

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" A " BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 966/AHD/2013  
निर्धारण वर्ष/Asstt. Year:2009-2010

M/s.Akik Tiles Pvt. Ltd., S.No.1071/74, Nandasan Mehsana Highway, Nandasan, Mehsana.  <b>PAN: AACCA3201G</b>	Vs.	J.C.I.T., Mehsana Range, Mehsana.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by	:	Shri Parimalsinh B. Parmar, A.R
Revenue by	:	Shri S.S. Shukla, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **06/04/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **13/04/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Gandhinagar, dated 04/02/2013 arising in the matter of assessment order passed under s.143 (3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2009-2010.

2. The assessee has raised the following grounds of appeal:

*1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the disallowance of Rs.6,61,569/- out of commission expenses.*

*2. The learned CIT(A) has erred both in law and on the facts of the case in confirming the disallowance of consultancy expenses of Rs. 10,83,8337-.*

*3. Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

*4. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s 234A/B/C/D of the Act.*

*5. The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id.AO in initiating penalty u/s.271(1)(c) of the Act.*

*The appellant craves leave to add, amend, alter, edit, delete, modify change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

3. The first issue raised by the assessee is that the Ld. CIT(A) erred in confirming the disallowance made by the AO for Rs. 6,61,569/- towards commission expenses on the reasoning that the assessee failed to furnish the details of the services rendered by the commission agent.

4. The facts in brief are that the assessee is a private limited company and engaged in the business of manufacturing Glazed Ceramics Tiles. The assessee in the year under consideration has claimed commission expenses amounting to Rs. 6,61,569/- only. The assessee in support of such commission expenses has filed copy of accounts of the parties along with the copies of the income-tax return. However, the AO found that the assessee failed to furnish the details of the services rendered by such commission agents. Therefore, the AO disallowed the same and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the Ld.CIT(A). The assessee before the Ld.CIT(A) submitted that it's a common prevailing practice to increase the business by way of getting references from the parties. By way of reference, the assessee gets vital business information which has been used to increase the turnover and therefore the commission expenses were incurred.

5.1 It was also submitted by the assessee that the commission expenses were paid to unrelated parties after deducting the TDS. Therefore, there cannot be any doubt on the genuineness of the expenses.

6. However, the Ld. CIT(A), disregarded the contention of the assessee by observing that the assessee failed to furnish the details about the services rendered by the commission agents. It was also pointed out by the Ld.CIT(A) that the assessee has not furnished the names of the parties to whom the sales have been made after getting reference from the commission agents. Thus the Ld.CIT(A) confirmed the order of the AO.

7. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

8. The Ld. AR before us filed a paper book running from pages 1 to 193 and contended that the amount of commission expenses constitutes only 0.2% of the total turnover which is a very negligible amount. Furthermore, the sales of the assessee has increased from 17.16 crores to Rs. 33.78 crores on account of commission paid to the parties. It was also submitted that none of the commission agent was related to the assessee and commission was paid after deducting the TDS. Thus the Ld. AR prayed to allow the deduction of the commission expenses. The Ld. AR in support of his contention has made reference to various judgments.

9. On the hand, the Ld. DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. As far as the genuineness of the payment of the commission expenses is concerned, there is no iota of doubt that the commission was paid through banking channel and after deducting the TDS. What has been doubted by the authorities below is that the assessee failed to provide details of the nature of services rendered by the commission agent. The onus lies upon the assessee to justify based on the documentary evidence that the expenses have been incurred wholly and inclusively for the purpose of the business. To our understanding the assessee has not justified the services rendered by the commission agent, therefore, we do not find any merit in the argument of the Ld. Counsel for the assessee. Accordingly, we uphold the findings of the authorities below. Hence the ground of appeal of the assessee is dismissed.

11. The second issue raised by the assessee is that the Ld. CIT(A) erred in confirming the disallowance made by the AO for Rs. 10,86,833/- on account of consultancy expenses.

12. The assessee in the year under consideration has paid consultancy charges to the various parties as detailed under:

<i>Sr.No.</i>	<i>Name of the Payee</i>	<i>Amounts(Rs.)</i>
1.	<i>B Bharath Laxmi Ahmedabad</i>	<i>600,000.00</i>
2.	<i>Venkatesh B, Ahmedabad</i>	<i>225,000.00</i>
3.	<i>Bharat Patadia-Rajkot</i>	<i>33,833.00</i>
4.	<i>BR Rao-Ahmedabad</i>	<i>225,000.00</i>
	<i>Total</i>	<i>1,083,833.00</i>

12.1 The assessee to justify the above expenses submitted that all the payments to the aforesaid parties have been made for getting the consultancy of the

advertisement. As a result, the assessee was able to boost up its sales by having taken consultancy for the advertisement from the parties as discussed above.

12.2 However, the AO found that the assessee has already incurred huge expenditure on the advertisement and it has also paid retainership fees in respect of such advertisement expenses. Therefore, there was no necessity of incurring any consultancy expense for the purpose of advertisement. Therefore, the AO disallowed the same and added to the total income of the assessee.

13. Aggrieved assessee preferred an appeal to the Ld. CIT(A)

14. The assessee before the Ld. CIT(A) submitted that the AO has not doubted the genuineness of the expenses incurred by it. It was the decision of the assessee to take the consultancy for the advertisement in order to increase the sales which has really been achieved.

14.1 According to the assessee, it is not the jurisdiction of the AO to direct the assessee how and what expenses to be incurred in the course of business. It is the decision of the assessee to look into the business affairs diligently and take the decision accordingly after considering the prevailing competition in the market.

14.2 However, the Ld. CIT(A), disregarded the contention of the assessee by holding that the assessee failed to furnish the necessary details about the services rendered by the consultants as discussed above.

14.3 Likewise, the identity of the parties to whom the consultancy expenses have been paid were not furnished. Therefore, the same has been confirmed by the Ld. CIT(A).

15. Being aggrieved by the order of the Ld. CIT(A) the assessee is in appeal before us.

16. The Ld. AR before us submitted that all the parties to whom the payments have been made for the advertisement/marketing consultancy are not related to the assessee and the payment has been made after deducting the TDS. It was also submitted that the amount of expenses are hardly 0.03% of the total turnover. As a result of advertisement expenses, the turnover of the assessee has increased manifold.

16.1 The Ld. AR also contended that it was the business decision to take the consultancy from the parties for the purpose of the advertisement. As such the AO cannot interfere in the business decision of the assessee.

16.2 The Ld. AR in support of his contention relied on the judgment of Hon'ble Supreme Court in the case of S.A. Builders reported in 288 ITR 1.

17. On the other hand the Id. DR vehemently supported the order of the authorities below.

18. We have heard the rival contentions of both the parties and perused the materials available on record. There is no ambiguity to the fact that the AO is not expected to interfere in the decision making process of the assessee. In the business environment, there are certain decision which are taken by the assessee depending upon the market forces. However, the primary onus lies upon the assessee at least to justify based on the documentary evidence that the business decision were taken in the course of the business as mandated under the provision of section 37 of the Act. But in the given case we note that the Ld. AR has just tried to justify the genuineness of the expenses which has been not doubted by the authorities below. What has been doubted, were the services which were rendered by the consultants

as discussed above. To this effect no satisfactory explanation was furnished by the Ld. AR for the assessee before us. Therefore, we do not find any ambiguity in the order of the authorities below. Hence, the ground of appeal of the assessee is dismissed.

19. In the result, the appeal filed by the assessee is **dismissed**.

**Order pronounced in the Court on 13/04/2022 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE,  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 13/04/2022  
*Manish*

**(True Copy)**