

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.1611/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2007-08)

M/s. Kesaria Marketing (P.) Ltd. No.31, Kent Apartments, 26, Ritherdon Road, Vepary, Chennai - 600 007.	बनाम/ Vs.	DCIT Company Circle-II(4), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAACK-1447-N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri D. Anand (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri P. Sajit Kumar (JCIT) –Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	23-03-2022
घोषणा की तारीख / Date of Pronouncement	:	04-04-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2007-08 arises out of the order of learned Commissioner of Income Tax (Appeals)-8, Chennai [CIT(A)] dated 17.12.2018 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 147 of the Act on 29.11.2010.

2. The Ld. AR, at the outset, drawing attention to the Writ order passed by Hon'ble High Court of Madras in the case of **Shri Umed C. Mehta V/s ITSC / CIT (WP No.23631 of 2009 & MP No.1 of 2009 & 1 of 2010 dated 09.08.2019)**, submitted that the matter may be remanded back to the file of Ld. AO considering the Income Tax Settlement application filed by Shri Umed C. Mehta. The Ld. AR submitted that Shri Umed C. Mehta has owned up the additions of the group which is evident from the counter-affidavit filed by the revenue during Writ proceedings. The Ld. AR submitted that adding the same income in the hands of the assessee would amount to double addition. The Ld. AR relied on the order of Tribunal in the case of **Smt. Anju Jitendra Kothari V/s ACIT (ITA No.1210/Chny/2018 dated 14.02.2022)** wherein the matter was remanded back under similar factual matrix.

3. Having heard rival submissions and after going through the orders as cited before us, our adjudication would be as given in succeeding paragraphs.

4. We find that the assessee has been assessed u/s 143(3) r.w.s. 147 on 29.11.2010. The assessee is stated to be engaged in mining activity. However, pursuant to survey action on assessee, it transpired that the assessee did not carry out any mining activity. Accordingly, entire expenditure of Rs.116.40 Lacs as claimed by the assessee for mining activities was disallowed and the commission income and interest receipts were brought to tax in its entirety. Shri Umed C. Mehta is stated to be authorized signatory of Smt. Prema U. Mehta, Director of the assessee company. During survey, Shri Umed C. Mehta admitted that he had floated many entities and was getting some receipts from M/s Kanwarlal & Sons for liasioning to introduce bogus credits and the

income received from them was also inflated and to accommodate them, the non-existent mining business was brought into books to pay the tax on the actual income as received from Kawarlal & sons.

The stand of Ld. AO, upon confirmation by Ld. CIT(A), is in further appeal before us.

5. We find that Shri Umed C. Mehta has preferred an Income Tax Settlement application before Ld. Income Tax Settlement Commission (ITSC). The undisclosed income was stated to be commission earned from accommodation transaction with Mr. Parasmal Jain of M/s Kawarlal Group. However, the application was rejected on 23.10.2019 which was challenged by the assessee in Writ Petition (supra). Allowing the petition, Hon'ble Court has noted that the transactions pertaining to the undisclosed income of the petitioner is also the subject matter of the Settlement Application in the case of Parasmal Jain. If that being so, there is a possibility that such a subsequent consideration by the settlement commission could be deemed as double taxation, in case the order dated 23.10.19 is upheld. It was also noted that the order passed by ITSC in Parasmal Jain has become final and the double taxation for one transaction may occur. Therefore, order dated 23.10.2019 rejecting the settlement application of Shri Umed C. Mehta was set aside and the matter was remanded back to ITSC for fresh consideration and to pass fresh orders in accordance with the law.

We also find that during the course of Writ Petition, a counter-affidavit has been filed by the revenue. Upon perusal of the same, it could be gathered that Shri Umed C. Mehta has owned up the entire responsibility to have routed the accommodation entries and transactions in various

books and accounts of family group concerns. The assessee is one of such group entity.

6. Thus, the outcome of settlement application of Shri Umed C. Mehta would have material bearing on the additions made in the case of the assessee since the same may be subject matter of settlement application filed by Shri Umed C. Mehta. Therefore, accepting the submissions of the assessee, we set aside the impugned order and remand the matter back to the file of Ld. AO to reframe the assessment in the light of outcome of settlement application filed by the assessee group. All the issues are kept open.

7. The appeal stand allowed for statistical purposes in terms of our above order.

Order pronounced on 04th April, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 04-04-2022
EDN/-

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

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF