

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 1617/DEL/2018
[Assessment Year: 2008-09]

HOPEWIN ADMIARK & CONSULTANCY VS. ITO, WARD-11(2)
SERVICSE (PVT.) Ltd. NEW DELHI
39/2068, NAIWALA, 315, DAKHA CHAMBER,
KAROL BAGH,
NEW DELHI - 110 005
(PAN AAACH6960P)

[Appellant]

[Respondent]

ITA No. 1618/DEL/2018
[Assessment Year: 2008-09]

HOMEWAY MARKETING PVT LTD. VS. ITO, WARD-11(2)
39/2068, NAIWALA, 315, DAKHA CHAMBER, New Delhi
KAROL BAGH,
NEW DELHI - 110 005
(PAN AABCH130Q)

[Appellant]

[Respondent]

Date of Hearing : 06.09.2018
Date of Pronouncement : 10.09.2018

Assessee by : Shri Vishal Aggarwal, CA

Revenue by : Shri Anil Kumar Sharma, Sr. DR

ORDER

These appeals by two separate Appellants preferred against the two separate orders of the Ld. CIT(A)-35, New Delhi dated 08.1.2018 pertaining

to assessment year 2008-09. Since the underline facts in issues are identical in the case of both the appellants, therefore, I deem it fit to dispose off both the appeals by this common order for the sake of convenience and brevity.

2. The Representatives of both the sides agreed that facts of ITA No. 1618/Del/2018 may be taken into consideration in the disposal of the appeals. On such concessions I have heard both the Representatives on the facts of ITA No. 1618/Del/2018.

3. Briefly stated the facts of the case are that original assessment was framed u/s. 143(3) of the I.T. Act, 1961 vide order dated 30.12.2010. The matter travelled to the Tribunal and the Tribunal in ITA No. 6272/Del/2015 vide order 1.3.2016 restored the matter to the file of the AO. The relevant findings of the Tribunal are reproduced as under:-

“3. We have heard the rival submissions and perused the relevant material. Though there is a reference in the assessment order to the statement of Shri Vishal Aggarwal recorded in the year 2005 who admitted that his companies were engaged in providing accommodation entries, but, the AO has not linked any such transaction. He has simply added Rs.36,000/- on protective basis, being the amount which was voluntarily credited by the assessee to the Profit & Loss Account. In the absence of any link manifestly brought out by the AO, we are unable to understand as to how addition of Rs.36,000/- was made on protective basis and upheld in the first appeal. It is further observed that the AO referred to 1% commission on Rs.36,000/-, but, he determined the amount at Rs.3,600/- as against the correct amount which ought to have been Rs.360/-, being 1% of Rs.36,000/-. Under such circumstances, we set aside the impugned order and remit the

matter to the file of AO for making a proper nexus of the racket of accommodation entries with the assessee's accounts, so as to justify the addition. In such fresh proceedings, he will also proportionately reduce the amount of commission income. Needless to say, the assessee will be allowed a reasonable opportunity of being heard in such fresh proceedings.

4. Both the sides are in agreement that the facts and circumstances of the other appeal in ITA No.6273/Del/2015 by Hopewin Admark & Consultancy Services (P) Ltd. are mutatis mutandis similar to those of ITA No.6272/Del/2015 discussed above. Following the view taken in the case of Homeway Marketing (P) Ltd., we set aside the impugned order and remit the matter to the file of AO for deciding it afresh in conformity with our decision rendered in the case of Homeway Marketing (P) Ltd. (supra)."

4. In the fresh assessment proceedings, the AO reiterated what has been done in the original assessment and once again made the addition on account of commission on entries given. The AO further added Rs. 36,000/- found credited in the books on protective basis. Assessee carried the matter before the Ld. CIT(A), but without success. Before me the counsel vehemently stated that the entire additions have been made on the strength of the statements of Harish Aggarwal, Manju Aggarwal and Vishal Aggarwal, who in their statements have admitted that the assessee is engaged in giving accommodation entries. It is say of the counsel that the AO not done any verification in spite of the specified direction of the Tribunal and has made similar additions. Therefore, the same deserve to be deleted. Per contra Ld. DR strongly supported the findings of the AO.

5. I have given the thoughtful consideration to the orders of the authorities below. I have also carefully gone through the decision of the Coordinate Bench (Supra). The undisputed fact is that the AO has made protective addition of Rs. 36,000/-. However, when I asked the Ld. DR in whose hands substantive addition have been made, the Ld. DR could not reply to the query. In my considered opinion, the AO has made the addition without any basis simply relying upon the statements of third parties without bringing any cogent direct material on record. Therefore, in my considered opinion such additions cannot be sustained which are devoid of any merit. I accordingly set aside the findings of the Ld. CIT(A) and direct the AO to delete the impugned additions.

6. In the result, appeals of both the Assesseees are accordingly allowed.

The order is pronounced in the open court on 10.09.2018.

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 10, September, 2018

SRBhatnagar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	07-9-18
Date on which the typed draft is placed before the Dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	07-9-18
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	