

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'C', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 2787/Del/2015  
Assessment Year: 2006-07**

DCIT, Circle 12(2), New Delhi  <b>(Appellant)</b>	<b>vs.</b>	International Travel House Ltd. T-2, DDA Community Centre, Sheikh Sarai, Phase-1, New Delhi PAN – AAACI 0093G <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. Amit Katoch, Sr. DR
<b>Respondent by</b>	Sh. Neeraj Jain, Advocate & Sh. Bharath Janarthana, Adv.

<b>Date of Hearing</b>	02.01.2019
<b>Date of Pronouncement</b>	25.01.2019

**ORDER**

**Per L.P. Sahu, A.M.:**

This is an appeal filed by the revenue against the order of Id. CIT (A)-IV, New Delhi dated 25th February 2015 for the assessment year 2006-07 on the following grounds :

*"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.3,04,80,562/- made by the A.O. on account of excess debit of discount in Profit & Loss A/c.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,88,751/- made by the A.O. on account of excess claim of depreciation on computer accessories."*

2. The brief facts of the case are that the assessee filed return of income on 15<sup>th</sup> December, 2006 declaring total income at Rs.11,61,16,414/- which was revised on 30<sup>th</sup> January, 2008, showing total income of Rs. 13,05,52,249/-. In the assessment proceedings, the Assessing Officer asked the assessee to reconcile the receipts as per profit and loss account and as per TDS Certificates. The assessee submitted reconciliation chart as under :

<b>Particulars</b>	<b>Total Income as per ledger</b>	<b>TDS forms deposited</b>	<b>TDS @5.61%</b>
Air passage	36,54,53,749	2,07,11,980	2,05,01,855
Add: Rail income/Brokerage	11,64,763		
Total Commission (Air passage)	36,66,18,511		
Less: Discount Allowed/Handling Charges	22,68,03,687		
Net Income as per Annexure A	13,98,14,824	2,07,11,980	2,05,01,955

3. From the above reconciliation chart, it was noticed that the assessee has debited Rs.22,68,03,687/- towards discount allowed/handling charges. The assessee was asked to explain the same. In response, the assessee submitted that he had received 5% commission from airlines and 3% is passed on to the customers for whom the tickets were booked. The Assessing Officer further noticed that assessee received basic commission from domestic travels to the extent of Rs. 9,77,93,007/- and on International travels to the extent of Rs. 9,31,18,315/- totaling to Rs.19,09,11,322/- but from the above chart, it was observed that the handling charges are to the extent of Rs. 22,13,91,884/-. The assessee submitted that in some cases, entire Commission is passed on to the customers and initially Airlines were giving Commission at the rate of 7% but

subsequently revised up to 5% and the assessee was passing Commission at the rate of 5% continuously. The assessee filed some evidences in which entire Commission has been passed on and in some cases 5% has been received and 3% has been passed on to the customers. The Assessing Officer, however, noticed that no evidence to substantiate the claim has been furnished that it has passed on the commission more than the commission received by it. He also noticed that assessee never produced any evidence that even the PLB/OR commission is passed on to the customers because it is not decided at the time of booking of air tickets. It is decided by Airlines at the subsequent date. The Assessing Officer observed that the assessee received commission of Rs.19,09,11,322/- but has debited towards discount and handling charges Rs.22,13,91,884/- and the difference of Rs. 3,04,80,562/- could not be reconciled. Therefore the Assessing Officer added this amount to the income of the assessee.

4. Further, the assessing officer noticed that the assessee has claimed depreciation on computer accessories and peripherals @ 60% whereas the Assessing Officer allowed depreciation @ 15%. Accordingly the Assessing Officer made addition to the extent of Rs.2,88,751/- as excess depreciation claimed.

5. The assessee carried the matter in appeal before The learned CIT(A), who after considering the submissions of the assessee deleted both the additions. Aggrieved, the Revenue is in appeal before The ITAT.

6. The Ld. DR submitted that in the assessment proceedings, assessee was unable to reconcile the difference of commission received and commission paid. The CIT(A) has wrongly accepted the additional evidence and deleted the additions. The case laws cited by the CIT (A) are not applicable in the peculiar facts and circumstances of the case. In respect of excess depreciation claimed, he has relied on the order of the Assessing Officer.

7. On the other hand, learned AR reiterated the submissions made before the CIT (A) and relied on the same. It was further submitted that all the documents were provided before the Assessing Officer but he has not pointed out any mistakes therein. Books of accounts have been audited by qualified chartered accountant. No adverse remarks have been given by him. The Assessing Officer has accepted the books of accounts. Therefore, the Assessing Officer was not justified to make the impugned additions.

8. After hearing both the sides and perusing the entire materials available on record, we find no infirmity in the order of the CIT(A). The findings reached by learned CIT(A) are as under :

“6.7 On careful consideration of the facts, I find that the Ld. AO has taken incorrect facts relating to various types of discounts/ handling charges received/passed on. The details filed show that the appellant has out of the total commission including overriding commission and productively link bonus aggregating to Rs 36,54,53,748/-, passed on a sum of Rs 22,13,91,984/- as discount/handling charges to the customers as follows:-

S. No.	Description of transactions	Amount received	Discount/ handling charges
1.	Basic Commission on domestic air tickets	7,02,86,610	2,95,99,447
2.	Basic Commission on international air tickets	12,06,24,712	8,15,91,166
3.	Over Riding Commission (ORC)	16,11,98,890	11,02,01,271
4.	Productivity Linked Bonus (PLB)	1,33,43,536	-
	<b>TOTAL</b>	<b>36,54,53,748</b>	<b>22,13,91,884</b>

6.8 It appears that the Ld. AO has not taken efforts to appreciate the business of travel agency for air travel and the method of reporting/accounting followed in this sector. The Hon'ble Delhi High Court while deciding in the case of CIT vs. Singapore Airlines Ltd. (2009) 319 ITR 29 (Delhi), have taken detailed overview of this procedure, the relevant excerpts of which are as below:

*"What is not disputed is that the IATA monitors the trade in air traffic and lays down guidelines for carrying on civil air transportation business. As a matter of fact, IATA prescribes PSA agreements which most airlines have executed with their travel agents. It is also not disputed that in respect of commission which the assessee-airlines are required to pay to the travel agent is fixed by IATA. This commission is termed as standard commission. The IATA commission, that is, the standard commission payable by the assessee-airlines to travel agent prior to June 1, 1999 was 9 per cent and thereafter it dropped to 7 per cent. It is also an admitted fact that in so far as the assessee(s)-airline(s) which operate from India are concerned they are required to file a fare list with the Directorate General of Civil Aviation (in short "DGCA") for its approval. This fare which is called the DGCA fare is more often than not below the IATA fare. It is important to note for the period, under consideration, the assessee-airlines were prohibited from mentioning a fare below the IATA/DGCA approved fare on air tickets. What is of importance is that this is referred to as the published fare on which the commission fixed by IATA, that is, the standard commission is paid by the assessee-airlines to their respective travel agents. It is also undisputed that IATA in order to streamline the financial aspects of air transportation service provides a service for settlement of financial transaction between the travel agent(s) and their assessee(s)-airline(s). This is done broadly in the following manner:*

- (i) IATA prints neutral tickets and distributes them to all agents.*
- (ii) Agents issue tickets to passengers and send audit coupons to the BSP.*
- (iii) The BSP captures the information from these audit coupons and prepares a billing statement which clearly reflects the gross/published fare, standard IATA commission paid to agents as well as the supplementary commission. The net fare payable by the travel agent to the assessee-airlines is also reflected in the billing statement.*

*(iv) The travel agent then pays a single cheque to IATA/BSP for tickets sold on behalf of various assessee-airlines, who then distribute the money received to respective assessee-airlines.*

*It is not disputed that each billing analysis received from the BSP contains the following details:*

- (a) The name of the agent;*
- (b) Identification number of the tickets sold;*
- (c) Gross value of the tickets sold*
- (d) Standard commission or the IATA commission payable to travel agent, and*
- (e) The supplementary commission, which is the difference between the gross fare, net fare, taxes and standard commission payable to the travel agent."*

6.9 I find that in reaching to his conclusion, the Ld. AO has only made cognitive analysis of the submission of the appellant filed before him, without however, making any independent enquiry either from any of the airlines or from any of the customers, which was crucial to prove whether the appellant had debited excess commission without, actually passing on the same to the customers. Further, it is also seen that before forming this opinion, the AO had not confronted the appellant with this adverse observation by show causing it to explain. Had the Ld. AO done so, it would have allowed the appellant opportunity to furnish specific detailed explanation supported by evidence. Under the circumstances, due to absence of directions of the AO to require the appellant file any corroborative evidences, the appellant was never caused to file the relevant evidences in the assessment proceeding, which could have allayed the concerns of the AO.

6.10 In the appellate proceeding, the appellant filed before me BSP Settlement advices in support of the amount charged to customers taking into account the basis price of the ticket, tax value, standard discount, trade discount and overriding commission. Further, agreements with important customers were also filed, which show that the passing on the discount/handling charges was as per agreements signed prior to the date of impugned order. Further, the appellant also filed copies of invoices issued to the customers, which reflect the details of tickets charges after adjusting the various types of discount. In my view, the above evidences are in the nature of 3rd party evidence, which were required to verify whether the appellant had claimed any excess discount in its P&L account compared to the discount actually passed to its customers or not. These evidences remained in the possession of the AO for examination since January, 2009 for over a period of 6 years. Despite several reminders from this office, the Ld. AO could not make any adverse finding in respect of the evidences filed by the appellant before this office. Under the circumstances, in the interest of justice, the appeal is to be decided on the basis of available evidences on record and keeping in view the nature of business of appellant, as acknowledged by the Hon'ble Delhi High Court in the case of CIT vs. Singapore Airlines Ltd. (Supra).

6.10.2 The above evidences were got verified by me in the presence of the AR of the appellant company and the Ld. Counsel. Certain client-wise bills were identified on which, detailed explanation of the appellant regarding the basis for extending discount was given, which was duly verified and was found in order, taking into account, the relevant invoices, ledger account and the relevant agreement.

6.11 On careful consideration of the above, in the light of the above evidences, I hold that the claim of the appellant is in accordance with the books of account regularly maintained by it and based on the method of accounting being consistently followed by it and no infirmity is observed therein. The appellant has been passing on a part of basic Discount and overriding discount to its clients. This is evident by the agreement, client ledger account, invoices and BSP settlement. While basic discount is always passed on to the customers, ORC, which is made available to it by Airlines in case of specific deals only, is also shared with customers. Therefore, the Ld. AO's finding in this regard is not based on the prevalent market practices as acknowledged by the Hon'ble Delhi High Court in the case of CIT vs. Singapore Airlines (Supra), nor supported by the facts. The productivity linked bonus (PLB), whenever given by the airlines subsequently, is obviously not passed on to the clients.

6.12 I also observe that before rejecting the trading results of the appellant company, the Ld. AO has neither rejected the books of account u/s 145(3) nor made the best judgment assessment u/s 144. The impugned order is based on the AO's own interpretation of the submission of the appellant, without supported by any evidence/independent enquiry conducted from any of the clients or Airlines. Keeping in view the above, the addition without support of facts and law cannot be sustained."

9. On the issue of excess depreciation, the ld. CIT(A) has observed as under while deleting the addition :

"6.2 Regarding the Ground No.2 of the appeal by which the AO has restricted the disallowance on UPS and printer @ 15% instead of 60%, I find that lot of water has flown since the assessment order was passed by the AO in December, 2008. The law in the matter is now well settled with the decision of Hon'ble Delhi High Court in the case of CIT vs. BSES Yamuna Power Ltd. (2010) TIOL 636. Decision of several High Courts on this issue are in favour of the appellant, in which it has been held that UPS and printers are integral part of the computer system and entitled for depreciation @ 60%. In view of this, the Ground No.2 is allowed in favour of the appellant."

10. The above observations of the CIT(A) do not stand controverted on behalf of the Revenue. Therefore the above decision of learned CIT(A) does not require

any interference. The additional evidences were sent to the Assessing Officer for remand report, but he did not send any remand report on the admissibility of additional evidences even after lapse of 6 years' time. Therefore, the CIT(A), after giving several reminders, has rightly observed that the AO had nothing to say on the admissibility of additional evidences. Accordingly, CIT(A) has rightly deleted the additions after relying on various judicial precedents. As a result, the appeal of the Revenue deserves to be dismissed.

11. In the result, the appeal is dismissed.

Order pronounced in the open court on 25.01.2019.

Sd/-

**(Amit Shukla)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 25.01.2019

*\*aks\**

*Copy of order forwarded to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>Commissioner</i>	(4)	<i>CIT(A)</i>
(5)	<i>Departmental Representative</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New Delhi*