

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.1138/Del/2016
Assessment Year: 2009-10

ITA No.1139/Del/2016
Assessment year: 2010-11

ITA No.1141/Del/2016
Assessment year: 2012-13

ACIT, Central Circle-9, New Delhi	Vs.	Shri Anil Aggarwal, H. No. 67, Sector-1, Vaishali, Ghaziabad
		PAN : AFGPA3349M
(Appellant)		(Respondent)

Appellant by	Shri J.K. Mishra, CIT(DR)
Respondent by	Shri Ved Jain, Adv.

Date of hearing	21.10.2019
Date of pronouncement	20.12.2019

ORDER

PER Dr.B.R.R. KUMAR, A.M:

These three appeals have been filed by the Revenue against the separate orders of learned Commissioner of Income Tax (Appeals)-24, each dated 09.12.2015, pertaining to assessment years 2009-10, 2010-11 and 2012-13 respectively.

2. Since common grounds, except difference in amount, are raised in all the appeal, we proceeded to decide all the three appeals by passing a consolidated order. The grounds of appeal raised in ITA No.1138/Del/2016 in assessment year 2009-10 are as under:

1. *The order of Ld. CIT(A) is not correct in law and on facts.*
2. *On the facts and circumstances of the case, the CIT(A) has erred in law in restricting the addition amounting to Rs.9,91,000/- out of total addition of Rs.11,59,200/- made by the AO on account of commission.*
3. *On the facts and circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs.19,32,00,000/- made by the AO on account of unexplained cash credit.*

3. Brief facts of case are that a search and seizure action u/s 132 of the Income Tax Act 1961 was carried out on the Rockland Group of cases on 06.09.2011. A consequential search action u/s 132 was conducted on assessee, Sh. Anil Aggarwal on 21.10.2011. The assessee is admittedly an entry operator based in New Delhi. The Assessing Officer computed the assessment u/s 153A for this assessment year on 28.03.2014 wherein he made two additions:

“i. On account of commission income @ 60 paisa per Rs.100 of accommodation entry provided - Rs.11,59,200/-.

ii. Credits appearing in the bank account of the appellant - Rs.19,32,00,000/-.”

4. **Ground No. 2:** During the course of search action, it was observed that certain concerns of the Rockland Group have credited share capital and share capital premium to their books. These are admittedly bogus accommodation entries, in which

monies were transferred to the Rockland Group though the bank accounts of certain companies controlled by the assessee cheques, for which the assessee received commission. The statement of the assessee, Sh. Anil Aggarwal had been recorded u/s 132(4), wherein he has unequivocally admitted that he has set up some paper companies which do not carry out any business activity, but only indulge in routing of accommodation entries. The statement of Sh. Anil Aggarwal has been reproduced in the assessment order at pages 2, 3, 4 & 5. The assessee has admitted that he has provided accommodation entries totaling Rs. 289.79 crores to various clients through his companies. He has stated that he has received commission @ 0.1% of the total accommodation entries. The total of such accommodation entries is Rs.19,32,00,000/- for this year. The A.O. observed that various other investigations had been carried out on other similar entry providers namely, Sh. Mahavir Jain. In the statement recorded of Sh. Mahavir Jain, a entry operator and Sh. Vipul Jain, Director of some other companies like Brain Soft Infra Consultants Pvt. Ltd., M/s Kay Buildwell P. Ltd., M/s Vaishno Devi Land & Building Developers Pvt. Ltd., M/s Chint Pumi Builders Pvt. Ltd. and M/s Kela Devi Builders Pvt. Ltd., who also provide accommodation entries on commission basis, for which they have admitted that the commission charge is 0.6% for providing such entries. The A.O. rejected the plea of the assessee that his case is different from Mahavir Jain/Anil Jain inasmuch as he has provided only expenditure entries and not share application entries. The A.O. adopted the rate of 0.6% commission on entries. Accordingly, in view of the total accommodation entries of Rs.19,32,00,000/- for

the year the A.O. arrived at the undisclosed commission at Rs.11,59,200/- (Rs. 19,32,00,000/- * 0.6%) for this year.

5. Heard the arguments of both the parties and perused the order of the Id. CIT (A). The relevant operative portion is as under:

“I... find that it is an undisputed fact that the appellant has provided accommodation entries total Rs. 19,32,00,000/- for the A.Y. 2009-10. This is also reflected in the “statements of facts” filed along with the appeal application. The appellant has admitted providing accommodation entries for a commission, and this admission is incriminating material unearthed during the search action.

The next point is regarding the rate of commission. The appellant has offered only 0.1% as commission. However, the A.O. has clearly brought out evidence that admitted market rate for providing similar accommodation entries is 0.6% and not 0.1% as claimed by the appellant. I am of the view that the action of the A.O. in adopting 0.6% commission rate is not arbitrary, but based on evidence unearthed during the search action at the Rockland Group and clearly establishes the market rate for such accommodation entries. I therefore confirm the adoption of 0.6% commission rate by the A.O. However, I note that the A.O. has added the entire 0.6% commission as undisclosed income, instead of the excess of 0.6% over the admitted commission rate of 0.1%. Therefore the addition has to be restricted to the difference of 0.5% on Rs.19,32,00,000/-. In other words, the addition is upheld to the extent of Rs.9,91,000/- only for the A.Y. 2009-10”.

6. Having gone through the order of the Id. CIT (A), we find that the order is only rectification of the computation of the commission and effectively no amount has been deleted by the Id. CIT (A). The appeal of the revenue is on the verge of being treated

as infructuous. Hence, this ground of appeal of the revenue is hereby dismissed.

Ground No. 3:

7. Heard the arguments of both the parties who relied on the respective order of the authorities below and perused the material available on record.

8. The A.O. has considered the sum of Rs.19,32,00,000/- credited to the bank statement of the assessee as undisclosed income of the assessee u/s 68 of the Income Tax Act “on protective basis”. However, in any case, since the assessee has submitted that the modus operandi of the assessee was that he was intermediary in the accommodation entry business wherein he has received cheques which was organized by one Sh. H.P. Aggarwal from Kolkata and then passed accommodation entry cheques to the Rockland Group (for which received the commission only) and which the Assessing Officer does not dispute, it would naturally follow that the sum of Rs. 19,32,00,000/- cannot be the undisclosed income of the assessee. It is admitted position of the revenue that the assessee is only passing on the amounts received in his account for which he gets commission. The A.O. has not brought out the results of any enquiries made about the source of the cheques that has been received, to show if indeed the sums credited to the bank account is indeed the assets of the assessee. From the records, it is gathered that the substantive addition has to be made in the case of Rockland Group for which the assessee has provided the

entries as per the information available in the assessment order. Hence, we decline to interfere with the order of the ld. CIT (A) as the protective addition is liable to be deleted.

9. In the result, the appeals of the revenue are dismissed.

Order is pronounced in the open court on 20/12/2019.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(Dr.B.R.R KUMAR)
ACCOUNTANT MEMBER

Dated: 20/12/2019

Subodh

Copy forwarded to:

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

Assistant Registrar