

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "B": NEW DELHI ]**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
A N D  
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER  
(Through Video Conferencing)**

ITA. No. 7511/Del/2017  
(Assessment Year: 2013-14)

M/s. Chhabra Triple Five Fashions Pvt. Ltd., 555-A, KatraAshrafi, ChandniChowk, Delhi-110006. <b>PAN: AAACC0499E</b>	Vs.	DCIT,  Circle : 6 (1),  New Delhi.
(Appellant)		(Respondent)

Assessee by :	Ms. Vandana Bhandari, C. A.;
Department by:	Ms. Sangeeta Yadav, Sr. D.R.;
Date of Hearing :	22/12/2021
Date of pronouncement :	24/12/2021

**ORDER**

**PER N. K. CHOUDHRY, J. M.**

**1.** This appeal has been preferred by the Assessee against the order dated 24<sup>th</sup> October, 2017 impugned herein passed by the Id. Commissioner of Income Tax (Appeals)-2, New Delhi, under Section 250(6) of the Income Tax Act, 1961 (hereinafter referred to as the Act) for the Assessment Year 2013-14.

**2.** In the instant case the Assessing Officer has made an addition of Rs.23,32,048/- on account of commission and brokerage charges against which the Assessee preferred first appeal before the Id. CIT (Appeals), who vide impugned order dated 24<sup>th</sup>

October, 2017 while dismissing the appeal of the Assessee uphold the addition under challenge by concluding as under:-

*“3.2 The appellant submitted before the undersigned that against the said appellate order, it filed second appeal before the Hon’ble ITAT, Delhi and the Bench in ITA No. 5532/Del./2015 for the A.Y. 2012-13 has decided the same in favour of the appellant. With due respect, perusal of the aforementioned order of the Hon’ble ITAT reveals that they have allowed the appeal of the appellant by placing reliance on their order dated 21.04.2016 in the appellant’s case for A.Ys 2009-10 & 2010-11, wherein the first appellate authority itself had deleted the disallowance on account of brokerage made by the A.O. and the Revenue had filed the second appeal. Thus the facts of the case for A.Ys 2009-10 & 2010-11 (on which the Hon’ble ITAT have based their order for A.Y. 2012-13) were quite different. Accordingly, following my judgment in the appellant’s own case for A.Y. 2012-13, I uphold the disallowance made by the Assessing Officer and dismiss this **ground of appeal**.*”

**3.** The assessee being aggrieved against the impugned order, preferred the instant appeal and claimed that the identical addition under consideration has been made by the Assessing Officers for the A.Ys. 2009-10, 2010-11 and 2012-13 as well, which was challenged upto Hon’ble ITAT and the Hon’ble Tribunal consistently for the said preceding assessment years, did not support the making of disallowance qua identical commission and brokerage charges which is under consideration herein and specifically in the AY 2012-13 deleted the same by following the decisions of Co-ordinate bench and the Principle of Consistency.

**4.** On the contrary the Ld. DR supported the impugned order by submitting that res judicata is not applicable to the Income Tax cases and every assessment year is a distinct year.

**5.** Having heard the parties and perusing the material available on record, we find that the Id. Commissioner affirmed the disallowance made by the Assessing Officer qua commission and brokerage expenses on the ground that the coordinate bench in ITA. No. 5532/Del/2015 for the AY 2012-13 has decided the same issue in favour of the appellant while placing reliance on their order dated 21<sup>st</sup> April, 2016 in the appellant's case for A.Ys. 2009-10 and 2010-11 wherein the first appellate authority itself had deleted the disallowance made by the Assessing Officer on account of brokerage and the Revenue had filed the second appeal.

The Id. Commissioner further observed that the facts of the case for AYs. 2009-10 and 2010-11 on which the Hon'ble ITAT has based their order for A.Y. 2012-13 were quite different. Finally the Id. Commissioner upheld the disallowance by following his own judgment in the appellant's own case for A.Y. 2012-13.

**5.1** It is undisputed fact that the Hon'ble ITAT vide its order dated 31<sup>st</sup> August, 2017 for the A.Y. 2012-13 on which the Id. Commissioner based his decision, has deleted the same addition under consideration on the same facts. For the sake of ready reference the concluding part of the order is reproduced herein below:-

“This appeal is directed by the assessee against the order dated 29.05.2015 of Id. CIT(A)-2, New Delhi for the assessment year 2012-13. The assessee has raised as much eight grounds of appeal, but all of them

challenge the disallowance of brokerage and commission expenses of Rs.22,96,606/-.

2. The aforesaid disallowance of Rs.22,96,506/- on account of brokerage expenses was made by the authorities below on the premise that these expenses were not incurred by the assessee wholly and exclusively for the purpose of business. The Id. AR of the assessee contended that the appellant had appointed several persons who manage the relationship with various dealers and the appellant; that these persons were free-lancers and acted as the communication channel between the appellant the dedicated dealers; that during the year complete details of individual brokers and the basis of computation of brokerage paid was submitted to the AO; that all the payments were made through cheques after deducting TDS; that thus, the commission expenses incurred were wholly and exclusively for the purpose of business; and that the issue involved in this appeal is covered in favour of the assessee by the order dated 21.04,20 16 of 1TAT., New Delhi in the appeals of Revenue in assessee s case for A. Yrs. 2009-10 and 2010-11 in the identical facts and circumstances of the case.

3. On the other hand, the Id. DR relied on the orders of the authorities below.

4. Having considered the rival submissions and perused the entire material available on record, we find that the issue involved in this appeal is squarely covered in favour of the Assessee by the decision dated 21.04.2016 of coordinate Bench in Assessee's own case for A.Yrs, 2009-10 and 2010-11 (supra), whereby the issue has been disposed of as under :

"15. In view of the above, we are of the considered view *that* the sale to the dedicated dealers during AY 2009-10 was of Rs. 31.67 crores and for AY 2010-11 was of Rs. 27.08 crores which is major part of the sales made by the assessee during the relevant financial periods. Neither the AO nor the Id. DR has disputed this fact that free Lance individuals have been appointed by the assessee to manage the assessee's business relationship

with the dealers and the method of computation of commission and brokerage clearly shows that the amount incurred on this account was an incentive for the individuals to increase the sales of the dedicated dealers further leading to the substantial increase of sales by the assessee to its dedicated dealers. In this situation it can safely be assumed that the expenses on commission and brokerage were incurred wholly and exclusively for the purpose of business of the assessee which are allowable/s 37 of the Act. Further the assessing officer made additions without any justified reasoning and basis and the same was rightly deleted by the CIT(A) for both the assessment years by following the principle of consistency under the provisions of the Act. In views of our discussion we are inclined to hold that the CIT(A) rightly appreciated the facts of the case and granted relief on justified reasoning and by following the doctrine of consistency in the line of the earlier assessment years.

16. On the basis of foregoing discussion, we are of the view *that the assessing officer made additions without any reasonable cause for both the assessment years and the CIT(A), after considering and properly appreciating the facts, and of the assessee to the rightly held that the expense was incurred wholly and exclusively for the purpose of the business of the assessee and the same was allowable expenses expenditure for the assessee under the provisions of the Act. Finally we reach to a conclusion that we are unable to see any valid reason to interfere with the first appellate order on this issue and thus, we uphold the same for both the assessment orders. Accordingly, ground no. 3 for AY 2009-10 and ground No. 1 for AY 2010-11 of the Revenue being devoid of merits are dismissed. “*

Respectfully following the decision of co-ordinate Bench, and also following the principle of rule of consistency grounds Nos. 1 to 6 of Assessee's appeal deserve to be allowed. “

**6.** The Ld. DR mainly emphasized that res judicata is not applicable to the Income Tax cases and every assessment year is a distinct year. No doubt, res judicata is not applicable to Income Tax cases as also held by the Hon'ble Apex Court in **Radhasoami Satsang, Saomi ... vs Commissioner Of Income Tax, decided on 15 November, 1991 {1992 AIR 377}** by holding as under :-

*“We are aware of the fact that strictly speaking res-judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.”*

**6.1** However, the Hon'ble Apex Court accepted the 'principle of consistency' and even otherwise litigation must come to end and therefore 'Principle of Consistency' also having essence for just and proper adjudication of the Income Tax cases.

**6.2** Coming to the instant case, the facts related to the addition under challenge are exactly similar to Assessee's own cases for the Assessment Years 2009-10, 2010-11 and 2011-12, decided by Co-ordinate Benches of the Tribunal, wherein the identical addition has either been deleted or deletion of same upheld. Thus we are inclined to delete the addition under challenge by allowing the appeal of the Assessee.

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

Order pronounced in the open court on : **24/12/2021.**

**Sd/-  
( R. K. PANDA )  
ACCOUNTANT MEMBER**

**Sd/-  
( N. K. CHOUDHRY )  
JUDICIAL MEMBER**

Dated : 24/12/2021.

\*MEHTA\*

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	22.12.2021
Date on which the typed draft is placed before the dictating member	23.12.2021
Date on which the typed draft is placed before the other member	24.12.2021
Date on which the approved draft comes to the Sr. PS/ PS	24.12.2021
Date on which the fair order is placed before the dictating member for pronouncement	24.12.2021
Date on which the fair order comes back to the Sr. PS/ PS	24.12.2021
Date on which the final order is uploaded on the website of ITAT	24.12.2021
date on which the file goes to the Bench Clerk	24.12.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	