

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA Nos.5967, 5968 & 5969/M/2019
Assessment Years: 2011-12, 2012-13 & 2013-14**

Mr. Bijal A. Shah, 187/189, Gurukul Chamber Mumba Devi Road, Zaveri Bazar, Mumbai - 400 002 PAN: AVZPS 0810J	Vs.	DCIT-CC-2(1), 8 th Floor, Old CGO Building, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sashi Tulsian, A.R.
Revenue by : Ms. Smita Verma, D.R.

Date of Hearing : 22.06.2021
Date of Pronouncement : 22.06.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled three appeals have been preferred by the assessee against the order even dated 28.06.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12, 2012-13 & 2013-14. Since the issue involved in all these appeals is common and therefore these are being decided and disposed by the common order for the sake of convenience. First we shall take AY 2011-12.

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2. The assessee has challenged the order of Ld. CIT(A) on legal issue as well as on merit. At the time of hearing the legal issue raised by the assessee was not argued and therefore the same is dismissed as not pressed.

3. The second issue raised is against the confirmation of addition of Rs.24,904/- by Ld. CIT(A) as made by the AO to the income of the assessee @ 0.13% being the amount of commission on Rs.1,91,57,153/- the cash transactions done by the assessee with the other parties.

4. The facts in brief are that a survey under section 133A of the Act was conducted on 14.01.2007 at the assessee's premises in which the assessee admitted that he has done some cash transactions with some parties in order to earn some commission. A statement under section 133 of the Act was recorded for all the four years commencing from A.Y. 2010-11 to 2013-14 and the cases of the assessee were reopened u/s 147 r.w.s. 148 of the Act and assessments were framed accordingly.

5. At the outset, the Ld. Counsel of the assessee submitted that the issue involved in the present appeals is squarely covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.4416/M/2018 A.Y. 2010-11 vide order dated 24.07.2019 which was one of the years covered under the survey and similar addition was made by the AO towards the commission. The Ld. A.R. submitted that since the co-ordinate bench of the Tribunal has decided the issue in favour of the assessee by setting aside the order of Ld. CIT(A) by directing the AO to delete the addition as these were merely based on assumptions, presumptions and surmises as statement of the assessee which was retracted by filing an affidavit dated 24.01.2017. Besides, there is no evidence brought on records the AO to back the addition. The ld AR, therefore, prayed that the addition in the current year may kindly be deleted accordingly.

6. The Ld. D.R., on the other hand, relied on the order of authorities below.

7. After hearing both the parties and perusing the material on record particularly the decision of the co-ordinate bench of the Tribunal in ITA No.4416/M/2018 A.Y. 2010-11 dated 24.07.2019, we find that the similar issue has been decided in the earlier year the operative part whereof is reproduced as under:

“3. I have heard the rival contentions and gone through the facts and circumstances of the case. I noted that a survey action u/s. 133A of the Act, was carried on the premises of the assessee on 14-01-2017. During the survey proceedings the assessee admitted that he has done cash transactions with some of the parties to retain some on commission, but later on retracted his treatment stating that the statement taken by the Investigating Wing during survey was through coercion and threat. The assessee filed an affidavit on 24-01-2017 i.e. immediately after the survey. There are various allegations of coercion and threat and counter allegations by both the sides. I am not going to all these allegations. But I have gone through the orders of the Assessing Officer and that of the CIT(A). I also heard both the sides now and I am of the view that the Assessing Officer has merely estimated the commission income @ 0.5% of the alleged entries of sale and purchase of Rs. 1,52,11,694/-. The Assessing Officer estimated the commission at Rs.76,060/-. The CIT(A) reduced the estimation at Rs.20,000/- by observing as under:-

“7.4 In view of the facts as discussed above, there is no dispute with “E entries amounting to Rs.1,52,11,964/-. However, the commission income earned on such entries as computed by the AO @ 0.5% at Rs.76,060/- is without any basis. In this regard, the admissions and disclosures by the assessee at the time of survey in reply to question No. 25 (as pointed out in para 6.2.1(3) that he has earned commission approximately at Rs.6,000/- per Rs. 1 crore of transaction is held to be most fair and reasonable estimation in the absence of any other fair basis. However, since it is only an estimation, the commission income is estimated at Rs. 20,000/- from such business of commission.”

4. From the above, it is clear that there is no basis for estimating the commission and even the alleged statement was retracted by the assessee by filing the said affidavit on 24-01-2017. The peculiar nature of the case and due to smallness of quantum of addition, I am of the view that in the absence of any evidences, the addition so restricted by CIT(A) is hereby deleted.

5. In the result, the appeal of the assessee is allowed.”

8. We note that in the survey conducted on 14.01.2017 under section 133A on the business premises of the assessee 4 years were covered i.e. A.Y. 2010-11 to 2013-14. In all these years the addition was made towards commission on cash transactions as admitted by the assessee during the course of recording of statement under section 133 of the Act which has been retracted subsequently on 24.01.2017. We note that the co-ordinate bench of the Tribunal has already decided the appeal of the assessee in A.Y. 2010-11 as stated above which involved similar issue. We, therefore, respectfully following the same, set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

9. Accordingly, the appeal of the assessee is allowed.

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10. The issue involved in both the appeals is identical to the one as stated above in ITA No.5967/M/2016 for A.Y. 2011-12. Therefore, our finding in ITA No.5967/M/2016 for A.Y. 2011-12 would, mutatis mutandis, apply to these appeals as well. Accordingly, these appeals of the assessee are allowed.

11. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 22.06.2021.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 22.06.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai

The DR Concerned Bench
//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.