

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE PRAMOD KUMAR, VP AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 1058/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2011-12)

Disha Niseet Rupani 202, Padmanabh Darshan, Gopal Lane, L. B. S. Marg, Ghatkopar (W), Mumbai- 400086.	बनाम/ Vs.	ACIT, Circle-27(1) Tower No.6, 4 th Floor, Vashi Railway station Commercial Complex, Vashi, Navi Mumbai-400703.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ANGPK4952N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri Bharat Andhle (DR)

सुनवाई की तारीख / Date of Hearing: 29/06/2021

घोषणा की तारीख /Date of Pronouncement: 07/07/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 10.01.2019 passed by the Commissioner of Income Tax (Appeals) -25, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2011-12.

2. The assessee has raised the following grounds: -

“1. On the facts and the circumstances of the case and law, the learned Commissioner of Income Tax (A) erred in directing the Assessing Officer to reassess the net commission income of the appellant @1.25% plus TDS of the gross value of building material bills as against 0.75% as admitted by the appellant.



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2. On the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (A) erred in directing the AO to adopt percentages on the activities carried out by the appellant, and such percentages are excessive and not prevalent in the market as stated in the assessment order to be the rate being charged in market for such transactions.

3. On the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (A) erred in directing the Assessing Officer to reassess the net commission income of the appellant @ 1% plus TDS of the gross value of transportation bills as against 0.50% as admitted by the appellant.

4. On the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (A) erred in adopting the rate of commission on gross value of building material @1.25% and gross value transportation @1% stating that appellant was not able to prove handing over the cash to LI 19 parties from whom cheques were received! Without appreciating the fact that neither the issue of handing over the cash to the parties was raised by the Assessing Officer in the course of assessment proceedings nor the same has been discussed in the assessment order.

5. On the facts and the circumstances of the case and, in law, the learned Commissioner of Income Tax (A); failed to appreciate that appellant has during the course of appellate proceedings, explained that she was maintaining a diary wherein entries of cash returned by her to the parties during the year under reference have been duly recorded.

6. On the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (A) failed to appreciate that in the earlier order of CIT(A) dated 08.09.2015 against the original assessment order



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dated 25.02.2014 rate of commission on transportation bills was determined. @0.5% of the gross value of transaction.

7. The appellant craves leave to add, amend, alter) modify, delete and/or change all or any above grounds on or before the date of hearing.”

3. The brief facts of the case are that the assessee filed its return of income on 29.09.2011 declaring total income to the tune of Rs.1,53,030/- for the A.Y.2011-12. The assessment was completed on 25.02.2014 determining total income to the tune of Rs.4,75,920/- u/s 143(3) of the Act. At the time of assessment, the assessee filed an affidavit that she was merely providing accommodation entries and not doing any genuine business. The assessee was earning commission of 0.5% on transport bills and 0.75% building material bills. The AO held that the rate of commission @ 2% on supply of material and @ 0.50 on the income of Transportation Charges. The assessee filed an appeal before the CIT(A) who restricted the addition @ 2% on income on supply of material and 0.50% upon the income of transportation charges vide order dated 08.09.2015. The assessee filed an appeal before the Hon'ble ITAT and the Hon'ble ITAT remanded the issue before the AO to justify the bills and assess the income on supply of material @0.75%. Thereafter, the AO further assessed the income on supply of material @ 2% and income @ 2% on transportation charges. Subsequently on appeal, the CIT(A) restricted the income @ 1.25% income on supply of material and @ 1% upon the income of transport charges. The assessee was not satisfied, therefore, the assessee has filed the present appeal before us.

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4. Under these issues the assessee has challenged the addition @ 1.25% upon the income on supply of material. It is the second round of appeal, the AO estimated the commission @ 2% whereas CIT(A) confirmed the commission income @ 1.25%. The Hon'ble ITAT has already directed to assess the income @ 0.75% after due verification of bills and cheques vide order dated 28.11.2016. The assessment order speaks about the non-furnishing of proper evidence. However, at the time of filing the present appeal, there is nothing on record to which it can be assumed that the rate of commission should be @ 1.25%. This matter has already been considered by the Hon'ble ITAT and the Hon'ble ITAT has already directed the AO to assess the income @ 0.75% after due verification of bills and cheques. We nowhere want to further re-assess the income on supply of material. By relying upon the order of the Hon'ble ITAT dated 28.11.2016, we restrict the commission income @ 0.75% on supply of material. Accordingly, these issues are decided in favour of the assessee against the revenue.

ISSUE Nos. 3 & 4

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. We find that the CIT(A) has passed the order dated 08.09.2015 in which the income @ 0.5% was estimated on transportation charges and the said finding has accepted by assessee. The assessee did not appeal before the Hon'ble ITAT on these grounds. However, the Hon'ble ITAT remanded the issue of commission income on supply of material before the AO. But the AO re-assess the income on supply of material @ 2% and income on transportation charges @ 2%. The



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issue of transportation charges was not remanded to the AO. But the AO re-assessed the income on transport charges @ 2% which is not justifiable. The CIT(A) has assessed the income on transportation charges @ 0.50% which has been accepted by the assessee. Keeping in view of the all the facts and circumstances, we are of the view that the income @ 0.50% on transport charges has attained the finality vide order dated 08.09.2015 passed by the CIT(A) which is not liable to be varied/changed. Accordingly, we restrict the addition @ 0.50% upon the commission income on transportation charges. We decide these issues in favour of the assessee against the revenue.

9. In the result, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in the open court on 07/07/2021

Sd/-

(PRAMOD KUMAR)

उपाध्यक्ष / VICE PRESIDENT

मुंबई Mumbai; दिनांक Dated : 07/07/2021

Vijay Pal Singh/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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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**