

THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 5118/Mum/2016 (Assessment Year 2007-08)

I.T.A. No. 5120/Mum/2016 (Assessment Year 2009-10)

DCIT, CC-5(3) (erstwhile DCIT,CC-36) Room No. 1906 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai-400 021. (Appellant)	Vs.	Smt. Jyoti A. Kulkarni Gharkul, 28/B, Ganesh Krupa Society, off Paud Road, Kothrud Pune-411 038.  PAN : ABTPK9281B (Respondent)
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Assessee by	None
Department by	Shri Achal Sharma
Date of Hearing	09.02.2022
Date of Pronouncement	16.02.2022

ORDER

Per Bench :-

These are appeals by the Revenue directed against the order of learned CIT(A) for A.Y. 2007-08 & 2009-10.

2. The grounds of appeal for A.Y. 2007-08 read as under :

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in granting relief of Rs 88,14,830/- out of the entire commission payment of Rs 2,60,20,002/- disallowed by AO without taking into consideration the fact that the agreement entered in to by the assessee with these parties is 'silent' on the quantum of 'remuneration' to be paid to these said parties and there is neither clarification regarding the roles and responsibilities of the said parties nor any clarity on the rate of commission paid ?".

2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in giving relief of Rs 88,14,830/- without appreciating the fact that Ld. CIT(A) has in his order also held that the assessee furnished invalid affidavits in support of her claim and the same are not in conformity with the requirements of order XIX Rule 3 of code of civil Procedure and hence do not hold any probative value and therefore, do not satisfy the claimed transaction?"

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in giving relief of Rs 88,14,830/- without taking into consideration the fact that no concrete or cogent evidence has been produced to demonstrate that the rate of commission prevailing in the market exceeded 25% of the purchase cost is reasonable and within the limit of commercial expediency ?"
3. The grounds of appeal for A.Y. 2009-10 read as under :
- 1 . "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in granting relief of Rs 78,37,617/- out of the entire commission payment of Rs 4,88,09,303/-disallowed by AO without taking into consideration the fact that the agreement entered in to by the assessee with these parties is 'silent' on the quantum of 'remuneration' to be paid to these said parties and there is neither clarification regarding the roles and responsibilities of the said parties nor any clarity on the rate of commission paid ?".
- 1 . "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in giving relief of Rs 78,37,6 17 /-without appreciating the fact that Ld. CIT(A) has in his order also held that the assessee furnished invalid affidavits in support of her claim and the same are not in conformity with the requirements of order XIX Rule 3 of code of civil Procedure and hence do not hold any probative value and hence do not hold any probative value and therefore, do not satisfy the claimed transaction?"
2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in giving relief of Rs 78,37,617/-without taking into consideration the fact that no concrete or cogent evidence has been produced to demonstrate that the rate of commission prevailing in the market exceeded 25% of the purchase cost is reasonable and within the limit of commercial expediency ?"
4. At the outset it is noted that that the tax effect in these case are below the limit of Rs. 50,00,000/- fixed by CBDT vide Circular No. 17/2019 dated 8/8/2019 for filing appeal before the ITAT. Hence, these appeals by the revenue are not maintainable.
5. Learned Departmental Representative could not dispute the above proposition. He could not point out that the appeals fall in the exceptions carved in said circular.

6. Accordingly these appeals by the Revenue are dismissed as not maintainable due to low tax effect.

Order pronounced in the open court on 16.2.2022.

Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 16/02/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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