

आयकर अपीलीय अधिकरण “ ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

सर्वश्री राजेन्द्र, लेखा सदस्य एवं पवनसिंह न्यायिक सदस्य
Before Shri Rajendra, A.M. and Shri Pawan Singh, J.M.

आयकर अपील सं./ITA No.2786/Mum/2015, **निर्धारण वर्ष** /Assessment Year: 2009-10

ITO-14(3)(1) Room No.430A, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-20	Vs.	M/s. Raviraj Investments Corporate (India) Pvt. Ltd., D-1, Asha Kunj CHS Ltd. Ground Floor, Plot No.82, Next to Vaishali Hotel, Opp. Syndicate Bank , N.G. acharya Marg, Chembur, Mumbai-400 071. PAN: AACCR 1243 D
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Vishwas Mundhe-DR

Assessee by: Shri Haridas Bhat

सुनवाई की तारीख / **Date of Hearing:** **04.01.2017**

घोषणा की तारीख / **Date of Pronouncement:** **01.02.2017**

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य, राजेन्द्र के अनुसार -Per Rajendra, AM:

Challenging the order dt.26.2.15 of CIT(A)-22, Mumbai the Assessing Officer(AO) has filed the present appeal. Assessee-company, engaged in the business of financial consultancy and broking of mutual funds etc. filed its return of income on 26.09.2009, declaring total income at Rs.16.16 lakhs. The AO completed the assessment on 29.12.2011, u/s.143(3) of the Act, determining its income at Rs.75.58 lakhs.

2. Effective Ground of appeal is about deleting the addition made on account of commission payment. During the assessment proceedings, the AO found that the Assessee had paid commission of Rs.59.12 lakhs to Amit Umakant Agarwal. The assessee has paid commission on the investment made by four investors namely Sadhana A. Nadkarni, (Rs.35 lakhs); Shakuntala R. Ambekar (Rs.1.10 crores); Sujata R. Ambekar (Rs.35.00 lakhs) and Rajashree S. Dokras (Rs.35 lakhs) @ 2.75% brokerage. He issued notices u/s. 133 (6) to the investors. In reply to the notice the investors stated that investment in the PNB Asset Management Co. Pvt. Ltd. (PNB Asset) was made through the assessee-company.

Vide order sheet noting dt.13.12.11 the AO issued a show cause notice to the assessee and asked it to explain as to why the commission payment of Rs.59.12 lakhs paid to Amit Agarwal should not be disallowed. The assessee filed its reply on 21.12.2011 and stated that payment was made by cross account payee cheques. The AO held that assessee had not

proved that any services were rendered by Amit Agarwal, that the application form of PNB Asset nowhere mentioned the name of Amit Agarwal as broker / sub-broker, that commission payment for introducing or bringing the above mentioned investors, was not genuine, that the investors had confirmed that they had made the investment directly to the assessee, that commission payment was not incurred for business purposes. Finally, he made disallowance of Rs.59.12 lakhs and added it to the income of the assessee .

3. Aggrieved by the order of the AO the assessee preferred an appeal before the FAA and made elaborate submissions. It relied upon certain case laws also. After considering the order of the AO and submission of the assessee, the FAA held that the assessee was a registered broker, that it would receive brokerage income and in turn would pay commission to sub-brokers, that the sub-broker code of Amit Agarwal was ARN-41999, that the payment details of PNB Asset proved that Amit Agarwal was a sub broker, that PNB Asset in its profile has mentioned the sub broker code as ARN 41999, that the profile showed that funds invested by Ramesh S.Ambekar and Shakuntala R.Ambekar were through Raviraj and sub broker Amit Agarwal ,that Amit Agarwal had offered his income in Income tax return,that payment was made to Amit Agarwal through banking channel,that the AO had made disallowance based on the information given by the CA of the investors ,that no cross examination was allowed to the assessee of the CA of the investors, that the assessee had made payment to sub broker for the services rendered by him.He referred to case of Mobile Index(125ITD309) and Bharat Bijlee Ltd.(71ITD412). Finally,he deleted the disallowance made by the AO.

4. During the course of hearing before us, the Departmental Representative (DR) argued that the onus was on the assessee to prove that payment was incurred wholly and exclusively for the business,that no evidence was produced to prove that the sub-broker had rendered services, that the assessee did not ask for cross examination of the CA, that the investors had made direct investment.The Authorised Representative (AR) contended that genuineness of transaction was proved, that the portfolio of PNB clearly mentioned the name of sub broker, that payment was made through banking channels and the recipient had offered his income in his return, that the information of the CA had no evidential value.

5. We have heard the rival submissions and perused the material before us. We find that the AO had made enquiries about the investment made by four investors with their CA,that he held that sub broker had not rendered any services to the assessee and that commission expenditure was not incurred wholly and exclusively for business purposes, that the FAA

referred to the profile of PNB Assets and had allowed the appeal of the assessee. We find that the name of Amit Agarwal appears in the account statement issued by PNB Assets (pg No.2-5 of the PB). In these statements sub broker code ARN -41999 has been mentioned as sub broker and name of the broker is shown as Raviraj Investments. It is a third party independent evidence and cannot be ignored or taken lightly. All the payments were made through account payee cheques and the sub broker had offered the income received to the assessee in his return (Pg-18 of the PB). In response to the notice issued by the AO the sub broker has admitted receipt of brokerage from the assessee. All these evidences prove that assessee had paid sub brokerage to Amit Agarwal during the year under consideration. The AO had not brought on record that it was bogus payment or the payment was capital in nature. Therefore, we do not want to interfere with the order of the FAA. Confirming the same, we decide the effective Ground of appeal against the AO.

As a result appeal filed AO stands dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है।

Order pronounced in the open court on 01st February, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 01 फरवरी, 2017 को की गई।

Sd/-

(पवनसिंह/Pawan singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 01.02.2017.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “ E ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.