IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 07 OF 2007

M/s. Emerald Cruises, now known as
Paradise Ventures, a registered Partnership
Firm represented herein by its Partner
Shri Annand V. Madgavkar, having
Office at Nizari Bhavan, Panaji, Goa. ……... **Appellant.**

V/s.

1. The Income Tax Appellate Tribunal
having office at Aayakar Bhavan,
Patto Plaza, Panaji, Goa.
(<u>Resp. No.1 deleted as per Order dt.
30/4/2007, passed in M.C.A.283/0</u>7).

2. The Commissioner of Income Tax
(Appeals), having Office at
Aayakar Bhavan,
Patto Plaza, Panaji, Goa.

3. The Assistant Commissioner of
Income Tax (Appeals), having Office at
Aayakar Bhavan,
Patto Plaza, Panaji, Goa. ……..... **Respondents.**

Mr. A. D. Bhobe, Advocate for the appellant.

Ms. Asha Desai, Advocate for the respondents.

**CORAM :- F.M. REIS &
K.L. WADANE, JJ.**

Date : - 8th February, 2016.

<u>ORAL JUDGMENT</u> : (PER F.M. REIS, J.)

Heard Mr. A. D. Bhobe, learned Counsel appearing for the appellant and Ms. Asha Desai, learned Counsel appearing for the respondents.

2. The above appeal came to be admitted by an order dated 12^{th} March, 2007, on the following substantial questions of law :

> (i) Whether, in the facts and circumstances of this case the ITAT was justified in entertaining the appeal ITA No.142/PANJ/2005 as the same was filed beyond the prescribed period of limitation and was unaccompanied by any plea for condonation of delay ?
>
> (ii) Whether, there is any legal bar to the payment of commission for sale of tickets to the counter staff/ staff at the Cruise Jetty, in addition to the payment of fixed monthly salary, payment of commissions to taxi drivers, agents, etc. ?
>
> (iii) Whether, the observations/findings made by the ITAT that the appellant has made "unverifiable entries", is totally perverse, particularly in view of the voluminous material produced on record by the appellant, which is reflected at Paragraphs 9.8 and 9.9 of the Order dated 10/3/2005 passed by the

Commissioner of Income Tax (Appeals) ?

3. As far as the first substantial question of law is concerned, Ms. Asha Desai, learned Counsel appearing for the respondents has produced the original record to point out that the appeal was filed within time. Considering the notings therein, and as nothing has been shown to the contrary by the appellants, we find that the contention of the appellants that the appeal filed by the respondents before the ITAT is barred by limitation does not deserve consideration. On perusal of the findings in that regard, it is seen that the appeal is filed within limitation and, as such, the first substantial question of law is answered in favour of the appellant.

4. With regard to the other two substantial questions of law, Mr. A. D. Bhobe, learned Counsel appearing for the appellant has pointed out that the Assessing Officer has disallowed the two claims for deduction put forward by the appellant. One is for payments made towards commission to taxi drivers, travel agents, etc. to procure more business and other deductions towards commission paid to the staff. Mr. Bhobe, learned Counsel appearing for the appellant has pointed out that the Assessing Office, without application of mind, has refused the

said deductions. The learned Counsel further submits that there was enough material on record produced by the appellant to substantiate such claims before the Assessing Officer. The learned Counsel has, thereafter, taken us through the order passed by the Commissioner of Income Tax (Appeals) to point out that the Commissioner has minutely examined the material, as well as the other evidence on record to come to the conclusion that the appellants were entitled to deductions towards payment of commission paid to taxi drivers, travel agents, etc.. The learned Counsel further points out that the Commissioner has scrutinized the material, including the Memorandum of Agreement, as well as the vouchers and other material produced by the appellants to come to the conclusion that the entries towards the deductions were genuine and duly verified. The learned Counsel further submits that the Commissioner also bifurcated the deductions i.e. the amounts which could be verified and the amounts which could not be verified and, accordingly, disallowed the amount to the tune of Rs.73,749/-. The learned Counsel further submits that the Revenue preferred an appeal before the learned ITAT which, without unsettling the findings arrived at by the learned Commissioner, deducted from 42 and odd percent to 35 and odd percent. The learned Counsel further points out that there are no reasons given as to when such deductions are to be effected and as such, there is perversity in the findings of the learned Tribunal. The learned Counsel further points out that the findings arrived at by the learned Tribunal are without examining the evidence on record, namely the Memorandum of Agreement, as well as other material produced by the appellants in support of their claim for deductions. The learned Counsel further submits that non-consideration of this material itself would result in perversity in the findings of fact arrived at by the learned Tribunal.

As far as the deductions towards commission paid to the staff, Shri Bhobe, learned Counsel appearing for the appellant has relied upon a Judgment of the Apex Court reported in ***AIR 1977 SC 1182***, in the case of ***M/s. Shahzada Nand & Sons vs. The Commissioner of Income-tax, Patial,*** and pointed out that the Apex Court had accepted that there can be cases where commission can be paid also to the staff for carrying out extra services.

5. On the other hand, Ms. Dessai, learned Counsel appearing for the respondents, has pointed out that the Assessing Officer has minutely examined the material on record to come to the conclusion that the deductions claimed by the appellant cannot be accepted. The learned Counsel further points out that the claims of the appellant

could not be verified as the appellant had not given the particulars of existence of the persons, referred to therein. The learned Counsel further points out that in the absence of any material to prove the correctness of such claims, the Assessing Officer was justified to refuse the deductions claimed by the appellant. The learned Counsel further points out that the Commissioner has examined the material which was not before the Assessing Officer to come to the conclusion that the deductions towards the commission paid to the taxi drivers, travel agents, etc., are to be accepted. The learned Counsel further submits that the Commissioner has failed to consider that the Assessing Officer has also relied upon the commission paid by a person carrying on similar business, namely M/s. Royal Cruises whilst refusing the deductions to the appellant. The learned Counsel further points out that the Commissioner erroneously appreciated the material on record whilst coming to the conclusion that the appellants were entitled for the deductions. The learned Counsel further points out that the learned Tribunal has accepted the findings of the Commissioner, as well as the Assessing Officer and has weighed both the findings to come to the conclusion that deduction of 35% would be justified. The learned Counsel further submits that these findings of fact cannot be reappreciated by this Court in the present appeal and, as such, appeal deserves to be rejected.

With regard to the contention of Mr. Bhobe in connection with the deductions towards commission paid to the staff, Ms. Dessai, learned Counsel appearing for the respondents has pointed out that the Judgment of the Apex Court in the cases of ***M/s. Shahzada Nand & Sons vs. The Commissioner of Income-tax, Patial,*** (supra) was in the facts of the case before the Apex Court and, as such, not applicable to the facts of the present case. The learned Counsel, as such, points out that the appeal be rejected.

6. We have considered the submissions of the learned Counsel and we have also gone through the record. As far as the claim of the appellants for deductions towards commission paid to the taxi drivers, travel agents, etc., is concerned, we find that the Commissioner, whilst coming to the conclusion that the appellants were entitled for such deduction, has minutely scrutinized the material on record, but, however, on perusal of the impugned order, it appears that the learned Tribunal has not at all scrutinized the material whilst reversing the findings of the Commissioner. In fact, there are no reasons recorded in the impugned order of the learned Tribunal to hold that the findings of the Commissioner cannot be sustained. Besides

that, the documents relied upon by the learned Commissioner, including the Memorandum of Agreement, as well as the vouchers, etc., produced on record have not at all be considered. Non-consideration of such material would itself lead to perversity in the findings of fact, arrived at by the learned Tribunal which would call for interference of this Court in the present appeal.

7. As far as next claim of the appellants towards deduction on account of commission paid to the staff is concerned, we find that the learned Tribunal can re-examine the matter in the light of the Judgment of the Apex Court in the case of ***M/s. Shahzada Nand & Sons vs. The Commissioner of Income-tax, Patial,*** (supra), on its own merits. Both the substantial questions of law are answered accordingly.

8. In view of the above, we pass the following Order :

(I) The appeal is partly allowed.

(II) The impugned Order dated 7/9/2006, passed by the Income Tax Appellate Tribunal, Panaji in ITA No. 142/PANJ/2005 and Cross Objection No.11/PANJ/2005 is quashed and set aside.

(III) Income Tax Appeal No.142/PANJ/2005 and Cross Objection No.11/PANJ/2005 are restored to the file of the learned

Tribunal.

(IV) The learned Tribunal is directed to decide the appeal, as well as the cross objection, afresh, in the light of the observations made herein above, after hearing the parties, in accordance with law.

(V) All the contentions of both the parties, on merits, are left open.

(VI) The appeal, as also the cross objection stand, disposed of accordingly.

It is pointed out during the course of the hearing that the disputed amount has been deposited by the appellant before the Revenue Authorities. The amount so deposited shall be subject to the decision which may be passed by the Tribunal.

K.L. WADANE, J. **F.M. REIS, J.**

ssm.