

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-II', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 4220/Del/2016 : Asstt. Year : 2012-13

Sh. Dhanesh Kumar Gupta, II-F-65/3, Nehru Nagar, Ghaziabad	Vs	Income Tax Officer, Ward-1(2), Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. ACEPG2126R		

**Assessee by : Sh. Saubhagya Agarwal & Saurab Gupta, Adv.
Revenue by : Sh. F. R. Meena, Sr. DR**

Date of Hearing : 18.10.2016	Date of Pronouncement : 28.11.2016
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ORDER

This is an appeal by the assessee against the order dated 23.05.2016 of Id. CIT(A), Ghaziabad.

2. The only grievance of the assessee in this appeal relates to the confirmation of disallowance of Rs.12,81,665/- made by the AO on account of commission on sales.

3. Facts of the case in brief are that the assessee e-filed the return of income on 17.09.2012 disclosing income of Rs.4,73,710/- which was processed and subsequently selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee had debited Rs.12,81,665/- on account of commission to the profit and loss accounts as per following details:

Sl. No.	Name of the commission agent	Commission paid
1	M/s Infra Solutions	1,71,050/-
2	Meenakshi Pabbi, Punjab	2,09,810/-
3	Mohit Pabbi, Punjab	1,04,905/-
4	Priya Pabbi, Punjab	2,09,810/-
5	Rohit Pabbi, Punjab	1,25,885/-
6	Sudha pabbi, Punjab	2,09,810/-
7	Vipul Kumar, Ghaziabad	1,42,590/-
8	Seema Gupta, Ghaziabad	1,07,805/-
Total		12,81,665/-

4. The AO asked the assessee to produce Meenakshi, Priya and Sudha for oath on examination to ascertain genuineness of the services rendered by them to the assessee and consequently the payment of commission. However, those persons were not produced, therefore, the AO inferred that the genuineness of the amount of commission was under cloud. The submissions of the assessee before the AO was that the turnover of the assessee for the year under consideration was at Rs.1.66 crore while in the preceding year it was at Rs.1.44 crore, so there was an increase of 15% of sale in comparison to the preceding year due to commission, as such, the expenses so incurred had directly beneficial for the business of the assessee. However, the AO did not find merit in the submissions of the assessee and made the addition of Rs.12,81,665/- by observing in para 4.5 of the assessment order dated 30.03.2015 as under:

“4.5 Before taking any adverse view for not producing the commission agent, for examining them on oath, the submission of the counsel has duly been considered. The counsel has not put up % increase in turnover between AY 2010-11 and 2011-12. In fact, during the AY 2010-11, the turnover was Rs. 74.42

Lacs which rose to Rs. 1.44 Cr for AY 2011-12 with 94% increase. Surprisingly, no commission was paid by the assessee during the AY 2010-11 and 2011-12. On the contrary, commission of Rs. 2,04,500/- and 1,04,430/- shown to have been received. It is evident that payment of commission has no direct nexus in increase of turnover of the assessee. Further, deducting tax while making payment of commission does not automatically make payment of such commission sacrosanct. Lastly, by debiting huge commission to the P&L a/c might be beneficial to the assessee but not for the department because in such case lower income is offered for taxation.

In view of the facts and discussion above, I hereby disallow the whole commission of Rs. 12,81,665/- and add back the same to the income of the assessee.

(Addition- Rs. 12,81,665/-)

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submission which has been incorporated in para 4 of the impugned order, for the cost of repetition, the same is not reproduced herein. The Id. CIT(A) did not find merit in the submissions of the assessee and sustained the addition by observing in paras 8 & 9 of the impugned order which read as under:

“8. Having considered the facts and circumstances of the case and the rival contentions, I find that the issue here is not whether the payments have made to the said persons. The issue is whether the said persons provided any services to the appellant and whether they had the necessary skill and resources to provide any such services. The AO has been reasonable in asking appellant to produce only 3 persons for his examination as regards the allowability of such expenditure. Nothing has been brought on record by the

appellant at the appellate stage or the assessment stage to justify allowability of such expenditure u/s 37. Mere payment by cheque and TDS thereof do not establish allowability of such expenditure u/s 37. I also find that 5 of the 8 persons apparently belong to the same family bearing the surname 'Pabbi'. At least the three ladies whose attendance had been requested by AO, share the same address and the bank accounts are also in the same bank branch as per the submission of the appellant.

9. In these circumstances in my considered opinion the appellant has failed to establish the nexus of the impugned payments with the business requirement of the appellant and therefore the action of the AO calls for no interference. The grounds of appeal are rejected. The addition is sustained.”

6. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the AO only asked the assessee to produce 3 persons while the commission was paid to 8 persons and the disallowance has been made in respect of the commission paid to all the 8 persons. It was further stated that there was a direct nexus between the increase in turnover and the commission paid. Therefore the addition made by the AO and sustained by the ld. CIT(A) was not justified.

7. In his rival submissions the ld. DR supported the orders of the authorities below.

8. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the assessee had paid commission to 8 persons out of which 5 belonged to the same family -Pabbiø The AO asked the assessee to produce only 3 ladies to whom commission was paid but never asked to produce other persons, however, the disallowance had been made in respect of commission paid to all the persons. In the present case, it is not clear as to whether there was a direct nexus or not in between the increase in sales and the commission paid because nothing is brought on record by either of the parties. I, therefore, considering the totality of the facts deem it appropriate to remand this issue back to the file of the AO to be decided afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 28/11/2016)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 28/11/2016

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR