

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

ITA No. 1971/AHD/2025
(Assessment Year: 2018-19)

Nirav Dineshbhai Bhavsar, 6-B Sevakunj Society, Opp. Abhilasha Apartment, Shantivan, Paldi, Ahmedabad-380007. [PAN : AKZPB7718 H]	Vs.	Income Tax Officer, Ward 5(3)(2), Ahmedabad.
(Appellant)	..	(Respondent)
Appellant represented by :	Ms. Yashvi Mashruwala, AR	
Respondent represented by:	Shri Drop Singh Meena, Sr. DR	
Date of Hearing	08.07.2026	
Date of Pronouncement	01.10.2026	

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

This appeal has been filed by the assessee against the order dated 07.08.2025 passed by the Commissioner of Income-Tax (Appeals)/National Faceless Appeal Centre, Delhi (hereinafter referred to as 'Ld. CIT (A)' in short), under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act' in short) for Assessment Year 2018-2019.

2. The Assessee has raised the following grounds of Appeal:-

- The Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. Assessing Officer in restricting the commission expense paid to M/s Tanzil Nutrition Centre (Proprietor: Mrs. Riddhi Bhavsar, wife of the assessee) to 30% of turnover and disallowing the excess amount of Rs. 18,76,286/- under section 40A(2)(b) of the Act.*

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2. *The Ld. CIT(A) and Ld. AQO have erred in law and on facts in not appreciating that the appellant's business is not comparable to Ayurvedic businesses where the benchmark commission is 30% various The Ld. CIT(A) and Ld. AO have passed the order without properly appreciating the facts and they further erred in grossly ignoring submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. Their action is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed."*

3. The brief facts of the case are that the assessee is engaged in the business of earning commission by working as a distributor for M/s. Herbalife Nutrition India Private Limited (HLN), which operates its business on a multi-level marketing model. The assessee has been carrying on the activity as a proprietary business since August 2012. The products of HLN are distributed through trained and independent distributors who provide personalised guidance to customers in relation to their nutrition and wellness requirements. The distributors operate independently and are compensated by way of wholesale profit on retail sales, royalties and bonuses linked to the performance of their team of distributors developed over a period of time. As stated by the assessee, a substantial portion of the income of a distributor is derived from royalties and bonuses based on the efforts and performance of the team developed by the distributor. The assessee submitted that the nature of his business is different from the business of selling Ayurvedic products on commission basis and, therefore, the benchmark of 30% commission adopted by the Assessing Officer was not comparable or appropriate. The assessee further submitted that M/s. Tanzil Nutrition Centre (TNC), a proprietary concern of Mrs. Riddhi Bhavsar, wife of the assessee, played a substantial role in the development and promotion of the assessee's business. According to the assessee, the business was initially conceived by Mrs. Riddhi Bhavsar and was started in August 2012 as a

part-time venture in the name of the assessee. Within a month of commencement of the business, Mrs. Riddhi Bhavsar resigned from her employment with SBI Life Insurance and devoted her full time to supporting and developing the assessee's business. It was submitted that Mrs. Riddhi Bhavsar is a commerce graduate and had experience in the insurance sector, having worked with ICICI Prudential Life Insurance and thereafter with SBI Life Insurance. She also undertook foreign trips at her own cost for learning, promoting and developing the business. The assessee claimed that TNC continued to devote substantial time and resources towards promotion and development of his business and incurred considerable expenditure in this regard.

3.1 During the year under consideration, the assessee paid commission of Rs.31,87,156/- to TNC. Out of the said amount, TNC incurred expenditure of Rs.20,97,860/- towards business promotion and related activities, leaving a net surplus of Rs.6,03,316/- with TNC, as stated by the assessee. The assessee filed his return of income declaring business income of Rs.4,78,482/- and total income of Rs.3,91,120/-. The case was selected for limited scrutiny under the e-Assessment Scheme, 2019. During the course of assessment proceedings, the assessee was called upon to furnish details of business promotion expenses amounting to Rs.32,44,010/-. Subsequently, the Assessing Officer called upon the assessee to explain why the provisions of section 40A(2)(b) of the Income-tax Act, 1961 should not be invoked in respect of the commission paid to TNC, being a proprietary concern of the assessee's wife, and why the amount of Rs.18,76,286/-, being the amount considered to be in excess of 30% of the relevant turnover, should not be disallowed.

3.2 In response, the assessee submitted that the nature and methodology of his business were entirely different from those applicable to the business of Ayurvedic products and, therefore, the benchmark of 30% adopted by the Assessing Officer was not appropriate. The assessee further explained the role played by TNC, the services rendered by it, the efforts undertaken for promotion and development of the business, and the expenditure incurred by TNC in this regard. The assessee furnished, inter alia, a copy of the profit and loss account of TNC and the agreement entered into with TNC, claiming that these documents demonstrated that TNC was exclusively engaged in providing services for the assessee's business. It was also submitted that TNC had been rendering such services for several years and was being paid commission regularly. The assessee further submitted that TNC was registered under the applicable indirect tax laws and was regularly filing its returns of income, and that the payments were made through regular banking channels.

3.3 However, the Assessing Officer was not satisfied with the explanation furnished by the assessee and proceeded to treat the commission paid to TNC as excessive and unreasonable to the extent of Rs.18,76,286/- by applying the benchmark of 30%. Accordingly, an addition of Rs.18,76,286/- was made under section 40A(2)(b) of the Act, resulting in the assessed total income of Rs.21,67,717/-.

4. Aggrieved by the Assessment Order, the assessee preferred a appeal before the Ld. CIT(A), who dismissed the appeal by observing as follows:

“...5.5 On perusal of case record it is evident that the appellant has claimed to have paid unreasonably high commission to the proprietary concern of his wife Mrs. Ridhi Nirav Bhavasar (out of total commission received of Rs.45,48,392/-commission paid is of Rs.32,44,010/-). Therefore, primary onus cast on the appellant to justify with support of necessary authentic documentary evidences the nature and quantum of services rendered by M/s. Tanzil Nutrition Centre for which appellant has paid such a huge amount of commission. The case record reveal that the appellant failed to provide require details and documentary evidences before AO during assessment proceedings in support of commission paid. The appellant also failed to provide explanation and documentary evidences as called for in the notice issued u/s 250(4) of the I.T. Act. Thus, since appellant failed to justify the correctness and reasonableness of commission paid to Mrs. Riddhi Nirav Bhavsar and provide required details and documentary evidences showing nature and quantum of services rendered by Mrs. Riddhi Nirav Bhavsar, I find no reason to interfere with the findings given by the AO in the impugned assessment order and therefore. disallowance of expenditure on account of commission paid of Rs. 18,76,286/- made by AO is confirmed. The ground of appeal raised by appellant therefore stand dismissed...”

5. We have carefully considered the rival submissions and perused the material available on record. The main issue for consideration is whether the Assessing Officer was justified in disallowing a sum of Rs.18,76,286/- out of the commission of Rs.31,87,156/- paid by the assessee to M/s. Tanzil Nutrition Centre, a proprietary concern of the assessee's wife, by invoking the provisions of section 40A(2)(b) of the Act.

5.1 We note that the assessee is engaged in the business of distribution of Herbalife products and has claimed that the commission paid to M/s. Tanzil Nutrition Centre was against the services rendered for promotion and development of his business. The assessee has also contended that the business carried on by him is different from the business of sale of Ayurvedic products and, therefore, the benchmark of 30% adopted by the Assessing Officer is not an appropriate basis for determining the reasonableness of the commission expenditure.

5.2 It is an admitted fact that M/s. Tanzil Nutrition Centre is a proprietary concern of the assessee's wife and, therefore, the payment falls within the purview of section 40A(2)(b) of the Act. However, the applicability of section 40A(2)(b) by itself does not result in automatic disallowance of the expenditure. The Assessing Officer is required to examine whether the expenditure is excessive or unreasonable having regard to the fair market value of the services or facilities for which the payment has been made, or the legitimate needs of the business or profession of the assessee, or the benefit derived by or accruing to him therefrom.

5.3 In the present case, the Assessing Officer has restricted the commission expenditure to 30% of the turnover and has treated the balance amount of Rs.18,76,286/- as excessive. However, from the assessment order, it appears that the said rate of 30% has been adopted as a benchmark by comparing the assessee's business with the business of Ayurvedic products. The assessee has specifically contended that his business model, involving distribution and team-building under the Herbalife business structure, is different from the ordinary business of selling Ayurvedic products on commission basis.

5.4 Further, the assessee has furnished an agreement with M/s. Tanzil Nutrition Centre and has stated that the said concern was exclusively engaged in rendering services for promotion and development of the assessee's business. It has also been submitted that out of the commission received, substantial expenditure was incurred by M/s. Tanzil Nutrition Centre towards business promotion and related activities. The assessee has also pointed out that the payments were

made regularly and the recipient concern was duly registered under the applicable indirect tax laws and was filing its returns of income. At the same time, since the payment was made to a specified person covered under section 40A(2)(b), the assessee was required to substantiate the nature and extent of services rendered and the basis for determining the quantum of commission. The Ld. CIT(A), while confirming the disallowance, has observed that the assessee failed to furnish sufficient documentary evidence establishing the nature and quantum of services rendered by M/s. Tanzil Nutrition Centre.

5.5 In our considered view, the reasonableness of expenditure under section 40A(2)(b) has to be examined on the basis of the facts and circumstances of the assessee's own business and the services actually rendered. A mere comparison with a different line of business, without bringing any comparable material on record, cannot by itself establish that the commission paid was excessive or unreasonable. At the same time, the fact that the recipient is a related person requires proper verification of the actual services rendered and the commercial justification for the payment. Even academically speaking, the modification of commission paid of Rs.18,76,000/- is treated as excessive and restricted to say Rs.10,00,000/-, the result will lead to increasing of the taxable income of the husband by the same Rs.10,00,000/- which would be effectively a revenue neutral exercise, (barring tax rates)

5.6 Considering the above facts and in the specific circumstances of the case, we are of the view that the disallowance made by the Revenue

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is required to be deleted. Accordingly, the disallowance made u/s 40A(2)(b) of the Act of Rs.18,76,286/- is hereby set aside

6. In the result, the appeal of the assessee is allowed.

The order pronounced in the open Court on 01.10.2026.

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

**Sd/-
(DR. B.R.R. KUMAR)
VICE-PRESIDENT**

Ahmedabad; Dated 01.10.2026

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधित आयकर आयुक्त/ Concerned CIT
4. आयकर आयुक्त(अपील) /The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद/ DR, ITAT, Ahmedabad
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

**सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**