

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'एच', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES, 'H' MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and  
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA No.687/Mum/2017  
Assessment Year: 2012-13**

Income Tax Officer-29(2)(1), Building No.C-10, Room No.201, Income Tax Office, Pratyakshakar Bahvan, Bandra Kurla complex, Bandra (East), Mumbai-400051	<b>बनाम/ Vs.</b>	Kiran Anil Bist, 202, B. Wing, Kamal Park, Near Mangatram Petrol Pump, Bhandup(W), Mumbai-400078
(राजस्व /Revenue)		(निर्धारिती /Assessee)
<b>PAN. No. AJAPB3460A</b>		

राजस्व की ओर से / Revenue by	Shri Rajat Mittal-DR
निर्धारिती की ओर से / Assessee by	Shri Bhupendra Shah

सुनवाई की तारीख / <b>Date of Hearing:</b>	<b>20/06/2018</b>
आदेश की तारीख / <b>Date of Order:</b>	<b>20/06/2018</b>

**आदेश / O R D E R**

Per Joginder Singh(Judicial Member)

The Revenue is aggrieved by the impugned order dated 09/11/2016 of the Ld. First Appellate Authority, Mumbai, directing the Assessing Officer to estimate commission at the rate of 0.1% of the sales turnover which works out to Rs.3,12,764/- in stead of 2% and thereby granting relief of Rs.59,42,474/- without appreciating the detail facts, relying upon the decision in the case of Smt. Kalawati Negi, where on similar facts, the commission was estimated at the rate of 0.1% of the sales turnover.

2. During hearing, the Ld. DR, Shri Rajat Mittal, defended the addition made by the Ld. Assessing Officer by claiming that the assessee is doing circular trading, therefore, the Ld. Commissioner of Income Tax (Appeal) wrongly followed the decision of Smt. Kalawati Negi. On the other hand, the ld. counsel for the assessee, Shri Bhupendra Shah, strongly defended the impugned order by inviting our attention to the factual finding recorded by the Ld. Commissioner of Income Tax (Appeal) by claiming that identically in the case of Smt. Kalawati Negi, the Department itself calculated the commission @0.1% of the sales turnover.

The assessee also furnished the copy of the assessment order dated 20/03/2015 in the case of Smt. Kalawati Negi for Assessment Year 2011-12. This factual matrix was not controverted by the Ld. DR.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee is an individual having salary income from M/s Shirdi Industries Ltd. and also carrying out business activity in the name of Hiralal Printing, which is engaged in trading activities of MDF Board/plywood, declared income of Rs.1,93,074/- in its return filed on 20/07/2012. Thereafter the assessee filed revised return on 29/03/2014, declaring total income of Rs.2,07,880/- which was processed under section 143(1) of the Act. The case of the assessee was selected under CASS, therefore, notice under section 143(2) and 142(1) were issued/served upon the assessee. The assessee attended the proceedings and filed the details as is evidenced from assessment order itself. The Ld. Assessing Officer while framing the assessment made addition of Rs.62,55,235/- on account of commission by estimating the same @ 2% of the sales turnover of Rs.31,27,64,170/-. The

Ld. Commissioner of Income Tax (Appeal) has reproduced the observation made in the assessment order. Finally, the Ld. Commissioner of Income Tax (Appeal) reduced the estimated commission @ 0.1% against 2% made by the Ld. Assessing Officer. The Revenue is aggrieved and is in appeal before this Tribunal.

2.2. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, the disallowance/addition was made by the Ld. Assessing Officer merely on the presumption that the assessee is providing accommodation entries and thus must have earned some commission income. However, we find that no such evidence was brought on record by the Ld. Assessing Officer for such presumption. The assessee is an employee of one Asia Group. There is an uncontroverted finding in the impugned order that the amount of sale and purchases are exactly same and no profit or loss resulted from such purchase/sale. The assessee has admitted that the transaction of sale and purchases were within the group

companies only and were made at the instance of the employer to increase the turnover of the group company. It was also further admitted that there was no movement of goods and the transactions were shown of doing circular trading within the group merely to increase the turnover. The Ld. Commissioner of Income Tax (Appeal) has mentioned the case of Smt. Kalawati Negi, who was also an employee of the same group and showed similar transaction to jack up the turnover, wherein, the Ld. Assessing Officer itself made the addition on such account @ 0.1%. No contrary decision was brought to our notice. Thus, we find no infirmity in the conclusion of the Ld. Commissioner of Income Tax (Appeal), resultantly, the appeal of the Revenue is dismissed.

Finally, the appeal of the Revenue is dismissed.

This Order was pronounced in the open court in the presence of Ld. representatives from both sides at the conclusion of hearing on 20/06/2018.

**Sd/-**

(Manoj Kumar Aggarwal)

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 20/06/2018

*Shekhar, P.S.नि.स.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
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**