whether the members of HUF have rendered the services, which was not a result or inherited business or commission or having no nexus with the inherited asset. A person has to engage in some business / trade and transfer the rights to the next person to earn the commission, at the price fixed by the principal against the payment of certain commission. The other cases may be those of pure brokers or agents to receive the payments as middle men. The Assessing Officer emphasized that HUF cannot work as broker where individual skills are required. The Assessing Officer further observed that making the payments through cheques do not prove the genuineness of the transaction. According to the Assessing Officer, the TDS made on the payments and confirmation from the parties do not prove the validity or the claim. The Assessing Officer was of the view that the absence of any agreement or communication does not prove the services obtained by the assessee from the HUFs. In view of these facts, the Assessing Officer disallowed commission expenses amounting to Rs.31,96,047/-.”

6. Against the above order, assessee appealed before the Id. CIT (A). Assessee referred to the proposition that assessee had made payments to the HUFs for rendering their services as commission agents against invoices issued by Karta / Manager of the HUFs and the assessee was regularly

deducting tax at source as per law and all payments were supported by bills explaining details of work done/quantity supplied. Assessee further submitted that the HUFs are not prohibited under law to render services. In this regard various case laws were referred by the assessee as under :-

- (i) Raj Kumar Hukam Chandji vs. CIT (1970) 78 ITR 33, 43 (SC);
- (ii) S.S. Khubchand Motilal Jain – (1975) 100 ITR 206 (M.P.); and
- (iii) Tolaram Jalan vs. ITO – (1983) 6 ITD 261 (ITAT Cal.).

7. Ld. CIT (A) in his order observed that payment to HUF was not possible is not tenable. Ld. CIT (A) asked the assessee to provide description of services performed by agents to whom the payments were made; whether there was any agreement written or oral between the assessee and agents for the work to be performed by the agents; the evidences supporting the services having been performed by the agents and justification for the amount of commission paid to the related persons. Ld. CIT (A) recorded that assessee did not provide the information asked for.

He referred to following cases laws :-

- (i) Schneider Electric India Ltd. vs. CIT 304 ITR 360 (Del.);
- (ii) Lakshmiratan Cotton Mills Co. vs. CIT 73 ITR 634 (SC);
- (iii) The Printer House (P) Ltd. vs. DCIT, Circle 18(1) in ITA No.1674/Del/2011;
- (iv) ITAT, Delhi Bench in the case of Roger Enterprises (P) Ltd. vs. DCIT 88 ITD 95.

Referring to the above case laws, ld. CIT (A) enhanced the total income by disallowing the entire commission paid as under :-

“ In view of the provisions of Sec. 37 (1) of the IT Act and various case laws on the similar or identical issues, it is held that the whole or the claim of commission amounting to Rs.2,27,35,807/- is not deductible. Therefore, in view of my notice vide F.No. CIT(A)-12/2017-8/218 dtd. 21.11.2017 to enhance the income by Rs.1,95,39,767/-, the total income of the assessee is enhanced by this amount under provisions 251 (1)(a) r.w.s. 251 (2) of the LT. Act. I am satisfied that the assessee has furnished inaccurate particulars of income and has also concealed the particulars or such income. Therefore, the penalty proceedings u/s 271(1)(c) are initiated separately in respect of the income enhanced by me supra.”

8. Against this order, assessee has come up in appeal before us. We have heard both the parties and perused the records.

9. Ld. Counsel for the assessee summarised his submissions as under :-

“ In the case of the Appellant it has been a trade practice to pay commission to the agents in the line of business in which it is engaged. Entire commission has been paid in the normal course of business and none of the parties to whom commission was paid is related to the Appellant either directly or indirectly. The entire payment has been made through regular banking channels.

Further, it is not the first year in which commission was paid. The same has been paid in earlier year also which is tabulated below:-

Particulars	AY 2014-15 FY ended 31.03.14	AY 2013-14 FY ended 31.03.13	AY 2012-13 FY ended 31.03.12
Commission Exp	22735806	16108399	5419814
Turnover	10486891298	8466639002	4263043009
% of Commission to Turnover	0.22%	0.19%	0.13%
Net Profit	104539581	72054123	57327605
NP Rate	1.00%	0.85%	1.34%

The 6 parties (HUFs) to whom the commission paid has been disallowed by the Ld. Assessing Officer during the year under appeal are listed at Para 4.1 at Page No 2 of the Assessment Order. Out of these six parties, commission was also paid to three parties listed at Sr. No 1,2, and 6 during the AIY 2013-14 also which was duly accepted by the Ld. Assessing Officer and an order u/s 143(3) of the Act was passed in the case of the Appellant.

During the course of Assessment Proceedings notices u/s 133(6) of the Act were issued to all the parties to whom commission has been paid which were duly replied by them. Copies of the replies filed have been placed at Page Nos 76 to 255 of the Paper Book filed.

It is thus prayed that looking to the facts and circumstances of the case particularly that it has been a trade practice to pay commission in earlier year also, there was no justification to uphold the disallowance/enhancement of commission paid. Otherwise also following the principle of consistency the commission expenses should be allowed. Reliance is placed on the following judgements (copies enclosed):-

- Radhasoami Satsang v. CIT [(1992) 193 ITR 321 (SC)];
- DIT(E) v. Apparel Export Promotion Council [(2000) 244 ITR 734 (Del)];
- CIT v. Neo Polypack (P) Ltd [(2000) 245 ITR 492 (Del)];
- CIT v. Dalmia Promoters Developers (P) Ltd [200 CTR 426 (Del)];
- DIT (E) v Escorts Cardiac Diseases Hospital Society [(2008) 300 ITR 75 (Del)].”

10. Per contra, ld. DR for the Revenue relied upon the order of the ld. CIT(A).

11. We note that it is the contention of the assessee that the assessee is in the trade practice to pay commission to the agents in the line of business in which it is engaged and that the entire commission has been paid in the normal course of business and none of the parties to whom commission was

paid is related to the assessee either directly or indirectly. The entire payment has been made through regular banking channels. Further, it is the claim of the assessee that the assessee has paid the commission in earlier years too and it is not the first year. In this regard, following details given by the assessee are relevant :-

Particulars	AY 2014-15 FY ended 31.03.14	AY 2013-14 FY ended 31.03.13	AY 2012-13 FY ended 31.03.12
Commission Exp	22735806	16108399	5419814
Turnover	10486891298	8466639002	4263043009
% of Commission to Turnover	0.22%	0.19%	0.13%
Net Profit	104539581	72054123	57327605
NP Rate	1.00%	0.85%	1.34%

12. Further, during the course of assessment proceedings, AO issued notices u/s 133 (6) of the Act to all the parties to whom commission had been paid which were duly replied by them. Copies of the replies filed have been placed at page nos.76 to 255 of the paper book filed by the assessee in this regard. Further, it is noted that as regards 6 HUFs, 3 HUFs were also there in AY 2013-14 and the same was duly accepted by the AO in the order passed u/s 143 (3) of the Act. The above amply demonstrates that it is the trade practice of the assessee to pay commission. Assessee has paid commission earlier also and which was duly allowed during scrutiny assessment. The percentage of commission to turnover is consistent with earlier years. The net profit also is consistent with the earlier years. Further, it is not the case of Revenue that commission payment is unheard off. The

commission agents have duly replied to the notices and confirmed the same. In this regard, the case laws relied upon by the assessee as above is relevant. In these circumstances, when the payment has been allowed in earlier years, the same cannot be disallowed in the current year without any change in law or facts. Accordingly, in the background of aforesaid discussion and precedents, we set aside the order of CIT (A) and decide the issue in favour of the assessee.

13. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on this 26th day of June, 2024.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 26th day of June, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

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