

Smt. Jyoti Mantri vs. ITO , Ward- 2 (2), Jaipur

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
**IN THE INCOME TAX APPELLATE TRIBUNAL,
 JAIPUR BENCHES (SMC), JAIPUR**

श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 673/JP/2016
 निर्धारण वर्ष/Assessment Year : 2011-12

Smt. Jyoti Mantri 89, Jai Jawan Colony-II Tonk Road, Jaipur	बनाम Vs.	The ITO Ward- 2 (2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADDPM 4733 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.L. Poddar Advocate
 राजस्व की ओर से / Revenue by : Shri R.A. Verma, Addl CIT-. DR

सुनवाई की तारीख / Date of Hearing : 20/10/2016
 घोषणा की तारीख / Date of Pronouncement : 23 /11/2016

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id. CIT(A)-1, Jaipur dated 19-05-2016 for the assessment year 2011-12 raising therein following ground:-

“Under the facts and circumstances of the case, the Id. CIT(A) has erred in sustaining the addition of Rs. 22,57,462/- on account of disallowance of commission payment.”

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2.1 Brief facts of the case as emerges from the ld. CIT(A)'s order and his observation are as under:-

“(i) The brief facts of the case are that the appellant is engaged in the business of consignment agent and trading of color chemicals. During the assessment proceedings, it was observed by the AO that the appellant has claimed a sum of Rs. 22,57,462/- on account of commission payment in its profit and loss account as per the following details:

Sr. No	Name	Amount
1.	Pankaj Bakliwal	99,967
2.	Anil Maheshwai	1,50,110
3.	Prateek Mantri	6,56,859
4.	Gopal Sharma	1,82,248
6.	Rahul Mantri	7,24,415
6.	K.G. Colours	1,61,793
7.	Deepak Sharma	1,99,623
8.	Kundan Ram Choudhary	82,447
	Total	22,57,462

(ii) The AO required the appellant to furnish the details of the persons to whom commission was paid, the details of the parties to whom sales were made and commission was given to these persons. Subsequently, the AO made enquiries from a number of buyers of the appellant and the outcome of these enquiries have been given in detail in the assessment order. On the basis of these enquiries, the AO concluded that the persons to whom commission has been paid has no role in the sales made by the appellant and these expenses have been claimed in order to reduce profits. Consequently, the AO disallowed the sum of Rs. 22,57,462/- claimed by the appellant as commission expenses.

(iii) During the appellate proceedings, it was submitted by the appellant that it had also received commission of Rs.

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39,01,610/- on consignment sales and the payment of commission was allowed in earlier assessment years i.e. 2007-08, 2008-09 and 2010-11 completed u/s 143(3) of the Act. It was further stated that its GP rate has increased by 100% in comparison to Assessment Year 2009-10 & 2010- 11. The same has gone up to 5.79% (total turnover - Rs. 4.25 Crore) as against 2.71% (total turnover of Rs. 4.29 Crore in AY 2010-11 and Rs. 2.94 Crore in AY 2009-10) in earlier two years. The NP rate is almost the same and there is only a slight fall of 0.15%. The fall is marginal and ignorable. Despite cut throat competition in the market, the appellant has been able to maintain the sales as well as the GP/NP rates and this has been possible only because of the engagement of the agents for fetching business to the appellant. It was further submitted that the commission of Rs. 22,57,462/- included commission of Rs. 6,56,859/- and Rs. 7,24,415/- to Shri Prateek Mantri and Shri Rahul Mantri respectively, the sons of the appellant. It was the contention of the appellant that the commission payments are genuine and thus the addition made by the AO is to be deleted.

(iv) During the appellate proceedings, vide order sheet entry dated 15.12.2015, the appellant was required to file:

- * documentary evidences in support of the claim of commission paid,
- * what services were rendered by these persons along with documentary evidences thereof,
- * whether there was any linkage between the commission received and commission paid and if yes, the appellant was required to furnish the details along with documentary evidences thereof.

(v) However, no documentary evidence was filed by the appellant in support of payment of commission. No documentary evidence have been filed about the services rendered by the persons to whom hefty commission was paid. No linkage between the commission received and commission paid has been provided. It has not been explained by the

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appellant whether the commission was paid on its own sale or on account of consignment sales. It is noted from the assessment order that some of the buyers of the goods from appellant have categorically stated that no intermediary was involved in their purchases from the appellant.

(vi) It may be mentioned that in the case of Premier Breweries Ltd. (2015) 92 CCH 0098 ISCC / (2015) 372 ITR 0180 (SC), it was observed by the Hon'ble Apex Court that:

“The question that was posed by the High Court was whether acceptance of the agreements, affidavits and proof of payment would debar the assessing authority to go into the question whether the expenses claimed would still be allowable under Section 37 of the Act. This is a question which the High Court held was required to be answered in the facts of each case in the light of the decision of this Court in Swadeshi Cotton Mills Co. Ltd. Vs. Commissioner of Income Tax, 1967 (63) ITR 57 and Lachminarayan Madan Lai vs. Commissioner of Income Tax West Bengal, 1972 (86) ITR 439. In fact the High Court noted the following observations of this Court in Lachminarayan (supra):

“The mere existence of an agreement between the assessee and its selling agents or payment of certain amounts as commission, assuming there was such payment, does not bind the Income Tax Officer to hold that the payment was made exclusively and wholly for the purpose of the assessee's business. Although there might be such an agreement in existence and the payments might have been made. It is still open to the Income tax Officer to consider the relevant facts and determine for himself whether the commission said to have been paid to the selling agents or any part thereof is properly deductible under Section 37 of the Act.”

(vii) In the instant case under consideration, there was neither any agreement with the persons to whom commission

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was paid nor appellant has filed any documentary evidence which may suggest that any services were rendered by these persons to the appellant.

(viii) It was the contention of the appellant that the commission was allowed in the earlier years. I do not find any merit in the above contention of the appellant as the principles of res judicata do not apply to the income tax proceedings and each assessment year is an independent one. Further, the appellant has not brought on record any material which may suggest that any enquiries regarding the commission payments were made by the AO in earlier years. Therefore, the principle of consistency do not apply to the facts of the instant case under consideration.

(ix) Therefore, looking to the totality of facts and circumstances of the case, it is held that the appellant failed to justify the payment of commission as no documentary evidence was tiled in respect of services rendered by these persons to the appellant and thus the addition of Rs. 22,57,462/- made by the AO is hereby sustained.

2.2 Conclusively, the Id. CIT(A) sustained the addition to the extent of Rs. 22,57,462/- made by the AO.

2.3 During the course of hearing, the Id. AR of the assessee prayed that the Id. CIT(A) has erred in sustaining the addition of Rs. 22,57,462/- on account of disallowance of commission payment for which the assessee Id. AR of the assessee filed the written submission and the same has been taken into consideration for adjudication of the appeal of the assessee.

2.4 The Id. DR relied on the orders of the lower authorities.

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2.5 I have heard the rival contentions and perused the materials available on record. It is noted from the records that the assessee is a lady proprietor and she is engaged in the consignment / agency of all kinds of colour, chemicals and dyes which are mainly used in textile industries. It is further noted that for the conduct of business, the assessee utilized the services of various persons/ agents for targeting optimum sales of her business. The AO observed that assessee paid total commission of Rs. 22,57,462/- to the persons/ agents who rendered the services for achieving the target set up by the assessee. The details of payment of commission amounting to Rs. 22,57,462/- paid by the assessee to the following persons are as under:-

Sr.No	Name	Amount
1.	Pankaj Bakliwal	99,967
2.	Anil Maheshwai	1,50,110
3.	Prateek Mantri	6,56,859
4.	Gopal Sharma	1,82,248
6.	Rahul Mantri	7,24,415
6.	K.G. Colours	1,61,793
7.	Deepak Sharma	1,99,623
8.	Kundan Ram Choudhary	82,447
	Total	22,57,462

The AO required the assessee to furnish the details of the persons to whom commission was paid for which assessee provided the desired details to the AO. The AO after making enquiry came to the conclusion that the persons to

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whom commission had been paid had no role in the sales made by them and these expenses had been claimed by the assessee in order to reduce the profits. Consequently, the AO disallowed the sum of Rs. 22,57,462/- claimed by the assessee as commission expenses. In the appellate proceedings, the Id. CIT(A) disallowed the commission expenses of Rs. 22,57,462/- on the contention of the assessee that commission was allowed in the earlier years and he did not find any merit in the contention of the assessee as the principles of res judicata do not apply to the income tax proceedings and each assessment year is an independent assessment year. The Id. CIT(A) conclusively held that the assessee failed to justify the payment of commission as no documentary evidence was filed in respect of services rendered by the these persons to the assessee and thus he confirmed the addition of Rs. 22,57,642/- made by the AO. From the details available to the Bench by the Id. AR of the assessee, it is noted that the assessee had paid the following commission to the persons engaged for the enhancing business of the assessee.

Sr. No.	Name	Sales made	Rate of commission	Amount	PAN
1.	Pankaj Bakliwal	4998339	2%	99967	PANNOTAVBL
2.	Anil	7505480	2%	150110	ADDPM4745J

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	Maheshwai				
3.	Prateek Mantri	32842931	2%	656859	ARFPM3533J
4.	Gopal Sharma	9112404	2%	182248	AGXPS1638P
5.	Rahul Mantri	36220753	2%	724415	BCJPM4771L
6.	K.G. Colours	16179339	1%	161793	PANNOTAVBL
7.	Deepak Sharma	19962329	1%	199623	AXHPS8962P
8.	Kundan Ram Choudhary	8244680	1%	82447	ACRPC7428D
	Total	135066255		2257462	

It is further noted from pages 1 to 8 of the paper book of the assessee that the assessee had paid commission to the above persons for rendering the service in order to achieve the target set up by the assessee and the TDS was deducted by the assessee. It is also evident that these persons are having Permanent Account Numbers (PAN). It is also noticed from ledger account page 9 of the assessee's paper book that the assessee had paid the commission to the above persons amounting to Rs.22,57,462/-. It is also noticed from ledger account page 10 of the assessee's paper book that the assessee had deducted TDS amounting to Rs. 2,25,747/- which had been paid to the Govt. Account. It is also noted that in earlier years, the assessee

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had paid following commission to the persons engaged for her business which had been accepted by the Department.

Sr.No.	Assessment Year	Commission pad
1	2009-10	516546
2	2010-11	1287992

It is further noted that the assessee AO had not pointed out any specific defect in the maintenance of books of account of the assessee. The assessee had maintained regular books of accounts during the course of business which included cash book, journal, ledger etc. The books of accounts were audited u/s 44AB of the Act for which the assessee filed the audit report at pages 23 to 40 of the assessee's paper book. It is also noted that the gross profit rate the assessee is better as compared to earlier years and the same is depicted as under:-

A.Y.	Sales	Gross Profit	GP Rate	NP	NP rate
2009-10	29482112	800601	2.71%	538225	1.82%
2010-11	42975949	1165889	2.71%	851881	1.98%
2011-12	42511535	2462741	5.79%	779645	1.83%

It is also noted from the record that out of total commission payment of Rs. 22,57,462/-, the assessee had made payment of Rs. 6,56,859/- and Rs.

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7,24,415/- to her sons namely Shri Prateek Mantri and Shri Rahul Mantri respectively. It is natural in Indian culture that if the members of the family are competent to work in the business of the family, naturally they will be required to pay the minimum / the same compensation / benefit/incentive as other employees are paid. Hence, it has no relevance that they were paid the commission expenses. It is given to them for the work accomplished by them and the TDS was deducted from the commission expenses and thus deposited in Govt. Account. Both the sons of the assessee had filed the Income tax Returns for the assessment year 2011-12 and the same is available at pages 81 and 82 of the assessee's paper book. It is also noted that during the course of hearing, the Id. AR of the assessee relied on following case laws.

- (i) Mobile Communication (India) (P) Ltd. Vs. DCIT 125 ITD 309 (Del.) (Trib.)
- (ii) V.I.P. Industries Ltd. Vs. IAC 36 ITD 70 (Bom)(Trib)(TM).
- (iii) Anupam Synthetics (P) Ltd. Vs. JCIT 104 TTJ 119 (Del.(Trib.)
- (iv) CIT Vs. Ishwar Prakash & Bros. 159 ITR 843 (P&H) (HC).
- (v) CIT Vs. Gautam Creations (P) Ltd. 171 Taxman 271 (Del.) (HC).
- (vi) CIT Vs. Shriram Pistons & Rings Ltd. (2012) 206 Taxman 41 (Del.)(HC) (Mag.)
- (vii) J.K. Steel & Industries Ltd. Vs. CIT 112 ITR 285 (Cal.) (HC).
- (viii) ITO Vs. Desh Rakshak Austhalaya (P) Ltd. 7 ITD 531 (Del.) (Trib.).

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From the conspectus of the case as well as the case relied on by the assessee supra, the assessee has proved the genuineness of the commission paid to the above persons i.e. 08 persons amounting to Rs. 22,57,462/- indicating therein the PAN on the sales achieved by them. Thus, it appears from the record available before the Bench that the assessee has rightly paid the commission payment to the respective persons. In view of the above deliberations, I do not concur with the findings of the Id. CIT(A). Thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 23 /11/2016.

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 23 /11/ 2016

*Mishra

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

1. अपीलार्थी / The Appellant- Smt. Jyoti Mantri, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 2 (2), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 673/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar