

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 5981/Mum/2013

(निर्धारण वर्ष / Assessment Year : 2009-10)

Mr. Swapnil Chandrakant Joshi, 9 A R Block, Sikka Nagar, S.V.P. Road, Girgaon, Mumbai - 400 004.	बनाम/ v.	ITO - 16(3)(3), Mumbai.
स्थायी लेखा सं./PAN : ABSPJ9363L		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	Shri Devendra Jain
Revenue by :	Shri Sunil Kumar Agarwal- DR

सुनवाई की तारीख / **Date of Hearing** : 24-2-2016

घोषणा की तारीख / **Date of Pronouncement** : 06-05-2016

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 5981/Mum/2013, is directed against the order dated 15-07-2013 passed by learned Commissioner of Income Tax (Appeals)- 27, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2009-10, the appellate proceedings before the CIT(A) arising from the assessment order dated 30.12.2011 passed by the learned Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The grounds raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") reads as under:-

“1. The CIT(A) has erred in confirming the action of A.O. of adding commission of Rs. 18,45,793/- as undisclosed income which may please be deleted.

2. The expenses on account of commission paid to sub-distributors and relatives may please be allowed.”

3. The brief facts of the case are that the assessee is an individual engaged in the business of food products and telecom. The assessee is also an LIC agent.

4. During the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of the Act, it was observed by the A.O. that the assessee has earned total commission from Idea Cellular Limited of Rs. 18,45,793/- as appearing in the TDS certificate issued by the Idea Cellular Ltd. However, it was observed by the AO from the audited Profit & Loss account and the working of total income submitted during the course of assessment proceedings that there was no commission income earned from the Idea Cellular Ltd. which was offered for taxation in the return of income filed with the Revenue. The assessee was given an opportunity but the assessee was not able to prove the accounting of the income having suffered taxation. The assessee had also claimed credit of Tax deducted at source against the said commission income. The A.O. accordingly treated the said income of Rs. 18,45,793/- as undisclosed income by the assessee and added Rs. 18,45,793/- to the total income of the assessee vide assessment order dated 30.12.2011 u/s 143(3) of the Act.

5. Aggrieved by the assessment order dated 30.12.2011 passed u/s 143(3) of the Act by the A.O. the assessee filed first appeal before the CIT(A).

6. During the course of appellate proceedings before the CIT(A), the assessee submitted that the assessee obtained distributorship of Idea Cellular Ltd. vide agreement dated 18.8.2008 for sale of SIM card etc. The copy of the agreement was enclosed. The assessee submitted that the assessee did not have sufficient time to explain the accounting and how the commission income was offered as income in the P&L account having suffered taxation. The assessee submitted that the commission income of Rs.18,45,793/- was intimated in the form of purchase invoices which included commissions of the distributor as well as retailer. The assessee submitted that the commission income of Rs.18,45,793/- has been reduced from the purchases made from Idea Cellular Limited and the net purchases are claimed as business expenditure. Thus, it was submitted that commission income of Rs.18,45,793/- is already taxed in the hands of the assessee and there is no concealment of income. Purchase analysis was submitted before the CIT(A) giving details of gross purchases and commission being credited to arrive at net purchase amount. Additional evidences filed by the assessee were not accepted by the CIT(A) as the same did not fall within parameters of Rule 46A of Income Tax Rules, 1962. In the remand report, the A.O. has not made any comments on merits and the appeal of the assessee was dismissed on account of commission income from Idea Cellular Limited not being accounted in the return of income filed by the assessee with the Revenue as also due to some purported difference as per CIT(A) in accounting of purchases by the assessee vis-à-vis Idea Cellular Limited as detailed in the CIT(A) orders dated 15-07-2013.

7. Aggrieved by the orders dated 15-07-2013 of the CIT(A), the assessee is in appeal before the Tribunal.

8. The ld. Counsel for the assessee submitted that the assessee is a distributor of food products and telecom. The commission income of Rs. 18,45,793/- was earned from Idea Cellular Limited. Due tax was deducted at source by the afore-stated Idea Cellular Limited. The ld. Counsel submitted that the income has been duly accounted for in the books of accounts and duly offered for taxation in the return of income filed with the Revenue. The assessee has credited the said amount of commission income of Rs.18,45,793/- in purchases account whereby the purchases were reduced as commission income was related to the purchases made by the assessee of the telecom products from Idea cellular Limited. The assessee has produced the trading and profit and loss account for impugned assessment year whereby the commission income of Rs. 18,45,793/- earned from Idea Cellular Limited were shown to be credited to Purchases account and the same was reduced from the purchases of Rs. 2,07,70,722/- and net purchases of Rs. 1,89,24,929/- was accounted for in the audited Profit and Loss account. The copy of Trading, Profit and Loss A/c for the previous year ended 31st March, 2009 is placed in the paper book page 1 & 3 filed with the Tribunal. The assessee has also filed the copy of ledger account of M/s Akshay Agencies-Idea to contend that the commission income are reduced while accounting for the purchases made which is also placed in paper book page 6 to 11. Thus the ld. Counsel submitted that it has duly accounted for the commission income in the books of account and the income was duly offered for taxation and due taxes have been paid to the Revenue. The contention of the assessee was rejected by the authorities below. The additional evidences filed before the CIT(A) were also not admitted. The assessee relied upon the decision of Hon'ble Bombay High Court in the case of Smt. Prabhavati S. Shah v. CIT [1998] 100 Taxman 404 (Bom.) and the decision of ITAT, Mumbai Bench in the case of Shahrukh Khan v. DCIT, [2007] 13 SOT 61 (Mum) and submitted that by making this addition of Rs. 18,45,793/-, the Revenue has brought to tax the same income twice which is not permissible.

9. The ld. D.R. submitted that the assessee has earned commission income which is not reflected in the books of account. The assessee has not declared the same in the return of income filed with the Revenue. He further relied upon the orders of authorities below.

10. We have considered the rival contentions and also perused the material available on record including case laws relied upon. We have observed that the assessee is distributor of food products and telecom products. The assessee has earned commission income of Rs. 18,45,793/- during the impugned assessment year on which due taxes have been deducted at source by Idea cellular Limited. The Revenue has added the said commission income on the contention that the same has not been offered for taxation. While the contention of the assessee is that the said commission income of the assessee was duly offered for taxation by way of reduction from the purchases which has been placed in the paper book page No. 1 & 3 and submitted that the commission income has been duly offered for taxation and due tax paid to Revenue. It was submitted that the CIT(A) has not admitted the additional evidences and it has led to the addition of the same amount as the income of the assessee twice which is not permissible under the Act once at the behest of the assessee whereby the said commission income has suffered tax by way of reduction from purchases in the return of income filed with the Revenue and on the other hand the Revenue has also added the same while framing assessment u/s 143(3) of the Act vide orders dated 30-12-2011 which has led to double taxation. The accounts of the assessee are stated to be audited u/s 44AB of the Act wherein the commission income is stated to be credited to Purchases Account and suffered taxation in the return of income filed with the Revenue. In our considered view, interest of justice will be best served if the additional evidences submitted by the assessee are admitted and the income is computed on merits in accordance with law after consideration of

additions evidences to be filed by the assessee in his defense for which the matter needs to be set aside to the file of the AO for de-novo determination of the issue relating to chargeability of commission income of Rs. 18,45,793/- to tax as set out above. Accordingly, we set aside the matter to the file of the A.O. for de novo determination of the issue after considering the additional evidences filed by the assessee on merits and in accordance with law after giving proper and adequate opportunity of the hearing to the assessee in accordance with the principles of natural justice. We order accordingly.

11. In the result, the appeal filed by the assessee in ITA NO. 5981/Mum/2013 for the assessment year 2009-10 is allowed for statistical purpose.

Order pronounced in the open court on 6th May , 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 06-05-2016 को की गई ।

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 06-05-2016

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व.नि.स./ R.K., Ex. Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "E" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai