

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

BEFORE SHRI SHAMIM YAHYA, AM

आयकर अपील सं/ I.T.A. No.5909/Mum/2018

(निर्धारण वर्ष / Assessment Year:2002-03)

M/s. Shield Tradelinks Pvt. Ltd. 51, Broach Street, Kapadia Chambers, Masjid Bunder, Mumbai-400009.	बनाम/ Vs.	ITO 8(2)(1) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCS5456C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Chaitanya Anjaria (AR)	
Revenue by:	None	

सुनवाई की तारीख / Date of Hearing: 20/02/2020

घोषणा की तारीख /Date of Pronouncement: 20/04/2020

आदेश / ORDER

PER SHAMIM YAHYA, AM:

This is appeal by the assessee against the order of learned CIT(A) dated 23.07.2018 and pertains to A.Y.2002-03.

2. The issue raised is that the Ld. CIT(A) erred in confirmed the disallowance of Commission payment of Rs.23,66,028/-.

3. In this case, this is the second round of appeal before ITAT. The assessment was completed u/s 143(3) r.w.s. 147 of the I. T. Act, 1961 vide order dated 29.12.2009 making the disallowance of commission payment of Rs.23,66,028/- to M/s. Moira Steels Ltd. on the ground that the payments were bogus. The said disallowance was confirmed by the CIT(A) vide order dated 22.11.2012. The assessee



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filed appeal against the order of the CIT(A) before the Hon'ble ITAT taking the plea that the reply from M/s. Moira Steel dated 18.11.2009 was not considered by the Assessing Officer. The Hon'ble ITAT vide its order no. ITA. No.1476/M/2013 dated 08.12.2014 had remand the appeal to the file of the AO to decide the appeal of the assessee afresh in accordance with law for which due opportunity of being heard. In the set aside assessment the AO again referred the matter of statement on oath on the basis of which the payment of commission was disallowed. He held that assessee has not furnished any evidence or supporting proof in respect of service rendered by M/s. Moira Steels Ltd. for which the commission was paid. Hence the AO confirmed the addition. Upon the assessee's appeal Ld. CIT(A) held that when during the course of survey action u/s 133A of the I. T. Act at the business premises of M/s Moira Steels Ltd, the responsible director Shri Vimal Todi confessed before the authorized officers and that M/s. Moira Steels Ltd. had not rendered any service to the assessee company and had rather given accommodation entry in respect of commission payment of Rs.23,66,028/-, the onus was cast on the assessee. Hence he held that it cannot be held that onus has been discharged by filing mere confirmation of M/s. Moira Steels Ltd. He held that "the assessee should have at least filed the correspondence from the customers regarding services rendered by M/s. Moira Steels Ltd. from time to time in the course of rendering service. In the absence of above he upheld the order of the AO.

2. Against above order assessee is in appeal before the ITAT. I have heard Ld. DR and perused the records. None- appeared on behalf



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of the assessee. I note that the addition of in this case on account of disallowance of commission expenses is solely based upon the statement of the director of the recipient company obtained in the course of survey by the Department. The addition was confirmed by Ld. CIT(A). However, the ITAT has remitted the matter to the file of the AO to examine afresh. In the set aside assessment, the AO did not do any further examination. He repeated the observations of earlier assessment order. The Ld. CIT(A) also confirmed the same. It is clear that the addition is solely based on statement obtained in the survey. It is a settled law from the Hon'ble Apex Court of CIT Vs. S. Khader Khan Sons (2012) 254 CTR 228 that the statement of survey *de hors* any corroborative evidence cannot be the sole basis of addition of accommodation entry. Moreover, this sole basis has already been held to be not reliable by Hon'ble ITAT and the matter was remitted the file of AO. Accordingly, in our considered opinion, this addition is liable to be deleted. Accordingly, I set aside the order of the CIT(A) and delete the addition.

In the result this appeal by the assessee stands allowed.

Order pronounced in the open court on 20/04/2020

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 20/04/2020
Vijay Pal Singh/Sr. PS



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai