



ITA No.7516/Mum/2018
Numec & Suchit Associates
Assessment Year :2012-13

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.7516/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

Neumec & Suchit Associates 207, Regent Chambers, 208 Nariman Point Mumbai- 400 021.	बनाम/ Vs.	JCIT, Range-17(2) Room No.120, 1 st Floor Aaykar Bhavan, M.K. Road Mumbai- 400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAFFN-6444-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

Assessee by	:	Shri Aditya Maheshwari-Ld.AR
Revenue by	:	Ms. Kavita P. Kaushik-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	03/02/2020
घोषणा की तारीख / Date of Pronouncement	:	05/02/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2012-13 contest the orders of Ld. Commissioner of Income-Tax (Appeals)-58, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)-58/Mumbai/10320/2017-18 dated 03/10/2018 on following grounds of appeal: -



On the facts and circumstances of the case the learned Commissioner of Income-Tax (Appeals)-58 erred in disallowing the sum of Rs.11,00,000/- as brokerage paid for business purpose and reduced from work in progress.”

The Ld. Authorized Representative urged that the correct quantum under dispute may be read as Rs.12.55 Lacs.

1.2 We have carefully heard the rival submissions and perused the relevant material on record. Our adjudication to the subject matter of present appeal would be as given in succeeding paragraphs.

1.3 Briefly stated, the assessee being resident firm stated to be engaged in civil construction was assessed for year under consideration u/s. 143(3) on 17/03/2015. The assessee was saddled with disallowance of brokerage expenses of Rs.23.55 Lacs since the assessee, in the opinion of Ld. AO, was not able to furnish any documentary proof or evidence that the said expenditure was incurred towards apartments/units sold with cost of sale and entities to whom the sale were made including the confirmation letters from brokers.

2.1 Aggrieved the assessee assailed the same before Ld. CIT(A) wherein a remand report was called for against assessee's submissions. In the remand report, it was stated by Ld. AO that the assessee had filed documentary evidences. Further, replies were received from brokers in response to notices issued u/s 133(6) along with their respective return of income, bank statement, confirmation letter etc. The assessee submitted that since all the requisite details were furnished, the expenditure was an allowable deduction and the disallowance was not warranted.

2.2 However, Ld. CIT(A) noted that there was no uniformity in brokerage / commission rates and brokerage figures lack any particular



pattern and portrayed wide variation showing lack of credibility. The rate of brokerage ranged between 1% to 2%. Accordingly, Ld. CIT(A) brought down the brokerage rate to a uniform level of 1% and upheld the disallowance of Rs.12.55 Lacs. Aggrieved, the assessee is under further appeal before us.

3. Upon careful consideration of factual matrix as enumerated by us, it emerges that the assessee was successful in furnishing the requisite details of brokerage payment, as called for by Ld. AO. The confirmation letters, bank statements, return of income of brokers was placed on record. Due TDS compliance was made in terms of Sec. 194J. The brokers were clearly identified who responded to notices issued u/s 133(6). In such a scenario, the action of Ld. CIT(A) in restricting the brokerage rate to 1% uniform across all properties could not be said to be a correct approach. Nothing was brought on record to establish that the brokerage was excessive or unreasonable, in any manner. There is no allegation that the payment was not genuine. The assessee had duly discharged the primary onus of proving the transactions. Therefore, sustaining addition in the manner as sustained by Ld. CIT(A) would not withstand the scrutiny of law, considering the facts and circumstances of the cases. Hence, by deleting the same, we allow the appeal.

4. The appeal stands allowed in terms of our above order.

Order pronounced in the open court on 05th February, 2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**



ITA No.7516/Mum/2018
Numeç & Suchit Associates
Assessment Year :2012-13

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**