

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai**

**Before Shri Joginder Singh, Judicial Member
and Shri G. Manjunatha, Accountant Member**

ITA No. 1809/Mum/2017
(Assessment Year: 2010-11)

Shri Anil D. Agrawal
A-13, Omnitech House
Kondivita, Marol MIDC
Andheri (E), Mumbai 400059

Income Tax Officer-17(1)(1)
Room No. 115, 1st Floor
Vs. Aayakar Bhavan, M.K. Road
Mumbai 400020

PAN – AERPA1868D

Appellant

Respondent

Appellant by: Shri Jayant R. Bhatt
Respondent by: Shri V. Vidhyadhar

Date of Hearing: 06.02.2018
Date of Pronouncement: 21.02.2018

ORDER

Per G. Manjunatha, AM

This appeal filed by the assessee is directed against the order of the CIT(A)-28, Mumbai dated 02.01.2017 and it pertains to A.Y. 2010-11.

2. The assessee has raised the following grounds of appeal: -

- “1. Under the facts and circumstances of the case and in law, the CIT(A) has erred in confirming the addition of Rs.56,63,987/- by confirming an estimation of profit on accommodation turnover @ 3% as against 0.57% declared by the assessee
2. Under the facts and circumstances of the case and in law CIT(A) has erred in not appreciating the fact that while estimating 3% of T/o AO has not brought on record any evidence, material or comparable case to justify such addition or without finding any fault in actual income offered by the assessee.”

3. The brief facts of the case are that the assessee filed his return of income for A.Y. 2010-11 on 18.09.2010 declaring total income of ₹12,96,335/- and the same was duly processed under Section 143(1) of

the Income Tax Act, 1961 (hereinafter “the Act”). Subsequently on receipt of information from DGIT (Investigation), Mumbai the case has been reopened under Section 147 of the Act for the reason that income chargeable to tax has been escaped assessment on account of bogus purchases made by the assessee from suspicious/hawala parties. Notice under Section 148 of the Act dated 01.04.2013 was issued calling for return of income within 30 days. However, there was no compliance from the assessee. Thereafter notices under Section 143(2) and 142(1) of the Act were issued. In response to the notices Authorised Representative of the assessee appeared from time to time and furnished details as called for. During the course of assessment proceedings the AO noticed that in the course of survey proceedings conducted in the group cases of SRM Group of companies, they have admitted that they have obtained accommodation entries from certain parties and also accepted their tax liability before the Intelligence Wing and paid applicable tax on the whole hawala purchases. Based on the information, the AO called upon the assessee to furnish necessary evidences to justify the purchases from the parties. In response to the notice, the assessee has filed purchase bills. However, he failed to furnish further evidences in the backdrop of clear findings by the Investigation Wing that these parties are suspicious dealers indulged in providing accommodation entries without any delivery of actual material. Therefore, in view of the survey findings, the AO opined that the assessee has consciously entered into several circular transactions in order of provide benefit of fictitious/bogus entries to the ultimate beneficiaries i.e. M/s. Shree Ram Urban Infrastructure Ltd. and M/s. Raghuveer Construction Company Pvt. Ltd., even though there is no mention of cash commission in the survey report. The AO further observed that in these kind of modus operandi it is quite clear that the assessee has worked with an intent to derive some benefit by providing accommodation entries as per beneficiaries’ requirements. Therefore, he estimated 3% commission on total accommodation entries of ₹18,87,99,551/- provided during A.Y. 2010-11 and added back ₹56,63,987/- to the total income of the assessee.

4. Aggrieved by the assessment order the assessee preferred appeal before the CIT(A). Before the CIT(A) the assessee has reiterated the submissions made before the AO that the commission estimated by the AO at 3% of the total circular entries provided is very much on the higher side when compared to the nature of the business and also the gross profit declared by the assessee in his business wherein he has derived gross profit of less than 1%. Therefore, he requested to reduce the gross profit by 1% of the total accommodation entries. The CIT(A), after considering the submissions of the assessee and also relying upon the decision of the Hon'ble Madras High Court in the case of Coimbatore Spinning & Weaving Co. Ltd. vs. CIT (1974) 95 ITR 375, observed that the aspect of substandard morality so openly professes and admitted is astonishing and shocking to say the least. Thereafter to plead that the profit rate on the alleged practice which is unethical and illegal should be reduced to a particular percentage is taking things a bit too far. The CIT(A) further observed that already reasonable percentage has been applied on the accommodation entries which the assessee has facilitated. There can be no straightjacket formula for this but under the circumstances I find that 3% is reasonable rate, especially in view of the admission of the illegality which has been committed. With these observations he sustained the addition made by the AO towards estimation of 3% commission on total alleged accommodation entries. Aggrieved by the order of the CIT(A) assessee is in appeal before us.

5. The learned A.R. for the assessee submitted that the learned AO was erred in estimating 3% commission on total accommodation entries without appreciating the fact that the assessee has derived gross profit of less than 1% in his business. The learned A.R. referring to the decision of the ITAT, Mumbai in the case of Readymade Steel India P. Ltd. in ITA No. 7426/Mum/2014, submitted that under similar identical facts the ITAT has estimated 1% commission on accommodation entries. He, therefore, requested to scale down the estimation made by the AO from 3% to 1% of the total accommodation entries.

6. The learned D.R., on the other hand, strongly supported the order of the learned CIT(A).

7. We heard the rival submissions and perused the material on record. It is an admitted fact that the assessee is indulged in providing circular accommodation entries to certain beneficiaries and this fact has been admitted before the Investigation Wing in the statement recorded in the course of survey proceedings. The AO has estimated a commission of 3% on total circular transactions. It is the contention of the assessee that commission estimation by the AO is on the higher side when compare to the nature of business and also his gross profit admitted in the earlier years wherein he has derived the GP of less than 1%. The assessee further contended that under similar set of facts the ITAT Mumbai "D" Bench has directed the AO to estimate the commission at 1% on the total accommodation entries. Having heard both the sides and considering the material on record, we do not find any merit in the arguments of the assessee for the reason that the assessee himself has admitted before the Investigation Wing that he is involved in providing accommodation entries to various beneficiaries. Though there is no mention of cash component of commission in the survey report, it is an admitted fact that in this kind of transactions the entry provider will derive certain benefits for issuing accommodation entries. Considering this fact the AO has estimated reasonable percentage of commission on total accommodation entries provided by the assessee. Though the assessee claims that the commission estimated by the AO is on higher side he failed to justify the gross profit declared in his business in the earlier years with any other comparable case. Therefore, we are of the view that the AO was right in estimating 3% commission on total accommodation entries. The CIT(A), after considering the facts, has rightly affirmed the addition made by the AO. We do not find any error or infirmity in the order of the CIT(A). Hence, we are inclined to uphold the findings of the CIT(A). Thus, the ground raised by the assessee is rejected.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 21st February, 2018.

Sd/-
(Joginder Singh)
Judicial Member

Sd/-
(G. Manjunatha)
Accountant Member

Mumbai, Dated: 21st February, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -28, Mumbai*
4. *The Pr. CIT - 17, Mumbai*
5. *The DR, "A" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.