

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री धुव्वुरु आर.एल रेड्डी ,न्यायिक सदस्य एवं श्री जीमंजुनाथ ., लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.:3164/CHNY/2019

निर्धारण वर्ष / Assessment Year: 2016-17

M/s. Shri Ayngaran Business
Chits Pvt.Ltd.,
No.51, Kotrampalayam Street,
First Floor,
Kanchipuram – 631 501.

The Income Tax Officer,
v. Corporate Ward - 6(2),
Chennai – 34.

PAN: AAPCS 1446Q
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Ms. Nithya Sankaran, CA
: Shri G. Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 12.08.2021

घोषणा की तारीख/Date of Pronouncement : 30.08.2021

आदेश /O R D E R

Per G Manjunatha, AM:

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals) – 15, Chennai, dated 30.08.2019 and pertains to assessment year 2016-17.

2. The brief facts of the case are that the assessee company is engaged in the business of conducting chit, filed its return of

income for the assessment year 2016-17 admitting total income of Rs.12,67,707/-. The case was taken up for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has incurred a sum of Rs.90,16,875/- under the head commission expenses. Therefore, called upon the assessee to file necessary details including name and address of the person to whom such commission was paid and also nexus between business activity and payment of commission. In response, the assessee filed a letter dated 22.11.2018 and furnished all details. The AO, on the basis of details furnished by the assessee noticed that out of 23 agents to whom commission was paid, 14 agents were relatives of the Directors of the company. Therefore, he opined that commission paid to agents for procuring business is not expended wholly and exclusively for the purpose of business and accordingly made addition of Rs.65,83,750/-. Similarly, the AO has examined commission paid to other agents and on the basis of comparable cases of similar nature, has determined excess commission payment by the assessee of Rs.23,11,469/-. Thus, made addition of Rs.88,94,000/-.

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A). Before the Id.CIT(A), the

assessee filed detailed written submissions which has been reproduced at pages 7 to 15 of Id.CIT(A) order. The sum and substance of arguments of the assessee before the CIT(A) are that commission payments to agents for procuring business for the assessee is genuine expenditure which was expended wholly and exclusively for the business of the assessee. Therefore, merely for the reason that part of said commission was paid to relative of the Directors, the same cannot be disallowed. The CIT(A) after considering relevant submissions of the assessee and also taken note of various facts, opined that although payment of commission to canvassing agents is genuine and is fully accounted, but because part of commission was paid to relatives of the Directors, the reasonableness and the necessity of paying such commission needs to be examined. He further observed that once expenditure is paid to relatives of assessee, then the provisions of Section 40A(2) of the Income Tax Act, 1961 (hereinafter the 'Act') would come into operation. Therefore, it is necessary to examine the payment of commission in light of provisions of section 40A(2) of the Act. If the payment of commission is examined in light of above section, then it appears that commission paid by the assessee is excessive and unreasonable. But, fact remains that the recipients have already

admitted commission in their return of income and most of them fall under highest rate of tax slab and hence, entire payment of commission cannot be disallowed as done by the AO. Therefore, he opined that action of the AO in disallowing entire payment of commission is unreasonable, unfair and unjustifiable and hence, restricted addition made by the AO towards disallowance of commission to 10% of total disallowance made by the AO of Rs.88,94,000/- and thus, sustained addition of Rs.8,89,000/- and the balance amount has been deleted. The relevant findings of the Id.CIT(A) are as under:

“6.8 I have perused the supporting documents filed by the appellant’s AR listed below:

- a) Copy of written submission submitted before the Assessing Officer
- b) Copy of income tax return of all the commission agents
- c) Bank statement showing the payment to canvassing agents
- d) Copies of agreement signed with canvassing agents
- e) Copies of resolutions with regard to commission payments
- f) Affidavits from all 23 canvassing agents
- g) Copy of scrutiny assessment order *in* A.Y. 2013- 14 in which the AO has accepted the appellant’s return of income along with copy of financials *in* A.Y. 2013-14.

- (h) Copies of income tax returns of financials of similarly placed chit fund companies and their scrutiny assessment orders in which return of income has been accepted

6.9 After considering the appellant submission with supporting documents mentioned above, I am convinced that the payment of canvassing to the agents is genuine and as per Chit Fund Act. The entire payment is duly accounted by the appellant company as well as the canvassing agents. The AO has not controverted the appellant's claim that all the canvassing agents have declared the commission received by them in their income tax return. It is also pertinent to mention that the AO himself has accepted the appellant's claim of payment of commission in earlier A.Y. 2013-14 under similar facts and circumstances. The AR has further justified the claim of commission payment by comparing with similar chit fund companies with supporting documents as mentioned above.

6.10 I have also perused the summary of comparable foreman commission received by the appellant company and commission paid to canvassing agents in 5 A.Y.'s from A.Y. 2014-15 to 2018-19. The commission paid in percentage in this relevant A.Y. 2016-17 is 48.54% which is excess by 0.11% compared to the average for 5 A.Y.'s which works out to Rs. 48.43%. Thus prima facie there is an excess claim of commission payment to the canvassing agents compared to other A.Ys. This comparison is enclosed as an Annexure to this order.

6.11 Although I am convinced that the entire payment of commission to canvassing agents is genuine and is fully accounted, it cannot be denied that the commission agents were mostly family members and relatives, and therefore, the payments fall u/s. 40A(2) of the IT Act. Although the AR has contended that most of the commission agents fall under 30% tax slab, some of them do not fall under the maximum tax slab of 30% at which the appellant company has paid tax. Besides, it is noteworthy to mention that the commission agents are individuals who can claim deduction up to the threshold tax

limit and the effective tax rate paid by an individual is around 20% although they fall under 30% tax slab whereas the appellant company pays tax at a flat rate of 30%. In view of the same, although most of the commission payments have suffered tax in the hands of the individual, on a presumptive basis there is notional revenue loss of 10% when it is offered in the hands of the individuals instead of being offered in the hand of the appellant company, For the above reasons that the canvassing agents were mostly family members and relatives of the appellant company directors and fall u/s 40A(2) and there is a notional difference in tax rate as mentioned above, I am of the considered opinion that instead of disallowing the entire payment of commission as done by the AO which I find it unreasonable, unfair and unjustifiable, it is fair to restrict the addition of Rs, 88,94 lacs (65.83 + 23.11 lacs) to 10 % of the same which works out to Rs. 8.89 lacs.”

4. The Id.AR for the assessee submitted that the Id.CIT(A) having accepted the fact that commission payment to canvassing agents is genuine and is fully accounted for, has erred in sustaining adhoc 10% of such commission without appreciating the fact that the assessee has filed all details including agreement between the parties, copy of income-tax returns filed by the commission agents and affidavit from all the 23 canvassing agents. The Id.AR further submitted that there is no dispute with regard to the fact that the assessee has paid commission through proper banking channel after deducting applicable TDS as per law. The recipients have also admitted commission income in

their return of income. Therefore, the Id.CIT(A) was completely erred in sustaining 10% disallowance without any valid reason.

5. The Id.DR on the other hand strongly supporting order of the Id.CIT(A) submitted that there is no error in the findings recorded by the Id.CIT(A) to sustain 10% addition made by the AO towards disallowance of commission and hence, his order should be upheld.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The main reason for the AO to disallow commission paid to canvassing agents is, they are relatives of directors. Except this, the AO has not brought on record any adverse evidences to support his case that commission paid to canvassing agents is not expended wholly and exclusively for the purpose of business. In fact, the AO has admitted the fact that canvassing agents has brought business to the assessee and has also taken the burden of bad debts arising out of chit business. Even the Id.CIT(A) having accepted the fact that commission paid to canvassing agents is genuine and is fully accounted, erred in sustaining disallowance of 10% of said commission by invoking provisions of Section 40A(2)

of the Act, without bringing on record any comparable case of similar nature to support its case that commission paid by the assessee to canvassing agents is excessive and unreasonable, which is hit by the provisions of Section 40A(2) of the Act. In fact, the Id.CIT(A) has categorically agreed that there is a nexus between commission paid to female canvassing agents and business activity of the assessee. The CIT(A) has also recorded factual findings that the commission agents have pledged their immovable properties as collateral security for liabilities of subscribers to the chit and further compensated the assessee company towards bad debts arising to chit business to the extent of Rs.92 lakhs out of default in payment of chit subscribers. The CIT(A) had also recorded categorical finding that the assessee has made commission payment through banking channel after effecting TDS @ 10% applicable as per law. He had also recorded a categorical finding that the commission agents have offered income received from the company to tax in their income-tax returns. Therefore, we are of the considered view that once the authorities below have accepted the fact that there is a direct nexus between commission payment to canvassing agents and business activity of the assessee and further, commission payment is genuine in nature, erred in making disallowance of

commission only for the reason that commission was paid to relatives of directors. In our considered view, there is no bar in payment of commission or other expenditure to relatives of directors or managers of the company, as long as, the payment commensurate with the services rendered by them. In this case, there is no adverse comment from the authorities below regarding payment of commission and services rendered by the canvassing agents. Therefore, considering the facts and circumstances of the case, we are of the considered view that the AO was erred in disallowance of commission paid to canvassing agents by invoking provisions of section 40A(2) of the Act. The CIT(A), even though accepted the fact that commission expenditure is genuine in nature, has erred in sustaining adhoc 10% disallowance of said commission. Hence, we reverse the findings of Id.CIT(A) and direct the AO to delete addition made towards disallowance of commission paid to canvassing agents.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 30th August, 2021 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 30th August, 2021

RSR

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |