

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.2626/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2018-19)

Chandresh P. Thakker B/1702, Vikas Paradise Tower-3, LBS Marg, Mulund West, Mumbai- 400080.	बनाम/ Vs.	National Faceless Assessment Centre, 245-A, North Block, New delhi-110001.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADCPT1609H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Shashank Mehta	
Revenue by:	Shri H. M. Bhatt (Sr. DR)	

सुनवाई की तारीख / Date of Hearing: 06/03/2024

घोषणा की तारीख /Date of Pronouncement: 20/03/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi, dated 30.05.2023 for AY. 2018-19.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO making additions of Rs.44,36,581/- and Rs.4,25,176/- which assessee claimed to have incurred as *commission expenses* and *franking charges* respectively.

3. Brief facts are that the assessee had filed its return of income on 31.08.2018 declaring total income of Rs.13,43,410/-. And revised return was filed on 05.03.2019 declaring total income at Rs.11,41,840/- which was processed and accepted u/s 143(1) of the Income Tax Act, 1961(hereinafter "the Act"). Subsequently, the return was selected for scrutiny under CASS. The AO noted that the assessee is engaged in the business of arranging finance viz business loan,



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Home loan etc. As per the assessee, he gets customers from reference of old customers, from tele-caller services and from outside references etc. The AO noted that the assessee had received commission income to the tune of Rs.98,31,117/-. And as against the commission income, he has claimed commission expenditure of Rs.44,36,581/- and franking charge of Rs.4,25,176/- which AO noted to be almost 50% of income (commission). The AO noted that the assessee had shown to have paid salary to employees to the tune of Rs.16,08,020/- and have claimed various expenses and has finally offered only total income of Rs.11,41,840/-. In the light of the aforesaid facts, the AO asked the assessee to justify the commission expenditure with supporting documentary evidence. According to the AO, the assessee failed to furnish any evidence to prove that service has been rendered by those parties to whom commission was booked as payment/expenditure. According to the AO, the assessee had only submitted computer-generated invoices in support of commission expenditure; and assessee submitted that he earned brokerage from the respective bank or finance institutions for arranging finance for his customers; and he in-turn share the brokerage income with persons who has referred such customers [who availed loans through him]. According to the assessee, the practice of sharing/payment of brokerage were part & parcel of his business of arranging finance to the needy customers. However, the AO was not satisfied with the explanation of assessee regarding the genuineness of the commission expenditure, and pointed out that in the invoices presented to him, it would show that the description made therein were brokerage fee/commission/referral fee, but there is no mention of the name of party/customer to whom services was rendered



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by the person who took the commission from assessee. According to the AO, the assessee failed to furnish such important details so that he could have appreciated the services rendered by the thirteen (13) brokers/parties. And since the assessee could not prove the services rendered by thirteen (13) brokers in lieu of commission paid by the assessee, he disallowed the commission payment to the tune of Rs.44,36,581/-. Further, according to the AO, the assessee has not furnished any documentary evidence in support of his claim that franking charge were borne by him instead by customers. Therefore, the AO disallowed the franking charges incurred by him to the tune of Rs.4,25,176/- and added it also to total income of the assessee. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same. Aggrieved, the assessee is before us.

4. We have heard both the parties and perused the records. We note that the assessee is engaged in the business of arranging finance for different categories of person viz business loan, home loan etc. And as per him, customers (*for whom finance are arranged by assessee from banks etc*) were refereed by various parties/brokers viz old acquaintance/customers (*who had been arranged loan by assessee*) from tele-caller services and from outside references etc. It is noted that the assessee for services rendered by him (*of arranging loan to customers from financials institution/banks*) has received commission (*from financial institution/bank*) to the tune of Rs.98,31,117/- and had shown to have incurred commission expenditure of Rs.44,36,581/- [for thirteen (13) parties] named by AO at page no. 2 & 3 of his assessment



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order. And also assessee has claimed to have incurred franking charges (on behalf of customers) to the tune of Rs.4,25,176/- which expenses the AO noted to be approximately 50% of the income. The AO also noted that the assessee has claimed to have disbursed salary to his employees to the tune of Rs.16,08,020/- and after claiming other expenses has offered net income of only Rs.11,41,840/. On being asked by AO, to prove the commission expenditure, the assessee submitted that in order to earn the commission income of Rs.98,31,117/- he had taken the services of thirteen (13) parties, *[the details of whom all were given to the AO including their name address, PAN etc]*; and since thirteen parties *(to whom commission were paid to the tune of Rs.44,36,581/-)* had referred customers/clients to the assessee, which resulted in him earning the commission income of Rs.98,31,117/-, assessee pleaded for allowing the expenditure as business expenditure. However, the AO was of the view that assessee couldn't prove what services these thirteen (13) parties rendered to assessee for earning the commission of Rs.44,36,581/- and therefore he disallowed the commission expenditure as well as the franking charges booked by assessee to the tune of Rs.4,25,176/-. On appeal, the Ld. CIT(A) upheld the action of the AO since the assessee was not able to file proof in support of the services rendered by thirteen (13) commission agents and the incurrance of franking charges. Therefore, he confirmed the action of the AO. However, the Ld. AR submitted that the Ld. CIT(A) is not correct to say that assessee has not filed any evidence to prove the commission expenditure. According to him, the assessee had filed the details of the thirteen commission agents to whom assessee has paid Rs.44,36,581/- which has been paid through



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cheque/banking channel to all of them; and assessee has filed the relevant details viz name, address & PAN of those thirteen parties and the assessee demonstrated to AO/Ld. CIT(A) that these payments were made for reference of customer/borrowers to whom assessee had arranged loans and for such services rendered by assessee, the financial institutions/banks have given assessee commission to the tune of Rs.98,31,117/-. And since services were rendered by thirteen (13) brokers, by virtue of it assessee received commission, the commission/brokerage given by assessee to these thirteen brokers ought to have been allowed. In this regard, we note that the assessee has filed the details of commission expenditure along with invoices which are found placed at page no. 7 to 16 of PB. A perusal of the same would reveal that assessee had paid to thirteen (13) commission agents and details of which are seen from perusal of the page no. 7 of PB and it is further noticed that assessee had given the dates of payment, amount paid/debited, name of the commission agents and their PAN details [except in the case of brokers (i) Vinay Dube, (ii) Vidhya Joshi, (iii) Hitesh Rai, (iv) Shama Vinod (v) Varma Manoj (vi) Madhne Deepak Bhanushali (vii) Amisha Dhruv & (viii) Pramila Bhardwaj]. The Ld.AR under took before us that given an opportunity the assessee would be able to prove before AO that these commission agents had filed their respective ITR's and demonstrate that commission paid to these agents have been duly shown by them as income in their hands i.e, thirteen (13) commission agents. In such a scenario, we set aside the impugned order of Ld. CIT(A) and restore this issue back to the file of AO and direct him to verify the same, and direct the assessee to file the details of the services rendered by these



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commission agents for availing the commission payment from the assessee. And in case if the assessee is able to satisfy the AO about the services rendered by these commission agents and that they had shown as their income the commission paid by assessee, then the commission expenses to be allowed in accordance to law. Likewise, franking charge borne by assessee of Rs.4,25,176/-, the assessee has filed the details which is discernable from page no. 61 of PB. From a perusal of it is noted that the assessee had furnished the details of the parties to whom the franking charge has been incurred by assessee (on behalf of the customers). However, no other evidences have been filed by assessee to prove that franking charges have been incurred wholly and exclusively for the purpose of business, the Ld CIT(A) confirmed the action of AO. On the same reason, the action of Ld. CIT(A) confirming the action of AO disallowing same is confirmed. Therefore, issue regarding commission payment of Rs.44,36,581/- is restored back to the file of the AO for verification and the assessee to submit the relevant evidences as stated (supra), and the AO to pass order in accordance to law after hearing the assessee.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 20/03/2024.

Sd/-
(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 20/03/2024.
Vijay Pal Singh, (Sr. PS)



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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