

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI RAMLAL NEGI, JUDICIAL MEMBER

ITA No. 6558/Mum/2012,(A.Y. 2010-11)
ITA No. 6559/Mum/2012,(A.Y. 2004-05)
ITA No. 6560/Mum/2012,(A.Y. 2005-06)
ITA No. 6561/Mum/2012,(A.Y. 2006-07)
ITA No. 6562/Mum/2012,(A.Y. 2007-08)
ITA No. 6563/Mum/2012,(A.Y. 2008-09)
ITA No. 6564/Mum/2012,(A.Y. 2009-10)

M/s. Alpha Chemie Trade Agencies Private Limited,
Block H, Shri Sadashiv CHS Ltd.
6th Road, Santacruz (E),
Mumbai 400 055.
PAN:AADCA 9890L

..... Appellant

Vs.

The DCIT, Cen. Cir.46,
Aaykar Bhavan,M.K.Road,
Mumbai 400 020

.... Respondent

Appellant by : Shri Mukesh Choksi
Respondent by : Shri R.P.Meena

Date of hearing : 07/09/2016
Date of pronouncement : 09/09/2016

ORDER

PER G.S.PANNU,A.M:

These seven appeals are filed by the same assessee pertaining to assessment years 2004-05 to 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.

2. We may refer to the appeal for assessment year 2010-11 in order to appreciate the controversy, as the facts and circumstances in all the years are similar. ITA No.6558/Mum/2012 for assessment year 2010-11 is directed against an order passed by CIT(A)-38, Mumbai dated 31/08/2012, which in turn arises out of an order passed by the Assessing Officer under section 143(3) 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:-

“Following grounds of appeal are without prejudice to each other:

“1. On the facts and circumstances of the case the learned. Commissioner of Income Tax (Appeals) has erred in confirming the order of D.C.I.T, Central Circle-46.

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 not appreciating the fact that no evidence of the valid satisfaction has been brought on record before the issue of notice u/s 153C of the Act.

4. The learned, commission of Income Tax (Appeals) have erred in law and in facts in confirming the additions made under the Act amounting to Rs.57,56,977/-

5. 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

6. On the facts and circumstances of the case the learned. Commissioner of Income Tax (Appeals) has erred in law and in facts in applying 2% income on entire bank deposits - managed by agents as against 0.03% offered by the appellant.

7. The learned. Commissioner of Income Tax (Appeals) has erred in law and in facts by confirming the assessment made u/s. 153A made by the D.C.I. T.- Central Circle 46 without appreciating that only the income which is based on the evidences found as a result of search can be assessed in the present assessment.

8. The learned assessing officer has erred in law and in facts by ignoring the facts that no new assets have. been generated or emerged out of the income during the last 10 years even after carrying out the detailed search by the department.

9. The learned. Commissioner of Income Tax (Appeals) and Id.-D.C.I.T. Central Circle-46 have erred in law and in facts in not allowing business expenses against the income estimated.

10. The learned. Commissioner of Income Tax (Appeals) and Id.D.C.I.T. Central Circle-46 have erred in law and in facts in 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) 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) Alliance Intermediateries 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 2010-11, wherein the total income was assessed at Rs.59,26,220/- as against 'Nil' income returned by the assessee. 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 such modus operandi noted and the statements of Mr. Mukesh Choksi, recorded at the time of search, the Assessing Officer notes 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. 59,26,220/-. 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 under similar circumstances, 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 have also perused the respective orders of the authorities below and find that similar issue had come up before the Tribunal in the cases of Goldstar Finvest Pvt. Ltd.(supra), M/s. Mihir Agencies Pvt. Ltd.(supra), Alliance Intermediaries and Network Pvt. Ltd.(supra) and Mr. Mukesh Choksi(supra), which have been relied upon by the assessee before us. On perusal of the aforesaid decisions we find that the Tribunal had 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 Goldstar Finvest Pvt. Ltd.(supra), wherein earlier precedents have been relied upon and the issue decided accordingly:-

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 2010-11 is allowed, as above.

11. It was a common point between the parties that the facts and circumstances in ITA No. 6559 to 6564/Mum/2012, for assessment

years 2004-05 to 2009-10 are *pari-materia* to those considered by us in ITA No. 6558/Mum/2012 for assessment year 2010-11, thus, our decision therein shall apply *mutatis mutandis* in these appeals also.

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

Order pronounced in the open court on 09/09/2016

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 09/09/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai