



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.2991 and 2992/Mum./2017  
(Assessment Year : 2006-07 and 2007-08)

Income Tax Officer  
Ward-11(1)(2), Mumbai

..... Appellant

v/s

Realstone Exports Ltd.  
C-204, 2<sup>nd</sup> floor, Vishal Apartment  
Taki Road, Tulij, Nalasopara (East)  
District Thane 401 209  
PAN – AACCR8504K

..... Respondent

C.O. no.177, 178, 179/Mum./2019  
(Arising out of ITA no.2991, 2992 and 2993/Mum./2019)  
(Assessment Year : 2006-07, 2007-08 and 2012-13)

Realstone Exports Ltd.  
C-204, 2<sup>nd</sup> floor, Vishal Apartment  
Taki Road, Tulij, Nalasopara (East)  
District Thane 401 209  
PAN – AACCR8504K

..... Cross Objector  
(Original Respondent)

v/s

Income Tax Officer  
Ward-11(1)(2), Mumbai

..... Respondent  
(Original Appellant)

Revenue by : Smt. Jyothilakshmi Nayak  
Assessee by : Shri.Poojan Mehta

Date of Hearing -05.03.2020

Date of Order - 02.06.2020

**ORDER****PER SAKTIJIT DEY. J.M.**

The aforesaid appeals filed by the Revenue and cross objections by the assessee arise out of separate orders passed by the learned Commissioner of Income Tax (Appeals)-18, Mumbai, for the assessment year 2006-07, 2007-08 and 2011-12.

**ITA no.2991/Mum./2017 - A.Y. 2006-07**

**ITA no.2992/Mum./2017 - A.Y. 2007-08**

**Revenue's Appeal**

2. The grounds raised by the Revenue in both the assessment years under appeal are only on the common issue of partial relief granted by the learned Commissioner (Appeals) with regard to estimation of commission income on accommodation entries.

3. Brief facts are, the assessee company is stated to be engaged in trading in merchandise goods. The returns of income filed for the assessment years under consideration were initially processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Subsequently, on the basis of information received indicating that income chargeable to tax in the aforesaid assessment years have escaped assessment, the Assessing Officer re-opened the assessment under section 147 of the Act. During the assessment proceedings, the Assessing Officer found that as per the information received from the

Sales Tax Department, Government of Maharashtra, one of the Directors of Utkantha Trading Co., Shri Abhishekh Murarka, which is one of the Group concern, has clearly and categorically stated that neither the assessee nor the other group concerns are actually carrying on any purchase or sale transaction in merchandise or shares, but are only providing accommodation entries / bills on receipt of commission. On the basis of such statement available, which was also confronted to the assessee, the Assessing Officer called upon the assessee to explain as to why books of account being unreliable should not be rejected and the transactions relating to sale of goods / shares should not be treated as non-genuine and commission income should not be estimated on the purchase and sale turnover shown in the accounts. Though, the assessee furnished its explanation claiming that the transactions are genuine, however, not being satisfied with the correctness of assessee's explanation and in the absence of any credible evidence, as alleged by the Assessing Officer, he treated the entire transaction as non-genuine. After rejecting the books of account by invoking the provisions of section 145(3) of the Act, the Assessing Officer proceeded to estimate the commission income @ 1% of both purchase and sale turnover shown by the assessee in all the assessment years under appeal. Being aggrieved with the assessment orders so passed, the assessee preferred appeals before the first appellate authority.

4. After considering the submissions of the assessee and other material on record, though, learned Commissioner (Appeals) agreed with the Assessing Officer that the assessee has not carried out any genuine purchase and sale transaction and is only an entry provider, however, he restricted the rate of commission to 0.15%, that too, either on purchase or on sales turnover. Being aggrieved with the aforesaid decision of learned Commissioner (Appeals), the Revenue is in appeal before the Tribunal.

5. The learned Departmental Representative, Smt. Jyothilaxmi Nayak submitted, when it is proved on record that the assessee is merely an entry provider and has not carried out any genuine transaction, the estimation of commission @ 1% of the total turnover is fair and reasonable and the assessee does not deserve any leniency considering the nature of activity carried on by it. Further, she submitted, the Tribunal in assessee's own case while considering identical nature of dispute in assessment year 2010-11, vide ITA no. 3444/Mum./2014, dated 3<sup>rd</sup> October 2017, has upheld the decision of the Departmental Authorities in estimating the commission income @ 1% of the total turnover. She also furnished a copy of the order passed by the Tribunal.

6. The learned Authorised Representative strongly relied upon the observations of the learned Commissioner (Appeals). Further, though, he submitted that submissions would be filed in written form, but till date no such submission has been filed. As could be seen from the facts on record as well as the discussions made by the Assessing Officer and learned Commissioner (Appeals) in their respective orders, the fact that the assessee is an entry provider is clearly established. Therefore, the so called purchase and sale transactions in fabric / shares cannot be accepted as genuine. In fact, learned Commissioner (Appeals) has also accepted the aforesaid factual position while interfering only with regard to rate of commission. Therefore, the contention of the assessee that it is carrying on genuine purchase and sale transaction is unacceptable. Thus, in these circumstances, the assessee being engaged in providing accommodation bills / entries, estimation of commission income on the basis of its turnover is just and proper. Therefore, the only issue which needs to be decided is what is the reasonable rate of commission which can be estimated on such accommodation transaction and whether such commission can be charged on both purchase and sale turnover shown by the assessee. It is evident, while the Assessing Officer has charged commission @ 1% on both purchase and sale turnover, learned Commissioner (Appeals) has reduced the rate of commission to 0.15% and that too only on one of the transactions i.e., either purchase or sale. Notably, while

deciding identical issue in assessee's own case in assessment year 2010-11, the Tribunal, in the order referred to above, has upheld estimation of commission income @ 1% of the total turnover. However, to be fair to the assessee, the aforesaid decision of the Tribunal was not available before learned Commissioner (Appeals) while deciding the appeals for the impugned assessment years. Considering the above, we set aside the impugned orders of learned Commissioner (Appeals) and restore the issue back to his file for fresh adjudication keeping in view the order passed by the Tribunal in assessee's own case for the assessment year 2010-11, as referred to above. The assessee must be provided a reasonable opportunity of being heard before deciding the issues. Grounds raised are allowed for statistical purposes.

7. In the result, appeals are allowed for statistical purposes.

**C.O. no.177/Mum./2019**

**C.O. no.178/Mum./2019**

**C.O. no.179/Mum./2019**

**By Assessee**

8. Before we proceed to decide the cross objections by the assessee, it is necessary to put on record that all these cross objections have been filed with delay of 307 days. The assessee has filed a petition seeking condonation of delay which is common for all the years. It is stated by the assessee that before learned Commissioner (Appeals) the case was represented by a different

Counsel and purportedly on his advice to file the cross objections after obtaining second opinion from another Counsel, the assessee kept quite as he was of the impression that the earlier Counsel would be obtaining second opinion from some other Counsel. Whereas, it is stated that the earlier Counsel was carrying an impression that the assessee would be obtaining a second opinion and thereafter the cross objection would be filed. It is stated that in view of the confusion arising out of obtaining of second opinion, the filing of cross objections got delayed. Thus, it is requested that the delay being due to a reasonable cause should be condoned.

9. Having carefully considered the cause of delay shown by the assessee, we are of the view that it is not at all acceptable and is only a cooked-up story to tide over the delay in filing the cross objections. Firstly, though, it has been stated that the earlier Counsel and the assessee were carrying impression that the second opinion would be obtained by either the earlier Counsel or the assessee, however, to substantiate such claim, no affidavit of the earlier Counsel or the assessee have been filed. Moreover, even accepting that there was such confusion, it cannot lead to such inordinate delay of 307 days. Therefore, in our considered opinion, the cause for delay shown by the assessee is neither convincing nor the explanation of the assessee is satisfactory. Further, it is relevant to observe, perusal of the cross

objections filed by the assessee would reveal that the grounds raised therein are purely technical in nature challenging the validity of re-opening of assessment under section 147 of the Act as well as rejection of books of account under section 145(3) of the Act. It is evident, before learned Commissioner (Appeals), the assessee had not raised any grounds challenging the validity of re-opening of assessment under section 147 of the Act. On a query from the Bench, learned Counsel appearing for the assessee conceded this fact. Thus, the aforesaid factual position clearly establishes that the cross objections have been filed by the assessee raising such technical issue challenging the validity of re-opening of assessment after inordinate delay of 307 days is only as an after-thought without having any reasonable cause. In view of the aforesaid, we decline to condone the delay in filing the cross objections.

10. In the result, cross objections are dismissed in limine.

11. To sum up, Revenue's appeals are allowed for statistical purposes and cross objections are dismissed.

Order pronounced through circulation in the notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 on 02.06.2020.

**Sd/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 02.06.2020**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai