

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 69/MUM/2022
Assessment Year: 2005-06
&
ITA No. 70/MUM/2022
Assessment Year: 2008-09
&
ITA No. 71/MUM/2022
Assessment Year: 2009-10
&
ITA No. 72/MUM/2022
Assessment Year: 2010-11**

M/s Alag Securities Pvt. Ltd.,
Block H, Shri Sadashiv CHS
Ltd., 6th Road, Santacruz East,
Mumbai-400055.

PAN No. AAICA 0101 F

Appellant

The CIT(A)-22,
R. No. 513, 5th floor,
Earnest House, Nairman Point,
Mumbai-400021.

Vs.

Respondent

Assessee by : Mr. Mitesh Choksi, AR
Revenue by : Mr. Manoj Sinha, DR

Date of Hearing : 10/08/2022
Date of pronouncement : 26/08/2022

ORDER

PER OM PRAKASH KANT, AM

The captioned appeals by the assessee against separate orders all dated 29.11.2021, passed by the National Faceless Appeals



Centre, Delhi (in short 'the Ld. First Appellate Authority') for assessment year 2005-06, 2008-09, 2009-10 and 2010-11 respectively. As common issues-in-dispute have been raised in these appeals, therefore, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. Firstly, we are taking up the appeal of the assessee for assessment year 2005-06. The grounds raised by the assessee are reproduced as under:

1. *The learned Assessing Officer and the learned CIT (A) has erred in law and in facts in determining the income of the appellant at ₹1,12,12,150/-.*
2. *The learned Assessing Officer and the learned CIT (A) has erred in law and in facts in passing the order without complying with the principals of natural justice.*
3. *The learned Assessing Officer and the learned (A) has erred in law and in facts ignoring the Bombay High Court judgments which has been decided in favour of the applicant and according to the Bombay High Court judgments the income should be taken @0.15% of the turnover and 50% expenses should be allowed of the expenses claimed against the income.*



4. *The learned Assessing Officer and the learned CIT (A) has erred in law and in facts in applying 2% income on entire bank deposit as against 0.15% offered by the appellant.*
5. *The learned Assessing Officer and the learned CIT (A) has erred in law and in facts by ignoring the direction given by Honorable ITAT that income should be calculated @0.15% of the net turnover (after deducting transfer entries).*
6. *The learned Assessing Officer and the learned CIT (A) has erred in law and in facts in estimating the income on gross receipts without reducing the transfer entries amount in bank account on which no income is earned. It is a transfer to the sister concerns and entities under the same management.*
7. *The learned Assessing Officer and the learned CIT (A) has erred in law and in facts by ignoring the direction given by ITAT that 50% expenses claimed should be allowed against income estimated @0.15%.*
8. *The appellant craves leave to add to, alter, amend and/ or delete in all the foregoing grounds of appeal.*

3. Briefly stated, facts of the case are that consequent to search action u/s 132(1) of the Act carried out at the premises of 'Mahasagar Group' of cases [re-named as 'Alag Securities Pvt. Ltd.'], assessment u/s 143(3) r.w.s. 153A was passed on 08.12.2011 wherein the Assessing Officer assessed the total income at ₹1,12,12,150/- as against Nil income declared by the assessee. In the



course of search, it was found that the companies of 'Mahasagar Group' of cases were involved in providing accommodation entries by way of cheque against receipt of cash from the customers seeking cheques. The Assessing Officer estimated income from commission @ 2% for issuing accommodation entries on the sum of the 'credit entries' appearing in the bank accounts of the assessee. Against assessment order passed, the Ld. First Appellate Authority confirmed the additions by way of a combined order dated 31.07.2012 for assessment year 2004-05 to assessment year 2010-11. On further appeal by the assessee, the Tribunal by way of order dated 07.07.2017 in ITA No. 6049 to 6055/M/2012 restored the matter back to the file of the Assessing Officer for providing opportunity to the assessee, following the order of the Tribunal in the case of Jayesh K. Sampat v. DCIT [ITA Nos. 1000 to 1003 & 1005/M/2013 order dated 28.10.2016]. Consequent to the direction of the Tribunal (supra), the Assessing Officer provided opportunity



to the assessee, however, relying on the statement and the evidences found during the course of search, he in impugned assessment order, upheld the commission @ 2% which was estimated by the Assessing Officer in assessment order dated 08.12.2011. The Assessing Officer is of the view that order of the Tribunal in other group cases of 'Mahasagar Securities' wherein commission income has been estimated @ 0.15%, were not acceptable because the Department had preferred appeal against those orders before the Hon'ble Bombay High Court. Further, the Assessing Officer also disallowed the claim of the assessee seeking exclusion of certain transfer entries in the bank account for the purpose of invoking commission @ 2%. According to the Assessing Officer, no evidence in support of the claim was filed. Further, the Assessing Officer also rejected the claim for allowance of the 50% of the expenses as held in other group cases. On further appeal, the Ld.



CIT(A) rejected the contention of the assessee and dismissed the appeal.

4. Aggrieved, the assessee is before the Tribunal raising the grounds as reproduced above.

5. The ground No. 1 & 2 are general in nature and therefore, we are not required to adjudicate the same. The ground No. 3 to 5 are in respect of estimation of commission income on the receipts debited in bank account of the assessee. The contention of the assessee is that Hon'ble Bombay High Court for assessment year 2003-04 has restricted the commission income @ 0.15% of the turnover and therefore, facts of assessment year under consideration being identical to assessment year 2003-04, the rate of commission should be applied @ 0.15% on the turnover.

6. On the other hand, the Ld. DR relied on the order of the lower authorities.



7. We have heard the rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. The issue-in-dispute in the case is rate of commission to be applied on the accommodation entry bills issued by the assessee. The Assessing Officer has applied commission income @ 2% on the deposits found in the bank accounts. Whereas, the assessee is seeking commission income @ 0.15% in view of decisions in other group cases and including decision of the Hon'ble Bombay High Court in ITA No. 1512 of 2017 in the case of the assessee for assessment year 2003-04. We find that the Assessing Officer in the impugned order has estimated the rate of 2% for commission income mainly on the ground that decision of the Tribunal in group cases have not been accepted by the Department and appeals have been preferred to the Hon'ble Bombay High Court in other group cases. But we find that no stay has been obtained by the Department on the operation of the order of the Tribunals in other cases including the finding of



Hon'ble High Court in the case of the assessee for assessment year 2003-04 wherein @ 0.15% of the commission income has been upheld. The relevant finding of the Hon'ble Bombay High Court is reproduced as under:

"18. Since Tribunal had relied upon its own decision in the case of M/s. Goldstar Finvest Pvt. Ltd., it would be useful to examine the same. In M/s. Goldstar Finvest Pvt. Ltd. which pertained to assessment year 2003-04, Tribunal noted that the same issue had arisen before it in the assessee's i.e., M/s. Goldstar Finvest Pvt. Ltd., own case for the assessment year 2002-03. In that case, Tribunal had observed that in these type of activities, brokers are only concerned with their commission on the value of transactions. Therefore, Tribunal posed the question to itself as to what would be the reasonable percentage of commission on the total turnover. Tribunal observed that in all similar cases the average percentage of commission was between 0.15% to 0.25%. In the cases of Palresha and Company and Kiran and Company, Tribunal had considered 0.1% as reasonable percentage of commission to be earned on such turnover. Assessee itself had offered the percentage of commission at 0.15% which was more than the percentage of commission considered to be reasonable by the Tribunal in the above two cases having similar type of transactions. Tribunal held that the action of the Assessing Officer in treating the entire deposits as unexplained cash credits could not be accepted in the light of assessment orders in the case of the beneficiaries and also in the light of the fact that the assessee was only concerned with the commission



earned on providing accommodation entries. Therefore, Tribunal took the view that since the assessee had itself declared the commission on turnover at 0.15% which was more than the percentage considered to be reasonable by the Tribunal, Minal Parab ITXA1512_17.odt the same should be accepted. Accordingly, Tribunal accepted the commission declared by the assessee i.e., M/s. Goldstar Finvest Pvt. Ltd., and set aside the order of CIT (A). Tribunal further noticed that the above stand had been consistently followed by the Tribunal in various orders. No distinguishing feature could be brought on record by the Revenue. Therefore, Tribunal following the above orders including the order in the case of the assessee i.e., M/s. Goldstar Finvest Pvt. Ltd. in the immediately preceding year had upheld the order of the CIT (A)."

7.1 Accordingly, respectfully following the finding of the Hon'ble Bombay High Court, the Assessing Officer is directed to restrict the commission income @ 0.15% of the total turnover of the assessee.

8. The ground No. 6 of the appeal of the assessee is in respect of reducing the transfer entries amount in bank account out of gross receipts for estimating the commission income. We find that during the assessment proceedings, the Assessing Officer asked the assessee to provide necessary evidence in support of the claim that no commission was charged in case of said transfer entries.



circumstances, the claim of the assessee cannot be accepted the ground raised by the assessee is accordingly dismissed.

9. In ground No. 7, the assessee is seeking for allowing 50% of the expenses claimed by the assessee in the return of income. According to the Assessing Officer, the assessee has also filed Nil return of income and claimed expenses against the revenue shown from the business income. According to the Assessing Officer, commission income has been estimated separately and therefore expenses claimed against the business income cannot be allowed against the commission income. According to him, the commission income was estimated on net basis and therefore, further allowing the business expenses would result income Nil income or little income in the hands of the assessee. The relevant findings of the Assessing Officer are reproduced as under:

“5.3 In respect of expenses to the tune of Rs. 872,664/- claimed against the commission income as assessed in assessment order, the assessee company has filed only a list of such expenses. As reproduced herein



above the director of assessee company Mr. Mukesh Choksi was asked to submit evidences in support of such claims and in response only a chart giving break up of such expenses was submitted. Further, it was stated by the assessee that all the expenses were claimed in the original assessment proceedings and therefore should be allowed. In support of such argument copy of letters filed before the DCIT Central Circle 46, Mumbai in the block assessment proceedings were submitted. On perusal of such letters it is noticed that in such letters submission of details of expenses claimed in return of income are made and it is also written that ledger extracts and copies of vouchers for expenses claimed in return are submitted. The claim so made by assessee company is considered, however, such claim is found to be not acceptable as the said letters are filed in original scrutiny assessments submitting details & evidences of expenses claimed in return of income. As per the assessment order in response to Notice u/s. 153A assessee company filed return of income declaring NIL income i.e. all the expenses claimed in the return were set off against income offered in return of income and thereafter NIL income was filed. As against Nil income returned by the assessee commission income is assessed by the AO taking 2% of hawala entries. Thus the expenses claimed in the set aside proceedings are over and above the expenses claimed in return of income filed in response to Notice u/s. 153A since the said expenses are claimed against commission income worked out by the AO in the assessment order. This fact is also evident from the computation of total income made in the original assessment orders wherein the income of the assessee is assessed at only commission income and no other addition or deduction of income or expenses is made therein. Further, in the assessment orders commission income was worked out by the AO on ad hock basis as Net Commission i.e. after considering all incomes and expenses treated as



added/allowed and therefore the claim of assessee company to allow expenses against such commission income is not acceptable. On such facts of the case there is no scope for allowing further expenses as claimed by the assessee company and if, now the claim of the assessee company for expenses over and above claimed in the return of income is allowed against such net commission income, it will result in absurd results being losses to the assessee company as demonstrated hereunder on the basis of claims made in set aside proceedings:

Particulars	Amount (₹)
Total receipts	56,06,07,314/-
Less : transfer entries	24,16,09,563/-
Less : reverser payments/cheque returned	39,38,493/-
Gross receipts	31,50,59,258/-
Taxable Commission income @ 0.15% on gross receipts	4,72,589/-
Add : Income from Business/Other income	--
Total Income (A)	472,589/-
Expenses claimed	872,664/-
Taxable Income (A-B)	(-) 400,075/-

5.4 As shown above if claim of expenses so made by the assessee is genuine and is actually incurred over and above the expenses claimed in the return of income, the result will be loss of Rs. (-)400,075/-. In other words the assessee company forgoes its claim to the extent of 50% only in order to show some income and not losses which would otherwise create suspicion and therefore such claim of expenses are not allowable. As discussed above, the claim for allowance of further expenses against commission income is not acceptable and the income of the assessee is computed as per the original assessment order dated 08.12.2011."

9.1 However, we find that the Tribunal in the case of M/s Goldstar Finvest Private Limited v. DCIT [ITA No. 6114 to 6120/M/2012]



which is a group concern of the assessee group has allowed the claim of 50% expenses following finding in other group cases. The relevant part of the decision in the case of Goldstar Finvest Pvt. Ltd. (supra) reproduced as under:

"4. In all these cases of the Group concerns of Sri Mukesh Chowksi including assessee, the assessments have been made in the wake of search and seizure action under section 132(1) dated 25.11.2009 carried out in the cases of M/s Mahavir Securities Private Limited; M/s Mihir Agencies P. Ltd; M/s Alliance Intermediaries and Network P Ltd and other Group companies including assessee which was managed by Shri Mukesh Choksi himself and his family members. In all the Group concerns as well as in the case of the assessee, the main issues involved were determination of commission #ecome or net profit for providing bogus share trading entries and other accommodation entries. Department has held that the commission/net profit from such bogus entries should be taken at 2%. We find that, in the various Tribunal orders, which have been referred to above as well as in the case of the assessee. itself, the net profit rate of 0.15% have been accepted. Not only that 50% of the expenses claimed have also accepted, in other words, only balance claim of expenditure of 50% have been confirmed. The relevant observation of the Tribunal in the case of M/s Mihir Agencies Pvt. Ltd reads as under:

"6. After considering the relevant finding given in the impugned orders as well as submission made by the parties, we find that the assessee is one of the group concerns of Mukesh Chokshi Group. A



search and seizure action u/s 132(1) was conducted in the case of the assessee along with the other group companies on 25.11.2009 and on subsequent dates, wherein it was found that all these group companies belonging to Shri Mukesh Chokshi and his family members were involved in accommodation entries for various kinds of activities, has applied a commission income @ 2%. Before the CIT(A), various appellate orders were relied upon which has been noted by the CIT(A) in the impugned order at para 2.1. The Ld. CIT(A) after referring to the various material found at the time of search of Shir Mukesh Chokshi and his employees and the statements wherein various rates of commission charged have been stated ranging from 0.15% to 2% on different kind of accommodation entries. Accordingly, Ld. CIT(A) updated the application of net profit rate of 2% as applied by the AO.

7. *We find that in the case of Gold Star Finvest Ltd, which is a sister concern of the assessee, on similar facts for the assessment year 2003-04 and 2004-05, the Tribunal after referring to various decisions have upheld the percentage of commission on net profit @ 0.15% which was quite consistent with the statement recorded at the time of search. Accordingly, following the judicial precedence in the case of the assessee's sister concern (supra), we uphold the rate of commission / rate of net profit from such activities at 0.15%. Accordingly, ground no. 4 & 5 as raised by the assessee are allowed.*

8. *As regards the disallowance of business expenses, the Ld. CIT(A) has directed the AO not to allow any expenses against the net income of 2% determined. We find that the Tribunal in the case of Gold Star Finvest Ltd have disallowed only 50% of the business expenses. Accordingly, following the judicial precedence, which is applicable mutatis mutandis in the case of the assessee also, we direct the AO to*



allow the business expenses to the extent of 50%. Accordingly, ground no.8 is treated as partly allowed.

9. *In the result, appeal of the assessee is partly allowed"*

In assessee's own case also, this issue has been decided. in the following manner:

"4. On the other hand, the ld. DR relied upon the order of AO. Nothing has been brought on record by him to distinguish the orders relied upon by the ld. Counsel.

5. We have gone through the orders of lower authorities and the orders of the co-ordinate bench of Tribunal in assessee's own case and other orders relied upon by the assessee. It is noted by us that identical issue had came up before the Tribunal in assessee's own case for the assessment year 2002-03. The relevant observations from the Tribunal's order are reproduced below:

"12. Having, carefully examined the various orders in the case of different assesseees' it has become amply clear that in these types of activities, brokers are only concerned with their commission on the value of transactions. Now the question comes what would be the reasonable percentage to the commission on the total turnover? The assessee has also made out a case that the customers do not come directly to him and they come through a sub- broker who also charges a particular share of commission. In all the judgments what has been stated is that an average percentage of commission is between 0.15% to 0.25%. In the case of Palresha & Co. and Kiran & Co (surpa), the Tribunal has considered reasonableness of percentage of commission to be earned on turnover was at 0.1%. The assessee himself has offered



the percentage of commission at 0.15%, which is more than the percentage of commission considered to be reasonable by the Tribunal in the case of Palresha & Co and Kiran & Co (supra) in similar type of transactions. The theory of Assessing Officer to treat the entire deposit as unexplained cash credits, cannot be accepted in the light of assessment orders in the case of beneficiaries and also in the light of the fact that assessee is only concerned with the commission earned on providing accommodation entries. We, therefore, of the view that since the assessee itself has declared the commission on turnover at 0.15% which is more than the percentage considered to be reasonable by the Tribunal in the case of Palresha & Co and Kiran & Co (supra), the same should be accepted. We, accordingly, accept the commission declared by the assessee and set aside the order of the CIT (A) in this regard."

6. It is further noticed by us that this stand has been constantly accepted by the Tribunal in various orders, details of which have been given by the Id. Counsel, as mentioned above. We have gone through the orders as enclosed in the paper book filed by the assessee and find that the Id. AR has correctly stated that this issue has been unanimously accepted by the Tribunal in various cases including the case of assessee. Nothing has been brought on record by the Id. DR to distinguish these cases. Therefore, respectfully following the orders of the Tribunal including the order of Tribunal in assessee's own case in the immediately preceding year, we find that the Id. CIT(A) has rightly deleted the addition, no interference is called for in the order of Id. CIT(A), therefore, the same is upheld. Grounds No.1 and 2 taken by the Revenue stand dismissed".

Thus, following the judicial precedence in cases of various Groups concerns as well as that of assessee decided by the Tribunal, we hold



that net profit rate / commission should be taken at 0.15% and the expenditure claimed should be allowed to the extent of 50% from such income. Accordingly, these two issues are decided in favour of the assessee. As regards the other grounds taken, the same have not been argued before us on the ground that they will become purely academic. Accordingly, the appeal of the assessee is treated as allowed. As stated in the operating part of the order that similar issues are involved in all the appeals, therefore, this finding will apply mutatis mutandis in all the impugned years. Thus, all the appeals filed by the assessee are treated as allowed.”

10. Since, the facts and circumstances of the assessee are identical in the other group cases wherein also addition for commission income from accommodation entry income has been assessed therefore, respectfully following the finding of the Tribunal (supra), we direct the Assessing Officer to allow 50% of the expenses against the commission income. The ground of the appeal of the assessee is accordingly allowed.

11. In the result, the appeal of the assessee of assessment year 2005-06 is partly allowed.



12. The ground raised in the assessment years 2008-09 to 2010-11 are identical to grounds raised in assessment year 2005-06, therefore, following our finding in assessment year 2005-06. The grounds of the assessee in AY 2008-09 to 2010-11 are decided *mutatis mutandis*.

13. In the result, these four appeals of the assessee are accordingly allowed partly.

Order pronounced in the open Court in 26/08/2022.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 26/08/2022
Rahul Sharma, Sr. P.S.

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,

(Sr. Private Secretary)
ITAT, Mumbai