

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'जी', मुंबई।

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCHES, 'G' MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं

श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA Nos.1145 & 1146/Mum/2015
Assessment Years: 2010-11 & 2011-12**

ACIT, CC-8(4), Room No.658, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	<u>बनाम/</u> Vs.	M/s Zaireen Travel Services 19-A1-Karim Manzil, Palton Road, Mumbai-400001
(राजस्व /Revenue)		(निर्धारिती /Assessee)
PAN. No. AAAFZ0160A		

**ITA Nos.1206/Mum/2015
Assessment Years: 2011-12**

M/s Zaireen Travel Services 19-A1-Karim Manzil, Palton Road, Mumbai-400001	<u>बनाम/</u> Vs.	ACIT, CC-8(4), Room No.658, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
PAN. No. AAAFZ0160A		

राजस्व की ओर से / Revenue by	Miss Vidisha Kalra CIT-DR
निर्धारिती की ओर से / Assessee by	Shri Ajay R. Singh

सुनवाई की तारीख / Date of Hearing :	25/01/2017
आदेश की तारीख /Date of Order:	30/01/2017

आदेश / O R D E R

Per Joginder Singh(Judicial Member)

This bunch of three appeals out of which for Assessment Year 2010-11 and 2011-12 are by the Revenue, whereas, the assessee is in cross appeal for Assessment Year 2011-12 against the impugned order all dated 23/12/2014 of the Ld. First Appellate Authority, Mumbai.

2. First, we shall take up the appeal of the Revenue (ITA No.1145/Mum/2015)(Assessment Year 2010-11), wherein, ground nos. 1 & 2 are with respect to deleting the disallowance of Rs.86,92,845/- being difference between income shown in seized profit & loss account of Rs.1,44,11,784/- and income as per audited profit & loss account of Rs.57,18,339/-, as undisclosed income on the basis of loose paper, without appreciating the provisions of section 132(4) of the Income Tax Act, 1961 (hereinafter the Act) and further ignoring the factual matrix.

2.1. During hearing, the Ld. CIT-DR, Miss. Vidisha Kalra, defended the addition made by the Assessing Officer

which was argued to be on the basis of corroborative material. Our attention was invited to para-6(page-6) of the impugned order and argued that the facts in the cases, relied upon by the Ld. Commissioner of Income Tax (Appeal) are on different facts as onus cast upon the assessee was not discharged. It was also contended that the figures are not tallying.

2.2. On the other hand, Shri Ajay R. Singh, ld. counsel for the assessee, contended that the assessee is merely entitled for commission out of the travelling business. Our attention was invited to pages -44 & 45 of the paper book, which are copies of the seized document by explaining that the Department added both the figures. From page-46 of the paper book, the ld. counsel explained that the figures match with the audited books of accounts (page-15 of the paper book). The crux of the arguments is that all the figure are tallying, which has not been disputed by the Assessing Officer and the loose papers has to be corroborated with the independent evidence and such loose papers are merely dump documents. The impugned order was defended.

2.3. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessment was completed u/s 153A r.w.s 143(3) of the Act. A search and seizure action was initiated against the assessee, wherein, certain loose papers were seized. Statement was also recorded. As per the sized

documents/rough profit & loss account, there was income of Rs.1,44,11,784/- (Zaireen IATA-profit of Rs.4,75,442+ Rs.Zaireen-Visa Rs.1,39,36,342/-), whereas, as per the audited books of accounts it was Rs.57,18,339/-. The assessee was asked to reconcile the balance sheet and profit & loss account with audited financial statements. The ld. Assessing Officer added the difference of Rs.86,92,845/- (Rs.1,44,11,784-57,18,339) as unaccounted income of the assessee (i.e. difference in profit & loss account).

2.4. On appeal, the Ld. Commissioner of Income Tax (Appeal) considered the factual matrix and deleted the addition. The Revenue is in appeal before this Tribunal.

2.5. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, it is noted that as per audited books of accounts, the total income of the assessee was Rs.2,24,21,235/-, which is more than the seized rough profit & loss account of Rs.1,39,36,342/-, meaning thereby, the assessee has offered more income compare to the rough noting mentioned in the seized profit & loss account. The assessee is merely entitled to commission in the business of travelling. We have perused the paper book pages 44 & 45 (seized documents), wherein, it is noted that both the figures were added by the Department. The ld. counsel for the

assessee justifiably explained the factual matrix before us and we find that the figures explained by the assessee are matching with the audited books of accounts (page-15). We have also perused the figures mentioned at page-44 and are compared with the figures mentioned at page-47 of the paper book. Where the figures, as per the Revenue, are mismatching, the ld. counsel duly explained the same, meaning thereby, these figures are duly tallying with the figures contained in the consolidated in the profit & loss account. In view of this factual matrix, we find no infirmity in the conclusion of the Ld. Commissioner of Income Tax (Appeal), thus, this appeal of the Revenue is having no merit, consequently, dismissed.

3. Now, we shall take up the appeal of the Revenue (ITA No.1146/Mum/2015). The ld. DR, defended the addition made by the ld. Assessing Officer. It is noted that the Ld. Commissioner of Income Tax (Appeal) deleted the addition of Rs.11 lakh made on account of payment vouchers and as unexplained expenditure, on the basis of loose papers. The crux of the argument is that the Ld. Commissioner of Income Tax (Appeal) did not appreciate the figures mentioned in the loose papers along with the provisions of section 132(4) of the Act. The Bench raised a query whether any appeal has been filed by the assessee in the case of sister concern. The ld. counsel for the assessee stated at bar that in the case of other party/sister concern, vide order dated 28/11/2014, the addition was sustained and neither any appeal was filed, in

the case of sister concern, nor any appeal will be filed. In view of this statement of the ld. counsel for the assessee, at bar, we are of the view that the same addition cannot be made at two places, therefore, we affirm the stand of the Ld. Commissioner of Income Tax (Appeal). This appeal of the Revenue is also dismissed.

4. Now, we shall take up the appeal of the assessee (ITA No.1206/Mum/2015), wherein, the only ground pertains to confirming the addition of Rs.83 lakhs made on the basis of entry found in the books of Indo-Saudi Carrier Pvt. Ltd.. The crux of argument on behalf of the assessee is that the Ld. Commissioner of Income Tax (Appeal) did not appreciate the fact that the assessee filed confirmation from the said party stating that no such entry of Rs.83 lakhs were reflected in their books, therefore, the addition is without any basis. The ld. counsel further explained that no addition was made of this amount in the case of sister concern. The ld. counsel invited our attention to page-13 (para-11) of the impugned order. The ld. DR had no objection if the matter may be examined afresh by the Assessing Officer. Considering the totality of facts, assertion made by the ld. counsel for the assessee, the Ld. Assessing Officer is directed to examine the factual matrix and also to examine whether in the case of sister concern with respect to this addition, along with the source and genuineness of the amount involved. The assessee be provided opportunity of being heard to

substantiate its claim. Thus, this appeal of the assessee is allowed for statistical purposes only.

Finally, appeals of the Revenue are dismissed, whereas, the appeal of the assessee is allowed for statistical purposes only.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 25/01/2017.

Sd/-

Sd/-

(Manoj Kumar Aggarwal)

(Joginder Singh)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 30/01/2017

Shekhar, P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai