

IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI

BEFORE SHRI AMARJIT SINGH, JUDICIAL MEMBER

&

SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

ITA No.3865/Mum/2016

(Assessment Year :2010-11)

ITO-2(1)(1) Room No.543, 5 <sup>th</sup> Floor Aaykar Bhawan M.K.Road Mumbai-400 020	Vs.	M/s Acromatic Trading Pvt.Ltd. Office No.8, Apollo House 82/84, Bombay Samachar Marg, Fort Mumbai-400 023
		<b>PAN/GIR No.AAHCA4600J</b>
<b>Appellant)</b>	..	<b>Respondent)</b>

Assessee by	Prakash Jhunjunwala
Revenue by	Manoj Kumar Singh
<b>Date of Hearing</b>	<b>21/08/2019</b>
<b>Date of Pronouncement</b>	<b>23/08/2019</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the revenue is directed against the order of the Commissioner of Income Tax (Appeals)-4, Mumbai, dated 15/03/2016 and it pertains to the Assessment Year 2010-11.

2. The revenue has raised the following grounds of appeal:-

1. *"The order of the CIT(A) is opposed to law and facts of the case."*

2. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that addition made on account of commission should be restricted to 1% instead of 5% adopted by the Assessing Officer."*

3. The brief facts of the case are that the assessee company is engaged in the business of trading and dealing in steel sheet, filed its return of income for AY 2010-11 on 15/10/2010, declaring total income at Rs. 1,80,561/-. The case was selected for scrutiny and the assessment has been completed u/s 144 r.w.s. 145(3) of the I.T.Act, 1961 on 30/03/2013 and determined total income at Rs. 2,88,27,830/-, where the AO rejected books of accounts and estimated commission income @ 5% of total sales. The assessee carried the matter in appeal before the Ld.CIT(A). The assessee has filed elaborate return submissions, on the issue and argued that rate of commission adopted by the AO is excessive and higher, when compared to similar nature of businesses. The Ld.CIT(A), after considering relevant submissions of the assessee scaled down commission estimated by the AO from 5% to 1% of total sales. Aggrieved by the Ld.CIT(A) order, the assessee as well as, the revenue have been filed appeal before the Tribunal. The Tribunal vide its order dated 23/02/2018 in ITA No. 3927/Mum/2016 dismissed, appeal filed by the assessee and upheld estimation of commission @ 1% on total sales, however the appeal filed by the revenue on the same issue has not been taken into account, while disposing of appeal of the assessee. Thereafter, the revenue as well

as, the assessee have moved miscellaneous application against order of the Tribunal in ITA No. 3927/Mum/2016 and such miscellaneous application filed by the parties has been dismissed by the Tribunal vide its order dated 10/05/2019.

4. The Ld. AR for the assessee, at the time of hearing, submitted that the issue involved in the present appeal is covered in favour of the assessee by the decision of ITAT in assessee's own case, where the Tribunal upheld estimation of commission income @1% on total sales, further, the revenue has challenged findings of Ld.CIT(A) on same estimation of income. Since, the Tribunal has already upheld findings of Ld.CIT(A), appeal filed by the revenue becomes infructuous. The Ld. DR on the other hand, fairly accepted that the Tribunal has disposed of appeal filed by the assessee and upheld the findings of the Ld.CIT(A) in estimation of 1% commission on total sales. However, he strongly supported order of the AO.

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The revenue has challenged, the findings of Ld.CIT(A) in estimation of 1% commission on total sales declared by the assessee as against AO estimation of 5% commission on total sales. We find that the

Tribunal, while disposing appeal of the assessee in ITA No. 3927/Mum/2016 had considered the issue of estimation of commission on total sales and after considering arguments of both the sides held that the rate of commission adopted by the Ld.CIT(A) @1% on total sales is quiet fair and reasonable keeping in view, the nature of assessee's business. We, further noted that although the revenue has challenged findings of Ld.CIT(A) in estimation of 1% commission as against 5% adopted by the AO, since the issue has been already decided by the Tribunal in assessee's appeal and upheld, the findings of the Ld.CIT(A) in estimation of 1% commission on total sales, it is difficult for us to take a different view from view, which has been already taken by the Tribunal in assessee's appeal. Hence, we are inclined to uphold the findings of Ld.CIT(A) in estimation of 1% commission on total sales and reject appeal filed by the revenue.

6. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 23/08/2019

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 23/08/2019  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai