

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

**BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA Nos. 2205 & 2206/Mum/2019**

**(Assessment Years: 2008-09 & 2009-10)**

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| ITO 18(2)(4)<br>R.No. 303, Earnest House<br>Nariman Point<br>Mumbai. | <b>बनाम/<br/>Vs.</b> | Shri Oatmal V Purohit<br>401 Joth Salasar<br>Bageswari Park,<br>Bhayander,<br>Mumbai - 400104 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AQEPP0999H                  |                      |   |
| (अपीलार्थी /Appellant)   | ..                   | (प्रत्यर्थी / Respondent)   |

|                                     |                              |
|-------------------------------------|------------------------------|
| अपीलार्थी ओर से/ Appellant by :     | Shri Amit Pratap Singh, DR   |
| प्रत्यर्थी की ओर से/Respondent by : | Shri Prakash Jhunjunwala C.A |

|                                       |            |
|---------------------------------------|------------|
| सुनवाई की तारीख / Date of Hearing     | 09/09/2020 |
| घोषणा की तारीख /Date of Pronouncement | 17/09/2020 |

**आदेश / ORDER**

**PER PAVANKUMAR GADALE JM:**

These are the appeals filed by the revenue against the common order of the Ld Commissioner of Income Tax (Appeals) -29, Mumbai passed for the A.Y 2008-09 u/s 144 r.w.s 147 and 250 of the Act and for A.Y 2009-10 u/s 143 r.w.s 147 and 250 of the Act. For the sake of convenience both the appeals are

clubbed and heard and consolidated order is passed. First, we shall take up the ITA No. 2206/Mum/2019 for the A.Y 2009-10 and the facts narrated therein.

2. The assessee is engaged in the business of cheque discounting activities and filed the return of income on 14.10.2009 for the A.Y 2009-10 with total income of Rs1,09,080/-.Subsequently, the case was reopened and the A.O has issued notice u/s 148 of the Act and called for the information. The A.O find that in the original assessment u/s 144 r.w.s 147 of the Act, the income has been estimated @ 1% of the total credits and the total income was determined at Rs.1,83,74,770/-.Aggrieved with the order, the assessee has filed an appeal with the first appellate authority, where the Ld.CIT(A) has confirmed the addition made by the A.O and enhanced the net income to 2,73,98,537/-.Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Tribunal.

3. The Hon'ble Tribunal vide orders in ITA No. 7766/Mum/2014 dated 14.01.2007 restored the

disputed issues to the file of the A.O with specific directions to the A.O to exclude the returned cheques, RTGS and interbank transfers in assessee's bank account. Accordingly, the A.O has issued notice u/s 142(1) of the Act and called for the information. In response to notice, the Ld. AR of the assessee appeared from time to time and filed the details. The A.O has dealt on the details submitted and the credits in bank account and estimated income @ 1.5% of net credits and determined total income of Rs. 2,73,67,782/-dated 29.12.2017.

4. Aggrieved with the order, the assessee has filed an appeal with CIT(A). Whereas, in the appellate proceedings, the Ld. AR has filed the detailed submissions explaining the facts of the case and Miscellaneous Petition filed. The CIT (A) observed that the assessee has filed Miscellaneous Petition before the Hon'ble ITAT to decide on the issue of estimation of commission income. Whereas, the Hon'ble ITAT in Miscellaneous Application (MA) dated 23.07.2018 has directed the A.O to exclude the returned cheques, RTGS and interbank transfer in

assessee's bank account and estimate the commission on remaining amount applying the decision of the Coordinate Bench in the case of Ramesh Kumar Jain Vs. ACIT (ITA No. 3512 to 3518/Mum/2013), the operating portion of the MA referred at page 4 of the CIT(A) order is read as under:

*“Now we direct the assessee to exclude the returned cheques/RTGS/inter bank transfers in assessee's bank account and assess the income by way of estimating the commission on the remaining amount after applying the decision of the coordinate bench of the Tribunal in the case of Ramesh Kumar vs. ACIT in ITA No.3512 & 3513/M/2013 for A.Y. 2004-05 & 2005-06 dated 22.04.2015. The order of the Tribunal stands amended and modified to that extent.*

*The Hon'ble ITAT in the case of Shri Ramesh Kumar Jain Vs. ACIT had decided that the net commission income on accommodation transactions should be estimated @ 0.10%. the relevant para No..19 of the Hon'ble ITAT order in the case of Shri Ramesh Kumar Jain (cited supra) is reproduced as under:*

*Now the question that arises is with regard to the quantum of commission income. Since the assessee himself has confirmed the rate of commission as 0.25% and since the AO has not properly substantiated the rate of 1.50% adopted by him, we are of the view that the facts and circumstances of the case warrant that the rate of commission should be adopted @ 0.25%, in the absence of any other evidence to the contrary. Further the assessee has stated that he has shared the commission income*

*with two others. Further it cannot be denied that certain other expenses are also required to be incurred. Accordingly, by considering all these relevant factors, we are of the view that the net commission income should be estimated at 0.10% and in our view, the same would meet the ends of justice. Accordingly, we modify the order of Ld CIT(A) in respect of this issue in all the years under consideration and direct the assessing officer to work out the addition towards commission income in the lines discussed supra.*

*The AO, after receipt of the MA order dated 2307.2018 had reworked the commission @ 01.10% of the net transaction value”.*

5. Whereas, the CIT(A) considered the facts in the Miscellaneous Application (MA) of the Hon.ble ITAT and order giving effect(OGE) of the A.O referred at page – 6 of the Appellate order and observed that since the A.O has passed the order giving effect(OGE) therefore the appeal has become infructuous. Aggrieved by the order of the CIT(A), the revenue has filed an appeal with the Tribunal.

6. At the time of hearing, Ld. DR submitted that the decision relied in the Miscellaneous Application (MA) is distinguishable on facts and prayed for the set aside of the order of the CIT(A).

7. Contra, the Ld. AR of the Assessee supported the CIT(A) order and substantiated his arguments relying on the decision of MA No 101/M/2017 in ITAno7766/mum/201 and referred to the order giving effect(OGE) of MA by the A.O and prayed for dismissal of revenue appeal.

8. We heard the rival submissions and perused the material on record. The revenue has filed an appeal against the CIT(A) order. Whereas the assessee has filed the Miscellaneous Application (MA) with the Hon'ble Tribunal. The A.O has passed the order giving effect to the MA on 23.07.2018. We are of the opinion that since the A.O has passed the order giving effect and the income has been determined, therefore the order passed u/s 143(3) r.w.s 147 of the Act becomes in operative. We find that the CIT(A) has considered these facts and observed at page 6 para 5.1 of the order which is read as under:

*“The only dispute involved in appeal relating to A.Y 2009-10 is with regard to the estimation of commission income on accommodation transactions. Consequent to passing of impugned assessment order, Hon'ble ITAT in appellant's case in MA order no. 101/Mum/2017 arising*

*out of ITA No. 7766/Mum/2019 for A.Y 2009-10 had decided that the estimation of commission is to be made on applying decision of ITAT in the case of Ramesh Kumar Jain Vs. ACIT. It is observed that the coordinate bench of Mumbai ITAT at para No. 19 in the case of Ramesh Kumar Jain had decided that the net commission income should be estimated as 0.10% of the transaction value. In the order giving effect to Hon'ble ITAT order, AO vide order dated 23.07.2018 had recomputed the income on estimating the commission @ 0.10% of transaction value. Accordingly, on providing the effect of Hon'ble ITAT order by the AO the impugned appeal relating to A.Y 2009-10 would remain infructuous as the A.O had recomputed the commission @ 0.10% which is in accordance the direction of Hon'ble ITAT and the issue raised by the appellant in grounds of appeal stands resolved. Accordingly, the impugned appeal does not require any further adjudication and thus the appeal relating to A.Y 2009-10 is hereby allowed for statistical purpose”.*

9. The Ld. DR could not controvert the findings of the CIT(A) with any cogent or new evidences. Accordingly, we are not inclined to interfere with the order of the CIT(A) on these disputed issues and upheld the same and dismissed the grounds of appeal of the Revenue.

**ITA No. 2205/Mum/2019 for the A.Y 2008-09**

10. The revenue has filed an appeal for the Asst Year 2008-09 against the common order of CIT(A) passed

u/s 144 r.w.s 147 and 250 of the Act. The assessee has filed the detailed submissions with the CIT(A) and was granted partial relief. The Ld. DR Submitted that CIT(A) had erred in granting relief to the assessee and supported the order of the A.O. Contra, the AR relied on the CIT(A) order and the decision of the Hon'ble ITAT and prayed for the dismissal of the Revenue Appeal.

11. We have heard the rival submissions and perused the material on record. Prima facie, the facts in the present case are identical in respect of estimation of commission. The Ld. CIT(A) considered the assessee's submissions, grounds of appeal and has dealt on the disputed issue of estimation of the income on accommodation transactions and partly allowed the appeal. We consider appropriate to refer to the observations of the Ld. CIT(A) at page -8 para 5.3.2 of the order which is read as under:

*"I have considered the facts of the case and documents placed before me. I find that the facts of the case related to A.Y 2008-09 are similar to the facts decided for A.Y 2009-10 and moreover in both such assessment years the commission income was estimated*

*by the A.O @ 1.50% of accommodation transactions. The Hon'ble ITAT, in appellant's case, related to A.Y 200-10 had directed the A.O to estimate the commission income @ 0.10% on accommodation transaction and consequently the A.O vide order dated 2307.2018 had recomputed the commission @ 0.10% on accommodation transactions. Accordingly, I direct the A.O to estimate the commission income @ 0.10% on accommodation transactions determined in the assessment order and delete the balance addition. In the result, the appeal for A.Y 2008-09 is Partly allowed.*

12. The Ld. DR could not controvert the findings of the CIT(A) and relied only on the assessment order. We found that the CIT(A) has relied on the decision of the Hon'ble ITAT in assessee's own case and granted the relief. Accordingly, we are not inclined to interfere with the order of the CIT(A) and we uphold the same and dismissed the grounds of the appeal of the revenue.

13. In the result, both the appeals filed by the revenue are dismissed.

Order Pronounced in the open Court on  
17.09.2020

SD/-  
( M BALAGANESH)  
**ACCOUNTANT MEMBER**

SD/-  
(PAVAN KUMAR GADALE )  
**JUDICIAL MEMBER**

Mumbai, Dated 17/09/2020

KRK, PS

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

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

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai