

IN THE INCOME TAX APPELLATE TRIBUNAL "T" BENCH, MUMBAI

BEFORE S/SHRI SANJAY ARORA, ACCOUNTANT MEMBER

AND AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.2868/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2010-11)

Shri Dilip Jayantilal Shah A/302, White Arch, Mathurdas Road, Kandivali West, Mumbai - 400067	बनाम/ Vs.	DCIT Central Circle – 31 Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ASIPS1677F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Vijay Kothari
Department by:	Shri B. C. S. Naik (CIT-DR)

सुनवाई की तारीख / Date of Hearing: 11.08.2016

घोषणा की तारीख /Date of Pronouncement: 05.10.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 10.02.2015 passed by the Commissioner of Income Tax (Appeals)-52, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2010-11.

2. The appellant has raised the following grounds:-

- “1. On the facts and Circumstances of the case & law on subject the Assessing Officer erred in estimating commission @ 0.50% instead of 0.10% there by making addition of

Rs.23,95,657/-. On the facts & circumstances of the case and law on the subject the CIT(A) erred in upholding the addition made be deleted.

3. The brief facts of the case are that the assessee was an employee of M/s.Avon Corporation Ltd. and filed his return of income u/s.139(1) of the Income Tax Act, 1961(in short “the Act”) on 30.09.2010 declaring total income to the tune of Rs.2,75,250/-. Thereafter, search and seizure operation u/s.132 of the Act was carried out on 04.02.2011. The premise of the assessee was also covered during search. Some other premises of the M/s.Avon Corporation Ltd were also covered by the search simultaneously conducted u/s.133A of the Act. During the course of search and seizure and survey some documents were seized from the premises of the M/s.Avon Corporation Ltd and also from the premise of the assessee. The recovered material speaks that the assessee was engaged in providing accommodation entries of sale and purchase of various companies including M/s.Avon Corporation Ltd for which he was charging commission. The statement u/s.132(4) of the Act was recorded in which he stated that he was getting commission ranging from 0.02% to 0.10%. Subsequent to the search, a notice u/s.153A of the Act was issued to the assessee on 08.02.2012. Thereafter, the assessee filed the return of income on 27.02.2013, offering additional income of Rs.2,75,250/- from the business of providing accommodation entries. While completing the assessment, the Assessing Officer estimated the income @ 0.50% on the total transactions of Rs.47,91,31,428/- made by the assessee. The Assessing Officer

estimated the income to the tune of Rs.23,95,657/- and the said amount was added to the income of the appellant. Thereafter, the assessment was completed by assessing the income to the tune of Rs.26,16,070/- vide order dated 25.03.2013 passed u/s.143(3) read with section 153A of the Act. The assessee was not satisfied, therefore filed an appeal raising the question of the commission but the CIT(A) dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE NO.1:-

4. We have heard the arguments advanced by the learned representative of the parties and perused the record. The sole ground which has been raised by the assessee is that the Assessing Officer has erred in estimating commission @ 0.50% instead of 0.10% adding income to the tune of Rs.23,95,657/-. The learned representative of the assessee has argued that the Hon'ble Income Tax Appellate Tribunal in assessee's own case in ITA No.2867/Mum/2015 for the A.Y.2009-10 has decided this issue in favour of assessee wherein the Tribunal restricted the commission to the tune of Rs.0.20% in place of 0.50% and requested to follow with the said order. However, the learned representative of the department has strongly relied upon the order passed by the CIT(A) in question. On appraisal of the assessment order it came into the notice that the appellant was asserting in connection with the getting the commission @ 0.10% to 0.20%. The contention of the appellant was not accepted by the Assessing Officer. However, the Assessing Officer relied upon the statement of Shri Pankaj Saraiya

recorded u/s.132(4) of the Act during search proceeding where he stated that he was paying commission @ 50% to 60% per 100 rupees for bogus accommodation entries. Copy of order in ITA No.2867/Mum/2015 for the A.Y.2009-10 in the case of the case of the assessee has been perused in which Hon'ble ITAT has restricted the commission @0.20% in place of 0.50% assessed by the Assessing Officer. However, no cogent and convincing evidence on record by which the assessing officer was satisfied with the income of the assessee@ 0.50% from the accommodation entry. Anyhow in this regard the Hon'ble ITAT has decided the controversy of the assessee in connection with the last preceding year i.e.2009-10.

5. In view of the said circumstances and by following decision of co-ordinate bench, we restrict the addition to the extent of 0.20% in place of 0.50%. Therefore this issue is decided accordingly in favour of the assessee against the revenue.

6. In the result, the appeal of the Assessee is hereby partly allowed. .

Order pronounced in the open court on 5th October, 2016

Sd/-

(SANJAY ARORA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 5th October, 2016

MP

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai