

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri Mahavir Singh (JM) & Shri Shamim Yahya (AM)

I.T.A. No. 5134/Mum/2018 (Assessment Year 2009-10)

ITO-17(1)(3) Room No. 116 1 <sup>st</sup> Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	Smt. Charulata Nikesh Doshi 501, Sharda Chambers No. 2 27A, Keshavji Naik Road Mumbai-400 009.  PAN : AMRPD7112K (Respondent)
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Assessee by	None
Department by	Shri Akhtar H. Ansari
Date of Hearing	19.9.2019
Date of Pronouncement	3.12.2019

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A) dated 26.3.2015 and pertains to A.Y. 2009-10.

2. The grounds of appeal read as under :

1. "On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in reducing the percentage of commission on sale bills at 0.6% as against 1% adopted by the A.O. in respect of bogus sales."

2. "The appellant prays that the order of the A.O. should be restored and order of the CIT(A) should be set aside."

3. Brief facts of the case are that the assessee was found by the Investigation Wing to be engaged in bogus accommodation entries for purchase and sale. It was found by the Assessing Officer that it is found that in the Trading Account of the assessee, sales are shown at Rs.2,85,89,889 and closing stock at Rs.8,87,523/- and the corresponding purchases at Rs.3,71,45,591/-. That the indirect expenditure debited in P& L Account is Rs.1,39,042/-. That however, in the revised financial statement the sales are

Rs.2,37,77,968/- and corresponding purchases are Rs.2,34,62,039/- and indirect expenditure at Rs.1,39,042/-. That the assessee has reduced the amount of purchases and not shown closing stock in the revised statement. In the audited books, the assessee had inflated its purchases by Rs.1,36,83,552/-and sales by Rs.48,12,030/-(Rs.2,85,89,998- Rs.2,37,77,968) and in the audited balance-sheet Sundry creditors of rs.1,38,20,388/- included the name of M/s.N.B.Enterprises for Rs.1,07,68,673/- where as Sundry Debtors of Rs.51,41,236/-, no debt is shown in the name of N.B.Enterprises. That thus, it can be seen from the above that the assessee herself has admitted about variation between original books of accounts and the revised books. That the revised financials are contradictory to it's own audited report. Hence, assessee's books were rejected.

4. Hence, Assessing Officer observed that as per reports of investigation wing in various cases involving business of issuing of bogus bills and accommodation entries, commissions ranging from 0.5% to 3% of the bill amounts issued are paid to the bogus billers/accommodation entry givers. The Assessing Officer proceeded to estimate 1% commission on sales and purchases and added Rs. 6,57,360/- to assessee income.

5. Upon assessee's appeal learned CIT(A) reduced the estimate to 0.6% as under :

"I have considered the facts of the case and assessee's submissions. On perusal of the submissions of the assessee, it is found that the the assessee gets commission CADAT) only when the transaction of purchase from supplier sand sales to customer is completed. The assessee is representing one side either purchaser and seller and the other side is represented by broker taking brokerage from his party. The assessee is merely a middleman and not a housebroker taking commission from both the parties purchaser as well as seller, Estimation of commission merely on presumption on the part of the AO is not a good practice. Further, the assessee has drawn attention to her husband, Mr.Nikesh Doshi's case, wherein similar facts were dealt by the C1T(A)-28 and the Net profit was estimated at 0.6% of the turnover and the commission was directed to be taken at 0.6%. In view of the above, I agree with the assessee that 1% commission made by the AO is excessive and the same is directed to be taken at 0.6% as the assessee has offered net profit at 0.6% of the turnvoer. Thus, the assessee gets partial relief."

6. Against the above order Revenue is in appeal before us. We have heard learned Departmental Representative and perused the records. We are of the opinion that learned CIT(A) is correct in making an estimate of 0.6% as the commission value. The Assessing Officer himself has observed that addition in such case ranging from 0.5% to 0.3%. Hence, we do not find any infirmity in the order of learned CIT(A). Hence, we uphold the same.

7. In the result, Revenue appeal stands dismissed.

Order has been pronounced in the Court on 3.12.2019.

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 3/12/2019

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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