IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH, AHMEDABAD

[Coram: Pramod Kumar, VP and Ms. Madhumita Roy, JM]

ITA No. 1901/Ahd/2016
Assessment Year: 2006-07

Stallion Finstock Pvt Ltd **.....Appellant**
101, Shitalnath Apartment,
Vikas Gruh Road, Paldi
Ahmedabad – 380 007
[PAN : AAFCS 7281 R]

Vs.

Dy. Commissioner of Income-tax **.....Respondent**
Circle 1(3), Ahmedabad

Appearances by:

Urvashi Shodhan, *for the Appellant*
Prajana Parimita, *for the Respondent*

Date of concluding the hearing : 28.11.2018
Date of pronouncing the order : 25.02.2019

O R D E R

Per Pramod Kumar, Vice President :

1. By way of this appeal, the assessee appellant has challenged correctness of order dated 19.04.2016 passed by the learned CIT(A) for the assessment year 2006-07.

2. Grievance of the assessee, as pressed before us, is against learned CIT(A)'s upholding the disallowance of Rs.9,79,553/- in respect of commission paid by the assessee.

3. This is second round of proceedings. Vide order dated 27.09.2013, the Tribunal had remitted the matter to the file of the CIT(A) but the CIT(A) has, in the impugned order, confirmed the disallowance by observing as follows:-

> *"2.1 Appellant is a franchisee or sub-broker of Shah Investors Home Ltd which is a registered broker at NSE and BSE. Appellant receives 70% of the brokerage from Shah Investors Home Ltd. as brokerage for the business given by the appellant. M/s. Shah Investors Home Ltd. and the appellant both are the registered intermediaries of securities market as per the Securities Contract & Regulation Act, and registered with SEBI. They are eligible and entitled to receive the brokerage on the transaction of securities on registered stock exchange. The business of buying and selling of securities on the stock exchange comes from the clientele of appellant which includes individuals as well as agents of the appellant who bring business to the appellant. During the*

year under consideration, appellant was to receive Rs.45,99,677/- from Shah Investors Home Ltd. As against this expected brokerage income, appellant had reflected brokerage income of Rs.36,87,887/-. According to the appellant it has paid difference of Rs.9,79,553/- to various remisiers as it is the remisiers who bring clients to the appellant on which brokerage is earned. Appellant had explained various functions of remisiers during the assessment proceedings to the A.O. During the appellate proceedings as well as assessment proceedings it had submitted ledger accounts of Rs. 9,79,553/- paid as commission to various remisiers. Appellant has relied upon the case law of Mumbai Tribunal in the case of DCIT vs. S.J. Investment Agencies Pvt Ltd, 21 ITR (Trib) 258 (Mum) wherein it was held that no TDS was required to be deducted in case of transactions of purchase and sale of securities. There are various functions of remisiers as explained by the appellant. It is the remisiers who brings clients to the appellant and in the process appellant also earns brokerage on the transactions. As per the extant guidelines of SEBI the sub-brokers of brokers are not further allowed to appoint or register further sub-sub brokers keeping in mind the protection of interest of the investors. Similarly, the franchise agreement of the appellant with Shah Investors Home Ltd also prohibited the appellant from appointing any sub franchisee further. There have been no written agreement between appellant as franchise of broker and the remisiers appointed by the appellant. SEBI has consciously taken a decision prohibiting further chain of sub-sub brokers in order to protect the interest of investors. Yet appellant had gone ahead and appointed remisiers and paid commission to these remisiers amounting to Rs.9,79,553/-. What the appellant has done is that it has earned brokerage and paid commission to the remisiers. The kind of services that are offered by the remisiers, keeping in mind the restrictions placed by SEBI in order to check fraudulent transactions, I am convinced that appellant has paid commission to the remisiers for the business brought in by them and it is not brokerage on sale of securities. Appellant has also failed to prove during the appellate as well as assessment proceedings the nature of services that were rendered by the remisiers were as per the written agreement between appellant and remisiers as well as allowed by the SEBI. I completely agree with the decision of ITAT, Mumbai int he case of DCIT vs. SJ Investment Agencies P Ltd (supra) wherein it has ruled that no TDS is required to be made on the brokerage paid on transactions of securities. However, in the case of appellant, appellant has paid commission to the remisiers for the services and business brought in and not the brokerage as envisaged u/s 194H of the Act. Appellant has paid commission to remisiers for various services including bringing clients to the appellant. It is not the payment of brokerage u/s 194H of the Act. Therefore, I am of the considered opinion that appellant should have deducted TDS on payment of commission to these remisiers u/s 194H of the Act. Considering the above mentioned facts and circumstances, I hereby confirm the addition of Rs.9,79,553/- on account of failure of the appellant to deduct tax on the commission payment to the remisiers and the decision of AO to disallow commission payment of Rs.9,79,553/- u/s 40(a)(ia) of the Act is confirmed. This ground of appeal is dismissed."

4. Before we deal with the correctness of stand so taken by the CIT(A), we may also take note of the facts as discernible from material on record. The assessee is a sub-broker of Shah Investors Home Ltd and he got 70% of the commission earned by the broker for generating business. The assessee has also engaged various remisiers who help him generate the business for the principal broker. The commission so paid was, however, disallowed by the Assessing Officer on the ground that the assessee did not justify the commission, that the assessee is not permitted to engage sub franchisee in terms of para 2.17 of its franchise agreement with the principal broker and that there was no written agreement with the remisiers to whom commission was paid. When assessee carried the matter in appeal, learned CIT(A) confirmed the action of the Assessing Officer but then Tribunal vacated the CIT(A)'s order and sent it back for fresh adjudication by the CIT(A). That's how the impugned order, extracts from which have been reproduced earlier, was passed. The assessee is once again not satisfied and is again in appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. We find that complete details of commission paid, manner of calculation, names and addresses of the persons who received the said commission and all the requisite details were before the authorities below, and yet these payments have been disallowed. In our considered view, mere absence of a formal written agreement cannot be reason enough to disallow the commission. All the details were all along on record and genuineness of expenses have not been doubted. As for the breach of terms with the principal broker, that is a breach, if at all, of commercial agreement and that cannot be a reason to disallow the commission either. As regards disallowance under section 40 (a)(i) r.w.s. 194H, there is no merit in this plea either because of the simple reason that in terms of Explanation (i) to section 194H, these tax withholding obligations extend to "*any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities*". In other words, any payment for services relating to sale of securities will be outside the ambit of section 194H. The very foundation of disallowance is thus devoid of legally sustainable merits. In view of the these discussions and bearing in mind entirety of the case, we deem it fit and proper to delete this disallowance of Rs.9,79,553/-. To this extent, the appellant succeeds.

7. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 25th February, 2019.

Sd/- *Sd/-*

Ms. Madhumita Roy **Pramod Kumar**
(Judicial Member) (Vice President)

Ahmedabad, the 25th day of February, 2019
**bt*

Copies to: *(1)* *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

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Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad