



3#

%21.07.2011

Present: Mr. Abhishek Maratha, Sr. Standing Counsel for the Appellant

+ITA No. 867/2011

Although normal assessment was done by the Assessing Officer in respect of the assessment year 2002-2003 accepting the return as filed, thereafter, notice under Section 148 was issued re-opening the assessment proceedings. On the basis of information received from Income Tax Office, Ward 4(1), Chandigarh informing the Assessing Officer that the assessee had been providing accommodation entries to various persons and for the period in question, entries to the tune of Rs. 19,86,06,566/- were provided, it was also informed that the modus operandi of the assessee was to get the cash deposited in Account No. 3374 maintained with Vijaya Bank, Ansari Road, New Delhi in the name of M/s Lucky Enterprises, proprietor Shri Mahesh Kumar and the said amount used to be transferred in Account No. 3373 maintained by the assessee in the name of M/s H.B. Relan & Co. as its sole proprietor. Subsequently, accommodation entries were provided from this account by issuing drafts and cheques. During the course of assessment, statements of Shri Mahesh Kumar as well as the assessee were recorded. Shri Mahesh Kumar as well as the assessee, in fact, accepted the aforesaid modus operandi. On this basis, the Assessing Officer took the view that on the aforesaid entries provided by the assessee to different parties, it must have received some commission. In these circumstances,



the assessee earned brokerage @ 3% on the aforesaid amount given by the assessee by means of accommodation entries. The Assessing Officer added a sum of Rs. 61,02,190/- to the income of the assessee vide order dated 20th December, 2010.

In the appeal preferred by the assessee against this assessment order, the CIT(A) while maintaining that the assessee had earned the brokerage on the aforesaid accommodation entries, reduced the rate of commission from 3% to 0.75%. But we may note here that before the Assessing Officer as well as CIT (A), the contention of the assessee was that he earned brokerage only @0.25%. In these circumstances, both the assessee as well as revenue felt aggrieved by the order of the CIT(A) and approached the Tribunal by filing their respective appeals. The Income Tax Appellate Tribunal has inter alia observed that neither there was any favourable reason or basis for the Assessing Officer to estimate the brokerage @3% nor the assessee had given any cogent proof or evidence to show that he had earned the brokerage @0.25%. Even CIT(A) while reducing the commission from 3% to 0.75% did not arrive at the said conclusion on the basis of any cogent material.

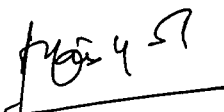
In these circumstances, the ITAT has remitted the case back to the Assessing Officer for a fresh decision after examining the parties, the details of whom are already available on record and on that basis, the Assessing Officer to arrive at a conclusion as to what percentage of commission was collected by the assessee from the aforesaid



accommodation entries provided by him to various parties. This order is without any blemish and does not call for any inference. No question of law arises. The only apprehension on the part of the department which is expressed before us is that since 9 years have lapsed, the assessee may take legal plea of not possessing the documents after 6 years of the relevant assessment years. However, as indicated above, the assessee is called upon to examine the parties to whom the accommodation entries were given for ascertaining the exact rate of commission which was received by the assessee from the said parties.

Moreover, if the assessee is not able to prove that he had received 0.25% only as a commission from various parties, adverse inference can always be drawn against him.

With these observations, we dismiss the appeal.


A.K.SIKRI, J.


M.L.MEHTA, J.

JULY 21, 2011
Sd