

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "F", MUMBAI**

**BEFORE D.T. GARASIA, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4573/M/2015
Assessment Years: 2011-12**

Asstt. Commissioner of Income Tax Circle-3, 2 nd Floor, Rani Mansion, Murbad Road, Kalyan (W) – 421301	Vs.	Shri Vinod Ratan Patil Shanti Niwas, Katai Gaon, Kalyan Shil Road, Dombivli (E) – 421201 PAN NO.AKWPP4159M
(Appellant)		(Respondent)

Present for:

Revenue by : Shri T. A. Khan D.R.
Assessee by : Shri Vijay Kumar Prajapati, A.R.

Date of Hearing : 07.09.2017
Date of Pronouncement : 20.09.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The above titled appeal has been preferred by the Revenue against the order dated 29.05.2015 of the Commissioner of Income Tax (Appeals) I, Thane [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The effective Grounds of the appeal:

“1.1 Whether on the facts and in the circumstances of the case, and in law, the Hon’ble CIT(A) erred in deleting the disallowance of Rs.75,00,000/- in respect of Shri Kashinath Patil on the basis of additional evidence without obtaining remand report from the A.O. as per the provisions of Rule 46A.”

3. The short facts of the case are as under:-

3. The brief facts of the case are that in this case the return, declaring total income of Rs.37,41,570/-, was filed on 06.10.2011. The assessee enjoys income from business of transport and general commission. The assessment u/s.143(3) of the Act, 1961, was finalized on 28.02.2014, at total income of Rs.2,18,16,160/-, by making the additions/ disallowances.
- 6.2 As regards the disallowance of Rs.75,00,000/-, claimed to have been paid to Mrs. Kashinath K. Patil, directly through M/s. Lodha Dwellers, is concerned, the same was disallowed by the AO, on the ground that though the recipient,

Mr. Kashinath Patil, has shown the above commission income, in his profit and loss account but the auditor in his audit report, in Part B, column no.10 i.e., commission received, has mentioned as nil amount. However, in the revised report, the typographical mistake was duly rectified. In addition to the above, the AO further observed that the appellant could not file confirmation from Mr. Kashinath Patil and compliance of notice u/s.133(6) was not received. Considering the fact that the payments to Mr. Kashinath Patil were made directly through M/s. Lodha Dwellers, therefore, the AO disallowed the entire amount of Rs.75,00,000/- and added back to the income of the appellant.

4. Matter carried to CIT(A) and CIT(A) has allowed the appeal by observing as under:-

“6.6 The applicant furnished all relevant details / documents / explanation to justify the payment of above brokerage, to Mr. Kashinath Patil. The Chartered Accountant in his explanation before the AO, admitted the fact that the commission received, not mentioned in the Audit Report, was a typographical mistake and the same was duly rectified, in due course. Considering the above facts, in my considered opinion, the appellant has duly discharged his onus, in respect of the above payment. Therefore, the payment of commission, amounting to Rs.75,00,000/-, in the name of Mr. Kashinath Patil, stands duly explained, in the hand of the appellant. Accordingly, the disallowance made by the AO is not justified, hence, deleted. This ground of appeal is partly allowed.

5. We have heard the rival contentions of both the parties. We find that the Assessing Officer has disallowed Rs.75,00,000/- paid to Mr. Kashinath Patil directly through Lodha Dwellers on the ground that the recipient, Mr. Kashinath Patil has shown above commission income in his Profit & Loss Account but auditor has shown his audit report as commission income received Nil. However, this fact was rectified before Commissioner. The Commissioner has verified the Profit & Loss Account, Audit Report and Bank Account and he has also verified the TDS and deleted the addition, therefore our interference is not required.

6. In the result, appeal of Revenue is dismissed.

Order pronounced in the open court on 20.09.2017.

**Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(D.T. GARASIA)
JUDICIAL MEMBER**

Mumbai, Dated: 20.09.2017.

* MP.

आदेश की प्रतिलिपि □ ग्रेषित/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