

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA NO. 105/MUM/2017 : **A.Y : 2012-13**

DCIT-14(3)(2), Mumbai
(Appellant)

Vs. Shriram Chits (Maharashtra) Ltd.,
A-41/419, Bezzola Complex, Sion
Trombay Road, Mumbai 400 001.
PAN : AAEC57592Q (Respondent)

Appellant by : Ms. Arju Garodia

Respondent by : Shri Prakash Jotwani

Date of Hearing : 19/06/2018

Date of Pronouncement : 22/06/2018

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the Revenue is directed against the order of CIT(A)-22, Mumbai dated 06.10.2016, pertaining to the Assessment Year 2012-13, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 14.03.2015 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the first issue raised by the Revenue is with regard to deduction on account of interest paid on delayed payment of Service tax. The Assessing Officer disallowed the claim on the ground that the interest

payment was for an infraction of law and, therefore, proviso to Sec. 37(1) of the Act disentitled the assessee from claiming the deduction. The CIT(A) allowed the claim by noticing that his predecessor, in assessee's own case for Assessment Year 2011-12, has considered such payment to be compensatory in nature. In this background, Revenue is in appeal before us.

3. Before us, it has been pointed out that in Assessment Year 2009-10, the Tribunal vide its order in ITA No. 7118/Mum/2012 dated 22.08.2014, held the interest paid on delayed payment of Service tax to be compensatory in nature and, therefore, such payment was allowed as a permissible deduction. Following the ratio of the said decision, which has been rendered in assessee's own case under identical circumstances, we hereby affirm the decision of CIT(A). Accordingly, on this aspect, Revenue fails.

4. Ground of appeal no. 2 relates to the action of Assessing Officer in estimating 'Foreman Commission' as against the amount declared by the assessee. Briefly put, the relevant facts are that the respondent-assessee is engaged in the business of Chit fund. The Assessing Officer noted that in the business of running of Chit fund, assessee is earning 5% of the Chit fund as its commission, which was accounted for as income under the head 'Foreman Commission'. Based on his stand taken in the earlier assessment years, the Assessing Officer computed 'Foreman Commission' at Rs.23,39,61,140/-, i.e. 5 times of the commission paid to its agents. As against this, assessee had credited income by way of Foreman commission of Rs.18,77,37,500/- and accordingly, the differential of Rs.4,62,23,640/- was added to the returned income. The CIT(A) deleted this addition based on

the order of his predecessor for Assessment Year 2011-12, wherein the action of the Assessing Officer in estimating the Foreman Commission was found untenable. Against such a decision of CIT(A), Revenue is in appeal before us.

5. At the time of hearing, it was a common ground between the parties that in the earlier assessment years of 2010-11 and 2011-12 vide ITA Nos. 1789/Mum/2015 and 3639/Mum/2016 dated 17.03.2017 and 08.01.2018 respectively, the action of Assessing Officer in estimating the income by way of Foreman Commission has been found to be untenable by the Tribunal. The relevant discussion in the order of the Tribunal for Assessment Year 2010-11, which is the lead year, is as under :-

“10. After analyzing the aforementioned order passed by Ld. CIT(A) and after hearing the arguments of both the parties, we find that the CIT(A) has taken into consideration that the assessee earned commission of 5% on the total chit fund collection. The said commission is spread over the total period of scheme and in this way the assessee earns commission on a month to month basis on the monthly collection made and on the successful bidding by the subscribers. As per the facts, the agents are paid a commission of 1% of the total chit fund value in respect of each subscriber enlisted by him provided such subscribers pays at least 4 months installment, immediately on receipt of 4 such installments and in this way there is no definite co-relation between the foremen commission earned and the agency commission paid. After appreciating the facts, the Ld. CIT(A) had rightly decided that the addition made by the AO in computing the income of the assessee by applying five times of the payment of the commission to the agents is not based on any objective yardsticks, therefore deleted the said additions. We have also noticed that the Ld. CIT(A) while deciding this issue had also taken into consideration the submission made by assessee which are contained in para no. 4 and also the findings of AO which are contained in para no. 3 of CIT(A)'s order.

Apart from the above, the Ld. DR appearing for the appellant has not placed on record any new facts or contrary judgments of higher courts before us in order to controvert or rebut the findings recorded by learned CIT (A), and therefore, there are no reasons for us to deviate from or interfere into the well reasoned findings recorded by the Ld.CIT(A). Therefore, after hearing both the parties and analyzing the impugned order, we are of the considered view that the findings so recorded by the Ld.CIT (A) are judicious and well reasoned. Accordingly, we uphold the same and dismiss this ground of appeal filed by revenue.”

6. As the aforesaid precedent has been rendered in assessee’s own case under identical circumstances, following the same we hereby affirm the decision of CIT(A). Furthermore, it is also a common ground between the parties that so far as the aforesaid precedents are concerned, they continue to hold the field and have not been altered by any higher authority. Thus, under these circumstances, the order of CIT(A) is affirmed and Revenue fails on this aspect also.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 22nd June, 2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 22nd June, 2018

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "J" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai