

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

BEFORE SHRI R.C.SHARMA, AM

**ITA No.4320/Mum/2018
(Assessment Year:2010-11)**

M/s. Prabha Multitrade Pvt. Ltd., Block H, Shri Sadashiv CHS Ltd., 6 th Road Santacruz (E) Mumbai – 400 055	Vs.	The Asst. Commissioner of Income Tax Central Circle – 46, Mumbai
PAN/GIR No.AAFCP0813N		
(Appellant)	..	(Respondent)

Assessee by	Shri Mukesh Chokshi
Revenue by	Shri Akthar H Ansari
Date of Hearing	06/11/2019
Date of Pronouncement	13/11/2019

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of CIT(A)—22, Mumbai in appeal No. CIT(A)-22/IT/242/2014-15 dated 05/04/2018 in the matter of order passed u/s.143(3) of the Income Tax Act, 1961.

2. The grievance of the assessee revolves around addition of 2% commission of alleged receipt as per the bank statement.

3. I have considered rival contentions and found that AO has estimated income at 0.15% on total receipt of Rs.8,40,75,293/-. It was contention of assessee before the AO and CIT(A) that receipt was only to the tune of Rs.4,70,70,093/-. Even before me, there was contention of Id. AR that Rs.8,40,75,293/- has been wrongly estimated by the AO. I

do not find any merit in the contention of Id. AR in as far as after giving detailed reasoning, the AO found that the assessee himself has filed a letter and also confirmed receipt of Rs.8,40,75,293/- for the relevant assessment year under consideration. However, it appears that out of it a sum of Rs.2,05,00,000/- was transferred by assessee to the sister concern M/s. Buniyad Chemicals Ltd, thereafter, turn over remains at Rs.2,65,65,093/-. This contention of the assessee was taken care of by AO after having the following observation:-

“6. However, the above contention of the assessee was not acceptable for the following reasons:

(i) During the course of the original assessment proceedings, the assessee filed return of income for AY 2010-11 wherein it had disclosed its total receipts at Rs 8,40,75,293/-.

(ii) The assessee submitted the details vide letter dated NIL in which it had confirmed that its total receipts for AY 2010-11 is Rs 8,40,75,293/-.

(iii) Thus, assessee had ample time at its disposal so as to rectify and file a revised return or point out the same at the time of scrutiny assessment.

(iv) No evidence in support of their contention of higher turn over adopted by mistake has been submitted.

(v) The principle of promissory estoppels prevents the assessee from going back on admission already made before any authority unless it is able to advance evidences to support the revised contention now being adopted.

(vi) The assessee is now adopting a lower turnover as is arising from over bank account but a order sheet noting dated 19.11.2011 it has been already admitted that Rs-4.70 Crores is only that part of the turnover arising from bank account show caused by the AO at that time but the assessee while computing the turnover had included the turnover of those bank accounts also which were not declared by the assessee.

7. In view of the above, the total receipts of the assessee for the year under consideration are taken at Rs 8,40,75,293/- as against Rs 4,70,70,093/- and the total commission income of the assessee @ 2% of the total receipts is taken at Rs 16,81,505/- as against of Rs 9,41,401/- and the balance amount of Rs 7,40,104/-[1681505 - 941401] is considered to be the commission income and is added back to the total income of the assessee. Further considering the facts of the case, I am satisfied that the assessee has concealed particulars of income and furnished inaccurate particulars of income and in view of the same, penalty proceedings u/s.271 (1)(c) of the Act are hereby initiated.”

4. By the impugned order, CIT(A) has also confirmed the action of the AO after having the following observation:-

“6.5 I have considered the facts of the case and appellant's submissions. In ground no. 3, the appellant has contended that the Assessing Officer has erred in law and in facts in making addition on account of commission @ 2% on alleged receipts of Rs.3,70,05,200/-(difference between returned turnover & assessed turnover as per original assessment order) on the basis of audit objection without confirming the evidence substantiating the bank transactions of the alleged receipts. From the impugned order, it is seen that the appellant in its return for A.Y.2010-11 had declared its total receipts at Rs.8,40,75,293/-and also vide its letter dated NIL as well as in order sheet noting dated 19/11/2011 the appellant had confirmed the total receipts at Rs.8,40,75,293/-. Moreover, the appellant failed to provide any documentary evidence to show that the higher turnover shown in its return of income was by mistake. During the appellate proceeding also, the appellant had not submitted/produced any evidence to show that the turnover for the AY under consideration is not Rs.8,40,75,293/- as shown by it in its original return of income. It is also a fact that though the assessment on the basis of original return of income was completed u/s 143(3) of the Act the appellant had not at any point of time brought to the notice of the A.O that the turnover shown in the said return of income was wrong. Pertinently, there is not even a whisper in the written submissions of the appellant before me about this issue which indicates that though a ground was taken, it has nothing to submit in this regard. Therefore, in view of these facts, this ground is dismissed.

6.6 In ground nos. 4 & 5 the appellant challenges the A.O's estimation of income at the rate of 2% on entire bank deposits without perusing the bank statement and without reducing the amount of fund transferred to sister concerns of Rs.2,05,00,000/- from which no income is earned. The written submission made by the appellant during the appellate proceeding in this regard contains the following propositions:-

- i) Since the Hon'ble ITAT had already decided the issue of estimation of income @ 0.15% of the total turnover Our prayer is to treat the appeal in the same manner.*
- ii) That 0.15% should be the rate of income for the bank accounts managed by us.*

iii) For the bank account managed by the franchise should be taxed @ 0.03%. as the appellant had to play a simple role i.e. giving signed cheque book and nothing else.

I find that several Benches of the Hon'ble Tribunal have decided on the matter under consideration in several of the Mahasagar group of cases including the appellant's own case for the A.Y.2010-11 relating to the assessment order passed u/s 143(3) of the Act dated 08/12/2011, The Hon'ble ITAT 'C' Bench, Mumbai, vide its order dated 17.08.2016, while deciding the appellant's appeal in ITA No. 326/MUM/2013 has directed to estimate the income from the appellant's business of providing accommodation entries at 0.15% of the total turnover. This direction would also cover the rate of commission to be estimated on bank deposits managed by agents, that is, amounts transferred to sister concerns, therefore, respectfully following the above Hon'ble Tribunal's order, the A.O is directed to estimate the income of the appellant at 0.15% of the Total turnover. Ground nos.4 and 5 are partly allowed."

5. However, before me nothing was produced by the Id. AR so as to persuade me to deviate from the findings recorded by the lower authorities, accordingly, I do not find any reason to interfere in the findings of the lower authorities.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 13/11/2019.

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 13/11/2019
Karuna, 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