

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

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER &
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**ITA No.301/Del/2024
[Assessment Year: 2014-15]**

Raj Kumar Daga, 7/18, Kalkaji, New Delhi	Vs	The Assistant Commissioner of Income Tax, Circle – 30 (1) New Delhi-110002
PAN No.AAHPD1424G		
Appellant		Respondent

Assessee by	Sh. Mayank Patawari, Advocate
Revenue by	Sh. Rajesh Kumar Dhanesta, Sr. DR.

Date of Hearing	29.10.2025
Date of Pronouncement	16.01.2026

ORDER

PER AMITABH SHUKLA, AM,

The captioned appeal has been preferred by the assessee against order dated 13.11.2023 of the Commissioner of Income Tax (Appeals)/ National Faceless Appeal Centre, Delhi [hereinafter referred to as 'Id. CIT(A)'] arising out of assessment order dated 28.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') pertaining to Assessment Year 2014-15.

2. The assessee has raised following grounds of appeal:-

1. That the learned Commissioner of Income Tax (A) is wrong in determining the total income at Rs.72,14,835/-

2. That the learned Commissioner of Income Tax(A) is wrong is ignoring all material fact and evidence produced before her while computing the total in come.

3. That the computation of total income is bad in law and is against the actual facts-and. evidence on record.

4. That the learned CIT(A) has erred in not allowing commission of Rs. 41,55,067/.

5. The appellant craves leave to add, alter, amend, amplify or delete any or all of the grounds of appeal before or at the time of hearing

6. That the learned CIT(A) has erred in not allowing donation of Rs. 12,100/-

7. That the Learned CIT(A)has further erred in charging interest u/s 234A and 234B of the Income Tax Act and raising an aggregate demand of Rs. 17,79,400/-. Thus failing to appreciate that no such interest was leviable on the facts of the instant case and in any case and without prejudice the same had to be calculated in accordance with the statutory provisions.

3. The assessee has contested the addition of Rs.41,55,067/- on account of commission expenses, through grounds of appeal no.1 to 4. Brief facts of the case are that the assessee is a trader in steel and is proprietor of Anupam Steel Centre. The main issue is addition of Rs. 41,55,067-, made on account of disallowance of expense of commission & brokerage paid to 24 parties. The ld. AO has noted that assessee has been carrying on the same business for the last many years but neither in the preceding years nor in the subsequent years any claim of commission and brokerage expense was made. When confronted, assessee submitted as under:

"The assessee proprietor has not claimed any Brokerage/Commission in respect of sale in the A. Y. 2013-14 but in A. Y. 2014-15 as due to change in Government in the captioned year affecting adversely the economy and trade, the assessee was not able to procure any sales order which resulted in drastic fall in sales from Rs.20.98.57, 157.69/- to Rs. 16,89,31,034/-"

4. On the basis of the details of commission paid, the ld. AO observed that there is no link between the change of government and the questions/queries raised in the Show Cause Notice issued to the assessee. It was noted that the change of Government took place on 26 May, 2014 i.e. after the completion of the Financial Year which ended on 31.03.2014 relevant to the assessment year under consideration. He further observed that a close look at the chart of Commission paid submitted by the assessee reveals that sum of Rs.40,60,252/- i.e. 97.14% of the total Commission has been paid only in the month of March, 2014 and majority of the cheques were issued on the last day of the Financial Year i.e. 31.03.2014. Then, the ld. AO requested the assessee to produce the parties to whom the commission was paid. However, on the stipulated date, assessee did not produce even a single party. Therefore, he gave one more opportunity to the assessee and again requested the assessee to produce the parties. The assessee was also requested to file confirmation, in original, from each party along with details of TDS deduction and their supporting evidence. Also called for was copy of ITR (Return of Income of each party for the A.Y. under consideration and copy of agreement with the parties to whom

commission was paid. However, till the date of completion of assessment, assessee did not produce even a single party. No agreement was produced. No proof of communication between the assessee and the commission receiving parties was produced. Out of the 24 parties, confirmations from some parties were not filed. On the basis of the documents filed, the ld. AO found that out of the 24 parties, 14 parties had the same address, i.e. 1/5812, Loni Road, Shahadara, Delhi- 110032. Other 02 parties also shared the address, i.e. 64, Govind Khand, Vishwakarma Nagar, Delhi. These details stand recorded on page no. 05 of the assessment order. On page no. 05 & 06 of the assessment order, the ld. AO has described the well-known modus operandi of assessee's who book bogus expenses of commission and brokerage or some other expenses of similar nature. He then observed as under:

"This would be a legal way of tax planning if the essential requirement for commission expense is satisfied which is that the person receiving the payment must be a genuine commission agent, who has in actual fact rendered services of commission agency to the assessee. Simply producing confirmations or proof of TDS deduction and Income Tax Return is not sufficient. The parties who have received the payment must establish that they have knowledge of the business, skill, contacts etc and have actually rendered services to the assessee. Therefore, in such cases, it becomes necessary to summon the commission agents personally in order to cross question them and the assessee did not produce even single commission agent for verification."

4.1. The ld. AO disallowed the commission expense of Rs.41,55,0671- on the ground that assessee failed to discharge the burden of proving that the

commission was paid to genuine person. Aggrieved by the order of the AO, the assessee filed appeal before the Id. CIT(A).

5. The Id. CIT(A) has confirmed the additions by observing as under:-

“.....7.2 From the above table, it is clear that the 15 private limited companies have declared nominal income and have claimed refund of the TDS deducted by assessee while making commission payment to them. Since assessee has not filed complete returns of 24 parties, there are no details regarding the manner in which the receipts from the assessee were accounted for by those parties. The party named Uddhav Rathi did not file return of income even when the commission payment to him was as much as rupees 6,05,1231-. Miss Priyanka Malhotra did not file return of income even though the commission payment to her was rupees 5,51,460-. Anurag Rathi-Huf did not file return of income even though commission payment to it was rupees 8,51,505. Anupam Rathi-Huf did not file return of income even though commission payment to it was Rs. 8,55,728-. In the submission, assessee has given the names of the parties which were introduced by each commission agent. However, assessee has not established that the parties introduced by the commission agents were new parties and the commission agents was bringing business to the assessee from those new parties. The assessee has not filed evidence linking specific sale bills to the commission agents. In the assessment proceedings, AO had specifically asked for evidence of communications between the assessee and the commission agents and between the commission agents and the parties to whom assessee sold the goods through the commission agents. Neither in the assessment proceedings nor in the appeal proceedings any evidence, demonstrating the relevant communication between the assessee and the commission agents and between the commission agents and the Sale parties, has been filed. Even if assessee's contention that no written agreement is required to be signed between the commission agents and the assessee is accepted, then also it was incumbent upon the assessee to furnish the details of relevant communication so as to establish that the parties did render relevant services for the assessee and consequently became entitled to commission. No evidence of any kind of

service has been furnished. If the assessee had filed self-evidencing material establishing genuineness of the commission payment then AO had no need of requiring the assessee to produce the parties before him. It is noteworthy that AO twice requested the assessee to produce the parties. It is the fact that they were not produced. Moreover, AO has clearly pointed out that 14 parties (all private limited companies) were operating from the same address, i.e. 1/5812, Loni Road Shahdara, Delhi-110032. Despite the above narrated circumstances, assessee has sought to justify the commission payment on the basis of the only fact that payments were made (mostly) through bank and due TDS was deducted. It is now settled law that payment thorough bank does not establish genuineness of the payment if the other material indicate that the payment/expense was not genuine. The case laws relied upon by the assessee have been duly considered and are found to be quite distinguishable on facts. In view of the above, the contentions of the assessee are not acceptable. Accordingly, the action of AO of treating the commission payment of Rs. 41,55,067/- as non genuine expense is upheld and the addition of that amount is confirmed.....”

6. Per Contra, the ld. DR supported the orders of the lower authorities.
7. The ld. Counsel for the assessee reiterated the submission before the ld. CIT(A). It was vehemently argued that the payments for the commission were made by using banking channel and due TDS was deducted. The ld. Counsel argued that non-disclosure of commission income by the impugned recipients would not make the claim of expenditure in assessee’s hand as ingenuine. The ld. Counsel submitted that it was able to increase its sales on account of payment of commission. On the issue of non-production of commission recipients before the AO, the ld. Counsel further submitted that the ld. AO was within its powers to have compelled their attendance by

issuing summons. The ld. Counsel submitted that the business of sale of steel does not required execution of lengthy agreements and that commission is paid to persons bringing business.

8. We have heard the rival submission in the light of material placed upon record. Undisputedly, the assessee has not produced the parties who were recipients of the commission. The ld. AO however also not made any attempts to enforce their attendance through summons proceedings under section 131. It is undisputed facts on record that the payments were made utilizing banking channel with due TDS deductions. The learned Assessing Officer while concluding the non-genuineness of the commission expenses has proceeded to accept the book results and the books of accounts were not rejected. We find force in the argument that non-disclosure or inadequate disclosure of commission receipts in the hands of the recipients could not make the commission expenses per se as ingenuine. Similarly, booking of commission payment in the last month of the financial year would not make the commission expenses per se as ingenuine as it is routine business practice to book expenses at the end. We have further noted that the arguments of the ld. AO on pages 5 and 6 of his order extracted hereunder dwell more in the realm of conjectures and surmises and a case of human probability.

“.....The modus operandi of tax evasion in such an arrangement first needs to be outlined.

The assessee first debits expenditure on account of commission or similar expense. Given large turnover and income of the assessee, he usually falls in the tax slab of 30%. Therefore, every debit in the P&L Account on the expense side reduces tax by 30% of the amount debited. The assessee normally has a few commission agents the full amount that is due to them, the assessee normally makes payments to various members of the agent's family as well as different HUFs of the agent, who by themselves either do not earn any income, or fall in the lower tax brackets (say 10% or 20%). The assessee even debits bogus expenditures and shows payments to parties who have remotely no connection with commission business and simply fall in the lower tax brackets. TDS is duly deducted on these payments and the income is also shown by the recipients. However, the recipients of the payments, by virtue of falling in the lower tax brackets, will pay tax only at 10% or 20%. Even if the assessee pays the entire tax on behalf of the parties to whom commission has been paid, he still saves tax of 10% or 20% on debiting the expense because the debit in the P&L Account reduces tax on that amount by 30% whereas the corresponding income shown by the agent requires tax to be paid at only 10% or 20%. This would be a legal way of tax planning if the essential requirement for commission expense is satisfied which is that the person receiving the payment must be a genuine commission agent, who has in actual fact rendered services of commission agency to the assessee. Simply producing confirmations or proof of TDS deduction and Income Tax Return is not sufficient. The parties who have received the payment must establish that they have knowledge of the business, skill, contacts etc and have actually rendered services to the assessee. Therefore, in such cases, it becomes necessary to summon the commission agents personally in order to cross question them and the assessee did not produce even single commission agent for verification.....”

9. We have noted that the ld. CIT(A) has confirmed the addition by placing full reliance upon the above hypothetical presumption drawn by the ld. AO. Conjectures and surmises have no place in judicial orders unless the same are supported by cogent and demonstrative evidence. Accordingly, we are of the considered view that the order of ld. AO and of the ld. CIT(A) is

not based upon correct understanding and interpretation of the facts of the case. We therefore set-aside the order of lower authorities and direct the ld. AO to delete the impugned addition of Rs.41,55,067/-. All the grounds of appeal raised by the assessee are therefore allowed.

10. Ground of appeal no. 5 is general in nature and does not deserve any specific adjudication and therefore dismissed.

11. Ground of appeal no.6 was not pressed by the assessee; hence this ground is dismissed as not pressed.

12. Ground of appeal no.7 is regarding charging of interest under section 234A and 234B. The same is consequential in nature and hence the same is dismissed.

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

Order pronounced in the open court on 16th January, 2026.

Sd/-
[YOGESH KUMAR U.S.]
JUDICIAL MEMBER

Sd/-
[AMITABH SHUKLA]
ACCOUNTANT MEMBER

Dated: 16.01.2026

*Shekhar @ N.E.H.H. , Sr. P.S. **

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi