IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1729 OF 2016

Principal Commissioner of Income Tax-14 .... Appellant

versus

M/s Goldstar Finvest Pvt. Ltd. ... Respondent

…....

- Mr.Suresh Kumar, Advocate for Appellant.
- Mr.M.A. Narvekar, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 01st APRIL, 2019.

P.C. :

1. The Revenue has filed this Appeal challenging the Judgment of Income Tax Appellate Tribunal. Following question was presented for our consideration;

> *"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal erred in restricting the addition of Rs.370.69 lakhs made on account of unexplained cash credits u/s. 68 of the Act to 0.15% without appreciating that the assessee*

> *had failed to furnish satisfactory explanation with regard to the identity of the parties and the sources and genuineness of the transactions?*"

2. It is undisputed that under similar circumstances a similar question in case of another assessee in similar business came up for consideration in Income Tax Appeal No.54/17 and connected Appeals. Revenue's Appeals were dismissed on 25/03/2019 making following observations;

> *"3. The Assessing Officer adopted the rate of commission of 2% on the total turnover, which order the CIT (A) confirmed. In further Appeal by the Assessee, the Tribunal reduced the rate of commission to 0.15%. The Tribunal referred to its own decision in case of the Assessee's sister concern and held that the appropriate rate of commission should be 0.15% which is also admitted by the Assessee during search.*
>
> *4. In our opinion, the entire issue is based on facts. The estimation of the rate of commission of the Assesee would always be subject-matter of some guesswork. No precise formula could be applied.*

The Tribunal having taken into consideration the relevant factors, has arrived at a certain percentage of commission that any such kind of activities could be expected to be derived from. This does not give rise to any substantial question of law.

5. The Revenue also disputes the expenditure allowed by the Tribunal on such activities. Here also, for the same reasons cited above, in our opinion, no question of law arises.

6. In the result, the Appeals are dismissed."

3. We are conscious that unlike in case No.54/17 and connected Appeals, in the present case, the Assessing Officer had added the entire sum not limiting to the commission charged. However, CIT (A) had applied the percentage of commission deleting the rest of the additions.

4. In the result, Income Tax Appeal is dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**