

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

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND  
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

**ITA NOS. 7121 & 7122/MUM/2011 : A.Y : 2005-06 & 2007-08**

Anil Kumar S. Goyal Vs. ITO, Ward - 1(3),  
Prop. Saroj Steel Traders, Building Thane (Respondent)  
No. 21, 103, Tulsidham,  
Ghodbunder Road, Thane.  
**PAN : AAZPG3866D (Appellant)**

**Appellant by : Shri Dinesh R. Shah**  
**Respondent by : Shri Nishant Samaiya**

**Date of Hearing : 19/03/2019**

**Date of Pronouncement : 19/03/2019**

**ORDER**

**PER G.S. PANNU, VICE PRESIDENT :**

The captioned are two appeals pertaining to the same assessee involving Assessment Years 2005-06 and 2007-08. Since the two appeals involve similar issues, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. In order to appreciate the factual matrix of the dispute, we may refer to the fact-situation in the appeal for Assessment Year 2005-06. This appeal

by the assessee is directed against the order of CIT(A)-II, Thane dated 12.08.2011, which in turn has arisen from the order dated 07.11.2009 passed by the Assessing Officer, Thane under section 143(3) r.w.s. 250 of the Income Tax Act, 1961 (in short 'the Act').

3. A brief background of the dispute is that the assessee is an individual who is, *inter-alia*, engaged in the business of trading in iron and steel through his proprietary concern, M/s. Saroj Steel Traders. For Assessment Year 2005-06, assessee has filed a return of income declaring a total income of ₹4,55,773/-. In the scrutiny assessment, which was finalised by the Assessing Officer, various disputes were raised, *inter-alia*, noting that assessee was involved in running of *hawala* business, i.e. issuing fictitious purchase and sale bills in the trading of iron and steel. Shorn of other details, it would suffice to note in the present proceedings that the matter travelled to the Tribunal, and vide order dated 05.09.2005, the assessment was restored back to the file of the Assessing Officer with certain directions for fresh assessment of income. Thereafter, the Assessing Officer completed the assessment at an income of ₹14,49,243/- after allowing expenditure on account of Legal and Professional Fee to the extent of ₹18,520/-. Notably, in the said assessment, the *modus operandi* of the assessee of having earned income by way of *hawala* business was upheld. Assessee raised a dispute before the CIT(A) against such assessment contending that the expenses otherwise debited in the Profit & Loss Account also ought to have been allowed by the Assessing Officer. The CIT(A) vide his order dated 02.03.2009 directed the Assessing Officer to verify the claim of the assessee and allow such expenses as were incidental to the running of *hawala* business. As a consequence, the Assessing Officer allowed expenses to the extent of

₹2,00,000/-, which was again agitated by the assessee before the CIT(A). The order of CIT(A) dated 12.08.2011 is the subject matter of appeal before us, wherein the CIT(A) noted that the total administrative expenses debited to the Profit & Loss Account amounted to ₹8,12,919/-. Out of the same, he allowed expenses to the extent of ₹4,85,390/- and computed the income from commission business at ₹11,66,008/-. Presently, the assessee is in appeal before us on multiple Grounds of appeal. Firstly, the plea of the assessee is for consideration of financial expenses as well as depreciation of ₹20,42,938/- and ₹1,83,635/- respectively while determining the total income. Secondly, assessee is also aggrieved with the action of CIT(A) in disallowing the administrative expenses of ₹4,61,469/-. Thirdly, and more pertinently, assessee has sought parity with the assessment for Assessment Year 2001-02, which has been directed to be finalised in terms of the order of Tribunal in assessee's own case being ITA No. 9109/Mum/2004 dated 23.07.2007. It is explained by the learned representative that in terms of the said decision of the Tribunal, the income from carrying on *hawala* business has been directed to be estimated @ 0.40% of the total turnover. The learned representative pointed out that assessee would be satisfied if the income from *hawala* business is directed to be assessed on this basis and at the same time he is giving up the other two claims seeking deduction for financial expenses and depreciation as well as the balance of administrative expenses disallowed by CIT(A).

4. On the other hand, the Ld. DR has reiterated the findings of the CIT(A) though the factual matrix asserted by the Ld. Counsel has not been assailed.

5. We have carefully considered the rival stands and find that the matter is quite old inasmuch as it is second round of proceedings before the Tribunal. The third plea of the assessee, in our view, would impart finality to the dispute. More so, when the same is in consonance with the decision of the Tribunal in assessee's own case for Assessment Year 2001-02 which has been rendered in identical circumstances. Pertinently, the *modus operandi* of the assessee in carrying out *hawala* business stands established not only in his case but also in the case of his father, Shri Shyam Sunder Goyal, which was decided by the Tribunal vide order in ITA No. 6592/Mum/2009 dated 27.10.2010. In the said decision also, which has been rendered for Assessment Year 2005-06 itself, the Tribunal found it expedient to assume the income from *hawala* business @ 0.60% of the turnover as offered by the assessee therein.

6. Considering the aforesaid aspects, in our view, it would be in the fitness of things that in the instant year also the income on account of running of *hawala* business be estimated at 0.40% of the total turnover offered by the assessee, which is ₹16,51,39,811/- (as per para 4.3 of the order of CIT(A)), thereby resulting in an income of ₹6,60,560/-. The said estimation of income from business shall be net of expenses, as consented by the Learned Representative for the assessee. Accordingly, we set-aside the order of CIT(A) and direct the Assessing Officer to finalise the assessment by estimating the income from business as above.

7. In the result, the appeal of assessee is treated as partly allowed, as above.

8. Insofar as Assessment Year 2007-08 is concerned, it was a common ground between the parties that the facts and circumstances in this year stand on identical footing to those considered by us in the earlier paras in relation to Assessment Year 2005-06. Therefore, our decision in Assessment Year 2005-06 will apply *mutatis mutandis* to the appeal of assessee for Assessment Year 2007-08 also.

9. Resultantly, both the appeals of the assessee are partly allowed, as above.

Order dictated and pronounced in the open court before both the parties on 19<sup>th</sup> March, 2019.

Sd/-  
**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Sd/-  
**(G.S. PANNU)**  
**VICE PRESIDENT**

Mumbai, Date : 19<sup>th</sup> March, 2019

\*SSL\*

Copy to :

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

By Order

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