

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

BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2773/Del/2017
Assessment Year: 2013-14

M/S SORUS POWER PVT. LTD., C-17, FIRST FLOOR, GURU NANAK PURA, LAXMI NAGAR, DELHI - 110 092 (PAN: AAPCS2574M)	Vs.	ACIT, CENTRAL CIRCLE 28 NEW DELHI
(Appellant)		(Respondent)

ITA No. 2774/Del/2017
Assessment Year: 2013-14

M/S ZOOM HERITAGE PROPERTIES PVT. LTD., 201, 2 ND FLOOR, YAMUNA TOWER, SAINI ENCLAVE, KARKARDOOMA, DELHI - 110 090 (PAN: AAACZ3059K)	Vs.	ACIT, CENTRAL CIRCLE 28 NEW DELHI
(Appellant)		(Respondent)

ITA No. 2775/Del/2017
Assessment Year: 2013-14

M/S PUMMY GARMENTS PVT. LTD. C-17, GROUND FLOOR, GURU NANAK PURA, LAXMI NAGAR, DELHI - 110 092 (PAN: AAFCP5340J)	Vs.	ACIT, CENTRAL CIRCLE 28 NEW DELHI
(Appellant)		(Respondent)

ITA No. 2866/Del/2017
Assessment Year: 2013-14

M/S VIGILANT PAPERS PVT. LTD., C/O SABHARWAL & PARTNERS, 4819/24, ANSARI ROAD, DARYAGANJ, NEW DELHI - 110 002 (PAN: AAACS8980Q)	Vs.	ACIT, CENTRAL CIRCLE 28 NEW DELHI
(Appellant)		(Respondent)

ITA No. 2867/Del/2017
Assessment Year: 2013-14

M/S GOPALAN AGRO FARMS PVT. LTD., C/O SABHARWAL & PARTNERS, 4819/24, ANSARI ROAD, DARYAGANJ, NEW DELHI - 110 002 (PAN: AACCG6666P)	Vs.	ACIT, CENTRAL CIRCLE 28 NEW DELHI
(Appellant)		(Respondent)

ITA No. 2868/Del/2017
Assessment Year: 2013-14

M/S ATITHI CHEMICALS PVT. LTD., C/O SABHARWAL & PARTNERS, 4819/24, ANSARI ROAD, DARYAGANJ, NEW DELHI - 110 002 (PAN: AACCA7316G)	Vs.	ACIT, CENTRAL CIRCLE 28 NEW DELHI
(Appellant)		(Respondent)

ITA No. 2869/Del/2017
Assessment Year: 2013-14

M/S STRUM INFRA DEVELOPMENT PVT. LTD., C/O SABHARWAL & PARTNERS, 4819/24, ANSARI ROAD, DARYAGANJ, NEW DELHI - 110 002 (PAN: AAOCS8220K)	Vs.	ACIT, CENTRAL CIRCLE 28 NEW DELHI
(Appellant)		(Respondent)

Assessee by	Sh. Satyajeet Goel, CA
Department by	Sh. B.S. Anant, Sr. DR.

ORDER

The aforesaid assesseees have filed the appeals against the respective orders passed by Ld. CIT(A) confirming the orders of Assessing Officer relevant to assessment year 2013-14.

2. Since facts involved in these appeals are same and identical, hence, the appeals were heard together and for the sake of convenience, all these appeals are being consolidated and disposed of by this common order. Similar grounds are taken in other six appeals, except the difference in figure. Therefore, for the sake of reference and facility, facts in case of M/s Zoom Heritage Properties Pvt. Ltd. vs. ACIT CC-28, New Delhi in ITA 2774/Del/2017 (AY 2013-14) are being discussed and the grounds of appeal raised in this Appeal are reproduced hereunder:-

1. That the assessment order passed u/s. 143(3) of the I.T. Act, 1961 on 31.3.2016 as upheld by the Ld. CIT(A) are perverse to the law and to the facts of the case because of not following proper law and procedure while completing the assessment proceedings.
2. That the AO has grossly erred in law and to the facts of the case in making lump sum addition of Rs. 25,12,597/- being commission income in the hands of the appellant at the rate of 0.60% merely on the basis of his presumption and guess work, without the support of any material either collected or placed upon records, which the Ld. CIT(A) has not appreciated while adjudicating the appeal.
3. That the addition made of Rs. 25,12,597/- were only on the basis of presumption and guess work of the AO because the provision of law contained u/s. 145 has never been invoked besides this the AO has further failed to appreciate, that on the identical facts the declared

income have already been accepted as correct in the preceding year and in the subsequent years also.

4. That the order passed is unconstitutional, having no locus standi under law as the AO has charged commission on lump sum basis @0.60% on the total amount appears to be credited in the bank of the appellant company for Rs. 27,40,40,079/-, without appreciating that the element of profit has to be worked out on the sale proceeds only.
5. That the order passed by the AO and upheld by Ld. CIT(A) are further illegal as against the law and to the facts of the case, because of not following rule of consistency while passing the assessment order for the assessment year 2013-14.
6. That the AO has further failed to appreciate while making illegal and impugned additions of Rs. 25,12,597/- in the declared income of the appellant that the appellant company is maintaining and possessing proper books of account, as required under the law wherein the entire transactions have already been reflected/recorded, as such no adverse inference if any, could be drawn only on the imagination and guess work.
7. That the Ld. AO has grossly erred on facts of the case as even after accepting profits as per books of account he presumed that the appellant company is in the business of providing accommodation entries without the support of any material either collected or ever placed upon records.
8. That no proper and reasonable opportunity, if any was ever afforded by the assessing officer prior proceeded to complete the assessment proceedings arbitrarily capriciously and in a whimsical manner thereby making illegal and impugned additions in the declared income of appellant.
9. That charging of interest under section 234B and initiating penalty proceedings u/s. 271(1)(c) are further wrong as against the law and to the facts of the case and a such same my please be deleted

because of being consequential to the illegal addition made and relief claimed there from.

10. That the appellant company assails their right to amend, alter, change any ground of appeal or take any further ground at any time even during the course of hearing of this instant appeal.

PRAYER

It is, therefore, prayed:

1. That the illegal and impugned addition made in the declared income of Rs. 25,12,597/-, may please be deleted/ quashed.
2. That the interest charged u/s. 234B and penalty proceedings initiated u/s. 271(1)(c) of the Act, may also be waived being consequential to the illegal and impugned additions made and relief claimed therefrom.
3. That any other relief which this Hon'ble Forum may please be deemed fit and proper on the facts and in the circumstances of the case.

It is prayed accordingly.

3. The brief facts of the case are that the assessee filed its e-return of income declaring income of Rs. 3,08,850/- on 26.11.2014, which was later processed u/s. 143(1) of the Income Tax Act, 1961 (in Short "Act"). The AO observed that since the assessee filed its return of income after the end of the relevant assessment year i.e. 31.3.2014, penalty proceedings u/s. 271F will be initiated separately. Later, the case of the assessee was taken up for scrutiny and notice u/s. 143(2) of the Act was issued on 1.9.2015 and served. Notice u/s. 142(1) of the Act alongwith questionnaire was issued on 03.12.2015. In response thereto, the A.R. for the assessee company attended the proceedings from time to time and filed the details called for. The brief issue in dispute is with regard to addition of Rs. 16,44,240/- being commission @0.60% (60 paise to Rs. 1 per Rs. 100) on total credit in the bank account of the assessee company. The AO has made the addition by

holding that the assessee is conduit paper company run by Sh. Vivek Jain and is engaged in the business of providing accommodation entries to various beneficiaries. Thereafter, the AO assessed the income at Rs. 28,21,450/- u/s. 143(3) of the Act and made the addition of Rs. 16,44,240/- on account of commission and Rs. 8,68,357/- on account of undisclosed interest income. Against the aforementioned assessment order dated 31.3.2016, assessee appealed before the Id. CIT(A), who vide his impugned order dated 31.01.2017 and partly allowed the appeal of the assessee and deleted the addition of Rs 8,68,357/- on account of undisclosed interest income. Aggrieved with the impugned order the assessee is in appeal before the Tribunal.

4. Ld. A.R. for the Assessee filed a Paper Book of documents containing pages 1 to 111 in which he has attached the brief synopsis; copy of assessment order; computation of income and copies of various judgment/decision of the Courts favouring his case. He submitted that Id. CIT(A) was not justified in affirming the order of the AO particularly when there is no material on record in support of estimation of commission @ 0.60% on accommodation entry business. He further submitted that AO has relied upon information from DDIT (Inv.) while concluding the assessee is a paper company engaged in the business of providing accommodation entry. He further submitted that on identical facts, in immediately preceding assessment year 2012-13, the AO has accepted the returned income while passing assessment order u/s. 143(3) of the Act after holding that the assessee is an conduit company engaged in the business of providing accommodation entries. In this behalf, he draw my attention towards the assessment year 2012-13 which placed in the Paper Book Pg. 1-19. He further submitted that in AY 2012-13, the AO relied upon the affidavit of Directors of the assessee company and as per the said affidavit, the Director has admitted that assessee was charging commission @ 0.10% on entry business and as such same rate is also relevant in the year under consideration. He

further submitted that there is no change in the facts and circumstances and when the AO himself has accepted the affidavit of the Director in immediately preceding Assessment Year 2012-13, the assessment should have been completed at returned income in the year consideration also in accordance with rule of consistence as laid down by the Hon'ble Apex court in the case of Radhaswami Satsang vs. CIT (1992) 193 ITR 321 (SC). In view of above, he submitted that the estimation of commission @ 0.60% is highly excessive and the same is in disregard to the past accepted history.

5. On the contrary, Ld. DR heavily supported the order of the Ld. CIT(A) and submitted that AO was justified in estimating the commission @ 0.60%, which need not to be interfered.

6. I have considered the rival submissions and gone through the orders of lower authorities. I find that the sole issue for adjudication is estimation of rate of commission on the business of providing accommodation entry. In the present case, as per the affidavit of the Director of the assessee company, it is established beyond doubt that assessee company is a paper company and not doing any real business. Further, on perusal of impugned order and assessment order, it is clear that assessee company is a conduit company operated by Sh. Vivek Jain and is engaged in providing accommodation entries to various beneficiaries. In these circumstances, I am inclined to approve the finding of Ld. CIT(A) and AO to the effect that assessee company is an entry provider. However, the next question to be answered is regarding estimation of commission income taxable in the hands of assessee company which is engaged in the business of providing accommodation entry. The Assessing Officer and Ld. CIT(A) have applied 0.60% (60 paise to Rs 1 per Rs. 100) on total credit entries appearing in the bank account whereas the Ld. AR is relying upon the assessment order for AY 2012-13 and affidavit of the Director wherein, it has been stated that

appellant was charging 0.10% (10 paise to Rs 1 per Rs. 100). However, on specific query from the Bench, neither of the sides could substantiate the basis for arriving at rate of 0.60% or 0.10%. I am also aware of the fact that in case of business of providing accommodation entry, there cannot be a single rate of commission and same vary from case to case and largely depends upon the quantum of entry.

7. Keeping in view of the facts and circumstances of the case, contention of both the parties and principle of equity and fairness, I deem just and proper to estimate the average commission @ 0.30% (30 paise to Rs. 1 per Rs. 100) on credit entries appearing in the bank account of the assessee. It is further noted that AO has made double addition to the extent that benefit of netting-off with respect to income already offered by the assessee in the return of income was not allowed. Accordingly, the AO is hereby directed to re-compute the income after allowing benefit of income already declared by the assessee in the return.

8. As regards the ground no. 9 relating to charging of interest u/s. 234B and initiating penalty proceedings u/s. 271(1)(c) of the Act is concerned, I find that charging of interest u/s. 234B is consequential in nature, hence, the AO is directed to re-compute the interest chargeable after giving effect of this order. As far as initiation of penalty proceedings u/s. 271(1)(c) is concerned, since no penalty under the said section has yet been levied there is no cause for any grievance on the part of the assessee. Hence, this ground is dismissed as such.

9. Since in all the other 06 appeals, similar facts are permeating and same finding has been given, therefore, my finding given above will apply mutatis mutandis in other 06 appeals also, because the nature of transactions, evidences and documents are exactly the same.

10. In the result, all the 07 appeals of different assessees are partly allowed for statistical purposes.

The decision is pronounced on 06th November, 2018.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 06th November, 2018.

"SRBHATNAGAR"

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi