

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI  
Before Sh. D. Manmohan, Vice President And Sh. N. K. Saini, AM  
ITA No. 420/Del/2013 : Asstt. Year : 2008-09**

Asstt. Commissioner of Income Tax, Circle 20(1), New Delhi	Vs	Sh. Saurabh Batra A-100, Gujrawala Town, Part-I, New Delhi-110009
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AEYPB9845E</b>		

Assessee by : Sh. Vinod K. Vindal & Sanjeev K. Bindal, CAs  
Revenue by : Sh. J. S. Minhas, ACIT DR

<b>Date of Hearing : 01.07.2015</b>	<b>Date of Pronouncement : 02.07.2015</b>
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the department against the order dated 29.10.2012 of Id. CIT(A)-XXII, New Delhi.

2. The only effective ground raised in this appeal reads as under:

*“1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts by deleting the disallowance made by the AO u/s 40A(2) of the IT Act, when it is seen that about 60% of the commission expense claimed by the assessee have been paid to family members at relatively higher rate of 5-5.19%.*

3. Facts of the case in brief are that the assessee filed the return of income on 26.09.2008 declaring an income of Rs. 8,60,482/- which was revised because of increasing deduction claimed by Rs. 10,500/-. It was again revised on 02.03.2009 declaring income of Rs. 16,99,868/- because of increase in income by Rs. 8,49,886/- under the head ÷capital gainsö. The said return was processed u/s 143(1)(a) of the Income Tax Act, 1961 (hereinafter referred to as the Act). Later on, the case was selected for scrutiny. During the course of assessment proceedings the AO noticed that the assessee had claimed commission expenses of Rs. 80,85,702/- in the profit and loss account of M/s Chevron Finserve and Rs. 68,96,585/- in the profit and loss account of M/s Autonet India, totaling to Rs. 1,49,82,287/-. The AO asked the assessee to furnish details of commission expenses. The assessee furnished the detail which revealed that the assessee had paid commission of Rs. 89,43,123/- to three family members as under:

1.	<i>Gaurav Batra Prop. G.S. Financials</i>	<i>Rs.21,33,940/-</i>
2.	<i>Mohinder Pal Batra Prop. New Batra Motors</i>	<i>Rs.33,86,313/-</i>
3.	<i>Monika Batra Prop. M.K. Financial</i>	<i>Rs.34,22,870/-</i>

4. The AO asked the assessee to furnish justification of commission paid to family members u/s 40A(2) of the Act. In compliance thereto the assessee furnished the detail of commission payment showing percentage of commission paid to other party and also to family members. From the said details, the AO observed that the assessee was

paying commission @ 3.87% to 5% to other parties whereas in the case of family members the commission was being paid from 5% to 5.19%. The assessee submitted that the relatives had done business of financing of motor cars independently through various car dealers in the market and the business of those relatives have got the bulk business and volumenise much above the direct parties. The AO did not find merit in the submissions of the assessee and disallowed 20% of the commission i.e. Rs. 17,88,629/- by invoking the provision of section 40A(2) of the Act.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and furnished the written submissions which have been incorporated in para 7 of the impugned order, for the cost of repetition, the same are not reproduced herein. The contention of the assessee before the Id. CIT(A) was that the observation of the AO that the commission was paid to the relatives parties @ 5% to 5.19% and to other parties @ 3.87% to 5% was not correct and not based on facts. It was pointed out that the commission paid to other parties was 2.63% to 5.30% and to the relatives was 4.78% to 5.18%. The detail of the income has been reproduced by the Id. CIT(A) at page no. 6 of the impugned order.

6. The Id. CIT(A) after considering the submissions of the assessee observed that the AO had taken only one sample transactions and on that basis he arrived at a decision for the entire year. He further observed that

only six parties (including three related persons) had been taken by the AO for the analysis, which implies that only three non related parties had been considered out of a very large number of non related parties. The Id. CIT(A) pointed out that the total number of non related parties in M/s Chevron Finserve was 22, and in M/s Autonet India was 40 to whom commission payments had been made during the year, but the AO had restricted his analysis to three unrelated parties and that too for three specific transactions. The Id. CIT(A) categorically stated that the AO had pointed out commission payments to three parties ranging from 4.97% to 5.19%, but on some transactions the payment of commission to unrelated parties was much higher i.e. in the case of Sh. Chander Mohan Gupta and Sh. Vinod Kumar Jain, it was 5.30% each and in the case of Sh. Neeraj Jain it was 5.25% but the AO had ignored all those cases. The Id. CIT(A) pointed out that the chart comparing the rates of commission payments furnished by the assessee revealed that the commission to the related parties was ranging from 4.78% to 5.18% and to the unrelated parties from 2.63% to 5.30% which shows that the rates of commission payments for unrelated parties were more than that of the related parties. The Id. CIT(A) was of the view that the AO made the disallowance @ 20% of the commission payments without any basis for the quantification and there was no proper ground to treat the commission payments to three related persons as excessive or unreasonable having regard to the fair market value or the legitimate needs of the business u/s

40A(2) of the Act. Accordingly, the addition of Rs. 17,88,629/- made by the AO was deleted.

7. Being aggrieved the department is in appeal. The Id. DR strongly supported the order of the AO and reiterated the observation made in the assessment order dated 30.11.2010.

8. In his rival submissions the Id. Counsel for the assessee reiterated the submissions made before the authorities below and strongly supported the impugned order passed by the Id. CIT(A). It was further submitted that the assessments for the preceding year 2007-08 and the succeeding year 2009-10 were also completed u/s 143(3) of the Act but no such disallowance out of the commission payments was made. The copy of the said assessment orders were furnished which are placed on the record. It was accordingly submitted that the Id. CIT(A) rightly deleted the addition made by the AO.

9. We 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 AO on the basis of wrong selection of sample, came to the conclusion that the assessee was paying commission at the higher rate to the related parties in comparison to the unrelated parties. The AO had chosen three parties out of the 62 unrelated parties and came to the conclusion that the rate of commission was ranging from 3.87% to 5% while the commission paid to the related parties was

ranging 5% to 5.19%. However, the Id. CIT(A) on the basis of complete details furnished by the assessee came to the conclusion that the commission paid to the related parties was ranging from 4.78% to 5.18% and to the unrelated parties 2.63% to 5.30%. In the present case, the commission paid to the unrelated parties @ 5.30% was at a much higher level than the highest rate of commission paid to the related parties at 5.19%. Therefore, the AO was not justified in presuming that the commission paid to the related parties was at higher rate. In the present case, it is also noticed that in similar circumstances, the AO while framing the assessment u/s 143(3) of the Act on 26.07.2011 for the preceding assessment year 2007-08 and on 08.08.2011 for the succeeding assessment year 2009-10 had not made any such disallowance out of the commission payment to the related parties. Furthermore, the AO made the disallowance by invoking the provisions of section 40A(2) of the Act, however nothing was brought on record on the basis of the comparative analysis to substantiate that the commission paid to the related parties was higher than the commission paid to unrelated parties. It is also not the case of the AO that the payment was made at a higher rate than the market rate, he had also not given any basis for making the adhoc disallowance @ 20% of the commission payments to the related parties. We, therefore, considering the totality of the facts as discussed hereinabove are of the view that the Id. CIT(A)

was fully justified in deleting the impugned addition. We, therefore, do not see any merit in this appeal of the department.

10. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 02/07/2015)

**Sd/-**

**(D. Manmohan)**  
**VICE PRESIDENT**

**Sd/-**

**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 02/07/2015**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**