

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री शैलेंद्र कुमार यादव, न्यायिक सदस्य एवं श्री रमित कोचर, लेखा सदस्य के समक्ष ।
BEFORE SHRI SHAILENDRA KUMAR YADAV, JM
AND SHRI RAMIT KOCHAR, AM

आयकर अपील सं./ITA Nos. 661 to 666/Mum/2013
(निर्धारण वर्ष/Assessment Years: 2005-06 to 2010-11)

Shri Pramod Gadia
B-506, Priti Sagar CHS
New Link Road, Borivali (W)
Mumbai

अपीलार्थी/Appellant

बनाम/ Vs.

DCIT, Central Circle 46
Àayakar Bhavan, M.K. Road
Mumbai 400020

प्रत्यर्थी/
Respondent

स्थायी लेखा सं./PAN - ADUPG6871G

अपीलार्थी की ओर से / Appellant by: Shri Hari S. Raheja
प्रत्यर्थी की ओर से/ Respondent by: Shri C.W. Angolkar

सुनवाई की तारीख /Date of Hearing : 20.10.2015
घोषणा की तारीख/Date of Pronouncement : 30.10.2015

आदेश / O R D E R

PER BENCH

All these appeals of the assessee pertain to the same assessee on same issue. Therefore they are being disposed of by this common order for the sake of convenience.

2. As search seizure action under section 132 of the Act was conducted in the case of M/s. Mahasagar Securities Pvt. Ltd., M/s.

Mihir Agencies Pvt. Ltd, M/s. Alliance Intermediatories & Network Pvt. Ltd. and its group companies on 25.11.2009 and also was also covered in the search. Thereafter notice under section 153A of the Act dated 08.07.2011 was issued directing the assessee to file the return of income. In response to the same assessee filed return of income on 24.08.2011 declaring total income of ₹1,08,200/-. Later on, assessee had revised his income to ₹3,28,097/- by declaring additional income of ₹2,19,897/-. Assessing Officer observed that assessee is earning commission on share application money transactions @0.25% to 0.40% and on share profit transactions @1.25% to 2.5%. Thus he has not accepted the contentions of the assessee and treated the commission income at 2% and assessed the total income at ₹6,07,370/- in A.Y. 2005-06, which was confirmed by the CIT(A).

2.1 Before the learned counsel for the assessee submitted that similar issue arose in assessee's own case for A.Y. 2004-05 in ITA No. 660/Mum/2013 on similar set of facts the Tribunal has directed the Assessing Officer to apply 0.5% commission total deposits by observing as under: -

"5. After considering the order of the AO, CIT(A) and the submission of both the parties, I found that on similar facts in case of **M/s Alembic Securities Private Limited (supra)**, the issue has been discussed at great length, wherein I have

taken a view that if the net profit at the rate of 0.50% is taken, that will meet the end of justice. The findings in the aforesaid case have been recorded in para 9, which are as under:-

"9. I have heard rival submissions and considered them carefully. After considering the relevant material and perusing the various case laws along with the order of the AO as well as the order of CIT(A), I found that the assessee deserves to succeed in part. This is also a fact that certain documents were found which indicated earning of commission between 1.5% to 3.06% but these evidences were not related to the assessee as they were related to different entities or agents. The submission of Mr. Mukesh Choksi, who handled all these companies were recorded and he has categorically stated that he used to charge a commission at the rate of 0.03% of transaction conducted through various bank accounts and have charged commission at the rate of 0.15% of the transaction belonging to beneficiaries. Affidavit was also filed. Copy of the same is placed on record, it is further seen that a search was also conducted in case of M/s Mihir Agencies Pvt. Ltd. The matter came upto the stage of the Tribunal and the Tribunal following other order of the Tribunal held that the commission income earned by the company i.e. M/s. Mihir Agencies Pvt. Ltd. at 0.15% was correct. While holding so, the Tribunal has followed the order of the Tribunal in case of **M/s Goldstar Fin vest Pvt. Ltd.** I further noted that in the case of **M/s Richmond Securities Pvt. Ltd.** again the Tribunal held that commission of 0.15% is reasonable. I further noted that the AO passed assessment under Section 143(3) for assessment year 2007-08 vide order dated 24-11-2008. In this case also the AO following the order of the Tribunal has accepted the commission at the rate of 0.15%, copy of this order is placed in the paper book. From these facts, it is emerges that even the department has accepted the earning of commission at the rate of 0.15%, however, I am of the view that since in the present case statement of various parties were recorded and certain material were also found, therefore, I feel that if the income is computed by applying a net commission of 0.50% instead of 0.15% declared by the assessee and 2% admitted by the AO, which is *confirmed by the learned CIT(A), that will meet the end of justice. Accordingly, I direct the AO to recompute the income by taking a net profit rate of 0.50% of deposits for all relevant years in these appeals. I order accordingly.*

6. Following the order in the case of **Mis Alembic Securities Private Limited (supra)**, which is even **dated**, I direct the AO to compute the income by applying 0.50% commission on total deposits.

7. In the result, appeal of the assessee is allowed in part."

3. Nothing contrary was brought to our notice. The facts being similar, following the same reason, Assessing Officer is directed to compute the income by applying 0.50% of total deposits. Appeal is partly allowed.

4. Similar issue arose in other years in ITA Nos. 662 to 666/Mum/2013. Facts being similar in all these appeals, following the same reasoning the AO is directed to compute the income by applying 0.50% of total deposits

5. In the result, all the appeals filed by the assessee are partly allowed.

परिणामतः निर्धारित अपीलें आंशिक स्वीकृत की जाती हैं।

Order pronounced in the open court on 30th October, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: 30.10.2015 को की गई।

Sd/-
(RAMIT KOCHAR)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(SHAILENDRA KUMAR YADAV)
न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai, दिनांक Dated 30th October, 2015

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A) - 38, Mumbai
4. आयकर आयुक्त / The CIT - Central-IV, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, "C" Bench ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ By Order

सत्यापित प्रति //True Copy//

सहायक पंजीकार /Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई/ITAT, Mumbai