

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘SMC’

[Conducted Through Virtual Court]

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

आयकर अपील सं./ ITA No. 2539/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2014-15

Seahorse Pharma P.Ltd. A/159, Darshnam Nr. Parihar Char Rasta Waghodia Road, Vadodara Pan : AAQCS 4592 Q	Vs	ITO, Ward-2(1)(3) Vadodara.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Mehul Talera, AR
Revenue by :	Shri Vinod Tanwani, Sr.DR

सुनवाई की तारीख/Date of Hearing : 19/05/2020

घोषणा की तारीख /Date of Pronouncement : 21/05/2020

### ORDER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-2, Vadodara dated 26.9.2017 passed for the Asstt.Year 2014-15.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming commission expenses to the extent of Rs.22,31,200/- by holding that impugned payments were not genuine.

3. Brief facts of the case are that the assessee is a private limited company engaged in trading and manufacturing of pharma products. It has efiled its return of income at Rs.98,280/- . After processing the return under section 143(1) of the Act, the same was further selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. During the course of assessment proceedings,

the AO has noticed that the assessee has paid commission expenses of Rs.30,66,480/- which appeared to be not genuine. The commission expenses noticed by the AO in the impugned order were in respect of the following persons:

<b>Name of person</b>	<b>Amount paid (in Rs.)</b>
Jagdish Chander Kumar	10,00,000
Neeru J Puri	5,00,000
Madhu Kumar	10,00,000
Devendra J Kumar	2,61,900
Desai Pritesh Dolatrai	2,93,100

4. The AO construed that majority of commissions were paid to the family members of main director of the assessee company viz. Shri Devendra Kumar. Therefore, a show cause notice was issued to the assessee for explanation and evidence in support of sales commission expenses. In response to the same, assessee filed written submissions explaining that since assessee started new business, it required experienced marketing team for market exposure, sales promotion activities, besides liaison activities with customers located various parts of the country. The persons engaged by the assessee as agents are well educated and having experience in pharma sector. The assessee has provided copies of agreements entered into between the commission agent and the assessee-company in this behalf, and therefore, the expenses were incurred wholly for the business activities of the assessee, and the same should be allowed as deduction. However, the ld.AO did not accept the explanation of the assessee. AO was of the view that the assessee did not having any documentary evidence to prove services rendered by the concerned agents and taking into consideration the fact

that no evidence showing rendering of services in terms of agreements entered between them, he presumed that motive of the assessee was for diversion of profits of the company to minimize the tax payment, and hence, it was bogus commission expenses paid *qua* Shri Jagdish Chander Kumar of Rs.10.00 lakhs, Smt.Madhu Kumar of Rs.10,00,000/- and Smt.Neeru J Kumar of Rs.5,00,000/-. Thus, he disallowed a total amount of Rs.25.00 lakhs, and the remaining was allowed. In appeal, the Id.First Appellate Authority upheld the stand taken by the AO, but gave a part relief of Rs.2,68,800/- in respect of commission payment paid to Smt.Madhu Kumar and confirmed balance amount of Rs.22,31,200/-. Against this confirmation, the assessee is now before the Tribunal.

5. Before me, the Id.counsel for the assessee reiterated his submissions as were made before the Revenue authorities. The assessee filed a paper book which contained copy of agreement entered into with the agents and scope of work. It is placed at page no.40 and 41 of the paper book. He submitted that the agents are highly educated and possessing wide experience in the pharma sector. They are also working for several companies as commission agents including the assessee-company. Therefore, there is no dispute with regard to their capacity to act as agents to the assessee. He further drew our attention to page no.42 wherein detailed summary of comparative commission earned by Shri Jagdish Chanderkumar and Shri Madhu Kumar from various companies and the commission earned from the assessee-company was given. Assessee has also filed copies of form no.26AS of the agents for the relevant assessment years. These details clearly justify the claim of the assessee to be genuine. So far as commission paid to Smt.Neeru Puri

is concerned, she is a retired employee, as a Polio Programmer, from the State Government, and has very good experience in pharma sector. She is working as full time director and incharge of day-to-day affairs of the company, and for this service, she is paid commission in lieu of salary. Therefore, payment of Rs.5.00 lakhs made to her during the year cannot be doubted. The Id.counsel for the assessee further submitted that because of concerted efforts put in by these agents, sales of the assessee has been increased to Rs.1,71,11,199 in the Asstt.Year 2015-16 to Rs.96,96,84,544/- in the Asstt.Year 2014-15. It is reiterated that it was a legitimate business expenditure incurred for business purpose which cannot be doubted, and the same be allowed as business expenditure.

6. On the other hand, the Id.DR supported orders of the Revenue authorities. He further submitted that Revenue authorities have justified in disallowing claim of the assessee, because there was no evidence in the form of client base of a particular agent, correspondences made with the clients, rate of commission for each transaction and the agent-wise contribution to the assessee's turnover. Therefore, orders of the Revenue authorities require to be upheld.

7. I have considered rival submissions and gone through the record carefully. The issue before the Tribunal was whether the commission payments made by the assessee to the above agents are genuine and are allowable expenditure under the provisions of the Act. For adjudicating this issue, it is pertinent to observe that in order to claim expenditure under section 37(1) of the Income Tax Act, the assessee requires to fulfill certain conditions viz. (a) there must be expenditure, (b) such expenditure must not be of the nature described in section 30 to 36, (c)

expenditure must not be in the nature of capital expenditure, or personal expenditure of the assessee, and (d)expenditure must be laid out or expended wholly and exclusively for the purpose of the business. Payment of commission was a normal trade practice in the line of business, and every business man pays commission to procure business. Assessee in order to prove its case has provided documents viz. copy of agreement entered into by the assessee and the agents, which *inter alia* provide the appointment and scope of the work of the assessee. Capacities of the agents to act as agents of the assessee and the business they have performed for the assessee have not been doubted. The commissions were paid in relation to the business procured by agents from various locations as indicated in the details furnished by the agents. Such commission payments were in the form of account payee cheques, and in order to evidence the genuineness of transactions of commission received by the agents, these agents have provided a summary of commission received from various companies including that of the assessee. They have also filed copies of form no.26AS showing details of TDS against the receipt of commissions, therefore, a live link between the business of the assessee and payments made to the agents have been established. These independent evidences produced by the assessee would prove that services were rendered by the agents, which have not been disputed by the Revenue. The Revenue authorities doubted the payment of commissions merely on the facts that agents are related to the assessee, and that commission expenses were claimed to reduce the tax liability of the assessee company, which allegation was not supported by any independent finding. The agents have included the receipts in their return of income and that there was no evidence to

show that the money has come back to assessee so as to allege that the transactions are bogus to avoid tax by reducing the profit. In the assessee's case, relevant conditions laid out in section 37(1) have been fulfilled. Therefore, the commission expenses paid was in the nature of business expense which requires to be allowed as deduction. Since it is of revenue nature and expended wholly and exclusively for the purpose of business and, therefore, the AO is directed to allow commission expenditure claimed by the assessee.

8. In the result, appeal of the assessee allowed.

**Pronounced in the Open Court on 21<sup>st</sup> May, 2020.**

**Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT**