

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

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NOS. 243 TO 245/MUM/2013 : (A.Ys : 2006-07, 2010-11 & 2009-10)

M/s. Alembic Securities Pvt.Ltd., Vs. DCIT, Central Circle-46,
Block H, Shri Sadashiv CHS Ltd., Mumbai (Respondent)
6th Road, Santacruz (E),
Mumbai 400 055 (Appellant)
PAN : AAACA7087N

**Assessee by : Shri Mukesh Choksi
Revenue by : Shri A. Ramachandran**

Date of Hearing : 22/09/2016

Date of Pronouncement : 30/09/2016

ORDER

PER G.S. PANNU, AM :

These three appeals are filed by the same assessee pertaining to assessment years 2006-07, 2009-10 & 2010-11 and involve certain common issues. Therefore, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. Appeal for Assessment Year 2006-07 is taken as the lead case to appreciate the controversy.

ITA NO. 243/MUM/2013 (Assessment Year – 2006-07) :

2. The captioned appeal by the assessee is directed against an order passed by CIT(A)-38, Mumbai dated 30/11/2012, which in turn arises out of an order passed by the Assessing Officer under section 143(3) r.w.s. 153C of the Income Tax Act, 1961 (in short 'the Act') dated 08/12/2011.

3. In this appeal, assessee has raised multiple Grounds of appeal, which read as under:-

"1. On the facts and circumstances of the case the learned. Commissioner of Income Tax (Appeals) has erred in confirming the order of Assessing Officer.

2. The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts in not appreciating the fact that the order is passed by the assessing officer without providing sufficient opportunity of hearing to the appellant.

3. The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts in passing the order without providing opportunity of hearing to the appellant.

4. The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts in not appreciating the fact that no evidence of the valid satisfaction has been brought on record before the issue of notice/s 153C of the Act.

5. The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts by applying 2% rate of income instead of 0.15% without appreciating the fact that no evidence corroborating the rate of 2% has been found during & after the course of search proceedings against the appellant.

6. The learned. Commissioner of Income Tax (Appeals) have erred in law and in facts in confirming the additions made under the Act amounting to Rs.5,25,700/-.

7. *The learned. Commissioner of Income Tax (Appeals) have erred in law and in facts in confirming the income on gross receipts without reducing the transfer entries amount in bank account MANAGED BY AGENTS from which no income is earned.*

8. *The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts confirming the additions made by Assessing Officer at 2% on the gross deposits as against 0.15% offered by the appellant.*

9. *The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the act of Assessing Officer of application of the rate of 2% income on entire bank deposits managed by agents as against 0.03% offered by the appellant.*

10. *The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts by confirming the assessment made u/s. 153C made by the Assessing Officer without appreciating the fact that only the income which is based on the evidences found as a result of search can be assessed in the present assessment.*

11. *The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts by confirming the assessment made by Assessing Officer by ignoring the facts that no new assets have been generated or emerged out of the income during the last 10 years even after the detailed search carried out by the Income Tax department.*

12. *The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the act of Assessing Officer of the disallowance of business expenses against the income estimated.*

13. *The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the act of Assessing Officer of levying interest u/s. 234B and 234C of the Act."*

4. At the time of hearing, it was stated by the Ld. Representative for the assessee that the issues raised in the captioned appeals have already been decided by the Tribunal in the cases of the sister concerns

of assessee company and in this context, reference has been made to the following decisions:-

- (i) M/s. Goldstar Finvest Pvt. Ltd. ITA Nos.887/Mum/2012 & 2699/Mum/2013 order dated 30/11/2015.
- (ii) M/s. Mihir Agencies Pvt. Ltd., ITA Nos.6114-6120/Mum/2012 order dated 6/1/2016.
- (iii) M/s. Alliance Intermediaries and Network Pvt. Ltd., ITA Nos. 2700,2702&2701/Mum/2013 order dated 24/2/2016.
- (iv) Mr. Mukesh Choksi ITA Nos.833 -839/Mum/2013 order dated 04/05/2016.

5. In brief, the background of the dispute is that a search and seizure action under section 132(1) of the Act was conducted in the case of several companies, whose kingpin is identified as one Mr. Mukesh Choksi. It was found in the course of search that such entities were providing accommodation entries by way of share trading/ loans, etc. As the assessee herein also was covered in the search, an assessment under section 143(3) r.w.s. 153C of the Act dated 8/12/2011 was made for assessment year 2006-07, wherein the total income was assessed at Rs.5,25,700/- as against the returned income of Rs.NIL. Such assessment of income has been further affirmed by the CIT(A), against which the assessee is in appeal before us.

5.1 During the course of search proceedings, the Revenue had noted that for providing accommodation entries, the entities like the assessee, which were controlled by Mr. Mukesh Choksi were earning commission

income. In view of the aforesaid, the Assessing Officer concluded that the group was earning commission ranging from 1.5% to 3.5% and accordingly he estimated the net commission income @2%. Accordingly, based on the total receipts reflected in the bank account, the Assessing Officer estimated the commission income @2% at Rs.5,25,700/-. This action of the Assessing Officer has since been upheld by the CIT(A).

6. Before us, the Ld. Representative for the assessee submitted that similar additions were made by the Assessing Officer in the cases of other group concerns also, which were covered by the search action carried out by the Department on 25/11/2009. It is pointed out that in the aforesaid decisions, the Tribunal has accepted the stand of the assessee that commission income was liable to be assessed @0.15% of the total receipts and also the fact that the net income was to be assessed after allowing 50% of the expenses claimed. It was, therefore, contended that following the decisions of the Co-ordinate Benches rendered in the group concerns of Shri Mukesh Choksi referred above, the assessed income in this case also be directed to be computed accordingly.

7. On the other hand, Ld. Departmental Representative while not disputing the aforesaid precedents, sought to point out that the other cases were assessed on the basis of the surveys conducted, whereas the instant assessee was covered by the search action under section 132(1) of the Act.

8. In reply, Ld. Representative for the assessee pointed out that even the group concern cases, relied upon by him, were covered by the search action and there is complete identity on facts. Therefore, it was contended that the said issue has already been decided in the aforesaid decisions, and the same ratio is applicable in the captioned appeals also.

9. We have carefully considered the rival submissions. We find that similar issue had come up before the Tribunal in the cases of M/s. Goldstar Finvest Pvt. Ltd.(supra), M/s. Mihir Agencies Pvt. Ltd.(supra), M/s. Alliance Intermediaries and Network Pvt. Ltd.(supra) and Mr. Mukesh Choksi(supra), which have been relied upon by the assessee before us. The Tribunal directed that the income by way of commission from the business of accommodation entries being carried out by Mukesh Choksi group was liable to be assessed at 0.15% instead of 2% applied by the Assessing Officer. In this context, we reproduce hereinafter paras 5 & 6 of the order of the Tribunal in the case of M/s. Goldstar Finvest Pvt. Ltd.(supra), wherein earlier precedents have also been referred :-

"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 come 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."

9.1 Since it was a common point between the parties that the appellant company before us is also a part of the entities controlled by Mr. Mukesh Choksi, in our view, the aforesaid decisions are relevant to assess the income of the assessee. In this view of the matter, we, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to recompute the commission income from the business of providing accommodation entry in conformity with the aforesaid precedents.

9.2 Before parting we may also state that while recomputing the total income, the Assessing Officer shall also give effect to the directions of the Tribunal in the precedents regarding the allowability of expenditure claimed.

9.3 In conclusion, we, therefore, set-aside the order of the CIT(A) and restore the matter back to the file of Assessing Officer to redetermine the total income as per aforesaid directions. Needless to mention, the Assessing Officer shall allow the assessee a reasonable opportunity of being heard before recomputing the income as per law.

10. In the result, appeal of the assessee for assessment year 2006-07 is allowed, as above.

11. It was a common point between the parties that the facts and circumstances in ITA Nos. 244 & 245/Mum/2013, for assessment years 2010-11 & 2009-10 are *pari materia* to those considered by us in ITA

No. 243/Mum/2013, for assessment year 2006-07, thus, our decision therein shall apply *mutatis mutandis* in these appeals also.

12. Resultantly, all the appeals of assessee are allowed, as above.

Order pronounced in the open court on 30th September, 2016.

Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 30th September, 2016

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai