

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2208/Del./2015  
(ASSESSMENT YEAR : 2010-11)**

M/s. Aries Crafts Pvt. Ltd., vs. DCIT, Central Circle 4,  
13/34, W.E.A. Karol Bagh, New Delhi.  
New Delhi – 110 005.

**(PAN : AADCA5439P)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri V.P. Gupta, Advocate  
Shri Anunav Kumar, Advocate  
REVENUE BY : Ms. Nidhi Srivastava, CIT DR

Date of Hearing : 15.07.2019

Date of Order : 22.07.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, M/s. Aries Crafts Pvt. Ltd. (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 31.12.2014 passed by the Commissioner of Income - tax (Appeals)-XXX, New Delhi qua the assessment year 2010-11 on the grounds inter alia that :-

*“1. That the CIT(A) erred in upholding commission income of Rs.37,35,000/- calculated by the Assessing Officer at 2.25% on the total amount of RS.16.60 crores considered as accommodation entries without appreciating that amount of Rs.10.95 crores had been paid for purchase of shares of Prakash*

*Industries and amount of Rs.5.45 crores represents transfer to other group companies and payment to outside parties was only of Rs.20 lacs as loan.*

*2. That the CIT(A) erred in not accepting payment of Rs.10.95 crores made for purchase of shares of Prakash Industries as genuine without appreciating that shares had also been sold during the year for total consideration of Rs.10,97,47,565/- and the appellant company had submitted before him necessary evidence in regard to sale of the shares and, therefore, genuineness of the same could not be doubted.*

*3. That the en (A) also failed to appreciate that transfer to runes to other group companies amounting to Rs. 5.45 crores could not be considered as accommodation entries in the case of appellant and accordingly, commission income could not be determined with reference to the same.*

*4. That the CIT(A) erred in not following the directions of the Hon'ble Tribunal given vide order dated 18.10.2013 in accordance with which the rate of commission was to be determined taking into consideration precedence on the issue and the appellant had duly submitted number of precedence before the CIT(A) in accordance with which the rate of commission in the business of providing accommodation entries was ranging 0.25% to 0.5%.*

*5. That the CIT(A) erred in upholding addition made by Assessing Officer as per the information available on AIR of transactions of sale of shares of MIs Prakash Industries without appreciating that the Appellant had given evidence for purchase and sale of above shares and profit on transactions of purchase and sale of shares of Rs.54,064/-had also been accounted for in the books of the company.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee company belongs to Tarun Goyal Group of Cases which is engaged in providing entries in share capital, loans etc.. On the basis of search and seizure operation carried out by the Investigation Wing of the Income-tax on 15.09.2008, it was found that the assessee company had transferred funds and had given accommodation entries to parties connected with Tarun Goyal group

and outsiders through its account no.01792090007427 and 03142340000152 maintained with Kotak Mahindra Bank and HDFC Bank respectively and total funds transferred to the outside parties during the year under assessment were Rs.16.60 crores. Assessing Officer (AO) reached the conclusion that the assessee company has been providing accommodation entries to the beneficiaries for earning commission income and following the AY 2009-10 estimated commission @ 2.25% for providing accommodation entries which was adopted on the basis of seized documents and thereby made an addition of Rs.37,35,000/- i.e. commission @ 2.25% on the funds amounting to Rs.16.60 crores.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee challenging the impugned order contended that in certain appeals pertaining to Tarun Goyal Group of companies for AYs 2006-07, 2007-08 & 2008-09, commission income qua accommodation entries has been determined @ 0.50%. It is further contended that the commission income is to be determined only qua the

entries provided outside the books and not in case of intra-group transactions. However, on the other hand, Id. DR for the Revenue relied upon the order passed by the AO as well as Id. CIT (A).

6. Coordinate Bench of the Tribunal in the group cases being *M/s. Dwarka Impex Pvt. Ltd. vs. ITO in ITA No.1565/Del/2017 & other cases order dated 26.04.2019* decided the issue as to determining the commission on transactions of providing accommodation entries by returning following findings :-

*“22. So far as question of applying the rate of commission at “the rate of 2.25 % by the AO and reduced to 2% by the Id. CIT(A) is concerned, this issue has already been decided by the coordinate Bench of the Tribunal in the Group cases of Tarun Goyal vide order dated 23.01.2019 passed in ITA No.6507/Del/2015 & Ors., thereby AO has been directed to adopt the rate of commission @ 0.50% or 50 paise and computed the profit accordingly by returning following findings :-*

*“14. The Id. 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.”*

*23. Following the decision rendered by the coordinate Bench of the Tribunal, AO is directed to adopt the decision*

*of Group cases of Tarun Goyal (supra) and computed the profit accordingly in these cases also.*

*24. So far as appeals bearing ITA Nos.484/Del./2015, 6516/Del./2015 & 6710/Del./2016 filed by the assessee are concerned, one of the issue is as to upholding the commission income @ 2.25% in case of Bhawani Portfolio Pvt. Ltd. and Geefcee Finance Ltd. and @ 2% in case of Tejasvi Investments (P) Ltd. by the ld. CIT (A). This issue is also decided in favour of the assessee by following the decision rendered by Tribunal vide order dated 23.01.2019 (supra) and the AO is directed to adopt the decision of Group cases of Tarun Goyal (supra) and computed the profit accordingly in these cases also.*

*25. Second issue in case of Bhawani Portfolio Pvt. Ltd. and Geefcee Finance Ltd., which are of Noida charge, is as to whether determination of commission income with reference to the entries given outside the group. It is the case of the assessee that the AO has calculated the commission income @ 2.25% on the total of all credit entries in the bank account without appreciating the fact that all the entries have been duly explained by the assessee and inter-group entries were to be excluded. Perusal of remand order dated 18.10.2013 passed by the Tribunal was required to exclude the inter-group entries in the bank account in order to calculate the commission income. So, the AO is directed to exclude all inter-group entries in the bank account as per directions of the Tribunal and then calculate the commission income @ 0.50%. Consequently, this issue in the case of Bhawani Portfolio Pvt. Ltd. and Geefcee Finance Ltd. is determined in favour of assessee for statistical purposes.”*

7. So, we are of the considered view that the first issue as to what should be the rate of commission on amounts provided as accommodation entries is required to be decided following the decision rendered by the coordinate Bench of the Tribunal in case of Dwarka Impex Pvt. Ltd. (supra) of Tarun Goyal Group of Cases. So, AO is directed to determine the rate of commission by adopting the decision of

Tarun Goyal Group of Cases. AO is also directed to exclude all intra-group entries in the bank account as per directions of the Tribunal, as discussed in para 25 above, and then compute the commission income @ 0.50%. Since the assessee has not given any segregation of the accommodation entries provided outside the group and accommodation entries pertaining to intra-group transactions, the issue is remanded back to the AO to decide afresh after providing adequate opportunity of being heard to the assessee, in the light of the findings returned herein above. Consequently, appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in open court on this 22<sup>nd</sup> day of July, 2019.**

**Sd/-  
(R.K. PANDA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 22<sup>nd</sup> day of July, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXX, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**