IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.6448/Mum/2019
(A.Y: 2015-16)

M/s. First Call Advisory Indi Pvt Ltd., Unit No. 66, Ground Floor, Udyhog Bhavan, Co-Op society Ltd Sonawala Road, Goregaon, Mumbai – 400063.	Vs.	ITO – 1(1)(3) Aayakar Bhavan, MK Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCF5952A		
Appellant	..	Respondent

Appellant by :	Shri Neeraj Mangla. AR
Respondent by :	Shri S.N. Kabra. DR

Date of Hearing	13.09.2021
Date of Pronouncement	30.09.2021

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)- 2, Mumbai passed u/s 143(3) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

1. *That the Ld. CIT(A) grossly erred in law and in facts of*

case in confirming disallowance of rental expenses of Rs. 44,610/- alleging the same to be disallowable being prior period expanses.

2. *The Ld. CIT(A) grossly erred in law and in facts of case in confirming disallowance of legal and professional expenses of Rs. 34,908/- alleging the same to be disallowed being prior period expenses.*
3. *That the Ld CIT(A) grossly erred in confirming addition of Rs. 5,76,800/- being commission income assessed by Ld. AO only on surmises, presumptions and conjectures.*
4. *Tat the appellant craves the leave to add/alter/amend or withdraw all or any ground of appeal during the course of appellate proceedings.*

2. The Brief facts of the case are that the assessee company is engaged in providing consultancy services. The assessee has filed the return of income electronically for the A.Y 2015-16 on 29.03.2016 declaring a total income of Rs.59,524/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for limited scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. The A.O made observations in the assessment order that the limited scrutiny under the CASS is (i) in respect of receipts u/s 194C and 194J of the Act as per 26AS are more than the receipts disclosed in the Return of income and (ii) the TDS credit claimed in the income tax return is

less than TDS credit available as per 26AS. In compliance, the Ld. AR of the assessee submitted the details and the case was discussed. During the F.Y 2014-15 the assessee has income from corporate entities towards consultancy services where the aggregate receipts of turnover is Rs. 47,18,940/- and the income determined is only Rs. 59,524/-. The A.O has found that an amount of Rs.2,40,000/- was claimed as rent expenses and the assessee has filed the details.

3. Whereas, the A.O on perusal of the facts and the information observed that the assessee has failed to establish that the premises used by the assessee for the business as there are discrepancies in respect of agreement and the owner is not available in the present address. Therefore, the AO is of the opinion that the claim of rent of Rs.2,40,000/- and rent expenses of Rs.44,610/-is not allowable. Similarly, electricity expenses of Rs.66,944/- in respect of the premises used for business debited in the profit and loss account was also disallowed. In the financial statements, the assessee has claimed the salary expenses of Rs. 6 lakhs and no TDS was deducted in

respect of payments and the A.O. has applied the provisions of Sec. 40(a)(ia) of the Act. Similarly, the A.O made addition of legal and professional fee Rs.34,908/- and understatement of the business receipts of Rs.34,80,240/-.Further undisclosed commission receipts are estimated and assessed the total income of Rs.67,98,670/-and passed order u/sec143(3) of the Act dated 30-12-2017.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal submissions of the assessee and findings of the A.O.The CIT(A) in respect of disputed issue of disallowance of rent expenses of Rs. 44,610/- and legal and professional fee of Rs. 34,908/- found that these are prior period expenses and confirmed the disallowance. Similarly the CIT(A) has confirmed the addition of commission income but restricted the rate @2%. Whereas, CIT(A) has granted the relief in other grounds of appeal and partly allowed the appeal of the assessee. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon’ble Tribunal.

5. At the time of hearing, on ground of appeal no 1 and 2, with respect to rent expenses and legal & professional expenses, the contentions of the Ld.AR are that the CIT(A) has erred in confirming the addition as the prior period expenses and over looked the facts and circumstances. Whereas in respect of estimation of commission income @2%, the Ld. AR submitted that it is on higher side and prayed for reduction of percentage. The Ld.AR substantiated the submissions with the judicial decisions and paper book. Contra the Ld. DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The assessee has challenged the disallowance of rental expenses, legal&professional expenses as prior period expenditure. The A.O is of the opinion that the work premises was vacated in Oct 2013 and was not occupied during the F.Y 2014-15 hence no rent expenses allowable. We found that the assessee has filed the detailed explanations before the A.O. and CIT(A), where the assessee has entered into an agreement in respect of the property and paid rent from April 2013 to September 2013 and renewed for additional period but the property has heavy water

leakage and the roof top cannot be repaired.Further, the premises was vacated in October 2013 and the premises was in the possession of the assessee. We find that the assessee company has claimed the expenses and the submissions are that it is regularly assessed to tax and the expenditure is genuine. Similarly we find the disallowance of legal and professional fee of Rs. 34,908/- which pertains to F.Y 2013-14. We find that the genuineness of the expenses is not doubted by the A.O. or CIT(A) and the Ld. AR relied on the following judicial decisions:

1. *CIT Vs. Nagri Mills 33 ITR 684 (HC) (Bom).*
2. *CIT Vs. Vishnu Industrial Gases Pvt Ltd, ITR No. 229/1988, Delhi High Court*
3. *DCIT Vs. Maharashtra State Electricity Board (2021) 61 CCH 0152 (Mum Trib)*

7. We considering the facts and the nature of expenditure are of view that the claim incurred wholly and exclusively for the purpose of business and the genuiness is not doubted by the revenue. Accordingly, we direct the assessing officer to delete the addition of rental expenses and legal&professional fees.

8. The last ground of appeal where the addition made by the A.O. was of Rs. 22,72,440/- was restricted to Rs.5,76,800/- by the Appellate authority. The Ld. CIT(A) considered the submissions of the appellant company and observed that out of the total funds received in the bank account of assessee company an amount of Rs.2,86,00,000/- was used by the assessee company for making Demand Draft which were cancelled in the bank account of the assessee company after 3 months. Further, amount of Rs. 2,40,000/- was paid to Asiya Praveen. The Ld. CIT(A) find that these demand drafts might have been used to keep as security/ collateral, related to accommodation entry business. Thus, the Ld. CIT(A) restricted the commission income @ 2% . The Ld.AR emphasized that the assessee company has duly substantiated the genuineness of its business activities and the fact that it was not engaged in the business of providing accommodation entries and the rate of commission determined by the Ld. CIT(A) is unreasonable. The Ld.AR submitted that on the similar issue of estimation of commission in the case of M/s Empower India Limited in ITA No.

3205/Mum/2019 it was restricted to 1%. We considering the facts and circumstances and the nexus between the assessee company and the lender restrict the addition @ 1% as against 2% and modify the order of the CIT(A).

8. In the result, appeal filed by the assessee is partly.

Order pronounced in the open court on 30.09.2021.

Sd/-	Sd/-
(S RIFAUR RAHMAN)	(PAVAN KUMAR GADALE)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated 30.09.2021

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai