

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA Nos.: 590, 591, 592, 593/Del /2014
Asstt. Years: 2004-05, 2004-05, 2005-06, 2005-06**

Prashant Aggarwal 206, Lal Jyoti Apartment, Sector-9, Plot No. 16, Rohini New Delhi – 110 086 PAN AEBPA4478F	Vs.	ACIT Central Circle-9 New Delhi.
(Appellant)		(Respondent)

**ITA Nos.: 886, 887, 888, 889/Del /2014
Asstt. Years: 2004-05, 2004-05, 2005-06, 2005-06**

ACIT Central Circle-09, New Delhi.	Vs.	Prashant Aggarwal 206, Lal Jyoti Apartment Sector-9, Plot No. 16, Rohini New Delhi – 110 034 PAN AEBPA4478F
(Appellant)		(Respondent)

**ITA Nos.: 594, 595 /Del /2014
Asstt. Years: 2004-05, 2004-05**

Ram Chander Garg C-65, 1 st Floor, Sangam Apartments Sector-9, Rohini New Delhi PAN AFDPG9137P	Vs.	ACIT Central Circle-9 New Delhi.
(Appellant)		(Respondent)

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ITA Nos.: 1917, 1918 /Del /2014
Asstt. Years: 2004-05, 2004-05

ITO Ward-29(1) New Delhi.	Vs.	Ram Chander Garg C-65, 1 st Floor, Sangam Apartments Sector-9, Rohini New Delhi PAN AFDPG9137P
(Appellant)		(Respondent)

Assessee by:	Shri Sanjeev Bajaj, CA
Department by :	Shri Atiq Ahmod, Sr.DR.
Date of Hearing	08/11/2017
Date of pronouncement	14/11/2017

ORDER

PER BENCH

The aforesaid bunch of cross appeals have been filed by the above named assessees as well as by the department against separate impugned order of even date 29.11.2013 for the quantum of assessment passed u/s 144 r.w.s. 147/148 for the assessment years 2004-05 and 2005-06; and separate appeals have been filed in relation to the penalty proceedings u/s 271(1)(c), against order dated 29.11.2013 for the assessment years 2004-05 and 2005-06. Since issues involved in all the appeals are common arising out of identical set of facts, therefore, same were heard together and are being disposed of by way of this consolidated order.

2. As a lead case, we are taking up the cross appeals in the case of Prashant Aggarwal for the assessment year 2004-05, being ITA No.

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590/D/2014 and 886/D/2014. In assessee's appeal, following grounds have been raised:-

- i. *“On the facts and circumstances of the case, the Ld. CIT(A) erred in treating commission @ 0.20% on cash deposits of Rs. 5,56,85,000/- i.e. Rs. 1,11,370/- against the facts of ITAT Order passed in the case of Sanjay Kumar Garg – [2012] 134 ITD 0082 (Delhi) on which basis assessment is made.*
- ii. *On the facts and circumstance of the Ld. CIT(A) erred in sustaining commission of Rs. 6,03,153/- against the facts of ITAT Order passed in the case of Sanjay Kumar Garg – [2012] 134 ITD 0082 (Delhi) on which basis assessment is made.”*

3. Whereas the revenue in its appeal has raised the following grounds:-

- i. *“The Commissioner of Income Tax, (Appeals) has erred in law and on facts in deleting the addition of Rs. 5,56,85,000/- on account of unexplained income from undisclosed sources.*
- ii. *The Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting the addition of Rs. 9,04,731/- on account of accommodation charges.”*

4. The brief facts *qua* the issue raised in both the appeals are that, assessee is an individual and is proprietor of 'M/s. GRS & Co.' The nature of business shown as per the audit report is, trading and commission agent of food grains and has shown income from Arhat and interest from bank. The net profit shown in the return of income filed on 1.11.2004 from the business was Rs. 75,727/-. A survey action u/s 133A was conducted on 12.7.2004, in the case of Shri

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Sanjay Kumar Garg, wherein it was found by the Investigation Wing of the department that Shri Sanjay Kumar Garg through his various dummy entities and individuals was carrying out accommodation entry activities to various food grain merchant on mass scale. The *modus-operandi* which was unearthed was that, cash was received from food grain merchant which was deposited in the bank accounts of his bogus concerns and dubious individuals against which cheques/ pay orders/ demand drafts were issued in favour of such beneficiaries. The assessee's proprietorship concern, M/s GRS & Co. was part of such dubious entities pertaining to Shri Sanjay Kumar Garg. The name of such entities used by Shri Sanjay Kumar Garg for his accommodation entry activities were as under:-

Sr. No.	Name of fictitious concern	Proprietor	Relation with Shri Sanjay Garg
1.	Suraj Enterprises	Vishnu Goel	Brother-in-law
2.	Pardeep Kumar Vikas Kumar	Pradeep Kumar	Brother-in-law
3	Baba Kishore Enterprises	Prem Prakash Garg	Friend
4.	*Yash Enterprises	R.C. Garg	Father
5.	Shiv Shakti	Harish Kumar	Friend
6.	*GRS & Co.	Prashant Aggarwal	Friend
7.	Rahul Enterprises	Sanjay Kumar	Self
8.	Rishabh & Co.	Amit Jain	Friend

* Persons/ entities impugned herein these appeals.

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5. In his statement recorded during the course of survey, Shri Sanjay Kumar Garg admitted that no genuine transactions of trading or actual purchase and sales were carried out through these entities and he was issuing bills after getting commission @ 25 paise per Rs. 100 and out of this, commission of 10 paise were given to those persons in whose names these accounts were operated and approximately 5 paise was spent on other expenses. In the case of the assessee, it was found that his proprietorship concern, M/s. GRS & Co. having bank account with State Bank of Bikaner & Jaipur at Khari Baoli, New Delhi, wherein the cash to the tune of Rs. 5,56,85,000/- was deposited during the financial year 2003-04. The details of which are appearing at pages 8 to 10 of the assessment order. The Ld. A.O. has added the entire deposits of Rs. 5,56,85,000/- **on protective basis in the hands of the assessee and held that same shall be added on substantive basis in the hands of Shri Sanjay Kumar Garg.** The relevant observation and conclusion of the AO is as under :-

“7. In view of the information in the possession of the department in the form of statement of M/s. Sanjay Kumar Garg, recorded at the time of survey u/s 133A in his case, as elaborately discussed above, and followed by the local enquiries made, the cash deposits totalling Rs. 5,56,85,000/- during F.Y. 2003-04 pertaining to Asstt. year 2004-05 under consideration is treated as unexplained income. The assessee has failed to adduce any evidence regarding the nature & source of cash entries totalling Rs. 5,56,85,0000/- in his bank account as detailed in Question No. 18. As such these are liable to be treated as his unexplained income from undisclosed sources. However, in view of the fact that Shri Sanjay Kumar Garg, being the actual account operator in the back ground, this income shall be considered in his hands on substantive basis and on protective basis in the hands of the assessee.

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As assessee has failed to disclose this income of Rs. 5,56,85,0000/- for taxation, the same is treated as un explained income and as such there is sufficient reason to believe that assessee has concealed particulars of this income, thereby attracting to penalty provisions u/s 271(1)(c) of I.T. Act 1961, which is being initiated.

(Addition : Rs. 5,56,85,000/-)”

6. Apart from that A.O. has further added amount of Rs. 15,07,884/- as a commission for providing accommodation entries @0.5 % of the total turnover as per the sales tax department which was Rs. 30,15,26,891/-.

7. Ld. CIT (Appeals) held that in the case of ‘Shri Sanjay Kumar Garg’, wherein substantive addition was made, the Tribunal vide order dated 28.1.2010 has held that for the entire accommodation entry business carried out by Shri Sanjay Kumar Garg, a commission rate of 0.20% has been applied and therefore, on same line in the case of the assessee also similar rate of 0.20% should be applied on the total deposits of Rs. 5,56,85,000/- and thereupon worked out the income of the assessee at Rs. 1,11,370/-. The relevant observation and finding of the Ld. CIT (A) reads as under:-

“7. I have considered the material on record, written submissions, CIT(A) order dated 18.6.2009 in the case of Shri Sanjay Kumar Garg, Hon’ble ITAT order dated 28.1.2010 in the case of Shri Sanjay Kumar Garg. With regard the addition of Rs. 5,56,85,000/- made by the Assessing Officer in the hands of the appellant, I find that a similar addition was made in the hands of Shri Sanjay Kumar Garg on substantive basis, in whose case the Hon’ble ITAT, Delhi Bench H, New Delhi by a consolidated order

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dated 28.1.2010 in ITAT No. 1501, 1502, 3531 to 3534/Del/2009 had an occasion to adjudicate upon this issue for the Assessment year 2005-06 and in this order it was held as under :-

“We have heard both the parties and gone through the material available on record. During the course of survey operations, statement of the assessee was recorded wherein it has been categorically admitted that no purchase and sale activities are undertaken in the names of firms. The assessee was using the firms for the purpose of providing sale bills for which he was collecting commission. The assessee was depositing cash in the bank accounts of the dummy firms as well as his own firms through which he was carrying out accommodation entry business. At the time of survey no evidence was found to suggest that the assessee was engaged in real commission business. No other source of income was also found. It is also the case of assessing officer that the assessee was carrying on business of entry provider. The assessments were reopened for this purpose only. The Ld. CIT(A) has given a finding of fact that the assessee was engaged in the business of providing accommodation entries and, therefore, the amounts deposited in the account of dummy concerns was to be treated as total receipts on which commission was to be determined. Therefore, we are in agreement with the view of the Ld. CIT commission was to be determined. Therefore, we are in agreement with the view of the Ld. CIT (A) that only commission can be determined on the deposits made in the bank accounts of the dummy concerns. Therefore, we do

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not find any infirmity in the order passed by the Ld. CIT (A) that the amount deposited in the account of dummy concerns cannot be treated as income of the assessee. Therefore, the Ld. CIT (A), in our considered opinion, is justified in treating the cash deposited in various bank accounts controlled and operated by the assessee as the turnover of the accommodation entry business and commission income has to be estimated thereon.”

Respectfully following the Hon’ble ITAT order, I hold that only commission can be determined on the deposits made in the bank accounts of the appellant. There is no dispute that no commission would be charged on such dealings as the appellant would not have done it free or on charity basis without deriving any benefit for providing bogus entry. There is no clear standard rate of commission on such activities. Since the Hon’ble ITAT, after a detailed discussion, has directed in the case of Sanjay Kumar Garg to apply a commission rate of 0.2%, the Assessing Officer is directed to apply a similar rate of 0.2% in the case of the appellant also on the deposits of Rs. 5,56,85,000/- which will work out to Rs. 1,11,370/-. The appellant will get a relief of Rs. 5,55,73,630/- (Rs. 5,56,85,000/- - Rs. 1,11,370/-).”

8. With regard to addition of Rs. 15,07,884/- by way of commission on accommodation entry @ 0.5% on the turnover shown by the assessee, Ld. CIT(A) held that same is to be applied at same rate of 0.20% on such turnover and thereby reducing the addition to Rs. 6,03,153/- and gave relief of Rs. 9,04,731/-.

Against the aforesaid finding of the Ld. CIT (A) both the parties are in appeal before us.

9. We have heard both the parties at length and also perused the relevant finding given in the impugned order as well as the material referred to before us. The revenue has challenged the deletion of addition of entire cash deposits made in the bank account of Rs. 5,56,85,000/- and also the part deletion of the addition of the commission by the Ld. CIT(A); whereas the assessee has challenged the applying of commission rate of 0.20% on the entire cash deposit by following the order of the Tribunal in the case of Shri Sanjay Kumar Garg, now reported in (2012) 134 ITD 82 and confirming the part of commission on disclosed turnover. Here in this case, as stated above, the addition has been made by the AO on the protective basis on the ground that entire deposits should be added in the hands of Shri Sanjay Kumar Garg. We find that the Tribunal in the case of Shri Sanjay Kumar Garg had applied 0.20% on total deposits appearing in all the bank accounts of all the bogus entities including that of the assessee also. Once in the case of Shri Sanjay Kumar Garg, where substantive addition was made by estimating the commission income from the accommodation entry @ 0.20%, then there is no basis for sustaining the protective addition of entire cash deposits of Rs. 5,56,85,000/- in the hands of the assessee. Therefore, following the Tribunal order, we do not find any merit in the ground No. 1 raised by the revenue and the same is dismissed.

10. So far as the issue relating to applicability of 0.20% as contested by the assessee, the Ld. Counsel for the assessee contended that if the entire deposits have been considered by the department in

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the hands of Shri Sanjay Kumar Gang, wherein for the entire deposits income @ 0.20% s commission has been applied, then no separate addition should be made in the hands of the assessee. However we are unable to appreciate such contention, because the assessee was provided the accommodation entry through his bank account for which he was also getting certain commission from Shri Sanjay Kumar Garg and since rate of commission for accommodation entry has been determined and estimated @ 0.20% in the case of Shri Sanjay Kumar Garg, then same rate of commission will be applied in the case of the assessee also and therefore we do not find any infirmity in the order of the Ld. CIT(A) while confirming the rate of commission of 0.20% on the total deposits and accordingly ground No.1 as raised by the assessee is dismissed.

11. So far as the separate addition on account of commission of Rs. 15,07,884/- which has been partly allowed by the Ld. CIT(A), we do not find any reason to sustain the further commission income, because, once we have held that assessee's commission on the entire cash deposits which is part of total turnover is to be taken @ 0.20%, then there is no requirement for making separate addition again on commission for giving accommodation entry. Accordingly, we delete the entire addition of commission of Rs. 15,07,884/-. Hence ground No, 3 of the assessee is treated as allowed, whereas ground No. 2 of the revenue is dismissed.

12. Exactly same additions have been made in the assessment year 2005-06 also and similar grounds have been raised in the cross appeals by both the parties, therefore, our finding given above will apply *mutatis-mutandis* for the cross appeals filed by the assessee as

well as by the revenue for the assessment year 2005-06 also. Therefore as a consequence ground No.1 of the assessee is dismissed and ground No.2 is allowed; whereas in the revenue's appeal, both the grounds are dismissed.

13. Likewise in the case of Shri Ram Chander Garg, both the revenue as well as the assessee has challenged the similar addition, whereby the cash deposit of Rs. 60,94,327/- was added by the A.O. and Ld. CIT(A) had applied commission rate of 0.2%. Shri Ram Chander Garg was also part of the same entity of Shri Sanjay Kumar Garg and therefore, the Ld. CIT (A) following the same order of Shri Sanjay Kumar Garg has applied commission income 0.20% in the hands of this assessee also. Similarly, the A.O. has added separate commission income of Rs. 17,95,882/- on similar footing. Accordingly, in view of our finding given in the case of Shri Prashant Aggarwal, we uphold the addition to the extent of commission of 0.20% on the cash deposits and delete the addition on account of commission of Rs. 17,95,882/- and also the protective addition of entire cash deposits made by the A.O. Thus, the appeal of the revenue is dismissed, whereas, the appeal of the assessee is allowed.

14. There are cross separate appeals filed by the revenue as well as by the assessee for the levy of penalty u/s 271(1)(c); both in the cases of Shri Prashant Aggarwal and Shri Ram Chander Garg. The Ld. CIT(A) has directed the A.O. to levy the penalty of 0.20% sustained by him, against which assessee is in appeal; whereas the revenue has challenged the order of Ld. CIT(A) on the levy of penalty on the entire cash deposits made on protective basis and part of the commission deleted by the Ld. CIT(A).

15. So far as the revenue's appeal is concerned same in view of our finding given above are to be dismissed, as no penalty u/s 271(1)(c) is leviable, because in the quantum proceedings, we have directed that the addition of cash deposits on protective basis cannot be added and only addition sustained is with regard to 0.20% by way of commission on such cash deposits in the hands of the both assesseees. Accordingly, the revenue's appeals are dismissed.

16. Now so far as the levy of penalty on the addition sustained by us on account of commission income estimated @ 0.20%, we hold that no penalty u/s 271(1)(c) is leviable for the reason that, admittedly the entire deposits have been considered in the hands of Shri Sanjay Kumar Garg and 0.20% has been applied in his case on the deposits which also includes the deposits in the case of these two assesseees also. Addition has been sustained by us on the ground that these assesseees were paid some commission by Shri Sanjay Kumar Garg and such commission too should be estimated @ 0.20%. Under these facts and circumstances, where addition has been made purely on estimate basis and there is no material to impinge upon assesseees directly who merely were acting as facilitator to Shri Sanjay Garg, there could not be case for either concealment of income or furnishing of inaccurate particulars of income. Otherwise also, here in the cases of the assesseees, even after the addition of 0.20% is made, income will fall below the tax limit on which no tax is to be computed. On this ground also we hold that no penalty is leviable.

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17. In the result penalty levied by the A.O. is deleted and accordingly, the appeals of the revenue are dismissed and appeals of the assesseees are allowed.

Order pronounced in the open court on 14th November, 2017.

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 14/11/2017

Veena

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