

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
**BEFORE SMT. KAVITHA RAJGOPAL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**
ITA No. 1712/Mum/2024 (A.Y. 2020-21)

Shri Vinod Jaywant,

Flat No. 103, Laxmi Vilas Society,

Ghantali Thane West,

Maharashtra – 400 601

PAN No. AAPPJ5829F

..... Appellant

Vs.

Faceless Assessment Unit,

ACIT Thane (Cir 1),

Maharashtra- 400 601.

..... Respondent

Appellant by	:	Shri Jayant Bhatt, Ld. AR
Respondent by	:	Ms. Rajeshwari Menon, Ld. DR
Date of hearing	:	08/08/2024
Date of pronouncement	:	24/10/2024

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") Delhi dated 31.03.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2020-21. The assessee has raised the following grounds of appeal:-

- 1. The learned CIT Appeals National Faceless Appeal Centre, Delhi has erred in confirming the order of the AO in which he had disallowed the commission expenses to the tune of Rs.*

1,24,35098/- just because some of the commission agents did not respond to the Notices issued by the Department u/s. 133(6) of the Income Tax Act, 1961.

2. The learned CIT Appeals National Faceless Appeal Centre, Delhi has erred in confirming the order of the AO in which he had disallowed the Salaries to the tune of Rs. 50,33,857/- although those were genuine business expenses

3. The learned CIT Appeals National Faceless Appeal Centre, Delhi has erred in confirming the order of the AO in which he had disallowed the Sales Promotion Expenses to the tune of Rs. 7,53,822/- although those were genuine business expenses

4. The learned CIT Appeals National Faceless Appeal Centre, Delhi has erred in confirming the order of the AO in which he had disallowed the Advertising and Marketing Expenses to the tune of Rs. 3,12,748/- although those were genuine business expenses

5. the appellant craves leave to add, alter, amend, and modify the aforesaid grounds of appeal at or any time before the hearing as may be advised from time to time.

B RELIEF CLAIMED

1. the addition made by the AO and confirmed by the CIT Appeals for the Commission Expenses to the tune of Rs. 1, 24, 35,098/- be deleted.

2. the addition made by the AO and confirmed by the CIT Appeals for the Salaries to the tune of Rs. 50, 33,857/- being unwarranted is deleted.

3. the addition made by the AO and confirmed by the CIT Appeals for the Sales Promotion Expenses to the tune of Rs. 7, 53,822/- being unwarranted is deleted.

4. the addition made by the AO and confirmed by the CIT Appeals for the Advertising and Marketing Expenses to the tune of Rs. 3, 12,748/- being unwarranted be deleted.

2. The brief facts of the case are that the assessee individual filed his return of income on 15.02.2021 declaring total income at Rs. 21,78,670/-. The case of the assessee was selected for complete scrutiny under CASS. During the year under consideration the assessee was involved as Direct Selling Agent (DSA) and has received income from commission as well as other sources. The gross commission received from LIC Housing Fin. And others was to the tune of Rs. 3, 86, 90,361/-.

The commission payout out of the commission earned was Rs. 2, 07, 73,674/- on which T.D.S. was followed by the assessee.

3. The case of the assessee was assessed after making addition of Rs. 1, 85, 35,525/- on various grounds. The assessee being aggrieved with this order of the AO preferred an appeal before the Ld. CIT (A), who in turn confirmed the order of the AO. The assessee being further aggrieved preferred the present appeal before us. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds taken before us. The assessee raised four substantive grounds. Ground wise adjudication of the issue is as under in our order in coming paras.

4. Ground No. 1 pertains to the disallowance of Rs. 1, 24, 35,098/- on account of the commission expenses claimed by the assessee. The assessee is a commission agent working for sourcing the housing loans for various banks and financial institutions. They normally give commission to their agents in the range of .9% to 1%. The appellant is working in this industry since last 25 years. As per the assessee he earned total Rs. 3.86 Cr. From commission and it is possible only with the network of capable and devotee people working on the ground directly in touch with needy customer. Looking at the amount it can be safely assumed that the assessee has arranged loans to the tune of Rs. 400 Cr. Approx.

5. Details of the commission paid by the appellant during the year alongwith PAN No., proof of payments in the form of bank statements were produced before the AO and it is also submitted that payments were made after due compliance of the T.D.S. Based on these information, the AO issued notices u/s. 133(6) of the Act to total 15 parties as enumerated on page 4 and 5 of the Ld. CIT

(A)'s order. It is observed that in this list PAN Nos. of the deductee were there and out of 15 parties, 4 parties confirmed the transactions (Although with a difference of Rs. 6,55,712/-) and rest of the parties chosen not to reply.

6. **Here it is pertinent to mention that, in none of the case it is alleged by the AO that notice not served or refused by the party.** In that case, as all the PAN Nos. were there alongwith the details of T.D.S. deducted by the assessee, the AO was fully empowered to write the concerned AO's of the recipients about receiving of the income and their status of filing the return and disclosing the income in their respective returns. But, the AO, who is duty bound to check the revenue leakage in other cases also (other than the assessee) simply relied on the fact that no reply in response to section 133(6) of the Act received in the case of the assessee and disallowed the same. The AO did not even consider those four cases where he received the confirmation (Although with a difference of Rs. 6, 55,712/-). **In view of the above facts, we are not in sync with the action of the AO and Ld. CIT (A).** Best possible information had already been shared by the assessee and the Revenue is fully empowered to verify the identity, genuineness and reasonableness of the transaction undertaken. For non-following the procedure laid down by the AO, the assessee can't be punished. While disallowing the expense under the head salary, the AO was of the view that, when the assessee is claiming expenses under the head commission, how he can justify the huge expenses under the head salaries. In view of the above facts out of total disallowance of Rs. 1, 24, 35,098/-, Rs. 6, 55,712 (Being amount of difference in confirmation vis-à-vis claimed) is confirmed and balance addition is deleted. **In view of that ground no. 1 raised by the assessee is partly allowed.**

7. Ground No. 2 pertains to the disallowance of Rs. 50, 33,857/- on account of Salary expenses claimed by the assessee. The assessee had claimed salary and bonus expenses to the tune of Rs. 1, 12, 05,343/-, which is Rs. 50, 33,857/- more than the immediately preceding year. It is observed by the AO that other infrastructure and model of the business is same as in the previous year. We have gone through the audited financials of the assessee for F.Y.'s 2018-19, 2019-20 and 2020-21 and observed that gross revenue from commission was Rs. 3,45,42,705/-, 3,86,90,361/- and Rs. 6,54,25,651/- respectively. Whereas expenses under the head salaries and bonus were Rs. 61, 71,487/-, 1, 12, 05,343/- and Rs. 1, 43, 20,791/- respectively, being 17.87%, 29% and 21.88% respectively. Average of three years comes to around 22%. In nutshell whatever may be the parameter is applied, it is not under challenge that the assessee claimed the expenses at very high side and that is too without any supporting is being produced. Although the ratio is distorted w.r.t. claim of commission expenses also (44.33%, 53.70% and 56.32% respectively) but as the assessee furnished complete details and the AO has not followed the prescribed procedure and simply relied on the response of notices issued u/s. 133(6), we were forced to allow the same. But, here the claim of the assessee is absolutely fudge and can't be allowed. Simply furnishing the bank statement and PAN No. details are not sacrosanct enough in the given facts, that the same decision what we applied for commission payment can also be applied here, especially when the assessee himself has written in description column that PAN No. and address of the employee is not known.

8. Especially, when the emphasis on commission based model is too high and already allowed to the assessee although the assessee is not able to explain the

exponential increase in salary and bonus expenses claimed. Relevant ratios discussed above also confirm the view. **Resultantly, Ground No. 2 raised by the assessee is dismissed and order of the Ld. CIT (A) is sustained.**

9. Ground No. 3 and 4 pertain to the disallowances of Rs. 7, 53,822/- and 3, 12,748/- on account of the Sales Promotion expenses and Advertising and Marketing expenses claimed by the assessee. On this issue, as per the assessee Sales promotion expenses were made through banking channel and advertising expenses were made in cash. It is pertinent to mention that the assessee is liable to maintain the books of accounts in prescribed format with supporting bills and vouchers as the same are liable to Tax Audit as prescribed in section 44AB of the Act. Still, there were no supporting bills and vouchers against the expenses claimed by the assessee. It is highly improbable. Still, understanding the business model of the assessee, cash expenses incurred by the assessee on advertisements amounting to Rs. 3, 12,748/- is fully disallowed and the order of the Ld. CIT (A) is confirmed. As far as Rs. 7, 53,822/- incurred through banking channel on sales and business promotion 50% of the same is allowed as no bill and vouchers were produced. **Resultantly, Ground No. 3 is partly allowed and Ground No. 4 is dismissed.**

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 24th day of October, 2024.

Sd/-

(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 24/10/2024

Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai