

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 404/VIZ/2015  
(Asst. Year : 2007-08)**

S.B. Bhutra,  
M/s. Bhutra & Co.,  
Room No. 505, 5<sup>th</sup> Floor,  
4, Synagogue Street, Kolkata.

vs. ACIT, Central Circle-1,  
Visakhapatnam.

PAN No. ADQPB 1064 Q  
(Appellant)

(Respondent)

**ITA No. 413/VIZ/2015  
(Asst. Year : 2007-08)**

ACIT, Central Circle-1,  
Visakhapatnam.

vs. S.B. Bhutra,  
Room No. 505, 5<sup>th</sup>  
Floor, 4, Synagogue  
Street,

(Appellant)

PAN No. ADQPB 1064 Q  
(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.  
Department By : Shri Deba Kumar Sonawal – CIT DR

Date of hearing : 14/08/2018.  
Date of pronouncement : 12/09/2018.

**ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER**

These are the cross appeals by the assessee and the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-3, Visakhapatnam, dated 31/08/2015 for Assessment Year 2007-08.

**ITA No.404/VIZ/2015**

2. Ld. counsel for the assessee has relied on the grounds of appeal.
3. Ld. Departmental Representative strongly supported the order of the Assessing Officer.
4. The only issue for consideration before us is whether Id.CIT(A) is correct in directing the Assessing Officer to adopt commission earned by the assessee at 0.80% by following the orders for the Assessment Years 2006-07 & 2008-09.
5. In this case, the Id. CIT(A) directed the Assessing Officer to adopt the rate of commission/profit earned by the assessee at 0.80% on total credits/receipts shown in two bank accounts by following the Assessing Officer's orders for the Assessment Years 2006-07 & 2008-09. The case of the assessee is that instead of 0.80%, the Id. CIT(A) ought to have been directed to adopt at 0.20%. For the sake of convenience, the relevant portion of the Id. CIT(A)'s order is extracted as under:-

*"5.12 In the course of appellate proceedings, it was brought to the notice that the amount of Rs.22,75,000 got embedded in to the total credits of Rs.33,10,77,522/- in to the bank account of 627605254373, as such amounted to double addition. It was further clarified by the assessee and admitted by the AO that the opening balance of Rs. 1,64,45,181/- and Rs.35,31,800/- representing cheque returns, in the said account were not considered, resulting in excess quantification of credits and there by the additions. Regarding the balance of the amounts, it was submitted by the assessee that entire credits do not*

*represent the income to the assessee, as he is entitled only to a commission of 0.20 paise per Rs.100/-, with the balance amounts are transferred to the accounts of the beneficiaries as bogus speculation profits with the assessee being in to the business of Jama-Kharchi, as a share broker, which is stated to be very usual in Kolkata. The appellant has brought out the examples of such business on record, while explaining the modus operandi involved, along with the furnishing of details of beneficiaries etc, which was not acceptable to the AO, at the subsequent stage of proceedings. The appellant also illustrated that similar business was carried on by him during the A.Y.2006-07 and 2008-09 which were accepted by department, while the arguments for A.Y.2007-8 are rejected. In this regard, the appellant furnished the assessment order for A.Y.2006-07 and 2008-09 where in the income of the assessee were computed by adopting the income at 0.80% of the total credits, as against treating the entire credits as unexplained income. In this regard, the appellant's further information was that while accepting the method of computation of business income, the orders were appealed against, on the issue of quantum of commission at 0.80%, as against the proposed rate of 0.20% by the assessee.*

*5.13 The modus operandi as adopted by the assessee, for all the years viz, 2006-07, 2007-08 and 2008-09 is precisely the same, where in the amounts were routed to the account of the assessee through third party accounts and the amounts being transferred to the beneficiaries accounts, as bogus speculative profits, for which the assessee is entitled to certain commission. Similar activities were exemplified through the transactions of Shri Rakesh Dhaniwal, which are accepted by the department on similar lines, the profits/income of the assessee was computed and accepted by the AG for AY.2006-07 and 2008-09. Thus based on the facts, it is reasonable to hold that once, the method of computation of income as applicable to a particular modus operandi was adopted for A.Y.2006-07 and 2008-09 by the same AG on similar facts, there is no reason to reject the same proposal for A.Y. 2007-08, though it is fact that res judicata is not applicable to the IT proceedings. The decision of Hon'ble Supreme Court in the case of Radhaswami Satsang, (where the amounts were flown to the beneficiaries) support the cause of the assessee, on similar lines. Further, it was not the case of the AG to establish that the entire credits represent the income to the appellant. With the facts remaining the same, I am of the considered opinion that there is no reason for the AG to reject the method of computing the profits different from A.Y.2006-07 and 2008-09 and treating the entire credits for the A.Y.2007-08 as income of the appellant.*

*5.14 However, in this context, it may be relevant to observe that the*

*AG had adopted the rate of commission/profit to the assessee at 0.80% for A.Y.2006-07 and 2008-09, being the maximum percentage of brokerage charged in the similar line of business. The AO had made an analysis of charging of commission on similar natured transactions. Thus, based on facts, there is no ground for the assessee to argue for adoption brokerage at 0.20%, more so in a case like this, where the assessee failed to bring the transactions in to the books of account and only being detected by the AO at the stage of the reopened assessments. It is also not a verifiable fact that the assessee has demonstrated the charging of commission through bank account only at the rate of 0.20%, since no such bank accounts were considered for computing the profits. Accordingly, it is reasonable to hold that the appellant do not deserve any relief on this issue. Hence, I am of the considered opinion that AO is justified on facts, to compute the income by charging the brokerage at the rate of 0.80% on the total of credits/receipts shown in to the two bank accounts. However, the AO should consider the opening balance, cheque returns, in the bank accounts in computing/totaling the credits. In this regard, it may be further relevant to observe that the amounts of transfer from Topaz Sales Corporation need not to be considered separately since the said amount have formed part of total credits in to the two bank accounts. Thus, on these lines, the additions are sustained partially and grounds related to the issue are treated as partly allowed."*

**6.** We have considered the order passed by the Id. CIT(A) and find that Id. CIT(A) has considered the orders of the Assessing Officer for the Assessment Years 2006-07 & 2008-09 and directed the Assessing Officer to follow the same for the year under consideration also. We find no reason to interfere with the order passed by the Id. CIT(A). Thus, this appeal filed by the assessee is dismissed.

**ITA No. 413/VIZ/2015**

**7.** When this appeal is taken up for hearing, Id. counsel for the assessee has submitted that tax effect involved in this appeal is

below Rs. 20.00 lakhs and as per the recent CBDT Circular No. 03/2018 dated 11.07.2018, the appeal filed by the revenue is not maintainable. Ld. Departmental Representative has not raised any objection. In view of the above, this appeal filed by the revenue is not maintainable and accordingly dismissed.

**8.** In the result, appeal filed by the assessee as well as revenue is dismissed.

Order Pronounced in open Court on this 12<sup>th</sup> day of Sep., 2018.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(V. DURGA RAO)**  
**Judicial Member**

**Dated : 12<sup>th</sup> Sep., 2018.**

**vr/-**

*Copy to:*

1. *The Assessee – S.B. Bhutra, M/s. Bhutra & Co., Room No. 505, 5<sup>th</sup> Floor, 4, Synagogue Street, Kolkata.*
2. *The Revenue – ACIT, Central Circle-1, Visakhapatnam.*
3. *The Pr.CIT(Central), Visakhapatnam.*
4. *The CIT(A)-12, Hyderabad.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.