

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.470/SRT/2024

Assessment Year: 2016-17

(Hybrid hearing)

Dhanuben Ramanbhai Sonavadiya A-1/102, Omkar Residency, Palanpur, Mahidharpura, Surat- 395 009	बनाम/ Vs.	Income Tax Officer Ward-2(3)(7), Surat, Anavil Business Center, Adajan Hazira Road, Adajan, Surat-395 007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: EBEP5 7022 D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारित की ओर से /Appellant by	Shri Sapnesh R Sheth, Advocate
राजस्व की ओर से /Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख/Date of Hearing	29/07/2025
उद्घोषणा की तारीख/Date of Pronouncement	27/08/2025

आदेश / ORDER

PER BIJAYANANDA PRUETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 08.04.2024 by the National Faceless Appeal Centre, Delhi/Commissioner of Income-tax (Appeals) [in short 'Ld. CIT(A)'] for the Assessment Year (AY) 2016-17, which in turn arises out of assessment order passed by Assessing Officer (in short, 'AO') u/s 143(3) of the Act dated 11.12.2018. Grounds of appeal raised by the assessee are as under:

1. *On the facts and in the circumstances of the case as well as the law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Assessing Officer in making disallowance of commission expense of Rs.88,81,886/-.*

2. *Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal."*

2. Facts of the case in brief are that appellant filed return of income on 17.10.2016 for A.Y 2016-17 declaring total income of Rs.13,79,990/-. Notices u/s 143(2) and 142(1) were issued to the assessee. The assessee had claimed commission expenses amounting to Rs.88,81,886/-. The assessee was asked to furnish complete details of the persons to whom commission was paid. However, assessee furnished only copy of ledger accounts and did not furnish other details including TDS on such commission payment. As the nature and quantum of work provided by the persons as well as agreement amongst the assessee and the recipients were not provided, the AO disallowed the entire commission expenses of Rs.88,81,886/-. He also disallowed salary expenses of Rs.10,97,445/-. The total income was determined at Rs.1,13,59,320/- as against returned income of Rs.13,79,990/-. Aggrieved by the addition made by AO, assessee preferred appeal before CIT(A).

3. Before CIT(A), the assessee filed written submission dated 25.08.2021 wherein it was stated that the assessee is a Direct Sales Agent (DSA) of various banks and other non-financial institutions such as ICICI Bank Ltd., Capital First Ltd., Magma Fincort Ltd., Bajaj Finance Ltd. etc., This is evident from Form-26AS. As a DSA, assessee needs to find potential customers in need of finance from the Banks and financial institutions. For that, assessee has to take service

of various agents who are in touch with persons requiring such finance. The assessee needs to pay commission to the referral agents to bring customers. The assessee submitted that she had submitted ledger confirmation of parties for Rs.88,78,295/- out of total commission expenses of Rs.88,81,886/-. The assessee also submitted PAN and Aadhar card of the agents for Rs.55,05,345/-. It was submitted that all payments were through banking channel which proves genuineness of the expenses. The assessee submitted that the ratio of commission expenses to the total commission income was 64.85% in the year under consideration as against 56.88% and 70.47% in A.Ys 2017-18 and 2018-19 respectively. Hence, there is no major fluctuation in the ratio of commission expenses. It was further submitted that the assessee was not liable to deduct TDS for the year under consideration because it was the first year of audit u/s 44AB of the Act. The submission of the assessee and additional evidence were forwarded to the AO for comment by the CIT(A). However, till the date of appellate order, no comments or objection were filed nor any request for adjournment was made by the AO. Hence, CIT(A) decided the appeal on the basis of finding in the assessment order and submission of the appellant during appellate proceeding. He observed that the appellant has not provided any proof in support of her claim that it was the first year of audit. Further, appellant did not provide list of parties to whom commission had been paid and provide copies of agreement with the parties to whom commission of more than Rs.1,00,000/- was paid along with invoice from the parties. The

CIT(A) also observed that appellant had not filed any evidence in support of her claim that it was the first year of audit and she was not liable to deduct TDS. Hence, he confirmed the addition of Rs.88,81,886/- on account of commission expenses. The CIT(A), however, deleted the disallowance of Rs.10,97,445/- on account of salary expenses.

4. Aggrieved by the order of the CIT(A), appellant has filed present appeal before the Tribunal. The Ld. AR submitted a paper book including written submission before CIT(A), copy of bank statements of assessee with Dena Bank and ICICI Bank Ltd. evidencing the name of persons to whom commissions were paid through her bank account, ledger confirmation along with proof of identity i.e., PAN and Aadhar card of the parties to whom commission was paid, return of income for AY 2014-15 and 2015-16 and assessment order for AY 2020-21 where commission expense was accepted by the AO. The Ld. AR submitted that the appellant is in the same business from AY 2014-15 and has been incurring commission expenses every year. He submitted that confirmations of all parties are given at pages 29 to 163 of the paper book. Such details had been given to the CIT(A) which was forwarded to AO for his comment. The AO has not submitted the remand report because nothing adverse in the submission of the appellant was found by him. The Ld. AR also submitted that the sales in FY 2015-16 was Rs.66,88,803/-, which was below the limit of Rs.1,00,00,000/- for the audit u/s 44AB of the Act. This is evident from page 165 of the paper book. He also submitted that the observation of

the CIT(A) that assessee did not furnish any information/documents is not correct because copy of bank statements with Dena Bank and ICICI Bank Ltd. evidencing the name of persons to whom commission was paid, had been submitted to the CIT(A) (pages 7 to 28 of the PB). He submitted that there was no TDS liability of the appellant because it was the first year of audit u/s 44AB of the Act.

5. On the other hand, Ld. Sr. DR for the Revenue supported the order of lower authorities. He submitted that the CIT(A) had given sufficient opportunities but there was no compliance by the appellant. He admitted that the AO did not file remand report to the CIT(A). He also submitted that the CIT(A) was reasonable and had deleted the disallowance of salary expenses.

6. We have heard both the parties and perused the materials on record carefully. The appellant was engaged in the business as a Direct Sales Agent (DSA) of various banks and financial institutions. For rendering such services, she had earned commission income, on which TDS was also made by the bank concerned. On perusal of the details enclosed in the paper book, it is seen that the appellant had filed details of commission paid to various parties. The AO made the disallowance on the ground that during the assessment proceedings, the appellant failed to furnish the details of commission expenses. However, it is seen that during the appellate proceedings before the CIT(A), the appellant had furnished the complete details i.e., confirmation of account with identity proof of various parties. As these details were not filed before the AO, the

CIT(A) called for a remand report from the AO, but he did not submit any comment or objection on these evidences. It is seen from these details that the appellant had filed confirmation of account of all parties and proof of identities (PAN and Aadhar card) of most of the parties to whom commission payments were made. It is also found that such commission expenditure is a regular feature of the assessee's business and the same has been regularly claimed in the return of income filed for various year. It is seen from page 3 of the paper book that there is not much variation in the ratio of commission expenditure for the year under considerations with those with the other assessment years. It is also seen that scrutiny assessment u/s 143(3) of the Act for AY 2020-21 was made on 06.09.2022 and the commission expenditure claimed by the assessee was accepted as genuine.

6.1 The CIT (A) while confirming the addition observed that the appellant did not specify as to why TDS was not made from the commission payment. In this regard, the Id. AR pointed out that there is no requirement for making TDS in case of the appellant, an individual, as the said liability arises only if the accounts of the appellant are required to be audited u/s 44AB of the Act for the immediately preceding AY. However, there was no such liability to get the accounts audited in case the appellant for immediately preceding AY 2015-16 as the total turnover was Rs.66,88,803/-, which was below the prescribed limit. This is evident from the figure of turnover mentioned in the return of income filed for the preceding year (pages 64 to 166 of the PB). The other ground of

the CIT(A) that the appellant did not file agreements with the parties to whom the commission had been paid for more than Rs 1 lakh cannot be a ground for making the impugned disallowance considering the nature of business of the appellant and also considering the facts that the appellant made payment through account payee cheques supported by the confirmation of the accounts and identity proof of the parties. These evidences filed during appellate proceedings were forwarded to the AO by the CIT(A) but the AO did not reject the evidences nor raised any objection. If he was not satisfied, he could have made independent inquiry as per law including by issue of notices u/s 133(6) of the Act. However, he did not raise any objection in this regard. On the other hand, the Revenue has accepted commission expenses incurred in AY 2020-21 after issuing notices u/s 133(6) to the persons to whom commission were paid. The order u/s 143(3) r.w.s. 144B of the Act for AY 2020-21 was passed on 06.09.2022 accepting the returned income of Rs.44,24,590/- declared by the appellant. Thus, genuineness of commission expenditure was accepted in AY 2020-21. Considering the factual matrix of the case and the nature of expenses, we do not find any reason for disallowing the entire commission expenses. However, we find that the appellant has not submitted identity proof of some of the recipients though all payments were made through banking channels. Therefore, it would be reasonable if 15% of the commission expense is disallowed to avoid possible leakage of revenue. The

AO is accordingly directed to add Rs.13,32,283/- and delete the remaining addition of Rs.75,49,603/-. The ground of assessee is partly allowed.

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

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 27/08/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 27/08/2025

Dkp Outsourcing Sr.P.S*

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

- **अपीलार्थी/** The Appellant
- **प्रत्यर्थी/** The Respondent
- **आयकर आयुक्त/** CIT
- **आयकर आयुक्त (अपील)/** The CIT(A)
- **विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/** DR, ITAT, SURAT
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By order/आदेश से,

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