**आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।**
**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE**

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER**
**AND**
**SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

**आयकर अपील सं. / ITA No.447/PUN/2017**

**निर्धारण वर्ष / Assessment Year : 2013-14**

Smt. Sharmila Yatin Palkar
Flat No.6, Second Floor,
Mahavir Blessings, Plot No.613,
Sector No.25, PCNTDA, Nigdi,
Pune – 411044

PAN: AOKPP8981R

.......अपीलार्थी / Appellant

**बनाम / V/s.**

The Asst. Commissioner of Income Tax,
Circle – 9, Pune

......प्रत्यर्थी / Respondent

| | | |
|---|---|---|
| Assessee by | : | Shri Hari Krishan |
| Revenue by | : | Shri S.P. Walimbe |

| | |
|---|---|
| सुनवाई की तारीख / Date of Hearing | : 02.03.2020 |
| घोषणा की तारीख / Date of Pronouncement | : 03.03.2020 |

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM :**

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-13, Pune, dated 24.01.2017 for the Assessment Year 2013-14.

2. Briefly stated the relevant facts include that during the year under consideration, the assessee carried on the business of sales and promotion

for the investment policies of Sai Prasad Group companies and she earned commission from the said activity. The assessee filed the return of income on 30.10.2013 declaring total income of Rs.65,65,480/-. The Assessing Officer passed assessment order u/s 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The AO made various additions and determined the total income of the assessee at Rs.1,04,85,530/-.

3. In the first appellate proceedings, the ld. CIT(A) upheld the order of Assessing Officer.

4. Aggrieved with the order of the CIT(A), the assessee is in appeal before us and has raised the following grounds:-

> *The following grounds of appeal are taken independently and without prejudice to one another.*
>
> 1. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in dismissing the appeal of the assessee.*
>
> 2. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in holding that the assessee's arguments are too unrealistic and unbelievable for its acceptance.*
>
> 3. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in dismissing the assessee's prayer that the Assessing Officer be directed to get the bills and vouchers and other evidences, in support of the assessee's explanations against the additions /disallowance made by the Assessing Officer, from M /s Sai Prasad Group of Companies who were the principles of the assessee and for whom the assessee was working as an agent for sale and promotion of the investment policies of the Group, and the assessee was unable to produce the said bills and vouchers and other evidences in support of her explanations, because the premises of M/s Sai Prasad Group of Companies have been sealed because of SEBI and Police action on the Group.*
>
> 4. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the <u>disallowance of Rs.10,00,000/-</u> made by the Assessing Officer out of the business-development expenses.*
>
> 5. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the <u>disallowance of Rs.1,50,000/-</u> made by the Assessing Officer out of the vehicle expenses.*

6. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the disallowance of Rs.2,00,000/- made by the Assessing Officer out of Hotels, Meetings and Travelling expenses.*

7. *On the farts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs.17,27,418/- made by the Assessing Officer u/s 68 of the Income Tax Act, 1961.*

8. *On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in dismissing the assessee's ground against the addition of Rs.8,42,630/- in respect of sale of gold jewellery in the absence_of evidence with regard to the sale and its corresponding purchase.*

5. Before us, ld. Counsel brought our attention to the above referred grounds and submitted that ground Nos.1 to 3 are argumentative or general. However, ld. AR submitted the said grounds revolve around the additions agitated in grounds 4 to 8 of the appeal.

6. On hearing the ld. Counsel on this, we find the said grounds are general or argumentative in nature. Accordingly, they are dismissed as such.

7. Referring to ground Nos.4 to 6, ld. Counsel submitted the Assessing Officer made disallowances on adhoc basis on account of business development expenses (ground No.4), vehicle expenses (ground No.5), travelling, meetings and hotel expenses (ground No.6). The ld. Counsel mentioned that the Assessing Officer has not followed any reasoning or logic in making adhoc disallowances. When a question is raised by the Bench on the evidences, the ld. Counsel mentioned the Bench may decided appropriate amount for disallowance. However, in this regard the ld. Counsel mentioned the assessee earned commission income of around Rs.1.95 crores and the same was offered to tax. Further, ld. Counsel mentioned the assessee was engaged in business promotion and the field development activities and

earned above said commission income. The ld. Counsel also mentioned that nominal sum may be disallowed on these accounts without specifying account-wise disallowance. He also mentioned whatever disallowance now made may not become the precedent for the later assessment years, if any.

8. On hearing both the sides on the grounds at Nos.4 to 6, we are of the opinion that adhocism in matters of disallowances is not appropriate. AO should not be arbitrary when adhoc disallowances are made. Reasonability needs to be demonstrated. Considering the same, we are of the opinion to restricting the disallowance to 50% of the disallowed amounts of i.e. (Rs.10,00,000/- + Rs.1,50,000/- + Rs.2,00,000/-) Rs.13,50,000/- should be reasonable and fair. Accordingly, we restrict the disallowance to Rs.6,75,000/-. Thus, ground Nos.4 to 6 are partly allowed.

9. Regarding the grounds at Nos.7 and 8, ld. Counsel mentioned that the assessee failed to provide evidences to the AO at the relevant point of time due to criminal charges levelled against the assessee. Right now, the assessee is on bail. As per ld. AR, if an opportunity is granted to the assessee, requisite evidences shall be furnished before the AO. He accordingly made a prayer for remanding of the issue to the file of Assessing Officer for fresh adjudication.

10. On hearing both sides, we are of the opinion that the assessee was prevented from filing evidences in the past due to the scam related criminal proceedings. On finding merit in the argument of ld. Counsel, we are of the opinion that for the issues raised in ground Nos.7 and 8, necessary facts were not available on record to take a decision. Accordingly, the Assessing Officer

is directed to entertain the evidences if any, following the due process of law. The Assessing Officer shall make use of them and adjudicate the issues as per law. The assessee is at liberty to file the necessary papers. Thus, the ground Nos.7 and 8 are allowed for statistical purposes.

11. In the result, the appeal of assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 3rd March, 2020.

| Sd/- | Sd/- |
| --- | --- |
| **S.S. VISWANETHRA RAVI** | **D. KARUNAKARA RAO** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

पुणे / Pune; दिनांक / Dated : 3rd March, 2020.
GCVSR

**<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent
3. The CIT (Appeals)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

//सत्यापित प्रति// True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune