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

BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER AND

SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.5281/Mum/2016 (Assessment Year- 2012-13)

Suresh Komal Singh Room No. 123-979, Motilal Nagar No.1, Goregaon West, Mumbai-400104 **PAN:APMPS5397D**	**Vs.**	DCIT Central Circle 6 Mumbai.
(Appellant)		(Respondent)

Assessee by	:	Shri B.N. Roa (AR)
Revenue by	:	Shri S. Padmaja (CIT-DR)
Date of hearing	:	08.03.2018
Date of Pronouncement	:	08.03.2018

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee under section 253 of Income Tax Act is directed against the order of Ld. Commissioner of Income-Tax (Appeals)-47, Mumbai, [for short the ld. CIT(A)] dated 23.04.2014 for Assessment Year 2012-2013. The assessee has raised the following grounds of appeal:

   On facts and in the circumstances of the case-
   1. The ld. Commissioner of Income tax (Appeals) erred in not giving reasonable opportunity of being heard and passed ex-parte order.
   2. The ld. Commissioner of Income tax (Appeals) erred in giving relief partially to the extent of 15% of such addition 1% of the turnover.

2. At the outset of hearing, the Ld. Authorised Representative (AR) of the assessee submits that the grounds of appeal raised by assessee is covered against the assessee by the decision of Tribunal in assessee's own case for Assessment Year 2006-07 to 2011-12 in ITA No. 1870 to

1875/Mum/12016. On going through the decision of earlier year, the ld. DR for the Revenue also accepted that ground of appeal raised by Revenue is covered in favour of Revenue and against the assessee.

3. We have considered the submission of the parties and have gone through the order of authorities below and the order passed by co-ordinate bench of Tribunal in assessee's own case for AY 2006-07 to 2011-12 on 18.08.2017. The co-ordinate bench of the Tribunal passed the following order:

> "7. We have heard both the counsel and perused the records. Learned Counsel of the assessee submitted that assessee was only providing cheque encashment facility in the guise of providing bills. That assessee in the affidavit before sales tax department has submitted that commission differs from .05% to 2.15%. That the Assessing Officer has got no evidence from the assets or properties held by the assessee substantiate the income. That Assessing Officer has noted that "generally market practice of changing commission is ranging from .5% to 2% and hence I adopt 1%". That this is on surmise without any cogent material. Learned Counsel for the assessee further placed reliance upon the decision of honourable apex court in the case of Commissioner of Income Tax vs. S. Kaderkhan 352 ITR 480.
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> 8. Per Contra, learned departmental representative submitted that the issue is squarely covered in favour of the revenue by the Tribunal decision as above. He further submitted that learned CIT-A has granted further relief apart from following the above said tribunal order. Hence, he submitted that there is no reason for the order of the learned CIT-A to be not upheld.
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> 9. Upon careful consideration we find that it is not in dispute that assessee was engaged in the business of providing bogus accommodation bills. This makes it clear that assessee was aiding and admitting money-laundering. We note that anti-money-laundering provisions are not invoked in this case. However, we find that the Assessing Officer has made an estimate of 1% income on account of the activities of the assessee. The aforesaid estimate also finds support from the tribunal decision as above. In these circumstances, in our considered opinion, there is no infirmity in the order of learned CIT-A. Once it is undisputed that amount has been received by the assessee, it is for the assessee to prove that the amount received is not taxable as his income. In the case of Kale Khan Mohammed Hanif vs. CIT 50 ITR 1, Hon'ble Apex Court has expounded that it is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or it is exempt. In the present case, assessee has not disputed this

onus. The authorities below have brought to tax only 1% of the amount received by the assessee. Hence no interference in the same is required.

10. The decision of honourable apex court in the case of S. Kaderkhan (supra) relied upon by the learned Counsel of the assessee is not at all applicable on the facts of the case. The said decision was in the context of addition made on the basis of a statement of survey, dehorse any corroborated material. In this case, we note that the anti-money-laundering provisions have not been invoked. The assessee has escaped with the computation of 1% income. We find that it is not appropriate for the ITAT to take away the benefit already granted by the Assessing Officer in an appeal by the assessee.

11. Hence, in the background of aforesaid discussion and precedent, we do not find any infirmity in the order of learned CIT-A. Hence we uphold the same.

4. Considering the decision of Tribunal in assessee's own case for earlier Assessment Year 2006-07 to 2011-12 in ITA No. 1870 to 1875/Mum/2016 dated 18.08.2017, we find no infirmity in the order of ld. CIT(A). Hence, the appeal filed by the assessee is dismissed.

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

Order pronounced in the open court on 8th day of March 2018.

Sd/-	Sd/-
(B.R.BASKARAN)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 08/03/2018

S.K.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER

(Asstt.Registrar)
ITAT, Mumbai