



ITA Nos.30-36/Mum/2009
& ITA No. 8985/Mum/2010
Shri Sachin M.Dand
Assessment Years 2000-2001 to 2006-2007

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI JOGINDER SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. Nos. 30-36/Mum/2009
(निर्धारण वर्ष / Assessment Years: 2000-01 to 2006-07)

&

आयकर अपील सं./I.T.A. No. 8985/Mum/2010
(निर्धारण वर्ष / Assessment Year: 2005-2006)

| | | |
|----------------------------------------------------------------------------------|---------------------|-----------------------------------------------------------------------------------|
| SACHIN M.DAND 24-A Panchratan Building Opera House Mumbai 400004 | बनाम/ Vs. | ASSTT. COMMISSIONER OF INCOME TAX Central Circle-34 Mumbai |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ADXPD-7202-K | | |
| (अपीलार्थी /Appellant) | : | (प्रत्यर्थी / Respondent) |

| | | |
|-----------------------------------|---|------------------------------------------------------------|
| अपीलार्थी की ओर से / Appellant by | : | Shri Hitesh Dharamshi & Shri V.V.R. Nageswara Dutt, ARs |
| प्रत्यर्थी की ओर से/Respondent by | : | Ms. Vidisha Kalra CIT, DR |

| | | |
|-------------------------------------------|---|------------|
| सुनवाई की तारीख / Date of Hearing | : | 01/02/2017 |
| घोषणा की तारीख / Date of Pronouncement | : | 06/02/2017 |



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आदेश / ORDER

Per BENCH

1. These are bunch of appeals by assessee for several assessment years as per the following details:-

| No. | Appeal No. | Assessment Year | Assessment order dated passed u/s 143(3) r.w.s. 153A | First Appellate Authority order dated |
|-----|--------------------|-----------------|------------------------------------------------------|---------------------------------------|
| 1. | ITA No.30/Mum/2009 | 2000-2001 | 31/12/2007 | 18/11/2008 |
| 2. | ITA No.31/Mum/2009 | 2001-2002 | 31/12/2007 | 18/11/2008 |
| 3. | ITA No.32/Mum/2009 | 2002-2003 | 31/12/2007 | 18/11/2008 |
| 4. | ITA No.33/Mum/2009 | 2003-2004 | 31/12/2007 | 19/11/2008 |
| 5. | ITA No.34/Mum/2009 | 2004-2005 | 31/12/2007 | 18/11/2008 |
| 6. | ITA No.35/Mum/2009 | 2005-2006 | 31/12/2007 | 15/12/2008 |
| 7. | ITA No.36/Mum/2009 | 2006-2007 | 31/12/2007 | 18/11/2008 |

ITA No. 8985/Mum/2010 by assessee is against confirmation of penalty u/s 271(1)(c) for Assessment Year [AY] 2005-2006 by Ld. Commissioner of Income Tax (Appeals)-41, Mumbai order dated 01/11/2010. Since, common and inter related issues are involved, we proceed to dispose-off the same by way of this combined order for the sake of convenience and brevity. During proceedings, additional grounds of appeals filed in all the quantum appeals have been withdrawn by the Ld. Counsel for Assessee [AR]. First of all we take up appeal for AY 2000-2001.

ITA No./30/Mum/2009 AY 2000-01

2. Briefly stated, the case of the assessee was subjected to assessment u/s 143(3) read with section 153A of the Income Tax Act, 1961 vide Assessing Officer [AO] order dated 31/12/2007 consequent to search & seizure action u/s 132 conducted in the case of 'Sachinam Travels group' on 21/03/2006. The assessee was proprietor of one group concern



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namely 'Sachinam Holidays'. The concern was IATA approved travel agent engaged in the business of booking air tickets and providing various travel related services such as VISA processing, passport stamping, hotel booking and arranging domestic and international tours. Pursuant to statutory notices, the assessee filed return of income for impugned AY on 31/03/2007 declaring total income of Rs.1,28,110/- which was the same as original return. The assessee expressed its inability to substantiate the receipts and expenditure reflected in the financial statements due to corruption of computer data maintained by the accountant who got migrated to foreign country. Further, the assessee also could not produce the bills and vouchers in support as the same got destroyed in the flood of July, 2005. Therefore, AO estimated an *adhoc* disallowance of Rs.1.00 Lac for unverifiable expenses out of total expenditure of Rs.5,58,281/- claimed by the assessee and determined total income at Rs.2,28,110/- which was assailed before First Appellate Authority. The assessee contended that non production of record was beyond control of the assessee. However, CIT(A) looking at the history of assessee's cases, confirmed the same. Aggrieved, the assessee is in appeal before us and requested for deleting the disallowance. The Ld. Counsel for Assessee [AR] has raised similar contentions in support as raised against First Appellate Authority whereas the Ld. CIT DR has supported the stand of the lower authorities and contended that disallowance has rightly been made as lower authorities had no other option in the given circumstances.

3. We have heard rival contentions and perused material available on record. A perusal of financial statement for impugned AY shows that the assessee reflected commission income of Rs.6,89,764/- and declared total income of Rs.1,28,109/- which translates into Net Profit [NP] rate of 18.57%. The assessee has claimed expenditure of Rs.5,58,281/- excluding depreciation which mainly consists of routine expenditure like salary, rent, telephone, conveyance, commission etc. The assessee failed to produce any books of accounts, physical



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documents etc. and attributed the same to circumstances beyond his control. We also note that no incriminating material has been found *qua* the assessee in search operations and hence without delving much deeper into the matter, we restrict the disallowance to 10% of total expenditure of Rs.5,58,281/- as claimed by the assessee. Accordingly, the assessee shall suffer disallowance of Rs.55,828/- as against Rs.1.00 Lacs confirmed by lower authorities. The appeal of assessee stands partly allowed.

ITA No./31/Mum/2009 AY 2001-02

4. This is assessee's appeal for AY 2001-02, where in similar circumstances, the assessee suffered disallowance of Rs.3.00 Lacs out of total expenditure of Rs.14,13,866/- which was confirmed by CIT(A). We find that in this year, the assessee achieved turnover of Rs.15,60,733/- and declared total income of Rs.1,43,914/- which translates into NP rate of 9.22% which is lower than earlier AY. But we note that in this year the assessee's accounts were subjected to Tax Audit and the assessee, in the paper-book, have furnished tax audit report dated 30/07/2001. Hence, this year stands on a better footing in comparison to earlier years. Therefore, notwithstanding the lower NP rate declared by the assessee, taking the same stand, we direct that the assessee shall suffer disallowance of 10% of total expenditure Rs.14,13,866/- excluding depreciation which translates into disallowance of Rs.1,41,386/- as against Rs.3.00 Lacs made by the lower authorities. The appeal of the assessee stands partly allowed.

ITA No./32/Mum/2009 AY 2002-03

5. For this year, the assessee had filed original return on 31/10/2002 declaring total income of Rs.4,73,076/-. However, declaring additional income of Rs.8.00 Lacs, it enhanced the total income to Rs.12,73,080/- in the return of income filed pursuant to Section 153A.



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Finally, the assessee suffered total disallowance of Rs.15,00,591/- vide AO order dated 31/12/2007 on account of following expenditure:-

| No. | Head of Expenditure | Amount (Rs.) |
|------------|----------------------------|---------------------|
| 1. | Commission Paid | 8,89,544/- |
| 2. | Office Expenses | 1,25,000/- |
| 3. | Travelling Expenses | 2,31,280/- |
| 4. | Negative Cash Balance | 2,54,767/- |
| | Total | 15,00,591/- |

After adjusting *suo-moto* enhancement of Rs.8.00 Lacs made by the assessee, the AO made net disallowance of Rs.7,00,591/-. AO noted various discrepancies and shortcoming in the commission expenses claimed by the assessee and the assessee also failed to substantiate the commission claim conclusively which led into commission disallowance of Rs.8,89,544/-. The action of the AO was confirmed by CIT(A). The assessee is in appeal before us for commission disallowance of Rs.6,82,731/- *qua* three payees and Rs.2,54,767/- *qua* negative cash balance. The Ld. AR briefly submitted that the assessee was in the business of ticketing and travelling and payment of commission, in this line of business was normal. Further, the assessee had deducted TDS as per the statutory provisions and therefore, the same should not suffer disallowance. However, to substantiate this, the AR could not produce the relevant TDS returns for the fact that its records got destroyed in the floods. We note that the assessee has suffered disallowance of commission expenses against following payees:-

| No. | Name of Payee | Amount (Rs.) |
|------------|----------------------|---------------------|
| 1. | Dedhia X 6 | 1,55,000/- |
| 2. | Nalini A.Shah | 40,236/- |
| 3. | NTD | 4,87,495/- |
| | Total | 6,82,731/- |



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A perusal of Return of income of Payee No.3 reveals that an amount of Rs.2,87,495/- has been reflected as commission in her return of income against which no TDS credit has been claimed by her. It shows that no TDS was deducted from the impugned payment and even the full commission payment of Rs.4,87,495/- was not reflected by her. No evidence has been produced for other payees and also, the commission payment per payee exceeded the threshold limit of TDS as per Section 194H. Similarly, no relief could also be given on account of negative cash balance. Therefore, on the facts and circumstances, we do not find any reason to disturb the order of lower authority. The assessee's appeal stands dismissed.

ITA No./33/Mum/2009 AY 2003-04

6. In this appeal for AY 2003-04, the assessee is aggrieved by addition of Rs.1,91,680/- *qua* negative cash balance and Rs.1,00,000/- *qua* addition for cash credit. The assessee had declared total income of Rs.9,06,490/- in 153A return as against Rs.7,06,490/- originally returned by him thereby offering addition income of Rs.2.00 Lacs. The income was finally determined at Rs.11,58,170/- after making following disallowances:-

| No. | Head of Expenditure | Amount (Rs.) |
|------------|------------------------------------|---------------------|
| 1. | <i>Negative Cash Balance</i> | <i>1,91,680/-</i> |
| 2. | <i>Travelling & Conveyance</i> | <i>1,20,000/-</i> |
| 3. | <i>Travelling Expenses</i> | <i>40,000/-</i> |
| 4. | <i>Unexplained Cash Credit</i> | <i>1,00,000/-</i> |
| | Total | 4,51,680/- |

After adjusting Rs.2 Lacs *suo-moto* enhancement offered by assessee, the net disallowance, thus made, was for Rs. 2,51,680/- which was confirmed by CIT(A). We find that the assessee has already suffered a disallowance of Rs.2,54,767/- against negative cash balance in AY 2002-2003 and addition thereof has been confirmed by us. Therefore, out of net



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disallowance of Rs.2,51,680/- suffered by assessee, we delete negative cash balance disallowance of Rs.1,91,680/- and confirm the balance Rs.60,000/- as the AO's order is quite reasonable to that extent. The assessee's appeal stand partly allowed.

ITA No./34/Mum/2009 AY 2004-05

7. In this year, the assessee has assailed addition of Rs.9,72,876/- made under the head Travelling Expenses, commission and cash credit. The original return was filed at Rs.6,69,960/- and the same income was returned u/s 153A which was finally determined at Rs.16,62,840/- by AO after making following disallowances:-

| <i>No.</i> | <i>Head of Expenditure</i> | <i>Amount (Rs.)</i> |
|------------|-------------------------------------------------------------|---------------------|
| 1. | <i>Travelling Expenses</i> | 60,000/- |
| 2. | <i>Unexplained cash credit due to negative cash balance</i> | 4,47,638/- |
| 3. | <i>Commission</i> | 4,65,238/- |
| | <i>Total</i> | 9,72,876/- |

The action of the AO was confirmed by the First Appellate Authority. The Ld. AR asserted that the commission of Rs.4,65,238/- was paid to the mother of the assessee namely *Mrs. Navalbai T.Dand* after deduction of TDS and the payee has duly reflected this amount in her return of income. The copy of relevant papers of payee has been placed before us which reveals that the payee has credited this commission income to the Profit & Loss Account and also claimed TDS credit against commission for Rs.22,867/-. Keeping in view the nature of assessee's business, this ground of assessee's appeal succeeds. Regarding other additions, we find the conclusion of lower authorities quite reasonable and therefore, find no reasons to disturb the same and hence, we dismiss the assessee's appeal against all other grounds.



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ITA No./35/Mum/2009 AY 2005-06

8. In this appeal, the assessee has contested various additions of Rs.6,64,701/-. The original income was filed at Rs.6,01,860/- which was enhanced to Rs.6,51,860/- and finally determined by AO and affirmed by CIT(A) at Rs.12,93,560/- after making following disallowances:-

| <i>No.</i> | <i>Head of Expenditure</i> | <i>Amount (Rs.)</i> |
|------------|-----------------------------------------|--------------------------|
| 1. | <i>ESIC Payments</i> | <i>27,000/-</i> |
| 2. | <i>Commission to Mrs. Navalbai Dand</i> | <i>4,98,479/-</i> |
| 3. | <i>Maintenance & repair</i> | <i>1,06,225/-</i> |
| 4. | <i>Personal Expenditure</i> | <i>60,000/-</i> |
| | <i>Total</i> | <i>6,91,704/-</i> |

We find that the commission payment of Rs.4,98,479/- has been duly reflected by the payee in her return of income and TDS thereon has been claimed and hence, following the immediately preceding year, we delete the same and affirm the balance additions. The assessee's appeal stand partly allowed.

ITA No./36/Mum/2009 AY 2006-07

9. In this year, the assessee was subjected to assessment u/s 143(3). The search operations were conducted on 21/03/2006 and the assessee filed his original return of income on 31/10/2006 declaring total income of Rs.12,99,160/- including Rs.29,50,000/- declared u/s 132[4] pursuant to search & survey operations. The assessee suffered sole addition with respect to commission of Rs.4,31,470/- paid to *Mrs. Navalbai Dand* which was confirmed by CIT(A). The assessee, as an alternative ground of appeal, has prayed for the deletion of the same on the ground that the assessee has already offered substantial additional income of Rs.29,50,000/- and hence this separate addition is not warranted for. A perusal of the audited



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profit & loss account of the assessee reveals that it has not debited any commission expenses in the account but credited additional Rs.29,50,000/- offered by him in the profit & loss account. Further, no incriminating material *qua* assessee has been found during the search. Hence, on the facts and circumstances, we delete the impugned addition. The assessee's second ground of appeal stands allowed whereas the other grounds become infructuous.

ITA No./8985/Mum/2010 AY 2005-06

10. The assessee was saddled with a penalty of Rs.2,15,996/- against addition of Rs.6,41,700/- made by the AO in quantum assessment vide penalty order dated 30/03/2009 which was confirmed by CIT(A) vide order dated 01/11/2010. Since, we have deleted substantial quantum additions which leaves estimated / *ad hoc* additions, the penalty imposed is not justified and hence, while deleting the same, we allow the assessee's appeal.

Summary

11. To summarize, the assessee shall suffer following disallowances:-

| <i>No.</i> | <i>Appeal No.</i> | <i>Assessment Year</i> | <i>Amount of net disallowance made by lower authorities</i> | <i>Amount of net disallowance sustained by us</i> |
|------------|--------------------|------------------------|-------------------------------------------------------------|---------------------------------------------------|
| 1. | ITA No.30/Mum/2009 | 2000-2001 | 1,00,000/- | 55,828/- |
| 2. | ITA No.31/Mum/2009 | 2001-2002 | 3,00,000/- | 1,41,386/- |
| 3. | ITA No.32/Mum/2009 | 2002-2003 | 7,00,591/- | 7,00,591/- |
| 4. | ITA No.33/Mum/2009 | 2003-2004 | 2,51,680/- | 60,000/- |
| 5. | ITA No.34/Mum/2009 | 2004-2005 | 9,72,876/- | 5,07,638/- |
| 6. | ITA No.35/Mum/2009 | 2005-2006 | 6,41,704/- | 1,93,225/- |
| 7. | ITA No.36/Mum/2009 | 2006-2007 | 4,31,470/- | Nil |
| | | TOTAL | 33,98,321/- | 16,58,668/- |

The penalty levied u/s 271(1)(c) for AY 2005-06 stands deleted.



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12. All the appeals stands disposed off on above terms.

Order pronounced in the open court on 06th February, 2017

Sd/-

(Joginder Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : **06.02.2017**

PS:- Pooja K.

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)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai