

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA Nos.948, 949, 950, 951, 952, 953 & 954/M/2022  
Assessment Years: 2004-05, 2005-06, 2006-07, 2007-08, 2008-09,  
2009-10 & 2010-11**

Mr. Mukesh Maneklal Choksi, Block H, Shri Sadashiv CHS Ltd., 6 <sup>th</sup> Road, Santacruz East, Mumbai – 400 055 <b>PAN: AAAPC7767J</b>	Vs.	Commissioner of Income Tax (Appeals)-22, R.No.513, 5 <sup>th</sup> Floor, Earnest House, Nariman Point, Mumbai – 400 021
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Mukesh Choksi, A.R.  
Revenue by : Shri Rajendra Chandekar, D.R.

Date of Hearing : 03 . 11 . 2022  
Date of Pronouncement : 29 . 11 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

Since common question of law and facts have been raised in these inter-connected appeals, the same are being disposed of by way of composite order to avoid repetition of discussion.

2. Appellant M/s. M.R. Mukesh Maneklal Choksi (hereinafter referred to as the assessee) by filing the present appeals, sought to set aside the impugned orders even dated 19.03.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment years 2004-05, 2005-06, 2006-07, 2007-08, 2008-09,

2009-10 & 2010-11 on identically worded grounds except the difference in figure of disallowance/addition (grounds of A.Y. 2004-05 are taken in order to dispose of the aforesaid appeals) inter-alia that:

*“1. The learned assessing officer and CIT (A) has erred in law and in facts while passing the order to allow transfer of funds to the sister concerns.*

*2. The learned assessing officer and CIT (A) has erred in law and in facts while passing the order u/s. 154 by not allowing the expenses even though the ITAT have passed orders to allow expenses to the extent of 50% against income assessed at 0.15% of the turnover.*

*3. The learned assessing officer and CIT (A) has erred in law and in facts while passing the order u/s. 154 and facts that tribunal has passed order to apply ratio of expenses to be allowed against the income assessed @0.15 and orders of sister concerns are to be applied mutatis mutandis.*

*4. The Learned assessing officer and CIT (A) has erred in law and in facts that the order passed by the ITAT has to be applied with respect to percentage of income @0.15% of the turnover and expenses to the extent of 50% of claim made.*

*5. The Learned assessing officer and CIT [A) has erred in law and in facts that all the ITAT orders are same where income is assessed @0.15% of the turnover and expenses to the extent of 50% is allowed all the orders passed and same ratio is applied mutatis mutandis. Therefore there is no question of applying another ratio and disallowing expenses 50% of the claim.*

*6. The learned Assessing officer and CIT (A) has erred in law and in fact is not allowing business expenses against the income estimated.*

*7. The learned assessing officer and CIT (A) has erred in law and in facts by ignoring the judgments given by the ITAT vide appeal No. 2695 to 2697/Mum/2013, dated 13/12/2017*

*8. The learned assessing officer and CIT "A" has erred in law and facts that without incurring of expenses income could not be earned and therefore on the humanitarian grounds also expenses should be allowed.*

*9. The learned Income Tax officer has erred in law and in facts that the subsequent order passed by the honorable ITAT "B" bench on 13/12/2017 accepting the claim of the assessee to allow 50% of the expenses claimed.*

***10. The learned Income Tax officer has erred in law and in facts that the ratio of the order passed in the case of sister concerns should be applied Mutatis Mutandis in the case of the assessee.***

***11. The appellant craves leave to add to, alter, amend and / or delete in all the foregoing grounds of appeal.”***

3. Briefly stated facts necessary for adjudication of the issue at hand are: on the basis of search and seizure operation carried out under section 132(1) of the Income Tax Act, 1961 (for short ‘the Act’) in case of group companies owned by the assessee Mukesh Chokshi on 25.11.2009 assessment proceedings under section 153A read with section 143(3) of the Act were initiated and completed. In the assessment order Assessing Officer (AO) proceeded to conclude that the assessee and the group company of the assessee were engaged in the business of accommodation entries and laundering of black money and by declining the contentions raised by the assessee AO proceeded to hold that the assessee and the group companies run by him were receiving commission income from all these activities ranging between 1.5% to 3.5%. So the AO after rejecting the books of account of the assessee estimated the net profit rate of commission at 2% and thereby framed the assessment.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who had confirmed the addition by dismissing the appeals. Feeling aggrieved assessee had filed appeals before the Tribunal bearing ITA No.833/M/2013 to 839/M/2013 for A.Y. 2004-05 to A.Y. 2010-11.

5. Co-ordinate Bench of the Tribunal passed the order in favour of the assessee by restricting the rate of commission/net profit rate from such activities to 0.15% and thereby partly allowed the appeal by relying upon the order passed by the co-ordinate Bench of the

Tribunal in case of group companies entitled M/s. Hire Agency Pvt. Ltd. in ITA No.6435 to 6441/M/2012 vide order dated 06.01.2016.

6. Thereafter the assessee by filing a miscellaneous application before the Tribunal sought to decide the issue as to allowance of 50% of expenses which was rejected vide order dated 07.04.2017 in MA No.51 to 57/M/2017.

7. Thereafter, the assessee moved rectification application before AO under section 154 of the Act in order to claim the allowance of 50% of the expenses against the commission income which was dismissed vide order dated 01.06.2017 under section 154 of the Act.

8. Again the assessee carried the matter before the Ld. CIT(A) by way of filing appeals challenging the order passed by the AO under section 154 of the Act who has dismissed the same. Feeling aggrieved assessee has come up before the Tribunal by way of filing present appeals.

9. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

10. Undisputedly, assessee's appeals for A.Y. 2004-05 to A.Y. 2010-11 were decided by the Tribunal in ITA No.833 to 839/M/2013 by returning following findings:

*“2. At the outset, the assessee submitted that, similar issue had arisen in group concerns of the assessee before the Tribunal wherein the rate of commission has been accepted at 0.15%. The list of some of the ITAT decisions filed before us are as under:-*

- (i) *M/s Goldstar Finvest P Ltd-ITAs 887 and 2699/M/2013, order dated 30.11.2015;*
- (ii) *M/s Mihir Agencies Pvt Ltd. in ITAs 6435 to 6441/M/2012 vide order dated 06.01.2016; and*
- (iii) *Alliance Intermediateries and Networks P Ltd., in ITAs 2700 to 2702/M/2013 order dated 20.02.2016.*

*3. Ld. DR also admitted that, the issue of rate of commission has been decided by the Tribunal in various cases.*

*4. Brief facts qua the issue involved are that, a search and seizure action under section 132(1) was conducted in the Group companies owned and floated by assessee, Shri Mukesh Choksi on 25.11.2009. The assessee was also covered under the same search and consequently assessments under section 153A r.w.s. 143(3) were completed. The AO in the assessment order has noted that, during the course of the search and seizure action, it was found that the assessee and the Group companies of the assessee were engaged in the business of accommodation entries and laundering of black money. The assessee himself was the mastermind behind formation of all these companies. Various other details and modus operandi have been noted by him along with the statement on oath of the assessee and the seized documents. Thus, on the basis of his detail discussions and material on record, the AO held that, the assessee and the Group companies run by him were receiving commission income from for all these activities. Such a commission income was ranging between 1.5% to 3.5%. The AO accordingly rejected the books of account of the assessee and estimated the net profit rate of the commission @ 2%, which according to the assessee was 0.15%. Before the CIT(A), the assessee filed various decisions passed by the CIT(A) in Group companies, wherein, 0.15% of the commission rate has been accepted. However, the Ld. CIT(A) did not accept the assessee's contention and confirmed the estimate made by the AO.*

*5. On the perusal of the impugned orders and the finding of the Tribunal in the case of M/s Mihir Agencies Pvt Ltd (supra) and on similar other decisions as relied before us, we find that the Tribunal has upheld the net profit rate of 0.15%. The relevant observation of the Tribunal in the case of M/s Mihir Agencies Pvt Ltd is reproduced hereunder:- "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". Thus, consistent with the view taken in various similar matters, we also uphold the rate of commission / net profit rate from*

***such activity at 0.15%. Accordingly, this issue is decided in favour of the assessee.***

***6. Since no arguments have been placed on other grounds of appeal, the same are not being adjudicated upon. In the result, appeal of the assessee is partly allowed. 7. In all the appeals, exactly similar issue are involved for our consideration, our finding given above will apply mutatis mutandis to the impugned appeals also, therefore, all the appeals filed by the assessee are treated as partly allowed.”***

11. It is also not in dispute that against the aforesaid order dated 04.05.2016 passed by the co-ordinate Bench of the Tribunal in case of the assessee qua the same assessment years i.e. for A.Y. 2004-05 to A.Y 2010-11, miscellaneous petition was filed before the Tribunal which was also dismissed vide order dated 07.04.2017 as duly recorded by the Ld. CIT(A) in para 4 of the impugned order and this fact has not been controverted by the Ld. A.R. for the assessee.

12. In the backdrop of the aforesaid undisputed facts when the grounds raised by the assessee in the present appeals that “Ld. CIT(A) has erred in law and in facts in not allowing the expenses to the extent of 50% of the turnover” has already been decided by the co-ordinate Bench of the Tribunal in the first round of litigation having not been pressed and miscellaneous application against the same has also been dismissed, the assessee is not entitled to re-agitate the matter again by filing rectification application under section 154 of the Act before the AO and then to again file the appeal against the order passed under section 154 before the Ld. CIT(A) and then before the Tribunal.

13. The AO in order dated 01.06.2017 passed under section 154 of the Act has duly complied with the order passed by the Tribunal to the extent of ground pressed by the assessee before the Tribunal as to restricting the rate of commission from 2% to 0.15% and has

rightly dismissed the appeal under section 154 of the Act. Likewise the Ld. CIT(A) has also rightly dismissed the appeal by withholding the order passed by the AO.

14. In view of what has been discussed above, since the assessee has himself not pressed the issue as to allowability of 50% of the expenses against the income earned in the original appeal filed before the Tribunal vide appeal bearing ITA No.833 to 839/M/2013 for for A.Y. 2004-05 to A.Y 2010-11 decided vide order dated 04.05.2016, against which miscellaneous application has also been dismissed, he is not entitled to re-agitate the same issue before the Tribunal under the garb of filing application under section 154 of the Act before the AO and then filing the appeal before the Ld. CIT(A) and the Tribunal. Hence, we find no illegality or perversity in the impugned order passed by the Ld. CIT(A). Resultantly, appeals filed by the assessee are hereby dismissed.

**Order pronounced in the open court on 29.11.2022.**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 29.11.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

**By Order**

**Dy/Asstt. Registrar, ITAT, Mumbai.**