

**SIN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2994/Mum/2017  
(A.Y. 2012-13)**

The Income Tax Officer- 11(1)(2), Room No. 202, Aayakar Bhavan, M.K. Marg, Mumbai – 400 020	Vs.	M/s Realstone Exports Limited, C-204, 2 <sup>nd</sup> Floor, Vishal Apartments, Taki Road, Tulij, Nallasopara (East) Thane, Maharashtra- 401209
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACCR8504K		
Appellant	..	Respondent

Appellant by :	Smt. Mahita Nair
Respondent by :	None

Date of Hearing	04.08.2022
Date of Pronouncement	25.08.2022

आदेश / O R D E R

**Per Amarjit Singh (AM):**

The present appeal of the revenue is directed against the order of the Id. CIT(A)-18, Mumbai which in turn arises from the order passed by the A.O. u/s 144 for A.Y. 2012-13. The revenue has raised the following grounds before us:

- “1. Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in restricting the addition made on account of unexplained cash credits u/s 68 of the Income-tax Act, 1961 to 0 15% without appreciating the fact that the assessee had failed to furnish

*satisfactory explanation with regard to the identity of the parties, sources thereof, and genuineness of the transactions.*

2. *Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in restricting the addition to the commission income at 0.15% without considering that the material found during the course of search clearly established that the net commission charged by the assessee group of companies varied between 1.5% and 3.6%.*
3. *Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) was correct in relying on the decision in the case of Gold Star Finvest Pvt. Ltd. which has not been accepted by the Department on merits for assessment year 2003-04 and is pending before the High Court for adjudication.*
4. *The appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the AO be restored.*
5. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”*

2. This case was listed for hearing for more than 14 times but no one has attended from the side of the assessee, therefore, the case is adjudicated after hearing the ld. D.R. and perusal of material on record as below.

3. The return of income was filed on 28.09.2012 declaring total income at Rs.16,49,590/-. Notice u/s 143(2) of the Act was issued on 06.08.2013. The assessment was finalized on 16.03.2015 assessing the total income at Rs.99,65,515/-. The A.O stated that during the course of assessment proceedings for assessment year 2010-11 information was received from the Sales Tax Department that assessee had not actually purchases and sold any goods and the purchase and sale transaction shown by the assessee were actually accommodation entries pertaining to various clients. The A.O also stated that during the course of assessment proceedings the assessee had failed to substantiate that it had maintained any quantitative detail of commodities purchased and sold during the year under consideration. The A.O further stated that in

the case of the assessee company in the assessment year 2010-11 on the basis of information received from Sales Tax Department purchase/sales transactions claimed by the assessee were held as non-genuine. On similar line during the year under consideration the A.O has also rejected books of account for not maintaining relevant details and proper record and estimated the income by treating the sales and purchase transactions of the nature of accommodation entries obtained by the assessee. The A.O has further stated that assessee had made purchases to the amount of Rs. 8,77,13,641/- and sales amounting to Rs. 21,30,58,015/-. The A.O estimated the net commission @ 1% on the aggregate amount of accommodation entries of Rs.30,07,71,656/- claimed by the assessee as purchase and sales transactions. Accordingly, the A.O has determined the commission income for assessment year 2012-13 to the amount of Rs.30,07,716/- added to the total income of the assessee.

4. Aggrieved the assessee filed the appeal before the ld. CIT(A). Before the ld. CIT(A) the assessee submitted that decision taken by the A.O relied on the basis of information of Sales Tax Department was not correct and also submitted before the ld. CIT(A) that there was a very thin margin on the sale and purchase of commodities. It was also stated that the delivery was directly taken by the buyer and the addition @ 1% on entire purchases and sale of goods was not justified. The ld. CIT(A) after taking into consideration the submission of the assessee and decision of the coordinate benches of the ITAT restricted the commission income to the extent 0.15% of the turnover on one side instead of 1% on both the sides by way of commission on accommodation entries.

5. Heard the ld. D.R. and perused the material on record. During the course of assessment on the basis of information received from the Sales Tax Department in the preceding assessment year 2010-11 the A.O rejected the books of account of the assessee stating that assessee had failed to substantiate that it had properly maintained the quantitative details of the commodities claimed to have been purchased and sold by it. Thereafter the A.O estimated net commission income @ 1% on the aggregate amount of sales and purchases made by the assessee for the assessment year 2012-13 to the amount of Rs.30,07,716/-. The ld. CIT(A) stated that A.O had added 1% of the accommodation entries of both side i.e purchase and sale which was not correct, the A.O should have added only accommodation commission on either purchase or sale and not on both. The ld. CIT(A) has also reproduced the statement given by Mr. Abhishek S. Morarka, Director of Utkantha Trading Ltd. that he received initially 0.1% on turnover from the companies which was not related to him/sister concern. The A.O has also taken into consideration the above referred statement of Shri Abhishek Morarka for making addition @ 15% as commission income. After perusal of the material on record it is noticed that A.O has not substantiated any material in support of estimating the impugned commission income @ 1% on both the sales and purchases made by the assessee. However, the ld. CIT(A) after taking into consideration the decision of coordinate bench of the ITAT in the case of Goldstar Finvest Pvt. Ltd. vide ITA No. 887/Mum.2012 and 2699/Mum/2013 restricted the disallowance of commission @ 0.15% on one side of the transaction. After taking into consideration the detailed findings of the ld. CIT(A) we consider that it will be appropriate to restrict commission income @ 0.15% to the sale transaction which was to the amount of Rs. 21,30,58,015/- as against

the purchases made to the amount of Rs. 8,77,13,641/-. We direct the A.O accordingly to restrict the commission income @ 0.15% of the sale transaction, therefore, the ground of appeal of the revenue is partly allowed.

6. In the result, the appeal of the revenue is partly allowed.

Order pronounced in the open court on 25.08.2022

Sd/-

(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 25.08.2022

PS: Rohit

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY  
ORDER,  
सत्यापित प्रति //True Copy//

(Asst. Registrar)  
ITAT, Mumbai