

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL “ D ” BENCH, MUMBAI**

सर्वश्री आई.पी.बंसल, न्यायिक सदस्य. एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष

**BEFORE SHRI I.P. BANSAL, JM AND SHRI SANJAY ARORA, AM**

आयकर अपील सं./I.T.A. No. 1455 TO 1459/MUM/2010

(निर्धारण वर्ष / Assessment Years : 2001-02 TO 2005-06)

Smt. Renu Sudesh Kapoor, 153 Maker Tower, “B’ Wing, Cuffe Parade, Mumbai 400 005.	<b>बनाम/ Vs.</b>	The DCIT, Cen. Cir.30, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AATPK 2407L		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी ओर से/ <b>Appellant by:</b>	Shri Dharmesh Shah
प्रत्यर्थी की ओर से/ <b>Respondent by :</b>	Shri Rupinder Brar

सुनवाई की तारीख / **Date of Hearing** : **21/05/2013**

घोषणा की तारीख / **Date of Pronouncement** : **21/05/2013**

आदेश / O R D E R

**PER I.P.BANSAL,J.M:**

All these appeals are filed by the assessee. They are directed against five separate orders passed by Ld. CIT(A)-39, Mumbai dated 21/12/2009 in respect of assessment years 2001-02 to 2005-06. All the impugned assessments have been framed under section 153A(1) r.w.s. 143(3) of the Income Tax Act, 1961 (the Act). The grounds of appeal in all the years are identical and read as under:

*“1. On the facts and circumstances of the case and in Law the Ld. Commissioner of Income Tax (A) erred in confirming the additions made by the Assessing Officer holding that the claim of sub-brokerage paid by the appellant is not supported by any evidence.*

2. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (A) failed to appreciate the fact that it is a common practice in the broking business to take the help of sub-brokers to whom the amount of sub-brokerage are paid.

3. On the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (A) erred in rejecting the contention of the appellant that the completed assessment should not be disturbed unless there is an independent evidence unearthing the undisclosed income found in the search.”

2. The only identical issue involved in these appeals is disallowance of sub-brokerage paid by the assessee. The amount involved in each of the year is as under:

Assessment Year	Amount.
2001-02	Rs. 1,05,000/- (Wrongly added by AO at Rs.1,50,00/- and mistake has been corrected by Ld. CIT(A) and disallowance is only Rs.1,05,000/-
2002-03	Rs. 96,500/-
2003-04	Rs. 89,000/-
2004-05	Rs. 30,000/-
2005-06	Rs. 24,000/-

3. The residence and office premises of the husband of the assessee namely, Shri. Sudesh Kapoor was searched on 6/11/2006, with regard to which impugned assessments have been framed under the provisions of section 153A. It is a matter of fact that no incriminating material was found during the course of search pertaining to sub-brokerage stated to be paid by the assessee. The assessee is stated to be engaged in the business of brokerage with regard to real estate from where the income has been earned by the assessee. For example a net commission of Rs. 6,26,250/- has been earned by the assessee in respect of assessment year 2001-02, which is after making payment of sub-brokerage of Rs.1,35,000/-. The total commission as per letter dated 2/3/2009 filed before Ld. CIT(A) is a sum of Rs.7,61,250/-. A copy of such reply is filed at page 4 to 8 of the paper book. The assessee has also given details with regard to commission earned by her in respect of the properties and such details for A.Y 2001-02 is filed at page -8 of the paper book and date of payments made to the various persons is also described and the said chart is reproduced below:

S.No./ Date	Name of the purchaser / seller	Name of the building, with full postal address	Total area what rate it is sold / purchased	Consideration receipt/ brokerage amount, what%
19/8/00	Puneet Gupta (Owner)	Lease Flat-Maker Tower 19 <sup>th</sup> Floor, Flat No.2, Cuff Parade	Lease rent- 1,05,000 (Area 1700 built up)	One month rent 1,05,000/- vide chq No.908194 Bank of Baroda
10.1.01	Seller - Maker Developers Services Pvt.	Maker Tower F, 21 <sup>st</sup> Floor, Cuff Parade	Area 5500 12,50,00,000/- (Lumpsum)	Part payment 6,56,250/- Less TDS vide chq No.008561 Bank of Baroda
				.....
			Total	7,61,250/-
	Less Paid Commission to Sub- Brokers			
	A) Cash Payments			
22.8.00	Paid to Raman Pandey	15000/-		
12.1.01	Paid to Ashok Pawar	15000/-		
15.2.01	Paid to Arjun Sawant	15000/-		
22.2.01	Paid to Arjun Sawant	15000/-		
22.2.01	Paid to Sekawat	15000/-		
10.3.01	Paid to Rajan Singh	15000/-		
10.3.01	Paid to Arun Sampat	15000/-		
10.3.01	Paid to Rajpal	15000/-		
12.3.01	Paid to Arun Sampat	15000/-		
		-----		
	Total	1,35,000/-		1,35,000/-
				-----
			Net	6,25,250/-

3.1 Similar details are filed with respect to other years also and for the sake of brevity the details in its entirety are not reproduced and details regarding gross commission earned by the assessee and sub-brokerage paid out of that are described year wise as follows:

Assessment Year	Gross Commission earned by the assessee (Rs.)	Sub-brokerage (Rs.)	Net amount. (Rs.)
2002-03	6,56,250/-	96,500/-	5,59,750/-
2003-04	6,66,323/-	89,000/-	5,77,363/-
2004-05	6,56,500/-	30,000/-	6,26,500/-
2005-06	5,34,300/-	24,000/-	5,10,300/-

3.2 It may also be mentioned here that the entire brokerage received by the assessee was through cheques and during the assessment year 2003-04 the payment of sub-brokerage amounting to Rs.44,000/- has been made by cheque. For A.Y 2004-05 the entire payment of sub-brokerage of Rs.30,000/- is made through cheque and similar is the position with respect to sub-brokerage paid of Rs.24,000/- in respect of A.Y 2005-06. All other sub-brokerage payments are made through cash. The disallowance has been made by the AO for the reason that the assessee failed to submit the evidence and addresses of the parties to whom the sub-brokerage was paid. Ld. CIT(A) has sustained the disallowances for the same reasons.

4. It is the case of the assessee that even during the course of search proceedings no evidence was found according to which it could be said that assessee did not pay sub-brokerage. As the matter was old assessee was not able to give details regarding the persons to whom sub-brokerage have been paid. As per common practice in the real estate brokerage small portion of the brokerage is to be paid to the person who has given information about the availability of the premises. Sub-brokerage paid by the assessee in all the cases is less than 20% of the amount earned by the assessee. Therefore, disallowance should not be sustained.

5. As against this it is the case of the Ld. DR that assessee having remained unable to furnish evidence regarding payment of sub-brokerage, the disallowance has rightly been sustained by Ld. CIT(A).

6. We have heard both the parties and their contentions have carefully been considered. The figures regarding earning of commission and sub-brokerage have already been mentioned in the above part of this order. The assessee has furnished full details regarding properties in respect of which she has earned commission income. Due to the oldness of the matter the assessee was unable to furnish the details regarding persons to whom the sub-brokerage has been paid. The amount of sub-brokerage is a small portion of the income earned by the assessee and it can reasonably be viewed that in the activity of earning

commission from real estate, certain part of the brokerage sometime has to be parted with as sub-brokerage . It is also seen that in some cases the assessee did not pay sub-brokerage. Keeping in view the entirety of facts which have been submitted by the assessee in the written submission filed before Ld. CIT(A) and which is part of the paper book, we see no justification in the disallowance made by the AO particularly, keeping in view the fact that there is no evidence with the department to establish that the sub-brokerage claimed to be paid by the assessee was not in fact paid. In this view of the situation we delete the disallowances for all these years in their entirety without going into the legal aspects which were also sought to be raised by Ld. A.R to contend that addition could not be made as no evidence was found during the course of search.

7. In the result, all these appeals are allowed in the manner aforesaid.

Order pronounced in the open court on 21/05/2013

आदेश की घोषणा खुले न्यायालय में दिनांक: 21/05/2013 को की गई।

Sd/-  
( SANJAY ARORA)

Sd/-  
(I.P.BANSAL)

न्यायिक सदस्य /ACCOUNTANT MEMBER

लेखा सदस्य /JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 21/05/2013

व.नि.स.Vm , Sr. PS

**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
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