

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

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No.7426/M/2014
Assessment Year: 2010-11**

M/s. Readymade Steel India P. Ltd., C/o M/s. U.B. Lakhani & Co., A/102, Neel Kanthdhara, Opp. Dhanwanti Hospital, N.S. Road, Mulund (W), Mulund – 80 PAN: AADCR2540N	Vs.	Dy. Commissioner of Income tax, Circle-7(2), R.No.624, Aayakar Bhavan, 6 th Floor, M.K. Road, Mumbai – 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jigna Parekh, A.R.
Revenue by : Shri Triparthi, D.R.

Date of Hearing : 05.10.2016
Date of Pronouncement : 19.10.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 29.10.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The assessee has taken the following revised grounds of appeal:

“The grounds of appeal mentioned herein below are without prejudice to one another.

1. The Ld AO erred in computing the amount of Accommodation turnover at Rs.24,89,60,272/-, instead of Rs.24,16,32,566/-, despite accepting the bifurcated figures of genuine turnover and accommodation turnover provided by the appellant, thus adopting the figure inflated by Rs.73,27,706/- of accommodation turnover as against the correct figure of such turnover.

The CIT (A) erred in confirming it.

2. The Ld AO erred in adopting the rate of 3% for estimating the income of the appellant on impugned accommodation turnover without bringing any comparable case on record, as well as rejecting the rate of 1% declared by the appellant itself without assigning any reason for such rejection.

The CIT (A) erred in confirming it.

The appellant craves leave to add, alter, amend, delete or withdraw one or more grounds of appeal.”

3. The brief facts of the case are that a survey action under section 133A of the Income Tax Act was carried out at the premises of the assessee and it was noticed that the assessee company was providing accommodation bills to certain parties apart from doing the actual business of trading in ferrous and non ferrous goods. The turnover declared by the assessee was bifurcated into two parts viz. i) actual business turnover and ii) turnover due to accommodation bills.

The assessee declared the net profit from the turnover of accommodation bills at the rate of 1% in the return of income. However, the Assessing Officer (hereinafter referred to as the AO) estimated the same at the rate of 3% of the turnover. Being aggrieved by the above order of the AO, the assessee preferred appeal before the Ld. CIT(A).

4. It was pleaded before the Ld. CIT(A) that the profit at the rate of 3% was excessive; that the assessee has rightly declared the profit at the rate of 1% of the turnover of accommodation bills. The Ld. CIT(A) , however, did not accept the contention of the assessee and confirmed the addition made by the AO in this respect. Being aggrieved by the above order, the assessee has come in appeal before us.

5. We have heard the rival contentions and have also gone through the records. The assessee, before us, has not disputed that it was indulged in providing accommodation bills to certain parties. However, it has been submitted that the estimation of profits at the rate of 3% were very excessive.

It was also explained that out of the total turnover of Rs.32.3 crores, the genuine turnover of the actual business carried out was only Rs.8.2 crores and profit there from has been declared at Rs.82,75,831/- which has accordingly been taxed as business income of the assessee. The Ld. A.R. has further submitted that the assessee has declared the income of the accommodation bills at the rate of 1% of the turnover which was actually received by the assessee. That the AO in the impugned assessment order himself has mentioned that there was no mention of cash commission in the survey report. But the assessee, despite that, itself, has offered for taxation the actual income received from providing accommodation bills and further that the assessee had not claimed any expenses or sub commission in respect of the said declared income. The Ld. A.R. has relied upon certain decisions of the Tribunal wherein the commission income from such accommodation bills has been estimated or accepted by the Tribunal even at a rate which is less than 1% of the turnover. She has mainly relied upon the decision of the co-ordinate bench of the Tribunal in the case of "Saroj Anil Steel Pvt. Ltd. vs. ITO". She has stated that in the said case also that assessee was in the similar business as that of the present assessee and in the said case the commission income was estimated by the AO at the rate of 1% of the turnover. But the Ld. CIT(A) in the appellate proceedings directed the AO to estimate the income of commission from hawala transactions at the rate of 0.4% of gross turnover. The Tribunal, however, directed the AO to estimate the income at the rate of 1% of total turnover and also directed to allow certain administrative expenses there from. The Ld. A.R. has stated that in the case of the assessee no expenditure has been claimed. Even the estimation of income at the rate of 1% of the accommodation bills turnover has also been approved by the Tribunal. Considering the above submissions of the assessee and after going through the decision of the Tribunal, though we find that there cannot be a fixed criteria to adopt as to at what rate the commission income in such cases can be adopted for turnover, however, considering the facts of the case and submissions of the

Ld. A.R., in our view, the estimation of commission income at the rate of 3% in the absence of any evidence, any calculation or other basis or any example of a similarly placed case seems to be on higher side. The assessee, on the other hand, has supported its case while providing all the details including the actual amount of the turnover and the actual amount received by the assessee and the AO has not pointed out any peculiar point on the basis of which the calculation and income offered by the assessee can be faulted with. We accordingly restrict the income offered from the accommodation bills turnover at the rate of 1% as against 3% estimated by the AO. Before parting, it is made clear that our above observations will not have any bearing in any other case as such type of cases have to be decided on their own merits.

6. In the result, the appeal of the assessee is treated as allowed.

Order pronounced in the open court on 19.10.2016.

Sd/-
(Ashwani Taneja)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 19.10.2016.

* 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.