

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5413/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2011-12)

Raman Trikha 403A, Adelphi Co-Op. Hsg. Soc., Building no. 10, Shastri Nagar, Andheri West (Mumbai)-400053.	बनाम/ Vs.	ITO 16 (1)(5) Room No. 439, Aaykar Bhavan, 4 th Floor, M.K. Road, Churchgate, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABPT7266L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Sashank Dundu	
Revenue by:	Shri R. Sindhu (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 14/05/2019
घोषणा की तारीख /Date of Pronouncement: 22/05/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 08.06.2017 passed by the Commissioner of Income Tax (Appeals) -4, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2011-12.

2. The assessee has raised the following grounds: -

- “1. On the fact & circumstances of the case & law on the subject, the Ld. AO erred in reopening the case u/s 147 r.w.s 148 and on facts and circumstances of the case & law on the subject the Ld. CIT(A) erred in confirming the reopening.

2. On the fact & circumstances of the case and law on the subject the Ld. AO erred in adding Rs.8677801/- on alleged bogus purchases during the year (3% of Rs.289260048/- & on facts and circumstances of the case and law on the subject the Ld. CIT(A) erred in confirming the addition & the same be deleted
3. The appellant craves leave to add or modify the above ground of appeal.”

3. The brief facts of the case are that the assessee filed its return of income for the A.Y. 2011-12 on 30.09.2011 declaring total income to the tune of Rs.5,40,893/-. The return was processed u/s 143(1) of the I.T. Act, 1961. Thereafter, the information received that the survey action u/s 133A was conducted by the Investigation Wing, Mumbai in the case of Shree Ram Mills Group on 28.02.2013. It was also found that the above mentioned group agreed to made bogus sale of Rs.28,92,60,048/- to the assessee. The case was reopened after the issuance of notice u/s 148 of the Act dated 11.09.2013. Thereafter, notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. After conducting the inquiry, the AO arrived at this conclusion that the assessee raised purchase of Rs.28,92,60,048/- as bogus from Shree Ram Mills Group. Therefore, 3% of the total bogus purchase was added to the income of the assessee and the income of the assessee was assessed to the tune of Rs.92,18,690/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who also dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE Nos. 1

4. At the time of argument, this issue has not been pressed by the Ld. Representative of the assessee, therefore, this issue is decided in favour of the revenue against the assessee being not pressed.

ISSUE Nos. 2

5. We have heard argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee has argued that the income of the assessee is 1% of the transaction which is the commission income but the AO estimated the commission income @ 3% of the turnover which is wrong, hence, the income of the assessee is liable to be assessed if any @ 1% of the accommodation bill if any. In support of this contention, the Ld. Representative of the assessee has placed reliance upon the decision of **Hon'ble ITAT in ITA. No.7426/M/2014 in the case titled as M/s. Readymade Steel India P. Ltd. Vs. DCIT, Circle 7(2) dated 19.10.2016** in which the Hon'ble ITAT has assessed the income @ 1% of the turnover. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. On appraisal of the argument advanced by the Ld. Representative of the parties and perusing the record, we find that the assessee is the proprietor of M/s. Miracle Trading. The assessee is in the business of trading in Structural Steel. The assessee was providing the accommodation bills apart from doing the Trading in Structural Steel. At the time of argument, the Ld. Representative of the assessee has relied upon the decision in the case of **M/s. Readymade Steel India P. Ltd.** in which the profit was restricted to the extent of 1% of the turnover of accommodation bills. The relevant finding has been given in para no. 5 which is hereby reproduced as under.: -

“5. We have heard the rival contentions and have also gone through the records. The assessee, before us, has not disputed that it was indulged in providing accommodation bills to certain parties. However, it has been submitted that the estimation of profits at the rate of 3% were very excessive. It was also explained that out of the total turnover of Rs.32.3 crores, the genuine turnover of the actual business carried out was only Rs.8.2 crores and profit there from has been declared at Rs.82,75,831/- which has accordingly been taxed as business income of the assessee. The Ld. A.R. has further submitted that the assessee has declared the income of the accommodation bills at the rate of 1% of the turnover which was actually received by the assessee. That the AO in the impugned assessment order himself has mentioned that there was no mention of cash commission in the survey report. But the assessee, despite that, itself, has offered for taxation the actual income received from providing accommodation bills and further that the assessee had not claimed any expenses or sub commission in respect of the said declared income. The Ld. A.R. has relied upon certain decisions of the Tribunal wherein the commission income from such accommodation bills has been estimated or accepted by the Tribunal even at a rate which is less than 1% of the turnover. She has mainly relied upon the decision of the co-ordinate bench of the Tribunal in the case of “Saroj Anil Steel Pvt. Ltd. vs. ITO”. She has stated that in the said case also that assessee was in the similar business as that of the present assessee and in the said case the commission income was estimated by the AO at the rate of 1% of the turnover. But the Ld. CIT(A) in the appellate proceedings directed the AO to estimate the income of commission from hawala transactions at the rate of 0.4% of gross turnover. The Tribunal, however, directed the AO to estimate the income at the rate of 1% of total turnover and also directed to allow certain administrative expenses there from. The Ld. A.R. has stated that in the case of the assessee no expenditure has been claimed. Even the estimation of income at the rate of 1% of the accommodation bills turnover has also been approved by the Tribunal. Considering the above submissions of the assessee and after going through the decision of the Tribunal, though we find that there cannot be a fixed criteria to adopt as to at what rate the commission income in such cases can be adopted for turnover, however, considering the facts of the case and

submissions of the Ld. A.R., in our view, the estimation of commission income at the rate of 3% in the absence of any evidence, any calculation or other basis or any example of a similarly placed case seems to be on higher side. The assessee, on the other hand, has supported its case while providing all the details including the actual amount of the turnover and the actual amount received by the assessee and the AO has not pointed out any peculiar point on the basis of which the calculation and income offered by the assessee can be faulted with. We accordingly restrict the income offered from the accommodation bills turnover at the rate of 1% as against 3% estimated by the AO. Before parting, it is made clear that our above observations will not have any bearing in any other case as such type of cases have to be decided on their own merits.”

6. On appraisal of the above said mentioned finding, we noticed that the Hon’ble ITAT in the case of accommodation entry has restricted the addition @ 1% of the accommodation bills. It is not in dispute that the facts of the each case are different and accordingly the decisions are liable to be given. Assessment of the year is different of the other year. At the time of argument, the Ld. Representative of the assessee agreed to restrict the addition to the extent of 1.5% of the accommodation bill, therefore, we set aside the finding of the CIT(A) on this issue and restrict the addition to the extent of 1.5% of the bogus purchase. Accordingly, this issue is decided in favour of the assessee against the revenue.

7. In the result, the appeal filed by the **assessee is hereby ordered to be partly allowed.**

Order pronounced in the open court on 22/05/2019.

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 22/05/2019

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

Vijay

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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Sr. Private Secretary)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai