

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT

ITA No. 1749/Bang/2025
Assessment Year : 2018-19

Mr. Zeeshaan Badami, 02 Killedar Complex, Near Ramangoudar Hospital Malapur Road, Dharward, Karnataka – 580 008. PAN: BWNPB6034M	Vs.	The Income Tax Officer, Ward-1(1), Hubli.
APPELLANT		RESPONDENT

Assessee by	:	Shri Vishal S Rao, CA
Revenue by	:	Shri Ganesh R Ghale – Advocate, Standing Counsel for Revenue

Date of Hearing	:	24-11-2025
Date of Pronouncement	:	27-01-2026

ORDER

PER PRASHANT MAHARISHI, VICE – PRESIDENT

1. ITA No. 1749/Bang/2025 is filed by Mr. Zeeshan Badami (the Assessee/Appellant) for Assessment Year 2018-19 against the Appellate Order passed by the National Faceless Appeal Centre on 11.06.2025 wherein the Appeal filed by the Assessee against the Assessment Order passed u/s. 143(3) of the Income Tax Act, 1962 dated 06.04.2021 passed by the National E-Assessment Centre (the AO) was dismissed.
2. The Assessee is aggrieved with the Appellate Order and has preferred the Appeal.

3. Only issue is disallowance u/s 40A (3) confirmed by the Id. CIT (A) rejecting the additional evidence submitted by the assessee during appeal proceedings.
4. The only issue in this Appeal is disallowance of Rs. 20,53,043/- u/s. 40A (3) of the Act. Brief facts of the case show that Assessee is an individual carrying the business of newspaper distributor filed his return of income on 18.09.2018 at a total income of Rs. 3,49,240/-. The return was picked up for scrutiny. It was found that the Assessee is deriving income from distribution of print paper agency having a turnover of Rs. 53,94,406/-. The Assessee has computed trade discount given by the publisher as gross profit and the commission given to the vendors is considered as an expense. It has been considered as brokerage paid to others in the return of income.
5. The AO found that Assessee has made a brokerage of payment of Rs. 20,87,460/-. The AO issued a show cause notice which was not responded and therefore further notice was issued on 22.03.2021 pressing the disallowance of sum of Rs. 20,87,460/- u/s. 40A (3) of the Act being the brokerage paid in absence of any evidence. The Assessee replied that it has incurred the above expenditure towards commission of hawkers. It was stated that these retail sellers keep their profit margin with them, which is considered as commission expenditure and pay the balance amount to the Assessee. The above payment made to them is merely their profit margin. It was further stated that the turnover of the Assessee in earlier years was less than Rs. 1,00,00,000/- and therefore the provisions relating to tax deduction at the source do not apply to him. He gave a list of brokers, showing the name of the newspapers, print price of the newspaper, margin by the Assessee, margin by the hawkers and also the total commission payable to the retailers. Assessee also submitted the copy of the letter of the original newspaper printer to

the above effect. The Ld. AO disallowed the commission of Rs. 20,53,043/- in absence of proof of payment through cheque or by means of electronic payment. Accordingly, Assessment Order was passed on 06.04.2021 at a total income of Rs. 24,02,283/- against the returned income of Rs. 3,49,240/-.

6. The Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) was also explained the same facts. The modus operandi of the business of the Assessee was also explained. Further, the Ld. CIT(A) did not agree with the submission of the Assessee and confirmed the same. Therefore, Assessee is in appeal.
7. I have heard the rival contentions. I find that the Assessee has made commission to 51 people on monthly basis. The method of paying the commission is that retailers on sale of the newspaper keep their margin and the balance sum is paid to the Assessee. The Assessee has not at all paid any commission. The claim of the Assessee that the commission structure was predefined by the newspaper company and to that effect, the Assessee submitted a letter of Printers (Mysore) Private Limited confirming the arrangement. It was further stated that the commission was the adjustment against liability for newspaper sold. It is in the form of discount/ profit and therefore same is not disallowable in the hands of the Assessee u/s. 40A (3) of the Act. The Assessee has also claimed that the payments are genuine. The Assessee refers to the table wherein the complete details of the commission are being shown. Accordingly, it was stated that when the payment is genuine giving the name of 51 people and showing their month wise payment exactly matching, the decision of the Hon'ble Madras High Court in case of Abiram agency v/s. ITO comes to the rescue of the Assessee and no disallowance could have been made. The Assessee further referred to the provisions of section 40A (3) and submitted that even otherwise the payment of the

commission to the individual is on account of distribution of newspaper and therefore there is no payment at a given point of time which is hit by the provisions of section 40A (3) of the Act. Assessee also contested that it is not the payment made by the Assessee but lesser receipt of the newspaper sale according to the scheme arranged by the newspaper printer. The Assessee also contested that in such a case the provisions of section 40A (3) cannot apply.

8. I find that the Assessee has made monthly payments to 51 parties. Further, as per paragraph no. 8.4 of the Ld. CIT(A) the Assessee has filed bills to show that there is no violation of provisions of section 40A(3) of the Act as the additional evidence, the Assessee wanted to show that in fact there are invoices wherein these agents have remitted the money to the Assessee and Assessee has not paid any sum to them. This evidence was not admitted by the Ld. CIT(A). The reason given by Ld. CIT(A) was that Assessee has failed to file a specific application requesting them to admit. I find that the reasons for rejection of additional evidence by the Ld. CIT(A) in absence of any specific application is very technical. Even otherwise, the Ld. CIT(A) could have issued a notice or directed the Assessee to furnish an application for admission of this evidence. Instead, the Ld. CIT(A) has not looked at the evidence and dismissed the claim of the Assessee. Further, the various contentions raised by the Assessee were also not considered.
9. In view of this we restore the whole appeal back to the file of the Ld. Assessing Officer with a direction to the Assessee to submit this additional evidence which were submitted before the Ld. CIT(A) before the Assessing Officer, raise all the contentions raised before us, which may be considered by the Ld. AO including the decisions relied upon and thereafter the Ld. AO may decide the issue afresh.

10. In the result, appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 27th January, 2026.

Sd/-
(PRASHANT MAHARISHI)
VICE-PRESIDENT

Bangalore,
Dated, the 27th January, 2026.

TNTS

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore