

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.	A.Y.	Appellant	Respondent
38/Mum/18	2003-04	Prolific Ventures Pvt. Ltd., Wilson House, Nagardas Road, Andheri (East), MUMBAI [PAN: AACCP5420E]	Income Tax Officer- 10(3)(4), MUMBAI
39/Mum/18	2004-05		
40/Mum/18	2005-06		
41/Mum/18	2006-07		
42/Mum/18	2007-08		
43/Mum/18	2008-09		

Appellant By : Shri Ashok Bansal, AR  
Respondent By : Shri Vijay Kumar Soni, DR

Date of Hearing : 29-01-2019	Date of Pronouncement : 01-02-2019
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**ORDER**

These are six appeals by the assessee, which are directed against a combined order of the Ld. Commissioner of Income Tax (Appeals)-17, Mumbai, dated 28-09-2017 for the AYs. 2003-04 to 2008-09. Since the facts and issues involved in all these appeals are common and identical, all these appeals were heard together and are being disposed by way of this common order for the sake of convenience.

2. The grounds raised by the assessee in respect of all these appeals are as under:

AY. 2003-04:

*"1. The authorities below have erred in passing the order/upholding the order u/s. 254 in pursuance of the Hon. ITAT order but assessing the total income higher at Rs. 16,61,779/- as against the original assessed income of Rs. 15,31,672/-.*

*2. The authorities below have erred in disregarding the decision of Hon. ITAT (Mumbai) dated 24.05.2015 rendered in appellant's own case for A.Y. 2009-10.*

*3. The authorities below have erred in not giving effect to the decision of the Hon. ITAT (Mumbai) for A.Y. 2003-04 correctly.*

*4. The learned CIT (Appeals) has erred in superseding the Hon. ITAT (Mumbai) by freshly adjudicating an issue which had been already decided by the Hon. ITAT (Mumbai).*

*5. The learned Assessing Officer has erred in initiating penalty proceedings in a case which has been highly litigated up to the Hon. Supreme Court".*

AY. 2004-05:

*"1. The authorities below have erred in passing the order/upholding the order u/s. 254 in pursuance of the Hon. ITAT order but assessing the total income higher at Rs. 29,62,410/- as against the original assessed income of Rs. 26,49,630/-.*

*2. The authorities below have erred in disregarding the decision of Hon. ITAT (Mumbai) dated 24.05.2015 rendered in appellant's own case for A.Y. 2009-10.*

*3. The authorities below have erred in not giving effect to the decision of the Hon. ITAT (Mumbai) for A.Y. 2004-05 correctly.*

*4. The learned CIT (Appeals) has erred in superseding the Hon. ITAT (Mumbai) by freshly adjudicating an issue which had been already decided by the Hon. ITAT (Mumbai).*

*5. The learned Assessing Officer has erred in initiating penalty proceedings in a case which has been highly litigated up to the Hon. Supreme Court".*

AY. 2005-06:

- “1. The authorities below have erred in disregarding the decision of Hon. ITAT (Mumbai) dated 24.05.2015 rendered in appellant’s own case for A.Y. 2009-10.*
- 2. The authorities below have erred in not giving effect to the decision of the Hon. ITAT (Mumbai) for A.Y. 2005-06 correctly.*
- 3. The learned CIT (Appeals) has erred in disregarding the fact that the appellant was in fact doing business and not adjudicating on ground no. 4 before him.*
- 4. The learned CIT (Appeals) has erred in superseding the Hon. ITAT (Mumbai) by freshly adjudicating an issue which had been already decided by the Hon. ITAT (Mumbai).*
- 5. The learned Assessing Officer has erred in initiating penalty proceedings in a case which has been highly litigated up to the Hon. Supreme Court”.*

AY. 2006-07:

- “1. The authorities below have erred in disregarding the decision of Hon. ITAT (Mumbai) dated 24.05.2015 rendered in appellant’s own case for A.Y. 2009-10.*
- 2. The authorities below have erred in not giving effect to the decision of the Hon. ITAT (Mumbai) for A.Y. 2006-07 correctly.*
- 3. The authorities below have erred in passing the order/upholding the order u/s. 254 in pursuance of the Hon. ITAT order but assessing the total income higher at Rs. 44,75,377/- as against the original assessed income of Rs. 44,74,710/-.*
- 4. The learned CIT (Appeals) has erred in superseding the Hon. ITAT (Mumbai) by freshly adjudicating an issue which had been already decided by the Hon. ITAT (Mumbai).*
- 5. The learned Assessing Officer has erred in initiating penalty proceedings in a case which has been highly litigated up to the Hon. Supreme Court”.*

AY. 2007-08:

- “1. The authorities below have erred in disregarding the decision of Hon. ITAT (Mumbai) dated 24.05.2015 rendered in appellant’s own case for A.Y. 2009-10.*

*2. The authorities below have erred in not giving effect to the decision of the Hon. ITAT (Mumbai) for A.Y. 2007-08 correctly.*

*3. The learned CIT (Appeal) has erred in superseding the Hon. ITAT (Mumbai) by freshly adjudicating an issue which had been already decided by the Hon. ITAT (Mumbai).*

*4. The learned Assessing Officer has erred in initiating penalty proceedings in a case which has been highly litigated up to the Hon. Supreme Court”.*

AY. 2008-09:

*“1. The authorities below have erred in disregarding the decision of Hon. ITAT (Mumbai) dated 24.05.2015 rendered in appellant’s own case for A.Y. 2009-10.*

*2. The authorities below have erred in not giving effect to the decision of the Hon. ITAT (Mumbai) for A.Y. 2008-09 correctly.*

*3. The learned CIT (Appeal) has erred in superseding the Hon. ITAT (Mumbai) by freshly adjudicating an issue which had been already decided by the Hon. ITAT (Mumbai).*

*4. The learned Assessing Officer has erred in initiating penalty proceedings in a case which has been highly litigated up to the Hon. Supreme Court”.*

3. At the outset, it was submitted by the Ld. AR of the assessee that as per Ground No. 1 in AYs. 2003-04, 2004-05 and Ground No. 3 in A.Y. 2006-07 in ITA Nos. 38/Mum/2018,39/Mum/2018 & 41/Mum/2018 respectively, the assessee has raised a grievance that the tribunal cannot enhance the income while deciding the appeal of the assessee and in these three years, the ultimate assessed income is more than the income originally assessed by the A. O. He submitted that upholding the entire addition made by the A.O.

in the final assessment order is not justified. At this juncture, the Bench wanted to know as to whether this issue was raised before the CIT (A) and if raised, what is the decision of the CIT (A) on this aspect. The Bench also required to see the original order of the assessment passed by the AO in these three assessment years. The Bench further observed that if this issue was not raised before the CIT(A) and original assessment order is not available on record, then this issue is to be restored to the file of CIT(A) in all these three assessment years for deciding this issue first and then he should decide the issue on merit.

4. In reply, both sides agreed for this proposition put forward by the Bench. Accordingly, in these three years, the order of CIT(A) is set aside and the matter is restored back to CIT(A) for a decision first on this aspect, which is raised by the assessee as per Ground No. 1 before the Tribunal in AYs. 2003-04 and 2004-05 and Ground No. 3 in AY. 2006-07 and thereafter a fresh decision on merit. In view of this decision, no adjudication on merit is called for at the present stage.

5. In the result, all the three appeals for the AYs. 2003-04, 2004-05 and 2006-07 are allowed for statistical purposes.

6. Now I take up the appeal of assessee for the AYs. 2005-06 in ITA No. 40/Mum/2018. For this year, it is submitted by the Ld. AR of the assessee that as per Para No. C at Page No. 17 of the impugned order of the Ld. CIT(A), it is stated by the Ld. CIT(A) that the facts and circumstances of this year are identical with that of AY. 2003-04 and appeal for A. Y. 2005 – 06 was decided on the same line of the decision for AY. 2003-04.

6.1. Thereafter, he submitted that an additional issue was raised by the assessee before the CIT (A) in AY. 2005-06 as per Ground Nos. 4 & 5 in respect of allowing of expenses claimed for earning of commission income. Ld. CIT (A) has not decided this issue at all in AY. 2005-06. Ld. DR for the Revenue supported the order of the Ld. CIT (A).

7. I have considered the rival submissions. I find force in the submissions of the Ld. AR of the assessee because I find that Ground No. 4 raised by the assessee before CIT (A) in AY. 2005-06 is as under:

*“4. The learned CIT (Appeals) has erred in superseding the Hon. ITAT (Mumbai) by freshly adjudicating an issue which had been already decided by the Hon. ITAT (Mumbai)”.*

7.1. In AY. 2003-04, there was no such issue raised by the assessee before the Ld. CIT (A) and hence, it is apparent that Ground No. 4 raised by the assessee before the CIT (A) in AY. 2005-06 was not decided by him. Hence, I feel it proper to set aside the order of CIT (A) in A. Y. 2005 – 06 and to restore the matter to his file for decision in respect of Ground No. 4 raised by the assessee for before him in this year. I order accordingly.

8. In the result, the appeal for the AY. 2005-06 is allowed for statistical purposes in the terms indicated above.

9. In respect of the remaining two appeals i.e. for AYs. 2007-08 and 2008-09 in ITA Nos. 42/Mum/2018 and 43/Mum/2018, it is seen that as per the grounds except Ground No. 4 raised in respect of initiation of penalty proceedings raised in these two years as reproduced above, the grounds are general and there is no specific grievance of the assessee in these two years. Apart from this, the ground No. 4 in both years in respect of initiation of penalty proceedings is a premature ground. When this was pointed out by the Bench to the Ld. AR of the assessee, Ld. AR had nothing to say. Ld. DR for the Revenue supported the order(s) of the Ld. CIT (A).

10. In view of the above discussion, I feel it proper to dismiss these two appeals for the AYs. 2007-08 and 2008-09 because I find that in these two years, the Ground No. 4 raised regarding initiation of penalty proceedings is a premature ground and the remaining three grounds are general in nature, for which no adjudication is called for.

11. In the result, the appeals of the assessee for these two years i.e., AYs. 2007-08 and 2008-09 are dismissed.

12. To sum-up, appeals in AYs. 2003-04 to 2006-07 are allowed for statistical purposes and appeals in AYs. 2007-08 & 2008-09 are dismissed.

*Order pronounced in the open court on 1<sup>st</sup> day of February, 2019*

Sd/-  
(A.K. GARODIA)  
लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक/Dated : 1<sup>st</sup> February, 2019

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asst. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai