

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER
&
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1844/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2012-13)

Dy. Commissioner of Income Tax Circle-2(1)(2), Ahmedabad	बनाम/ Vs.	M/s. Mudra Finvest Gujarat Limited 10B, Sumatinagar Society, Nr. Sindhi School, Usmanpura, Ahmedabad, Gujarat 380013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCM0526H		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Ms. Saumya Pandey Jain, CIT. DR
प्रत्यर्थी की ओर से/Respondent by :	Ms. Astha Maniar, A.R.

Date of Hearing	27/06/2024
Date of Pronouncement	12/07/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-2, Ahmedabad, (in short the ‘CIT(A)’) dated 29.04.2016 for the A.Y. 2012-13.

2. The appeal of the Revenue was decided by this Tribunal in ITA No. 1844/Ahd/2016 dated 09.11.2022 whereby the appeal of

the Revenue was partly allowed. The Revenue has taken Ground No.3 in that appeal, which is as under:

“3. The Ld.CIT(A) has erred in law and facts in deleting the addition of commission expenses amounting to Rs.19,29,530/- made by the AO without appreciating the facts of the case and the material brought on record.”

3. This ground of the Revenue was allowed in the order dated 09.11.2022. Thereafter, the assessee had filed a Miscellaneous Application stating that the submission of the assessee in respect of this ground was not properly considered by the Ld. ITAT. Therefore, there was a mistake apparent from the record. Considering the submission of the assessee an order was passed in M.A. No.22/Ahd/2023 in ITA No. 1844/Ahd/2016, dated 29.03.2023, whereby the M.A. of the assessee was partly allowed. The relevant portion of the said order is as under:

“4. Heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the contention was raised by the Ld. AR at the time of hearing with respect to the payment of commission of Rs. 17,13,530/- which was allowed by the Revenue in the later year but the same had not been considered by the ITAT while passing the order. Admittedly, contention of the ld AR is very crucial to decide the issue raised before us, therefore, we hold that there is a mistake in the order of the ITAT which requires to be rectified. As regards to the issue of the commission expense of Rs. 2,16,000/- in relation to the sale of raw cotton, the Ld. AR at the time of hearing has not raised any contention. Rather the Ld. AR agreed to the decision of the ITAT in this regard. Hence, we hold that there is mistake apparent in the order of the ITAT with respect to the sale of gold bullion and not in relation the commission expense in connection with the sale of raw cotton. Thus, we recall the impugned ground only to the extent of commission expense of Rs. 17,13,530/- only with respect to the sale of gold bullion. The date of hearing is fixed on 12/04/2023. As the date of hearing has been pronounced in the open court, there is no need to issue

separate notice intimating the date of hearing to any of the party. In view of the above the Miscellaneous Application filed by the assessee is partly allowed.”

4. In view of the above order, the matter was re-heard in respect of Ground No.3 of the Revenue's appeal. Ms. Astha Maniar, Ld. AR submitted that the evidence in respect of commission expenses of Rs.17,13,530/- was already brought on record in the course of assessment proceeding. She submitted that the Department had allowed the commission expenses paid to the same six parties in the subsequent year A.Y. 2013-14 while completing the scrutiny assessment for that year. Thus the matter was verified and claim of the assessee was accepted by the Department. As the nature of service rendered and the parties involved were same in this year as well, the claim of the assessee ought to be allowed.

5. Per contra, Ms. Saumya Pandey Jain, Sr. DR submitted that each assessment year is separate and, therefore, the finding as given by the Ld. Tribunal in the original order should be upheld.

6. We have carefully considered the facts of the case and the rival submissions. Originally, this ground of the Revenue was allowed for the reason that documentary evidences in itself doesn't prove the rendering of services or payment of commission. It was held that no evidence was brought on record about the services rendered by the commission agents. The finding as given in the original order was as under:

“24. We have heard the rival contentions of both the parties and perused the materials available on record. Indeed the assessee was able to furnish the necessary supporting evidence relating to the commission expenses in the form of debit note, confirmation, TDS certificate, and agreement bank account statement. Likewise, the commission parties have also confirmed the transaction in response to the notice issued to them u/s 133(6) of the Act. However, all these documentary evidences are not sufficient enough until and unless it is clear based on the evidences that the commission agents have rendered services to the assessee. It is the onus upon the assessee to bring such services based on the cogent materials but we note that there was no evidence brought on record about the services rendered by the commission agent, therefore, we are not inclined to uphold the order of the Ld. CIT(A), on the reasoning that the commission expenses have not been incurred by the assessee wholly and exclusively for the purpose of business. On perusal of the agreement, we note that there were executed on 01/04/2011 and the same were not notarized. Furthermore, most of the payment for the commission was made at the fag end of the Assessment Year though the assessee was carrying out business throughout the year. All these facts strongly suggest that the assessee has manipulated its profit by claiming commission expenses. Hence the ground of Revenue is allowed.”

7. The objection of the Revenue is that each assessment year is separate and the matter has to be examined independently. On the other hand, the assessee has contended that six HUFs to whom commission was paid in the current year were also involved in the subsequent assessment year A.Y. 2013-14. The commission was paid to the same six HUFs in the next year, which was examined by the AO in the course of assessment and was accepted as an allowable expenses. However, no evidence in this regard has been brought on record and the copy of assessment order for A.Y. 2013-14 has also not been filed. Only a copy of submission made by the assessee before the AO vide letter dated 26.12.2015 in the course of assessment proceeding for A.Y. 2013-14 has been brought on record. We don't know whether the nature of services rendered, based on which a decision was taken by this Tribunal

initially in this case, was verified by the AO in the assessment proceeding for the A.Y.2013-14. We, therefore, deem it proper to set aside the matter to the file of the AO to verify as to whether the six parties to whom commission of Rs.17,13,530/- was paid in the current year were also involved in the next assessment year i.e. AY 2013-14. Further, if the persons are the same and the commission paid to the six parties was allowed by the Department in A.Y 2013-14, then the assessee's claim for the commission payment in the current year should also be allowed.

8. In the result, appeal preferred by the Revenue is allowed for statistical purposes.

This Order pronounced on 12/07/2024

Sd/-
(SUCHITRA RAGHUNATH KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 12/07/2024

S. K. SINHA

True Copy

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad