

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.255/PUN/2022  
निर्धारण वर्ष / Assessment Year : 2009-10

Anshuman Rajendra Mohta HUF,  
9/33, Vakhar Bhag Industrial Estate,  
Near Herwade Printing,  
Ichalkaranji – 416115

PAN : AAHHA5351D

.....अपीलार्थी / Appellant

**बनाम / V/s.**

DCIT, Central Circle,  
Kolhapur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod S. Shingte  
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 20-09-2022  
घोषणा की तारीख / Date of Pronouncement : 10-10-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 07-02-2020 passed by the Commissioner of Income Tax (Appeals)-11, Pune [‘CIT(A)’] for assessment year 2009-10.

2. I find that this appeal was filed with a delay of 745 days. Upon hearing both the parties, I find that the delay of 745 days is saved by the decision of Hon’ble Supreme Court passed during National Lockdown imposed on account of pandemic Covid-19. Therefore, the delay of 745 days is condoned.

3. The only issue is to be decided is as to whether the CIT(A) justified in confirming the disallowance made by the AO to an extent of Rs.7,85,441/- on account of commission payment in the facts and circumstances of the case.

4. Brief facts relating to the case are that the assessee is an HUF engaged in the business of yarn trading and commission agent. The assessee filed return of income declaring a total income of Rs.11,42,780/-. Under scrutiny proceedings, notices u/s. 143(2) and 142(1) of the Act were issued to the assessee. In response to the said notices, the assessee produced books of accounts consisting of cash book, ledger, purchase/sale register etc. The AO found that the assessee paid commission to the brokers from profit and loss accounts. The assessee explained through its submissions dated 18-10-2022 and furnished details concerning the commission payment. The details of which the AO reproduced at page 3 of assessment order and opined the assessee diverted major commission to two parties and disallowed an amount of Rs.7,85,441/- and added to the total income of the assessee. The AO determined the income of the assessee at Rs.19,28,220/- vide its order dated 18-11-2011. In first appeal, the CIT(A) confirmed the view of AO in disallowing the commission paid to Sou. Poonam Mohata and Shri Kaushik Mohata. Having aggrieved by the same, the assessee is before us by raising above mentioned ground.

5. Heard both the parties and perused the material available on record. I note that the CIT(A) confirmed the addition of Rs.5,23,694 being commission paid to Sou. Poonam Mohata arising out of Shri Rajasthan Syntex Mill and further, commission paid to Shri Kaushik Mohata to an extent of Rs.2,61,847/- arising out of transaction of GIS Mill. I note that during the course of assessment proceedings, the AO examined Sou. Poonam Mohata which is discussed by the AO at page 6 of his order. On

perusal of the same at Q.6 she clearly admitted that she works for the assessee as agent and gets commission. Further, she also stated that she has her own business, alike, the activity of the assessee. Further, in Q.7 she stated the rates of counts of yarn purchased from Shri Rajasthan Syntex and further stated that she gets only commission with the business with Shri Rajasthan Syntex. I note that the AO disbelieved her version for many reasons which is evident at page 6. Further, he doubted how she could work with assessee as an agent as she was having her own business in sales of yarn situated on different locations. The AO proceeded to disallow commission paid to Sou. Poonam Mohata only on the ground that she did not state the rates of yarn of that day.

6. Further, regarding the commission payment to Shri Kaushik Mohata, the AO doubted the rates of commission paid, compared to other brokers. I note that according to the AO the commission paid by the assessee to Shri Kaushik Mohata @ 34% as compared to 0.5% to other brokers. The Id. AR submits that the AO and CIT(A) both erred in taking the rates of commission at 37% and 34% for Sou. Poonam Mohata and Shri Kaushik Mohata, respectively but however the commission rates on over all basis, are of one of the same as compared to other brokers at 0.50%. I note that the AO arrived at such conclusion only taking into consideration the transactions at Shri Rajasthan Syntex Mill and GIS Mill but did not take into other transactions. There is no contrary evidence to that effect brought on record by the AO. It is not disputed the assessee is not only paying commission to members of HUF, also paying commission to others who are in the same business activity. I note from the record that Sou. Poonam Mohata and Shri Kaushik Mohata rendered their services to the assessee and the entire commission earned by the assessee from Shri Rajasthan Syntex Mill and GIS Mill was due to business generated by the Sou. Poonam Mohata and Shri Kaushik Mohata as they

were actively engaged in the said business on behalf of the HUF. Further, I note that the said Sou. Poonam Mohata was examined by the AO and she clearly stated in above confirming the transaction on commission furnished detailed accounts of transactions. I note that Shri Kaushik Mohata also confirmed the transaction of commission paid and both the commission payments undisputedly were within the rates of 0.50% of overall transaction basis. Therefore, the CIT(A) without considering the statement of Sou. Poonam Mohata and the rate of interest adopted other commission agents confirmed the view of AO the rate of commission at 37% and 34% compared to other commission agents, in my opinion, is not justified. Thus, the order of CIT(A) is set aside and the addition is deleted. The only ground raised by the assessee is allowed.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 10<sup>th</sup> October, 2022.

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10<sup>th</sup> October, 2022.

रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune
4. The Pr. CIT, Central, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.  
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune