

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI

**Before Shri Sanjay Garg, Judicial Member &
Shri Om Prakash Kant, Accountant Member**

I.T.A. Nos.1446&1447/Mum/2021
Assessment Years: 2016-17 & 2017-18

Shri Janil Prakash Shah.....Appellant
51/10, Manorath Nikunj,
R A Kidwai Road,
Matunga-400019.
[PAN:CKNPS0085G]

vs.

DCIT, Central Circle-8(4),Mumbai.....Respondent

Appearances by:

None appeared on behalf of the appellant.

Shri Achal Sharma, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 17, 2022

Date of pronouncing the order : May 17, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The captioned appeals have been preferred by the assessee against the separate orders dated 05.08.2021 & 20.07.2021 of the Commissioner of Income Tax (Appeals)-50, Mumbai [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') respectively.

2. No one has put in appearance on behalf of the assessee. However, an adjournment application has been moved stating therein that the counsel for the assessee is not available. However, after going through the records and hearing the Id. DR, we find that there is small issue involved which needs verification at the end of the Assessing Officer, we, therefore, proceed to adjudicate the appeals after hearing the Id. DR.

3. Since the common issues are involved in both the appeals hence, the same are taken together for disposal by this common order. For the sake of convenience ITA No.1446/Mum/2021 is taken as lead case. The assessee in this appeal has taken the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in wrongly upholding addition of Rs.7,66,288/- made by the Ld AO on account of

mismatch in commission income offered in return of income to that of appearing in 26AS without verifying the details submitted to him during the course of appellate proceedings and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.

2. On the facts and in the circumstances of the case and in law the Hon'ble CIT(A) erred in wrongly upholding the addition of Rs.39,696/- made by the Ld Assessing Officer on account of interest on IT Refund without verifying that the same was already offered in next assessment year and the reason assigned for doing so are wrong and contrary to the provision of Income Tax Act and rules made there under.

3. Your appellant craves leave to add to, amend alter or delete any of the above grounds of appeal on or before the date of hearing.”

4. Ground No.1 – Vide Ground No.1, the assessee has agitated against the action of the ld. CIT(A) in upholding the addition of Rs.7,66,288/- made by the Assessing Officer on account of mismatch in commission income offered in return of income as compared to that appeared in 26AS form.

At the outset, the ld. DR has invited our attention to para 6.7.4 of the impugned order of the ld. CIT(A) wherein the ld. CIT(A) has made a categorical observation that to reconcile the amount of commission income and as appeared in Form 26AS as compared to the income returned by the assessee, the assessee submitted a chart listing out dates, names of parties, amount of gross total commission, gross amounts, service tax levied on the same, Swaccha Bharat Cess, Krishi Kalyan Cess etc. However, the ld. CIT(A) failed to appreciate the aforesaid above evidences observing that the assessee was required to produce further documents such as copies of the bills and other supporting evidences. Under the circumstances, in our view, the principle of natural justice will be well-served if the assessee is given an opportunity to reconcile the difference in amounts before the Assessing Officer. The issue is accordingly restored to the file of the Assessing Officer with a direction that the Assessing Officer will consider the evidences, details and statements etc. furnished by the assessee for the purpose of reconciliation as against appearing in Form 26AS and thereafter to decide the issue afresh.

5. Ground No.2 – Vide Ground No.2 the assessee aggrieved by the action of the ld. CIT(A) in confirming the addition of Rs.36,696/- made by the Assessing Officer on account of interest on Income Tax Refund.

The case of the assessee is that the assessee has already offered the said interest receipt as his income in the next assessment year. This issue is also accordingly restored to the file of the Assessing Officer to verify the above contention of the assessee and if it is found that the assessee has already offered the aforesaid amount to taxation then no addition will be warranted.

6. Ground No.3 is general in nature and does not require any adjudication.

7. In view of this, the appeal of the assessee is treated as allowed for statistical purposes.

ITA No.1447/Mum/2021 for Assessment Year 2017-18 – The only issue involved in this appeal is relating to the difference/mismatch regarding commission income offered by the assessee in its income-tax return as compared to the figure as appearing in Form 26AS.

In view of our observations made above on the identical issue for Assessment Year 2016-17, this issue is also restored to the file of the Assessing Officer to consider and verify the reconciliation statement as per directions given above.

This appeal is also treated as allowed for statistical purposes.

8. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

Mumbai, the 17th May, 2022.

Sd/-
[Om Prakash Kant]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 17.05.2022.

RS

Copy of the order forwarded to:

1. Shri Janil Prakash Shah
2. DCIT, Central Circle-8(4), Mumbai
3. CIT(A)-
4. CIT- ,

5. CIT(DR),

//True copy//

By order

Assistant Registrar,
Mumbai Benches

Sl. No.	Description	Date
1	Prepared by BRN/dictation pad enclosed	17.05.22
2	Draft dictated on	17.05.22
3	Draft placed before author	17.05.22
4	Draft proposed & placed before the second Member	
5	Draft discussed/approved by second Member	
6	Approved draft comes to the Sr.PS/PS	17.05.22
7	Kept for pronouncement on	
8	File sent to the Bench Clerk	20.05.22
9	Date on which file goes to the Head Clerk	
10	Date of Dispatch of order	