

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री शमीम याहया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.5797/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2009-10)

ITO-10(1)(4), Room No. 25B, Ground Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	<b>बनाम/</b> Vs.	M/s. Readymade Steel India Pvt. Ltd. (Now - M/s. Kridhan Infra Ltd.) A-13, Omitech House, Cross Road No.5, Kondivita House, Marol MIDC, Andheri (E), Mumbai-400 093
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACDR 2540 N		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri N. Hemalatha
प्रत्यर्थी की ओर से/Respondent by	:	Shri J. R. Bhatt
सुनवाई की तारीख / Date of Hearing	:	14.11.2017
घोषणा की तारीख / Date of Pronouncement	:	04.12.2017

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the Revenue directed against the Order by the Commissioner of Income Tax (Appeals)-17, Mumbai (‘CIT(A)’ for short) dated 27.06.2017 and pertains to the assessment year (A.Y.) 2009-10. The grounds of appeal read as under:

1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition at 3% commission estimated by the A.O. and same is restricted at 1%.

2. The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the A.O. be restored.
2. At the outset in this case, the ld. Counsel of the assessee submitted that the issue raised in the appeal is covered by the decision of ITAT in the assessee's own case for assessment year 2010-11. He submitted that the ld. Commissioner of Income Tax (Appeals) has followed the same decision. Hence, the ld. Commissioner of Income Tax (Appeals)'s order should be upheld.
3. Per contra, the ld. Departmental Representative did not dispute that identical issue in assessee's own case was adjudicated by the ITAT in assessee's own case, which the ld. Commissioner of Income Tax (Appeals) in the present case has followed.
4. On careful consideration, I note that the assessee in this case is a Private Limited Company engaged in the business of trading in ferrous and non ferrous goods. On the basis of information from the Sales Tax Department and other evidences gathered in the course of survey, the Assessing Officer had noted bogus purchases transaction indulged in by the assessee company. The Assessing Officer had added 3% commission on the same and added it to the total income of the assessee. The ld. Commissioner of Income Tax (Appeals) has granted relief to the assessee by restricting the addition to 1% as against 3% done by the Assessing Officer. In this regard, the order of the ld. Commissioner of Income Tax (Appeals)

which refers to the decision of ITAT in assessee's own case can be gainfully refer as under:

I have carefully considered the submissions and arguments made by the AR of the appellant company and has also carefully gone through the assessment order, where detail of estimation has been given. The order of Hon'ble ITAT in assessee's own case for A.Y.2010-11, has been perused and considered. There is a delay of 7 days in filing of appeal. An Affidavit explaining the reasons for this ordinate delay has been filed by Sri Anil Dhanpatlal Agarwal the Managing Director. Being satisfied with reasonable cause the delay is hereby condoned. Facts and circumstances emanates from a survey u/s 133A which was conducted by the Investigation Wing on 21.11.2012. From the evidences gathered in this survey, all the assessments/reassessments have been framed. In all these assessments, the additions have been made on the basis of estimation of commission on turnover / circular transactions detected during the course of survey proceedings. The facts and circumstances of assessment year 2010-11 are absolutely identical to the appeals filed for the assesment year 09-10 and 11-12. The finding of the Hon'ble Tribunal for 2010-11 is quoted below-

"We have heard the rival contentions and have also gone through the records. The assessee, before us, has not disputed that it was indulged in providing accommodation bills to certain parties. However, it has been submitted that the estimation of profits at the rate of 3% were very excessive. It was also explained that out of the total turnover of Rs.32.3 crores, the genuine turnover of the actual business carried out was only Rs.8.2 crores and profit there from has been declared at Rs.82,75,831/- which has accordingly been taxed as business of the assessee. The Ld.AR has further submitted that the assessee has declared the income of the accommodation bills at the rate of 1% of the turnover which was actually received by the assessee. That the AO in the impugned assessment order himself has mentioned that there was no mention of cash commission in the survey report But the assessee, despite that, itself, has offered for taxation the actual income received from providing accommodation bills and further that the assessee had not claimed any expenses or sub commission in respect of the said declared income. The Ld. AR has relied upon certain decisions of the Tribunal wherein the commission income from such accommodation bills has been estimated or accepted by the Tribunal even at a rate which is less than 1% of the turnover. She has mainly relied upon the decision of the co-ordinate bench of the Tribunal in the case of "Saroj Anil Steel Pvt.Ltd. v.s.ITO". She has stated that in the said case the commission income was

estimated by the AO at the rate of 1% of the turnover. But the Ld.CIT(A) in the appellate proceedings directed the AO to estimate the income of commission from hawala transactions at the rate of 0.4% of gross turnover. The Tribunal however, directed the AO to estimate the income at the rate of 1% of total turnover and also directed to allow certain administrative expenses therefrom. The Ld. AR has stated that in the case of the assessee no expenditure has been claimed. Even the estimation of income at the rate of 1% of the accommodation bills turnover has also been approved by the Tribunal. Considering the above submissions of the assessee an after going through the decision of the Tribunal, though we find that there cannot be a fixed criteria to adopt as to at what rate commission income in such cases can be adopted for however, considering the facts of the case and submissions of the Ld. A.R., in our view , the estimation of commission income at the rate of 3% in the absence of any evidence, any calculation or other basis or any example of a similarly placed case seems to be on higher side. The assessee , on the other hand, has supported its case while providing all the details including the actual amount of the turnover and the actual amount received by the assessee and the AO has not pointed out any peculiar point on the basis of which the calculation and income offered by the assessee can be faulted with. We accordingly, restrict the income offered from the accommodation bills turnover at the rate of 1% as against 3% estimated by the AO. Before parting, it is made clear that out above observations will not have any bearing in any other case as such type of cases have to be decided on their own merits."

In view of the arguments made by the AR and respectfully following the decision of Hon'ble Tribunal in assessee's own case for A.Y.2010-11 quoted above, the 3% rate of commission on turnover adopted by the AO is deleted and he is directed to adopt 1% rate, which has been decided by the Hon'ble Tribunal.

5. From the above, it is apparent that the Id. Commissioner of Income Tax (Appeals) has followed ITAT's decision in assessee's own case. It is not the case that above ITAT decision has been reversed by the Hon'ble jurisdictional High Court. Hence, respectfully following the precedent, I uphold the order of the Id. Commissioner of Income Tax (Appeals).

6. In the result, this appeal by the Revenue stand dismissed.  
परिणामतः राजस्व की अपील खारिज की जाती है ।

*Order pronounced in the open court on 04.12.2017*

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 04.12.2017

व.नि.स./Roshani, 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)
4. आयकर आयुक्त / CIT - concerned
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**