

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

S.NO	ITA NO	NAME OF THE APPELLANT	Asstt.Year
1	6507/15	Adonis Financial Services Pvt. Ltd 13/34, W.E.A. Karol Bagh New Delhi. PAN : AADCA 5949 C	2005-06
2	6508/15	-do-	2006-07
3	6509/15	-do-	2007-08
4	5922/15	Aparna Credit Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AADCA 8334 K	2004-05
5	5926/15	-do-	2008-09
6	5924/15	-do-	2006-07
7	5923/15	-do-	2005-06
8	5925/15	-do-	2007-08
9	5920/15	Aquarius Securities Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AAECA 0516 F	2008-09
10	5919/15	-do-	2007-08
11	5921/15	-do-	2009-10
12	5918/15	Aries Crafts Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AADCA 5439 P	2008-09
13	5917/15	-do-	2006-07
14	5916/15	-do-	2005-06

15	5927/15	Campari Fiscal Services Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AACCC 1903 B	2004-05
16	5928/15	-do-	2005-06
17	5929/15	-do-	2006-07
18	5930/15	-do-	2007-08
19	5931/15	-do-	2008-09
20	5932/15	-do-	2009-10
21	5937/15	Chequer Marketing Pvt. Ltd 13/34, W.E.A. Karol Bagh New Delhi. PAN : AACCC 8709 M	2008-09
22	5936/15	Countrywide Credit & Securities Pvt. Ltd 13/34, W.E.A. Karol Bagh New Delhi. PAN : AABCC 959Q	2008-09
23	5933/15	-do-	2005-06
24	5934/15	-do-	2006-07
25	5935/15	-do-	2007-08
26	5938/15	Deep Sea Drilling Pvt. Ltd 13/34, W.E.A. Karol Bagh New Delhi. PAN : AABCD 6380 N	2005-06
27	5939/15	-do-	2006-07
28	5940/15	-do-	2007-08
29	5941/15	-do-	2008-09

30	5942/15	Delhi Share Shopee Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AABCD 5060 F	2004-05
31	5943/15	-do-	2005-06
32	5944/15	-do-	2006-07
33	5945/15	-do-	2007-08
34	5946/15	-do-	2008-09
35	6487/15	Karol Bagh Trading Co. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AAACK 0511 D	2003-04
63	6488/15	-do-	2004-05
37	6489/15	-do-	2005-06
38	6490/15	-do-	2006-07
39	6491/15	-do-	2007-08
40	6493/15	-do-	2009-10
41	6492/15	-do-	2008-09
42	6510/15	Mahanivesh Pratibhuti Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AADCM 2286 N	2007-08
43	6511/15	New Delhi Electronics Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AAACN 0676 L	2004-05
44	6512/15	-do-	2005-06
45	6513/15	-do-	2006-07
46	6514/15	-do-	2007-08
47	6506/15	Rishabh Shoes Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AACC R 2358 D	2009-10
48	6505/15	-do-	2008-09

49	6504/15	-do-	2007-08
50	6503/15	Sadguru Finman Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AABCS 4800 J	2008-09
51	6502/15	-do-	2007-08
52	6501/15	-do-	2006-07
53	6499/15	-do-	2004-05
54	6500/15	-do-	2005-06
55	6497/15	Sai Baba Finvest Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AAHCS 6789 E	2007-08
56	6498/15	-do-	2008-09
57	6515/15	Tejasvi Investments Pvt.Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AABCT 3249 G	2004-05
58	6517/15	-do-	2006-07
59	6518/15	-do-	6007-08
60	6519/15	-do-	2009-10
61	6494/15	Unique Capital Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AAACU 5693 G	2007-08
63	6496/15	Vertex Drugs Pvt Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AABCV 5553 H	2009-10
62	6495/15	-do-	2008-09

64	483/15	Bhawani Portfolio Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AABCB 9482 B	2006-07
65	6351/16	-do-	2008-09
66	6350/16	-do-	2007-08
67	482/15	-do-	2005-06
68	488/15	DU Securities Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AACCD 0002 E	2008-09
69	489/15	-do-	2009-10
70	485/15	-do-	2005-06
71	486/15	-do-	2006/07
72	487/15	-do-	2007-08
73	6711/16	Geefcee Finance Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AAACG 1103 H	2006-07
74	6714/16	-do-	2009-10
75	6712/16	-do-	2007-08
76	6713/16	-do-	2008-09
77	6349/16	Taurus Iron & Steel Co. Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AABCT 7170 N	2009-10
78	6345/16	-do-	2005-06
79	6346/16	-do-	2006-07
80	6347/16	-do-	2007-08
81	6348/16	-do-	2008-09
82	492/15	Thar Steels Pvt. Ltd. 13/34, W.E.A. Karol Bagh New Delhi. PAN : AABCT 5923 D	2007-08
83	493/15	-do-	2008-09
84	494/15	-do-	2009-10
85	491/15	-do-	2006-07
86	490/15	-do-	2005-06

Vs.

Dy. Commissioner of Income-tax
Central Circle - 29
New Delhi

Date of Hearing : **18.01.2019**
Date of Pronouncement : **.01.2019**

Assessee by : Shri V.P. Gupta, Adv
Shri Anunav Kumar, Adv

Revenue by : Ms. Nidhi Srivastava, CIT-DR

ORDER

PER BENCH:-

The above captioned appeals by several appellants have been preferred against the separate orders of the first appellate authority for respective Assessment Years.

2. At the very outset, the ld. counsel for the assessee for the appellants stated that the underlying facts in issue are identical in all the appeals and if the facts of only one appeal are considered, all the appeals can be disposed of accordingly. The ld. counsel for the

assessee stated that he would be arguing only the facts of Adonis Financial Services Pvt. Ltd in ITA No. 6507/DEL/2015.

3. On such concession, the representatives of both the sides were heard at length and all the appeals are disposed of by this common order for the sake of convenience and brevity.

4. Out of 86 appeals, 64 appeals are against the order passed by the Assessing Officers in Delhi Charges and the remaining 22 appeals are against the order passed by the Assessing Officers in Noida Charge. In so far as the appeals against the orders passed by the Assessing Officer in Delhi charges are concerned, this is the second round of litigation and in the remaining appeals, this is the first round of litigation.

5. In the first round of litigation, the Tribunal restored the matter to the file of the Assessing Officer. In the first round of litigation, the Assessing Officer has adopted rate of commission at 2.25% on the basis of some notings found in the seized documents. The Tribunal, vide order dated 18.10.2013, directed the Assessing Officer to consider the

material on record and precedence on the issue and determine the rate of commission accordingly.

6. The Assessing Officers once again, on the basis of rough notings, adopted the rate of 2% as against 2.25% adopted in original order. The Assessing Officers of Noida Charge adopted the same at 2.25%.

7. Before us, the quarrel boiled down to the determination of rate of commission alleged to have been earned by the appellants from providing accommodation entries.

8. There is no dispute that the appellants were engaged in clandestine activities in the illegal business of providing accommodation entries to the beneficiaries. The beneficiaries purchased cheques from the appellants by paying cash. We are of the considered opinion that in such illegal activities, there cannot, and should not be any precedence. However, the Assessing Officer has referred to some loose sheets on which the percentage was mentioned at 1.69% to 2.5%.

9. The evidentiary value of loose sheets have been considered at length by the Hon'ble Supreme Court in the case of CBI Vs. V.S. Shukla [1998] Taxmann.com 2155 .

10. In the case of V.C. Shukla [supra] the Hon'ble Supreme Court held as under:

"A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person. Keeping in view the above principles, even if we proceed on the assumption that the entries made in MR 71/91 are correct and the entries in the other books and loose sheets which we have already found to be not admissible in evidence under [Section 34](#)) are admissible under [Section 9](#) of the Act to support an inference about the formers' correctness still those entries would not be sufficient to charge Shri Advani and Shri Shukla with the accusations levelled against them for there is not an iota of independent evidence in support thereof. In that view of the matter we need not discuss, delve into or decide upon the contention raised by Mr. Altaf Ahmed in this regard. Suffice it to say that the statements of the for witnesses, who have admitted receipts of the payments as shown against them in MR 71/91, can at best be proof of reliability of the entries so far they are concerned and not others. In other words, the statements of the above witnesses cannot be independent evidence under [Section](#)

[34](#) as against the above two respondents. So far as Shri Advani is concerned [Section 34](#) would not come in aid of the prosecution for another reason also. According to the prosecution case itself his name finds place only in one of the loose sheets (sheet No. 8) and not in MR 71/91. Resultantly, in view of our earlier discussion, [section 34](#) cannot at all be pressed into service against him."

11. Similar view was taken by the Hon'ble Supreme Court in the case of Common Cause, A registered Society Vs. UOI 394 ITR 220.

12. In the light of the ratio laid down by the Hon'ble Supreme Court [supra], notings found in the loose sheets would not do any good to the Revenue. The assessee has claimed 25 paise or 0.25% on the strength of the statement of kingpin Shri Tarun Goyal, who in his statement recorded under oath u/s 132(4) of the Income tax Act, 1961 has categorically stated that the rate of commission charged on accommodation entries provided through various companies was 0.25%.

13. However, the statement of Shri Tarun Goyal recorded u/s 132(4) of the Act can be a good piece of evidence in the case of Shri Tarun Goyal only.

14. The ld. counsel for the assessee also relied heavily on various decisions of the co-ordinate bench wherein the Tribunal has adopted rate ranging from 0.15 paise to 0.50 paise i.e 0.15% to 0.50%.

15. As mentioned elsewhere, in such illegal activities, there cannot be any precedence and the rate varies from facts of each case.

16. To put an end to the litigation and in the interest of justice and fair play, in our considered opinion, 0.50 paise or 0.50% should be taken as the reasonable rate of profit/commission in such clandestine activities. We, accordingly, direct the Assessing Officers to adopt 0.50% or 0.50 paise and compute the profit accordingly,

17. We are of the opinion that there cannot be any profit element in intra-group transactions. We, therefore, direct the Assessing Officers to consider the transactions with outside parties only and then compute the profit.

18. Thus, the common ground in the case of the appellants is partly allowed.

19. In so far as charging of interest u/s 234B and 234C of the Act is concerned, the Assessing Officer is directed to charge interest as per relevant provisions of the law.

20. To sum up, in the result, all the appeals of the appellants in 86 appeals are disposed of accordingly and are partly allowed.

The order is pronounced in the open court on 23.01.2019.

**Sd/-
[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

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

Dated: 23 January, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	21.01.2019
Date on which the typed draft is placed before the dictating Member	22.01.2019
Date on which the typed draft is placed before the Other Member	22.01.2019
Date on which the approved draft comes to the Sr.PS/PS	22.01.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	22.01.2019
Date on which the fair order comes back to the Sr.PS/PS	22.01.2019
Date on which the final order is uploaded on the website of ITAT	23.01.2019
Date on which the file goes to the Bench Clerk	23.01.2019
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	