



IN THE INCOME TAX APPELLATE TRIBUNAL
"J" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.1865/Mum./2016
(Assessment Year : 2006-07)

Shri Dushyant Singh
A/403, Matushri CHS Ltd.
M.G. Road, Goregaon (W)
Mumbai 400 104 – AWZPS2908L

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-6, Mumbai

..... Respondent

ITA no.1866/Mum./2016
(Assessment Year : 2007-08)

Shri Dushyant Singh
A/403, Matushri CHS Ltd.
M.G. Road, Goregaon (W)
Mumbai 400 104 – AWZPS2908L

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-6, Mumbai

..... Respondent

ITA no.1867/Mum./2016
(Assessment Year : 2010-11)

Shri Dushyant Singh
A/403, Matushri CHS Ltd.
M.G. Road, Goregaon (W)
Mumbai 400 104 – AWZPS2908L

..... Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle-6, Mumbai

..... Respondent

Assessee by : Shri B.N. Rao
Revenue by : Shri Abhijit Patankar

Date of Hearing – 26.02.2018

Date of Order – 28.02.2018

ORDER**PER SAKTIJIT DEY, J.M.**

Aforesaid appeals by the same assessee are against a common order dated 22nd December 2015, of the learned Commissioner (Appeals)-47, Mumbai, passed for five assessment years. However, the present appeals relate to assessment years 2006-07, 2007-08 and 2010-11.

2. The grounds raised by the assessee which are identical in all these appeals read as under:-

"1. The learned Commissioner (Appeals) erred in upholding the addition to the extent of 85% by giving relief only to the extent of 0.15% from the assessed 1% commission on the bogus bills provided by the appellant.

2. The Assessing Officer erred in invoking provisions of section 153C of the Act which is ab initio void and bad in law."

3. The assessee is an individual. A search and seizure operation under section 132(1) of the Act was conducted in case of M/s. Arya Group of companies on 29th April 2011. The said company is stated to be in the business of ship breaking at Alang in Bhavnagar, Gujarat, and trading in steel items in Mumbai and production of steel pellets at Barbil, Orissa. During the search operation, the group made cumulative voluntary disclosure of undisclosed income of ₹ 20 crore.

On the very same day a search and seizure operation under section 132(1) was conducted in case of M/s. Tirupati Group of companies which is involved in the business of trading of M.S. Steel Pipe, M.S. Joist, R.S.J. Polls, Angles, Channels and PMT Bars, etc. During the search proceedings, the group offered cumulative voluntary disclosure of undisclosed income amounting to ₹ 4 crore. From the incriminating materials seized from both the concerns during the search operation it was found that the assessee and other related concerns were providing bogus bills / accommodation entries to these two group of companies. As a consequence of the search operation, the assessee offered an amount of ₹ 2.93 lakh on account of commission earned for providing bogus bills in assessment years 2008-09 and 2009-10. On the basis of material available on record and the statement recorded from the assessee under section 133A of the Act on 29th April 2011, wherein, the assessee admitted of providing accommodation bills, the Assessing Officer called upon the assessee to prove the genuineness of sales effected to the concerned parties and also to explain why the books of account should not be rejected. Though, the assessee submitted its explanation stating that the books of account were correctly maintained, however, the Assessing Officer did not find merit in the submissions of the assessee. He found that apart from the material found as a result of search indicating involvement of the assessee in providing accommodation bills, the information received

from sales tax department, Maharashtra Government, also proved that the assessee was involved in providing accommodation bills. The Assessing Officer observed, as per the market practice, the fees charged for providing accommodation bills varied between 0.5% to 2% of the transaction value. Therefore, the Assessing Officer estimated the commission received by the assessee @ 1% of the bogus bills / accommodation entries as income of the assessee and accordingly made addition in different assessment years depending on the quantum of accommodation bills / entries provided by the assessee. Being aggrieved of such additions made by the Assessing Officer in different assessment years, assessee preferred appeal before the learned Commissioner (Appeals).

4. The learned Commissioner (Appeals) after considering the submissions of the assessee in the context of facts and material on record directed the Assessing Officer to allow deduction of 15% towards expenses out of the commission earned @ 1% and add the net commission income in all the assessment years in appeal.

5. We have considered rival submissions and perused materials on record. At the very outset, it was brought to our notice by the learned Counsels appearing for the parties that while deciding assessee's appeals arising out of the very same order of the first appellate authority, the Tribunal has upheld the decision of the learned

Commissioner (Appeals). On a perusal of the order dated 18th August 2017, passed in ITA no.1868/Mum./2016 and ITA no.1869/Mum./2016, we find the aforesaid submissions of the parties to be correct. Therefore, consistent with the view expressed by the Co-ordinate Bench in assessee's own case as referred to above, we uphold the decision of the learned Commissioner (Appeals) in all these assessment years under appeal. Grounds raised are dismissed.

6. In the result, all the appeals are dismissed.

Order pronounced in the open Court on 28.02.2018

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 28.02.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Asstt. Registrar/Sr.P.S)
ITAT, Mumbai