

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 266 of 2010

Date of Decision: 30.7.2010

M/s Sunrise Stock Services (P) Ltd.

....Appellant.

Versus

Commissioner of Income Tax (Appeals)-II, Ludhiana and another
...Respondents.

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL.
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.**

PRESENT: Mr. Akshay Bhan, Advocate for the appellant.

ADARSH KUMAR GOEL, J.

1. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (in short “the Act”) against the order dated 31.12.2009 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (hereinafter referred to as “the Tribunal”) in ITA No. 367/Chandi/2008 for the assessment year 2005-06, proposing to raise the following substantial questions of law:-

- (i) Whether in facts and circumstances of the case, the action of the authorities below in rejecting the claim of the assessee without their being any material evidence to rebut the claim of the assessee/appellant is legally sustainable in the eyes of law?
- (ii) Whether in facts and circumstances of the case, the action of the authorities below in ignoring the books of accounts of the

assessee/appellant and to arbitrarily arrive at the rate of commission income is legally sustainable in the eyes of law?

- (iii) Whether in facts and circumstances of the case, the action of the authorities below, impugned orders Annexures A-1 and A-3 are legally sustainable in the eyes of law?"

2. During the course of assessment, the Assessing Officer made an addition of Rs.66,62,980/- on account of unaccounted commission earned by the assessee on share dealing transactions. The amount was calculated @ 2% of the total receipt of Rs.33,31,48,866/-. On appeal of the assessee, the CIT (A) deleted the said addition.

3. The Tribunal restored the said addition. The Tribunal noticed the fact that originally the assessee declared income of Rs.9,04,360/-. Later the assessee made additional disclosure of income of Rs.14,25,000/-. The assessee took the stand that its books of account were lost and FIR was lodged on 6.6.2006. Having regard to the turnover of Rs.33,31,48,866/-, the Assessing Officer was of the view that the disclosed income was not genuine and in absence of books of account, the Assessing Officer made assessment by applying rate of 2% to the gross turnover reflected in the return of income. The view taken by the CIT (A) that there was not sufficient evidence to rebut the claim of the assessee, the addition was not justified was not approved by the Tribunal. It was observed as under:-

"15. The assessee worked out the total transactions

of the year at Rs.33,31,48,866/-. However, the assessee claimed that 90% of the total turnover was on account of short term capital gains on which it has received commission @ 0.3% as against the commission of 1.50% received on long term share profits. However, in the statement of the director of the assessee company recorded during survey, after explaining the modus operandi of carrying on the business of providing share profits to various persons, in reply to Q. No.7, the director admitted that commission earned on issuing share profit bills against cash receipt varies from 0.005% to 0.015%. During the assessment proceedings, the explanation was filed by the assessee. As per the said explanation and also the statement of directors recorded during survey, the modus operandi adopted by the assessee was that it was receiving cash/cheques from various parties to whom the shares profits were being given. The assessee claims that there were two types of transactions on account of share profits; on being short term capital gains. The assessee claims that on receipts of cash/cheques in lieu of bills or share profits, commission was charged at different rates on the different types of transactions. During assessment proceedings the learned counsel for the assessee claimed that in

case of short term transactions where the rate of commission was in the range of 0.25% to 0.30%, however, in case of larger volume the commission was in the range of 0.10% to 0.15%. The learned counsel of assessee further claims that in case of long terms transactions the commission was in the range 1.35% to 1.50%. The assessee furnished break up of long term and short term transactions conducted during the year totaling to Rs.33,31,48,866/- as under:-

	<u>Value (in Rs.)</u>
Long Term	1,81,68,972/-
Short Term	<u>31,49,79,894/-</u>
	33,31,48,866/-

16. The assessee claimed to have received commission @ 1.50% on long term transaction totaling Rs.2,72,535/- and 0.30% on short term transactions totaling to Rs.9,44,940/-. The total commission received by the assessee during the year totals to Rs.12,17,475/-. The Assessing Officer had accepted the total turnover declared by the assessee in its return of income. However, the bifurcation undertaken by the assessee on account of long term and short term transactions had not been accepted by the Assessing Officer in the absence of the books of account nor the rate of commission

earned was accepted. After applying a rate of 2% to the total turnover shown by assessee, the Assessing Officer worked the income at Rs.66,62,980/-.

17. The issue to be addressed by us is limited to the rate of commission/service charges charged by the assessee and the break-up of the total turnover in the turnover relating to the long term transactions and short term transaction. The claim of the assessee that 90% of the total turnover relates to short term transactions and balance is long term transactions cannot be accepted in the absence of any books of account or any other evidence furnished by the assessee to justify this claim. The director of the assessee company had also not talked about the said bifurcation. In his statement recorded during survey, the director of assessee Company stated that bogus share profits were issued and hence surrender of income. We are in conformity with the order of the Assessing Officer in this regard and reverse the order of the CIT (A) to this extent.

18. The consequential controversy in this case is with regard to the rate of commission to be applied for computing the income by the assessee. The director of the assessee company in his statement had talked of different rates of commission i.e. varying between 0.005% to 0.015%. The assessee

during the assessment proceedings though claims to have charged commission in the range of 0.25% to 0.30% for short term transactions and 1.25% to 1.50% for long term transactions. However, while computing the working of commission earned during the year under appeal the assessee has adopted the flat rate of 0.30% for short terms transactions and 1.50% for long term transactions and worked out the income of the year.

19. The assessee had adopted different stands regarding rate/s of commission earned on share profit transactions. No evidence to justify any particular rate of commission charged by the assessee had been filed on record. In the absence of any evidence brought to our notice, we are of the view that the exercise is hypothetical as varying rates of commission are put forward by the assessee or his counsel at various junctures. In the absence of any evidence filed regarding the rate of commission charged by the assessee for the aforesaid share profit transactions issued during the year, we are left with no alternative but to estimate the rate of commission charges for giving the share profits. In the facts and circumstances of the case, rate of 0.75% be applied to work the income of the assessee. The Assessing Officer is directed to

recompute the income of the assessee accordingly.

The ground of appeal No.1 raised by the Revenue is partly allowed.”

4. We have heard learned counsel for the assessee who submitted that the addition was without any basis and books of account of the assessee were wrongly ignored.

5. We are unable to accept the submission. The Tribunal had duly considered the statement of the Director. The assessee was adopting modus operandi of receiving cash through cheques from various parties and giving them share profits. Claim of the assessee that it was receiving only 1.50% commission on long term transactions and 0.30% commission on total transactions was duly considered and it was held that the rate of commission disclosed by the assessee was not acceptable. Further, circumstance that the assessee itself surrendered additional income was also taken into account which fact itself shows that the initial declaration of income of the assessee was not genuine. In absence of genuineness of the stand of the assessee, the Tribunal held that rate of 0.75% to the gross turnover would be a fair assessment. The assessment of income of the assessee in the facts and circumstances of the case cannot be held to be illegal or arbitrary.

6. No substantial question of law arises in the appeal.

7. The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

July 30, 2010
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(AJAY KUMAR MITTAL)
JUDGE