

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

Before: **Shri P.M. Jagtap, Accountant Member** and
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No. 2275/Kol/2014 A.Y: 2011-12

D.C.I.T., C.C-4(4), Kolkata

Vs.

**M/s. Sakshi Trade Link
Pvt. Ltd.PAN: AALCS 3353C**

[Appellant]

[Respondent]

For the Appellant : Shri Sallong Yaden, Addl.CIT, Id.Sr.DR
For the Respondent : Shri A.K. Upadhyay, Advocate, Id.AR

Date of hearing : 29-08-2017
Date of pronouncement : 03-11-2017

ORDER

Shri S.S.Viswanethra Ravi, JM:

This appeal by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), Central-II, Kolkata dt. 24-10-2014 for the A.Y 2011-12.

2. The only issue is to be decided as to whether the CIT-A justified in holding the estimation of commission income @ 0.26% in the facts and circumstances of the case.

3. Brief facts of the case are that the assessee is a private limited company and is a commission agent and filed its return of income showing total income of Rs. 3,18,200/- on 16-02-2012. Notices u/s. 143(2) and 142(1) of the Act were issued. In response to said notices, the assessee appeared and filed details. A search and seizure operation in the case of M/s. Electro Steel Casting and in the case of Sadbhav Group was conducted, wherein it was admitted that M/s. Silicon Real Estate and assessee have made accommodation entry for claiming bogus commission as expenses. Likewise, M/s. Montecarlo Construction Ltd has also admitted that it used to do siphon-off money by way of bogus expenditure through assessee. The AO was

of the view that by way of accommodation entry the assessee company earned commission @ 0.10% to 0.15% of turnover. The AO show caused the assessee as to why the said amount should not be added as undisclosed commission income. However, no documents in support of commission receipt was produced before the AO by the assessee. Considering the replies of the assessee, he added an amount of Rs. 87,35,940/- for providing accommodation entry to the total income of the assessee as undisclosed commission income.

4. In challenge before the CIT-A the assessee contended that in the statement, the director of the assessee company has specifically stated and admitted that for providing the accommodation entries the margin of the assessee company was 0.10% to 0.15% and the AO was not justified in assessing the commission income @ 0.50% of gross turnover on the ground that there was no evidence that the rate of commission was from 0.10% to 0.15%. The assessee also argued that the accommodation entries are provided to help the beneficiaries to claim inflated expenses. The beneficiaries are required to deduct tax on the payments made against the accommodation bills. Therefore, the margin of the company providing accommodation is not more than 0.10% to 0.15%. The assessee also contended that the beneficiaries if deducted the tax at higher rate than 0.10% to 0.15%, the excess amount of TDS has to be refunded by the assessee company to its beneficiaries. In view of above, it was pleaded by the assessee company that the AO be directed to restrict the addition on account of undisclosed commission income @ 0.15% in place of 0.50% as adopted by the AO.

5. The CIT-A after considering the above directed the AO to recalculate the total assessed income by adopting the rate of commission @ 0.26% of turnover as against 0.50% by the AO. Relevant portion of the CIT-A order is reproduced herein below for better understanding:-

5. I have considered the submission of the appellant and perused the assessment order. It is observed that there is no dispute on the fact that the only activity of the appellant company was to provide accommodation entries of sub-contract etc. In the course of assessment proceedings, the AO had received information from the ACIT, CC-I, Ahmedabad that the appellant company had provided accommodation entries to one M/s Monte Carlo Construction Ltd. In fact, in the course of assessment proceedings, the AO also recorded the statement of Shri Sumit Sharma, the Director of the appellant company and in that statement he accepted that the appellant company is indulged in the activity of providing the accommodation entries. He also stated that the margin of the appellant company in providing the book entries is from 0.10% to 0.15%. It is observed that on the basis of information received from Ahmedabad as well as the admission made by the Director of the appellant company before the AO, he accepted that the appellant is engaged in the activities of providing the accommodation entries. On examination of the profit and loss account, it is found by the AD that the appellant company had shown net profit of Rs.2,86,203/- on the turnover of Rs.181,66,01,622/- which comes to 0.015%. Hence, he was of the view that the appellant company has not declared profit/commission income @ 0.10% to 0.15% as claimed and admitted by the director of the company in his statement u/s 131 of the Act. Under the circumstances, in the absence of any evidence, the AO estimated the commission @ 0.50% of the turnover. On the other hand, it is contended by the appellant that the commission income should have been estimated by applying the rate not more than 0.15% because the margin of the company was ranging from 0.10% to 0.15% only as stated before the AO. During the course of appellate proceedings it is observed by me that the same AO has made assessment in another case named as M/s Safeco Projects Pvt. Ltd. u/s 143(3) of the Act on 27.03.2013 for the A.Y. 2011-12. In that case also, the AO had received information from the ACIT, CC-I, Ahmedabad that the said company was providing accommodation entries to Ahmedabad based company M/s Mote Carlo Construction Ltd. In the case of M/s Safeco projects Pvt. Ltd. also, the AD recorded the statement of the director of that company u/s 131 of the Act and in that statement the director of the company admitted commission margin in providing the accommodation entries ranging from 0.10% to 0.15% of the turnover. On examination of the profit and loss account of that company, it was observed by the AO that the net profit shown was @ 0.26% of the gross contract turnover. Since, the net profit shown @ 0.26% was more than the 0.10% to 0.15% admitted by the director of the M/s Safeco Projects Pvt. Ltd., the AO accepted the same and no further estimation on account of commission income was made by him. Thus, the AO accepted the commission @ 0.26% in that case.

In the case of appellant company, the facts are similar to the facts in the case of Safeco Projects Pvt. Ltd. and in the case of the appellant company also information was received by the AO that the company was providing accommodation entries of sub-contract to the Ahmedabad base company M/s Monte Carlo Construction Ltd. In the case of appellant company also the director any stated before the AO that margin of the company was ranging from 0.10 to 0.15%. In the case of appellant company also the year involved is A.Y 2011-12 as in the case of Safco Projects Pvt. Ltd and the assessment u/s. 143(3) was made on 27.03.2014. In view of above, I am of the opinion that it would be justifiable to estimate the commission income of the appellant company @ 0.26% of the turnover. Therefore, the AO is directed to recalculate the total assessed income by adopting the rate of commission @ 0.26% of the turnover. The ground no. 1 and 2 are partly allowed. "

6. The Id.AR reiterated his same submissions as made before the CIT-A. On the other hand, the Id.DR relied on the order of the AO.

7. Heard both the parties and perused the record. We find that there is no dispute that the assessee company provided accommodation entries. We find that Shri Sumit Sharma, one of the director of the assessee company in his statement u/s. 131 of the Act admitted that the assessee company indulged in the activity of

providing the accommodation entries. We find that the facts of the present case are similar to the facts in the case of Safeco Projects Pvt. Ltd in ITA No.1948/Kol/2014 for the A.Y: 2010-11 , since the net profit shown @ 0.26% was more than the 0.10% to 0.15%, which was admitted by the director of M/s. Safeco Projects Pvt. Ltd in its assessment and the AO accepted the same. Thus, the AO accepted the commission @ 0.26%. We further find the A.Y involved in the case of assessee company is 2011-12 and the same as in the case of Safeco Projects Pvt. Ltd and the assessment u/s. 143(3) u/s. 143(3) was made on 27.03.2014. In the present case, the AO estimated the commission @ 0.50%, which is not justified in the facts and circumstances of the case and, therefore, the order of CIT-A directing the AO to recalculate the total assessed income by adopting the rate of commission @ 0.26% of the turnover is justified. We find no infirmity in the impugned order of the CIT-A and is it is justified. Therefore, the grounds raised by the revenue are dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 03-11-2017

Sd/-
P.M. Jagtap
Accountant Member

Sd/-
S.S. Viswanethra Ravi
Judicial Member

Dated : 03-11-2017

PP(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant/Department: DCIT, CC-4(4), Aaykar Bhawan Poorva, 5th Floor, 110 Shanti Pally, Kolkata-107.
2. Respondent /Assessee: M/s. Sakshi Trade Link Pvt. Ltd 81/B, Diamond Harbour Road, Khidderpore, Kolkata-23.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata True Copy, By order,

Sr.PS/H.O.O,ITAT,Kol

