

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "F" : DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
ITA.No.684/Del./2018  
Assessment Year 2008-2009

The DCIT, Circle-21(1), Room No.391, 3 <sup>rd</sup> Floor, C.R. Building, I.P. Estate, New Delhi – 110 002.	vs.	M/s. Realistic Realitors Pvt. Ltd., 411, Amba Deep Building, Connaught Place, New Delhi-110001 PAN AABCR7585F
(Appellant)		(Respondent)

For Revenue :	Shri Gurmel Singh, Sr. D.R.
For Assessee :	Shri Mayan K. Patwari, CA

Date of Hearing :	03.03.2021
Date of Pronouncement :	05.03.2021

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-38, New Delhi, Dated 23.10.2017, for the A.Y. 2008-2009, challenging the Order of the Ld. CIT(A) in deleting the addition of Rs.1,58,91,312/- paid to M/s. Taral Vincom Pvt. Ltd., as sub-

brokerage/Commission under section 37 of the I.T. Act, 1961.

2. We have heard the Learned Representatives of both the parties through video conferencing and perused the material on record.

3. Briefly the facts of the case are that return declaring income of Rs.2,58,31,030/- was filed by assessee which was processed under section 143(1) of the I.T. Act, 1961. The case was reopened under section 148 of the I.T. Act, 1961. The A.O. decided the objections of the assessee separately. The A.O. during the assessment proceedings noticed that assessee has paid and debited a sum of Rs.1,58,91,312/- as payment on account of sub-brokerage fees to M/s. Taral Vincom Pvt. Ltd., [Name changed to M/s. Linkpoint Infrastructure Pvt. Ltd.]. The assessee was asked to give details of the commission paid to sub-broker. The assessee explained that assessee company is engaged in the business of real estate and made payment of sub-brokerage to M/s. Taral Vincom Pvt. Ltd., through banking channel after deduction of TDS. The amount is paid against the sub-

brokerage against bill. Copy of ledger account of M/s. Taral Vincom Pvt. Ltd., along with bill was filed. Since the payment is made through banking channel, the same is duly reflected in the books of account and that transactions are genuine. The assessee filed further reply before A.O. explaining therein that the assessee is engaged in business of real estate and impugned commission [sub-brokerage] is paid to M/s. Taral Vincom Pvt. Ltd., for their efforts and contribution in various real estate details which are noted in the assessment order. The above sub-broker provided services including persuasion, clarification and making other efforts in the real estate deals. The assessee also filed supporting documents in support of the contention. The assessee further submitted before A.O. that the above expenditure is an allowable deduction under section 37 of the I.T. Act, 1961 and relied upon Judgments of the Hon'ble Supreme Court in the cases of CIT vs., India Molasses Co. P. Ltd., [1970] 78 ITR 474 (SC); J.K. Cotton Mfrs. Ltd., vs., CIT [1975] 101 ITR 221 (SC) and CIT vs., Panipat Woollen & General Mills Co. Ltd., [1976] 103 ITR 66 (SC). The A.O,

however, did not accept the contention of assessee in the light of information emanating from the search in the case of Shri Praveen Agarwal for booking the expenditure. The A.O. accordingly disallowed the impugned amount of Rs.1,58,91,312/-.

3.1. The assessee challenged the addition before the Ld. CIT(A). The detailed written submissions of the assessee is reproduced in the appellate order in which the assessee briefly explained that assessee is in the business of real estate. The impugned amount was paid as sub-commission / sub-brokerage which was laid out expended wholly and exclusively for the purpose of business. Shri Praveen Agarwal did not mention about issue of any bogus bill to the assessee. Such statement did not refer to any activity of the assessee. His statement is not corroborated by any evidence on record. The statement of Shri Praveen Agarwal cannot prevail over the documentary and primary evidences produced before A.O. The assessee produced sufficient evidence before A.O. to show that genuine brokerage was paid to sub-broker for doing the business activity of the

assessee. The books of account of assessee have not been rejected under section 145(3) of the I.T. Act, 1961. The identity of sub-broker M/s. Taral Vincom Pvt. Ltd., is not disputed. The assessee relied upon Order of the Ld. CIT(A) Dated 10.07.2017 in the case of Group Company M/s. Reach Promoter Pvt. Ltd., A.Y. 2007-2008 in which in similar circumstances sub-brokerage/commission was paid to M/s. Taral Vincom Pvt. Ltd., and the Ld. CIT(A) considering the issue in detail and the identical similar documents from record, deleted the addition. The Ld. CIT(A) also found that the same sub-broker connected with the assessee and the amount is wholly and exclusively expended for the purpose of business of assessee. The sub-broker has helped for leasing of the property and substantial commission was received by the assessee out of which brokerage was paid to the same broker. The same was supported by Bill Nos, TDS Certificate and payments were made through banking channel, therefore, on the basis of the similar documents, the Ld. CIT(A) deleted the addition finding that profit has also better as compared to earlier

years. The assessee, therefore, submitted that since in the same circumstances in Group Company, the addition have been deleted, therefore, on identical facts, the addition needs to be deleted. The Ld. CIT(A) considering the issue in detail and documentary evidences on record, deleted the entire addition. The findings of the Ld. CIT(A) in para-5.2 of the Order is reproduced as under :

*“5.2. I have carefully perused the submissions of appellant and the remarks of assessing officer on this ground of appeal in the assessment order. The assessing officer has considered the reply filed by assessee on 22.02.2016 in response to notices u/s 143(2) and 142(1) in which the details of cheques of Rs. 1,58,91,312/- issued by assessee in favour of M/s Taral Vincom Pvt. Ltd. as commission (sub-brokerage). The appellant is engaged in the business of real estate in which sub-brokers and brokers help in finalizing sale/purchase of real estate in lieu of certain percentage of commission/ brokerage which is the standard practice in this*

*line of business. During assessment proceedings the assessee had filed details of the commission on the five transactions amounting in total to Rs.1,58,91,312 (Rs.76,00,000 + Rs.34,07,122 + Rs.31,03,300 + Rs.15,48,690 + Rs.2,32,200 = Rs.1,58,91,312).*

*The provisions of Section 37(1) are as under:*

*“37.General - (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head “Profits and Gains of business or profession”.*

*A plain reading of section 37(1) reveals that payment of commission / brokerage / sub-brokerage is an allowable expenditure u/s 37(1) of*

*the Act. It has not been disputed by the assessing officer that this payment to M/s Taral Vincom Pvt. Ltd. has been made through banking channel, is duly reflected in the books of accounts of the assessee, after deduction of TDS which is also reflected in the TDS return filed by the assessee. There is no evidence brought on record by the assessing officer to conclude that the transaction of appellant with M/s Taral Vincom Pvt. Ltd. is bogus. The assessing officer had a very good reason for suspicion, but that suspicion could not be held to be true in the light of evidence furnished by assessee. Nowhere in the assessment order has the assessing officer pointed out any defects in the books of accounts and the same have not been rejected u/s 145(3) of the I.T. Act. The Ld. AR of appellant has relied on the decision of Hon'ble Delhi High Court in B.K. Khanna & Co. Pvt. Ltd. vs. CIT (2001) 247 ITR 705,709 Delhi. In the light of principles laid down by Hon'ble Delhi High Court*

*in B.K. Khanna 86 Co. Pvt. Ltd. vs. CIT (2001) 247 ITR 705,709 Delhi, I hold that the addition of Rs.1,58,91,312/- is not warranted. The same is therefore, deleted.”*

4. The Ld. D.R. relied upon the Order of the A.O.
5. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that in identical case of Group Company M/s. Reach Promoter Pvt. Ltd., (supra), the Ld. CIT(A) deleted similar addition in the case of the same sub-broker M/s. Taral Vincom Pvt. Ltd. He has submitted that statement of Shri Praveen Agarwal was recorded at the back of the assessee and was never confronted to assessee, therefore, such statement cannot be read in evidence against the assessee. Learned Counsel for the Assessee submitted that assessee produced all the documentary evidences on record which clearly justified that sub-broker acted on behalf of assessee for business purpose of the assessee and has rendered services for the assessee's

business, therefore, addition have been rightly deleted by the Ld. CIT(A).

6. We have considered the rival submissions and perused the material on record. In this case the A.O. in the light of information emanating from the search of Shri Praveen Agarwal came to the conclusion that assessee has wrongly claimed deduction on account of sub-brokerage paid to M/s. Taral Vincom Pvt. Ltd., The A.O. in the entire assessment order did not mention any details of the search conducted in the case of Shri Praveen Agarwal. The A.O. did not mention anything in the assessment order as to how the statement of Shri Praveen Agarwal was incriminating in nature against the assessee. The assessee submitted before the Ld. CIT(A) that in the Group case of M/s. Reach Promoters Pvt. Ltd., an identical issue have been considered by the Ld. CIT(A) in respect of the same broker M/s. Taral Vincom Pvt. Ltd., in the light of statement of Shri Praveen Agarwal and addition have been deleted. It would, therefore, show that Shri Praveen Agarwal did not make any allegation against the assessee of taking any bogus commission /

brokerage in the matter. The statement of Shri Praveen Agarwal have been recorded at the back of the assessee and was never confronted to the assessee for explanation or cross-examination on behalf of the assessee. No such fact is discernible from the assessment order. Even this point was raised before the Ld. CIT(A) and the Ld. CIT(A) in the case of M/s. Reach Promoters Pvt. Ltd., Group Company has also considered this issue that no opportunity was given to cross-examine the statement of Shri Praveen Agarwal, therefore, such statement cannot be read in evidence against the assessee. We rely upon the Judgments of Hon'ble Supreme Court in the case of Kishanchand Chellaram 125 ITR 713 (SC) and Andaman Timber Industries 281 CTR 214 (SC). There is no other finding given by the A.O. for making disallowance against the assessee. Thus, whatever documentary evidence was produced by the assessee before A.O. have not been doubted by the A.O. and no enquiry on the same have conducted by the A.O. Thus, its stand established that assessee being engaged in business of real estate has engaged M/s. Taral Vincom Pvt.

Ltd., as sub-broker. The assessee paid the impugned amount to the sub-broker against Bill and copy of the ledger account of the sub-broker is filed before A.O. The impugned amount is paid through banking channel on which TDS has also been deducted. The assessee filed details to show that for how much deals, sub-broker has worked for the business of assessee which were noted in the assessment order. All these documentary evidences have not been doubted by the A.O, therefore, assessee has been able to prove that the impugned amount have been incurred wholly and exclusively for the purpose of business of assessee. The A.O. did not bring any evidence on record to dispute the correctness of the documentary evidences filed by the assessee on record. The A.O. merely following the information received from the search of Shri Praveen Agarwal, disbelieved the explanation of assessee, but, such fact cannot be read in evidence against the assessee as noted above. Further it may be noted that assessee has declared substantial income in the return of income and filed return of income at Rs.2,58,31,030/- which have been

accepted by the A.O. The books of account of the assessee have not been rejected. These facts, therefore, show that assessee declared substantial income in the return of income and has no reason to book any bogus expenditure so as to reduce the profit. The Learned Counsel for the Assessee placed on record financial statement of assessee for the assessment year under appeal, copy of Account of M/s. Taral Vincom Pvt. Ltd., chart showing details of name, Bill No. Date and details of transaction, amount and brokerage, name of sub-broker, TDS deducted, net payment made and cheque number. He has also filed copy of the bills issued and copy of accounts by the assessee to the party sub-broker by M/s. Taral Vincom Pvt. Ltd., along with copy of bill issued by M/s. Taral Vincom Pvt. Ltd. These documents show that assessee has substantial income from brokerage/commission and other income and for earning the same, assessee shall have to pay commission and sub-brokerage to others, which in this case has been paid to M/s. Taral Vincom Pvt. Ltd., for business purposes. The details of ledger account show that assessee has regular

business with M/s. Taral Vincom Pvt. Ltd., which is supported by the activities conducted by them. The bills issued by assessee and copy of bills issued by M/s. Taral Vincom Pvt. Ltd., show complete details as to for which property the transactions have been conducted by the sub-brokerage, for which commission have been paid to M/s. Taral Vincom Pvt. Ltd. The documentary evidences on record clearly suggest that assessee entered into the genuine business activities with the sub-broker and sub-broker rendered services for the business activity of the assessee. In the Group Case the Ld. CIT(A) has already deleted the similar addition finding the commission payment made to the same sub-broker as genuine. Considering the totality of the facts and circumstances of the case noted above and in the absence of any rebuttal from the side of the Revenue through any documentary evidences on record, we do not find any justification to interfere with the Order of the Ld. CIT(A) in deleting the addition. We, therefore, uphold his Order and dismiss the appeal of the Revenue.

7. In the result, appeal of the Revenue dismissed.

Order pronounced in the open Court.

Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 05<sup>th</sup> March, 2021

VBP/-  
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'F' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.