

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.1453/Bang/2013
(Assessment Year : 2004-05)

Shri. Jayakumar Reddy,
Ganigarahalli Village, Chikkabanavara Post,
Bengaluru - 560090 .. Appellant
PAN : AEXPR8840J

v.

Income-tax Officer,
Ward – 6(2), Bengaluru .. Respondent

Assessee by : Shri. V. Srinivasan, CA
Revenue by : Shri. Bipin C. N, JCIT

Heard on : 11.07.2016
Pronounced on : 26.08.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

Assessee in this appeal is aggrieved on an addition of Rs.15 lakhs
made by AO as unaccounted commission which was confirmed by the CIT

(A).

02. Facts are that assessee a commission agent had filed a return for the impugned assessment year declaring total income of Rs.3,86,160/-. There was a reopening for the impugned assessment year and a notice was issued on 23.03.2011. Assessee there upon submitted to the AO that original return filed could be considered as one filed in pursuance to the notice u/s.148 of the Income-tax Act, 1961 ('the Act' in short). During the course of assessment proceedings it was noted by the AO that Investigation Wing of the Department had conducted search in the case of one RMP Gutkha group on 21.01.2010. As per the AO, seized record disclosed transactions relating to the assessee as well. From the seized record, AO came to a conclusion that assessee had acted as a commission agent of RMC Gutkha group controlled by M/s. Dhariwal Industries. As per the AO, Sohanraj Mehta of M/s. Dhariwal Industries had confirmed selling of products of RMD Gutkha group through various persons for which commission was paid. Assessee on 13.07.2011 however stated that he had received only a sum of Rs.50,000/- in two tranches of Rs.25,000/- each as brokerage and commission and that too for arranging a building for rent and sale of a site. As per the assessee he had received nothing over a sum of Rs.50,000/- from Shri. Shohan Raj Mehta of M/s. Dhariwal Industries. However AO was of the opinion that assessee had himself signed a document which clearly

proved that assessee had received a sum of Rs.15 lakhs as commission. As per the AO since assessee had himself stated that the signature was his own, he could not now turn back and argue that the commission was not received. He made an addition of Rs.15 lakhs.

03. In appeal by the assessee, CIT (A) confirmed the addition.

04. Now before us, Ld. AR submitted that assessee was questioned twice during the course of assessment proceedings. As per the Ld. AR, there was no record with the Revenue to show that any amount other than Rs.50,000/- was received by the assessee. As per the Ld. AR there was no credit of any sum coming in the vicinity of Rs.15 lakhs during the period 21.01.2005 to 21.08.2009 in his bank account. There was no query raised on the assessee as to whether the sum of Rs.15 lakhs alleged to have been paid by M/s. Dhariwal Industries was received by him. Assessee had all along stated that the only amount he had received was Rs.50,000/- in two tranches of Rs.25,000/- each. As per the Ld. AR assessee had acted as a broker for one of the directors of M/s. Dhariwal Industries and the brokerage received by him was only Rs.3 lakhs. Further according to him there was no evidence brought in by lower authorities to prove that assessee had received Rs.15

lakhs from M/s. Dhariwal Industries or any persons connected to the said firm.

05. Per contra Ld. DR supported the orders of lower authorities.

06. I have heard the rival contentions and perused the orders. Case of the Revenue is that one of the records seized during the course of search in the case of RMD Gutkha group was a voucher in which signature of the assessee appeared. As per the assessee he had not received any sum of Rs.15 lakhs, mentioned in the said record of Sohan Raj Mehta. Contention of the assessee is that he had received only a sum of Rs.50,000/- in two tranches of Rs.25,000/- each and nothing other than that. The voucher signed by the assessee is reproduced hereunder :

VOUCHER	
No.	(28)
Head of A/c	Jayakumara Reddy
Date	6/11/2003
Received / Paid the sum of Rupees	fifteen lakh
	only - from M/s - Mehta
on account of	Associates - Bilove -
Rs. Rs. - 15,00,000/-	
(Cheques are subject to realisation)	
	J. Reddy (J. K. Reddy)

07. Assessee has not disputed that the signature was not that of his. If the assessee wanted to rebut the receipt of the amount from M/s. Dhariwal Industries and Sohan Raj Mehta, then it was required for him to produce positive evidence. Except for stating that he had received nothing more than Rs.50,000/- in two tranches of Rs.25,000/- each from Sohan Raj Mehta, assessee could not rebut the voucher reproduced above where he himself had signed the voucher clearly states that assessee was paid a sum of Rs.15 lakhs. Assessee having signed the voucher himself he cannot turn back and say that he had not received the amount mentioned therein. I am of the opinion that the addition was rightly done by the lower authorities. I do not find any reason to interfere.

08. In the result, appeal of the assessee stands dismissed.

Order pronounced in the open court on 26th day of August, 2016.

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar