

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.1161/MUM/2024
Assessment Year: 2017-18

Ranjankumar Simanchal Panigrahi, Flat No.113, B-Wing, Centroid, Ghatkoper East, Mumbai – 400075 (PAN : AKVPP1207D)	Vs.	Commissioner of Income Tax(Appeal), NFAC, Delhi
(Appellant)		(Respondent)

ITA No.1194/MUM/2024
Assessment Year: 2017

Income Tax Officer – 27(3)(1), Vashi, Navi Mumbai	Vs.	Ranjankumar Simanchal Panigrahi, Flat No.113, B-Wing, Centroid, Ghatkoper East, Mumbai – 400075 (PAN : AKVPP1207D)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Kiran Mehta, CA
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 02.07.2024
Date of Pronouncement : 27.09.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by the assessee and Revenue are cross appeals against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1059822597(1), dated 17.01.2024, against the assessment order passed by Income Tax Officer – 27(3)(1), u/s. 143(3) of the Income-tax

Act, 1961 (hereinafter referred to as the "Act"), dated 26.12.2019 for Assessment Year 2017-18.

2. A) Grounds taken by the assessee in ITA No. 1161/MUM/2024 are reproduced as under:

"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) grossly erred in confirming the 60% of commission of Rs.2,17,57,800/-, out of commission of above Rs.15,000/- amounting to Rs. 3,62,63,000/-, without pointing out specific reasons.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming 60% of commission expenses, ignoring the fact that the appellant during the appellate proceedings had placed on record various documentary evidences/ explanation which clearly justified that the commission expenses paid were business purpose.

3. That the Ld. CIT (A) erred in law and on facts by not properly appreciating the explanation/documents as furnished by the appellant during appellate proceedings and rejecting the same in a routine manner which make the order arbitrary, unjustified and bad in law."

B) Grounds taken by the Revenue in ITA No. 1194/MUM/2024 are reproduced as under:

"(i) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A)(NFAC) is justified in deleting 40% of commission payment of Rs.3,62,63,000/- i.e. Rs. 1,45,05,200/- and Rs 1,03,900/- without appreciating the fact that the assessee has not submitted sufficient documentary evidences either during the course of assessment proceedings or during the appellate proceedings.

(ii) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A)(NFAC) is justified in deleting 40% of Commission Payment of Rs.3,62,63,000/- i.e. Rs. 1,45,05,200/- without appreciating the fact that the assessee has not deducted tax on such commission expenses."

3. The two appeals are cross appeals by both the parties hence we take it up together for adjudication.

4. Assessee filed his original return of income on 26.09.2017 alongwith tax audit report u/s.44 AB of the Act, which was subsequently revised on 07.08.2018, reporting a total income at Rs.38,81,920/-. Assessee is a commission agent running his business

in the name and style of M/s. Shriya Financial Services. Income consists of brokerage and commission against services as distributor of mutual funds and insurance either directly or through sub agents. In the course of assessment, ld. Assessing Officer enquired about the commission expenses of Rs.3,63,66,900/- claimed as deduction against total receipts of Rs.4,16,38,621/- by perusing the profit and loss account. The details of assessment proceedings undertaken by the ld. Assessing Officer by issuing statutory notices is tabulated as under:

<i>Sl.No.</i>	<i>Section</i>	<i>Date</i>	<i>Remarks</i>
1	143(2)	22/09/2019	
2	142(1)	24/12/2019	For hearing on 25/12/10
3	Show cause notice	25/12/2019	For hearing on 26/12/19
4	Order u/s 143(3)	26/12/2019	

4.1. In respect of the above tabulated information, assessee claims that he had been hardly given any time to submit his replies tantamounting to denial of natural justice and not giving adequate opportunity of being heard. While enquiring on the issue, ld. Assessing Officer called for the details which included names and address of the parties, nature of services rendered and proof of TDS on the same to prove the genuineness of the commission expenses claimed by the assessee. Since these could not be furnished, the disallowance was made. In the assessment so completed by the ld. Assessing Officer, commission expenses of Rs.3,63,66,900/- are disallowed. Aggrieved, assessee went in appeal before the ld. CIT(A).

5. Before the ld. CIT(A), all the details along with explanations and corroborative evidences were placed on record. Details of commission expenses claimed by the assessee is tabulated as under:

<i>Description</i>	<i>Amount</i>
<i>Triton Trading Company Private Limited</i>	<i>3,52,18,000</i>
<i>Bharti Tekwani</i>	<i>3,80,000</i>
<i>Anjali Panigrahi</i>	<i>2,85,000</i>
<i>Murlidhar B. Panigrahi</i>	<i>2,85,000</i>
<i>Ashish Padhi</i>	<i>95,000</i>
<i>Other (below Rs. 15,000/-)</i>	<i>1,03,900</i>
<i>Total</i>	<i>3,63,66,900</i>

6. In the course of hearing, assessee furnished details and documents to establish genuineness of the commission expenses, details of which is tabulated as under:

Sr. No.	Description	Amount	Remark
1.	Triton Trading company Private Limited	3,52,18,000	1. Service cum engagement letter 2. Tax Invoices 3. Ledger confirmation 4. Highlighting receipt in bank statement 5. ITR Acknowledgment 6. Financial Statement
2.	Bharti Tekwani	3,80,000	1. Tax Invoices 2. Ledger confirmation 3. Highlighting receipt in bank statement
3.	Anjali Panigrahi	2,85,000	1. Tax Invoices 2. Ledger confirmation 3. Highlighting receipt in bank statement
4.	Murlidhar B. Panigrahi	2,85,000	1. Tax Invoices 2. Ledger confirmation 3. Highlighting receipt in bank statement
5.	Ashish Padhi	95,000	1. Tax Invoices 2. Ledger confirmation 3. Highlighting receipt in bank statement
	Total	3,62,63,000	

7. It was submitted that assessee being a distributor of mutual fund and insurance products, payment of commission is essential part of his business which has been legitimately incurred and claimed as deduction. Assessee had appointed individuals/firm/body corporate by entering into agreements with them for the purpose of his business. These parties acted independently and procured business for the assessee for which commission expenses were incurred by the assessee for making payments to them. In respect of deduction of tax at source on the payment so made, assessee submitted that in the immediately preceding financial year, total gross receipts/turn over from the business carried by the assessee did not exceed the monetary limits specified under clause (a) of section 44AB and therefore there was no liability on the assessee to deduct tax at source for year under consideration on the commission expenses incurred and paid by him. Assessee claimed that the expenses ought to be allowed, they being genuine business expenses. In the alternate, it was also prayed that the matter may be remanded back to the ld. Assessing Officer to carry out fresh assessment.

7.1. Ld. CIT(A) after considering the submissions of the assessee observed that it will be a preposterous suggestion that the whole amount of commission payment is held as ingenuine since assessee's business is that of commission agent only which requires employment of sub-agents for the purpose of his business. At the same time, he also observed that it was incumbent upon the assessee to produce pointed evidence in support of his claim of huge commission payments which did not appear to have been done to his satisfaction. He thus, in order to strike a balance, directed the ld. Assessing Officer to allow the

expenditure on account of commission to the extent of 40% so claimed by the assessee apart from allowing amount of Rs.1,03,900/- which comprised commission payment of less than Rs.15,000/- in each case, so as to be out of purview of section 194H of the Act. The appeal was thus partly allowed. Aggrieved, assessee is in appeal before the Tribunal.

8. Before us, ld. Counsel for the assessee reiterated the facts as narrated above. A paper book containing pages 129, is also placed on record before us. In this, it is certified that pages from 1 to 118 were before the ld. CIT(A). These pages relate to the documentation furnished in support of the claim of commission expenses which are already tabulated above. In this respect, contention of the Revenue is that the documents were placed for the first time before the ld. CIT(A) only. Ld. Assessing Officer never got a chance to verify and examine these documents, for the partial relief given by him. Ld. Assessing Officer, ought to have been given a reasonable opportunity of being heard by calling a remand report in respect of these documents and details on which reliance was placed by ld. CIT(A), by partly allowing the appeal of the assessee.

9. We have heard both the parties and perused the material on record. We note that conduct of business of assessee, as stated above is not in dispute before us. Claim of commission expenses from the gross receipts of the assessee is the subject matter of the appeal for want of explanation corroborated by adequate documentary evidences justifying the said claim. Ld. CIT(A) has given a partial relief by adopting 40% of the said expense claim and payment of commission aggregating to Rs.1,03,900/- being less than Rs.15,000/- in each case, not

subjected to TDS. We are unable to discern the basis and rationality of adopting 40% by Ld. CIT(A) for allowing the claim vis-à-vis explanation and documentary evidences placed on record by the assessee in the paper book. Considering the submissions made by the ld. Sr.DR, we find it appropriate to remand the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication on the grounds of the appeal taken at the first appellate stage by giving a reasonable opportunity of being heard to the ld. Assessing Officer in respect of explanations and documentary evidences placed on record. A remand report may be called for from the ld. Assessing Officer on the submissions made by the assessee. Needless to say, assessee be given a reasonable opportunity of being heard to make any further submissions or rejoinder, if he so requires. After considering the same, the matter may be dealt with meritoriously by passing a speaking order to this effect.

10. Since the matter is restored to the file of Ld. CIT(A) for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). The observations herein made by us in remanding the matter back to the file of Ld. CIT(A) will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee. Accordingly, grounds taken by both, assessee and Revenue are allowed for statistical purposes.

11. In the result, appeals of both, assessee and Revenue are allowed for statistical purposes, they being cross appeals.

Order pronounced on day of 27 September, 2024 under Rule 34 of
The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 27 September, 2024

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai