

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI
BEFORE SHRI R. S. SYAL, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No.-4897/DEL/2012
(ASSESSMENT YEAR 2009-10)**

Jay Enn Infotech Pvt. Ltd. 105- A/2, Saraswati House, 27-Nehru Place New Delhi-110019 AAACJ9991N (APPELLANT)	vs	ACIT Central Circle- 11 New Delhi (RESPONDENT)
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Appellant by	Sh. Ruchesh Sinha, Adv
Respondent by	Sh. Umesh Chandra Dubey, SR. DR

Date of Hearing	10.10.2016
Date of Pronouncement	14.10.2016

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 30/07/2012 passed by CIT(A) -XXXI, New Delhi

2. The grounds of appeal are as under:-

“On the facts and in circumstances of the case and in law, an appeal is filed before the Tribunal against the order of Commissioner (Appeals) XXXI erred in sustaining the addition made by the A.O. without appreciating the true facts of the case and assessing the income of the Assessee at Rs. 6096027 against the returned income of Rs. 350670/-.

The assessee prays for the total relief, so wrong additions made of Rs. 5745357 be deleted.

The appellant craves leave to add, amend alter vary and or withdraw any or all the above ground of appeal.”

3. The Ld. AR submitted that application under Rule 9A read with Rule 11 of the ITAT Rules and Judgment of Apex Court in case of NTPC Vs. CIT 229 ITR 383 (SC) was filed on 09.06.2016 for revising the grounds of appeal. The said grounds are as follows:

“1. That in the facts and circumstances of the case, the order of the Ld. CIT (A) is arbitrary, invalid and illegal.

2. That in the given facts and circumstances of the case, the CIT (A) has grossly erred in law on facts in not considering that survey u/s. 133A in this case was conducted on 24.9.2009 i.e. in the F.Y. 2009-10 relevant for the A.Y. 2010-11 and the addition based on the finding of survey if any, can be made for the A.Y. 2010-11 only and not in A.Y. 2009-10. The CIT(A) while confirming the assessment order has grossly failed to consider that the AO in this case has made addition for a pre-survey period i.e. in the F.Y. 2008-09 relevant for the A.Y. 2009-10.

3. That in the given facts and circumstances of the case, the order of the CIT(A) is arbitrary, invalid and ‘perverse’ as the same does not deal with the documentary and circumstantial evidence(s), does not consider the detailed submissions placed on record, and is passed without verifying the facts on record, giving proper opportunity of hearing to the Appellant and also without considering that no addition in pursuance of survey can be made in the A.Y. 2009-10.

4. That in the given facts and circumstances of the case, the CIT(A) has grossly erred in law and on facts in confirming the addition of Rs.

73,55,760/- made by the AO in the case of the Appellant based on the gross turnover.

5. That CIT(A) has grossly erred in confirming the addition made by the AO, without considering that before making the addition the AO has substantiated that the appellant is providing accommodation entries in the nature of bogus purchases to the Tulip Group of cases, and any materials in this regard was never confronted or discussed with the Appellant before making such addition.

6. That the Appellant prays for all consequential reliefs entitled to it under the law in pursuance of the foregoing grounds of appeal or even otherwise.

4. The brief facts of the case are a simultaneous survey operation was conducted on M/s. Jay Enn Infotech Pvt. Ltd. and M/s. Binary Network Solutions Pvt. Ltd. under Section 133A of Income Tax Act, 1961 on 24.09.2009 at 105, A/2, Saraswati House, 27, Nehru Place, New Delhi with an action under Section 132 on Tulip Group of cases. Smt. Nirmala Jain, mother of Sh. Sunil Jain, Director was available at the time of survey as Sh. Jain was away for the treatment of his wife. During the course of survey proceedings, certain incriminating documents in the form of blank cheque books, loose papers and electronic media was found and impounded. Smt. Nirmala Jain confronted on the basis of the material so found and impounded. The Assessing Officer observed that Assessee Company was providing accommodation bills and had no genuine sales. Sh. Sunil Jain never attended the proceedings

in the course of survey nor in post survey inquiries. Therefore, the Assessing Officer held that the assessee is involved in the business of providing accommodation purchase bills to various persons/concerns/entities without supply of goods and charges commission on such sales. In the profit and loss account for the period ending 31.03.2009, total turnover of the assessee company is mentioned at Rs. 383682543/-. Considering that the assessee is not involved in actual business of sale and purchase of goods and only issuing accommodation bills to provide bogus entries to various concerns on commission basis, the income of the assessee was assessed on account of commission charged @ 2% on gross turnover recorded in the books of account. Thus income of the assessee works out to Rs. 7673650/- ($383682543 \times 2\%$) on account of commission on gross turnover of the assessee company. Thus the Assessing Officer was satisfied that the assessee failed to furnish true particulars of its income in the return of income filed, for the A.Y. 2009-10 and concealed particulars of income. Thus addition of Rs.7673650/- was made.

5. Aggrieved by this, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee by holding that the rejection of books were justified and there is no ground for any interference with the addition made. The rate of commission charged @ 2% by the AO is reasonable on the

entire accommodation bill and confirmed the order of the Assessing Officer.

6. The Ld. AR submitted that in case of M/s. Binary Network Solution Pvt. Ltd. Vs. ACIT, the ITAT, New Delhi has remanded the matter back to the file of the Assessing Officer. (ITA NO. 1282/DEL/2014 dated 11.08.2016 A.Y. 2009-10). In the said matter, the Tribunal has set aside the orders of the authorities below and matter was restored to the file of the Assessing Officer.
7. The Ld. DR relied upon the orders of the CIT(A) and Assessing Officer.
8. We have perused all the records and heard both the parties. The statement of Smt. Nirmala Jain was taken on records in case of M/s. Binary Network Solution Pvt. Ltd. as well. The case herein is identical with the said case. Therefore, it will be proper to set aside the orders of the CIT(A) and Assessing Officer. The matter is remanded back to the file of the Assessing Officer for fresh adjudication. Proper opportunity and hearing may be given to the assessee and assessee is directed to produce necessary evidence before the Assessing Officer.
9. *In the result, appeal is partly allowed for statistical purpose.*

The order is pronounced in the open court on 14th of October, 2016.

Sd/-
(R.S. SYAL)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 14/10/2016

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	.10.2016	PS
2.	Draft placed before author	.10.2016	PS
3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	14.10.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	14.10.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		

10.	Date of dispatch of Order.		
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