



आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में
**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

श्री बी आर भास्करन, लेखा सदस्य एवं
श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष ।
**BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. 833/Mum/2013
(Assessment year 2004-05)
ITA No. 834/Mum/2013
(Assessment year 2005-06)
ITA No. 835/Mum/2013
(Assessment year 2006-07)
ITA No. 836/Mum/2013
(Assessment year 2007-08)
ITA No. 837/Mum/2013
(Assessment year 2008-09)
ITA No. 838/Mum/2013
(Assessment year 2009-10)
ITA No. 839/Mum/2013
(Assessment year 2010-11)

मुकेश चोकसी Mr. Mukesh Choksi, Block H, Shri Sadashiv CHS Ltd., Santacruz (East), Mumbai -400 055 PAN: AAAPC 7767 J	Vs	Dy. Commissioner of Income Tax -Central Circle -46, Room no. 659, 6 th Floor Aayakar Bhavan, M K Road, Mumbai -400 020
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री मुकेश चोकसी Shri Mukesh Choksi
Respondent by	:	श्री एन पी सिंह Shri N P Singh

सुनवाईकीतारीख /Date of Hearing : 04-05-2016
घोषणाकीतारीख /Date of Pronouncement : 04-05-2016

आदेश
ORDER

PER BENCH:

The aforesaid appeals have been filed by the assessee against common order dated 30.11.2012, passed by CIT(A) -38, Mumbai for the quantum of assessment passed under section 153 r.w.s. 143(3) for the assessment years 2004-05; 2005-06; 2006-07; 2007-08; 2008-09; 2009-10; and 2010-11. The sole issue argued

before us, is estimation of net profit rate of 2%, made by the AO as against 0.15% offered by the assessee on the 'gross receipts'.

2. At the outset, the assessee submitted that, similar issue had arisen in group concerns of the assessee before the Tribunal wherein the rate of commission has been accepted at 0.15%. The list of some of the ITAT decisions filed before us are as under:-

- (i) M/s Goldstar Finvest P Ltd-ITAs 887 and 2699/M/2013, order dated 30.11.2015;
- (ii) M/s Mihir Agencies Pvt Ltd. in ITAs 6435 to 6441/M/2012 vide order dated 06.01.2016; and
- (iii) Alliance Intermediateries and Networks P Ltd., in ITAs 2700 to 2702/M/2013 order dated 20.02.2016.

3. Ld. DR also admitted that, the issue of rate of commission has been decided by the Tribunal in various cases.

4. Brief facts *qua* the issue involved are that, a search and seizure action under section 132(1) was conducted in the Group companies owned and floated by assessee, Shri Mukesh Choksi on 25.11.2009. The assessee was also covered under the same search and consequently assessments under section 153A r.w.s. 143(3) were completed. The AO in the assessment order has noted that, during the course of the search and seizure action, it was found that the assessee and the Group companies of the assessee were engaged in the business of accommodation entries and laundering of black money. The assessee himself was the mastermind behind formation of all these companies. Various other details and *modus operandi* have been noted by him along with the statement on oath of the assessee and the seized documents. Thus, on the basis of his detail discussions and material on record, the AO held that, the assessee and the Group companies run by him were receiving commission income from for all these activities. Such a commission income was ranging between 1.5% to 3.5%. The AO

accordingly rejected the books of account of the assessee and estimated the net profit rate of the commission @ 2%, which according to the assessee was 0.15%. Before the CIT(A), the assessee filed various decisions passed by the CIT(A) in Group companies, wherein, 0.15% of the commission rate has been accepted. However, the Ld. CIT(A) did not accept the assessee's contention and confirmed the estimate made by the AO.

5. On the perusal of the impugned orders and the finding of the Tribunal in the case of M/s Mihir Agencies Pvt Ltd (*supra*) and on similar other decisions as relied before us, we find that the Tribunal has upheld the net profit rate of 0.15%. The relevant observation of the Tribunal in the case of M/s Mihir Agencies Pvt Ltd is reproduced hereunder:-

"7. We find that in the case of Gold Star Finvest Ltd, which is a sister concern of the assessee, on similar facts for the assessment year 2003-04 and 2004-05, the Tribunal after referring to various decisions have upheld the percentage of commission on net profit @ 0.15% which was quite consistent with the statement recorded at the time of search. Accordingly, following the judicial precedence in the case of the assessee's sister concern (supra), we uphold the rate of commission / rate of net profit from such activities at 0.15%. Accordingly, ground no. 4, 5 as raised by the assessee are allowed".

Thus, consistent with the view taken in various similar matters, we also uphold the rate of commission / net profit rate from such activity at 0.15%. Accordingly, this issue is decided in favour of the assessee.

मुकेश चोकसी
Mr. Mukesh Choksi
ITAs No. 833 to 839/Mum/2013

6. Since no arguments have been placed on other grounds of appeal, the same are not being adjudicated upon. In the result, appeal of the assessee is partly allowed.

7. In all the appeals, exactly similar issue are involved for our consideration, our finding given above will apply *mutatis mutandis* to the impugned appeals also, therefore, all the appeals filed by the assessee are treated as partly allowed.

Order pronounced in the open court on 4th May, 2016.

Sd/-
(बी आर भास्करन)
लेखा सदस्य
(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(अमित शुक्ला)
न्याईक सदस्य
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 4th May, 2016

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The CIT(A) -38, Mumbai.
- 4) The Commissioner of Income Tax-Central-IV, Mumbai.
- 5) प्रतिनिधि विभागीय "बी", अधिकरण अपीलीय आयकर, मुंबई/
The D.R. "B" Bench, Mumbai.
- 6) गार्डफाईल
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आदेशानुसारBy Order

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सहायक पंजीकार
मुंबई ,आयकरअपीलीयअधिकरण
Asstt. Registrar
I.T.A.T., Mumbai

*Chavan, Sr.PS