

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, B, मुंबई।

INCOME TAX APPELLATE TRIBUNAL BENCHES "B", MUMBAI
Before Shri P.K. Bansal, Vice President, and
Shri Pawan Singh, Judicial Member

ITA No. 995/Mum/2015 (AY 2004-05);
ITA No. 997/Mum/2015 (AY 2007-08);
ITA No. 418/Mum/2015 (AY 2006-07);
ITA No. 419/Mum/2015 (AY 2008-09);
ITA No. 420/Mum/2015 (AY 2009-10);
ITA No. 421/Mum/2015 (AY 2010-11);

MukeshChoksi Block H Shri Sadashiv CHS Ltd. 6 th Road, Santacruz (E), Mumbai	बनाम/ Vs.	DCIT CC 46 R. NO. 659, Aayakar Bhavan, M.K. Road, Mumbai-400020
(Appellant)		(Respondent)
P.A. No. AASPC7767J		

Appellant by	Mr. MukeshChoksi
Respondent by	Mr. N.P. Singh (CIT DR)
सुनवाई की तारीख/Date of Hearing:	30/05/2017
आदेश की तारीख /Date of Order:	30/05/2017

आदेश / O R D E R

Per Bench,

These 6 appeals under section 253 of the Income tax act are directed against the orders of Commissioner of Income Tax (Appeals) for different assessment years. In all the appeals the assessee has challenged the correctness of order of Id Commissioner (Appeals) in confirming the penalty levied under section 271(1) (c) of the Act. In all appeals almost common grounds of appeal are raised, thus all appeals were heard together and are decided by consolidated order to avoid the conflicting decision.

2. At the outset of proceedings the Ld. AR of the assessee argued that the grounds of appeal raised by the assessee in all 6 appeals are covered by the decision of Tribunal in assessee's own case in ITA No. 996/M/02015 and in case of Mihir Agencies Pvt. Ltd., 695/M/2015. It was further argued that the assessee filed appeal before the Tribunal in the quantum assessment vides appeal(s) ITA No. 833/M/2013 for AY 2004-5, ITA No. 835/M/2013 for AY 2006-07, Appeal ITANo. 836/M/2013 for the AY 2007-08, appeal ITA No. 837/M/2013 AY 2008-09, ITA No. 838/M/2013 for AY 2008-09 and ITA No. 839/M/2013 for AY 2010-11, wherein the estimation of income commission income was restricted to 0.15%. On the other hand, the Ld. DR for the revenue not disputed the factual position and the decision of coordinate bench in assessee own case in quantum assessment.

4. We have considered the rival submission of parties and perused the records of the appeals. We have seen that the assessee challenged the addition in quantum assessment before tribunal and the coordinate bench of this tribunal vide order dated 04th May 2016 in ITA No. 833/M/2013 for AY 2004-5, ITA No. 835/M/2013 for AY 2006-07, ITANo. 836/M/2013 for the AY 2007-08, ITA No. 837/M/2013 AY 2008-09, ITA No. 838/M/2013 for AY 2008-09 and ITA No. 839/M/2013 for AY 2010-11. The following order were passed as under:

“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 favor of the assessee.

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.”

5. Considering the fact that coordinate bench of Tribunal for estimating the income of the assessee for the years under consideration. We hold that CIT (A) was not justified in confirming the order penalty levied u/s. 271(1)(c) of the Act, which was also based on the estimate basis, therefore, the grounds of appeal raised by assessee in all the 6 appeals are allowed.

Order was pronounced in the open court on 30th day of May 2017.

Sd/-
(P.K. Bansal)
VICE PRESIDENT

Sd/-
(Pawan Singh)
JUDICIALMEMBER

मुंबई Mumbai; दिनांक Dated : 30 /05/2017

Rahul Dhoke, P.S./नि.स.

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

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

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