

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 1140/DEL/2016 (A.Y 2011-12)

ACIT, Central Circle-06, New Delhi. (APPELLANT)	Vs	Sh. Anil Aggarwal, H. No.67, Sector – 1, Vaishali, Ghaziabad, UP (PAN : AFGPA 3349 M) (RESPONDENT)
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Appellant by	Shri J. K. Mishra, CIT-D.R.
Respondent by	Shri Akshit Goel, C.A.

Date of Hearing	01.01.2020
Date of Pronouncement	06.01.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order of the Commissioner of Income Tax [Appeals]-24, New Delhi dated 09.12.2015 for Assessment Year 2011-12.

2. The Grounds of appeal 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. 67,52,000/- out of total addition of Rs. 81,02,400/- 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. 1,35,04,00,000/- made by the AO on account of unexplained cash credit.*

4. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.”*

3. 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 appellant 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:-

- 1) On account of commission income @ 60 paise per Rs.100 of accommodation entry provided - Rs. 81,02,400/-
- 2) Credits appearing in the bank account of the appellant - Rs.135,04,00,000/-.

4. Being aggrieved by the assessment order, the assessee filed an appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. At the time of hearing there is an adjournment application given by the assessee's counsel signed by Ashish, Partner of VJA Legal Advocates. Shri Akshit Goel of VGA Legal has appeared and requested for adjournment stating therein that they require to file paper book in the matter. When we have enquired with the Ld. DR about the matter, the Ld. DR submitted that the assessee's appeal for A.Y. 2011-12 has been remanded back to the file of the CIT(A) in respect of the relief which was not granted to the assessee which has a bearing on the present appeal which is filed by the Revenue for the same assessment year. Therefore, the Ld. DR submitted that the revenue's appeal should also be remanded back to the file of the CIT(A) as the issues are inter-connected. When we pointed out this aspect to the assessee's counsel who appeared before us, he expressed that he require certain time to go through the file. Therefore, we have kept back the matter and handed over the second folder of the appeal to the counsel who was appearing before us. When the matter was taken at the end of the board, none appeared despite giving the second

folder of the Bench to the counsel who have appeared for the assessee. Therefore, we are proceeding with the matter on the basis of the Tribunal's order in assessee's own case being ITA No.1317 to 1322/Del/2016 order dated 04.08.2017 as regards to Ground No. 2 and as regards to Ground No. 3 we are taking up the submissions of the assessee before the Assessing Officer and the CIT(A).

6. We have heard the Ld. DR and perused the records available before us including the Assessment Order, order of the CIT(A) and the order of the Tribunal in Assessee's own case. Ground No. 1 is general, hence dismissed. As regards to Ground No. 2 relating the issue of restricting the addition amounting to Rs. 67,52,000/- out of total addition of Rs.81,02,400/- made by the Assessing Officer on account of commission is concerned, the said issue is remanded back to the file of the CIT(A) in assessee's appeal for same assessment year which is interconnected to the issue in revenue's appeal which will have a bearing on the addition whether to sustain or not. Thus, to attend the consistency, it will be appropriate to remand back the issue contested by the Revenue to the file of the CIT(A) as well as. Needless to say the assessee be given opportunity of hearing before the CIT(A) by following the principle of natural justice. Thus, Ground No. 2 of the Revenue's appeal is partly allowed for statistical purpose.

7. Ground No. 3 relates to deletion of addition of Rs. 1,35,04,00,000/-made by the Assessing Officer under Section 68 of the Act as unexplained cash credit, the Ld. DR submitted that the assessee has not furnished any details in respect of beneficiaries to whom accommodation entries has been provided during the year. The assessee has also not furnished the explanation of credit entries appearing in the bank account of the companies which were mentioned in the assessment order through which the accommodation was provided to the beneficiaries during the year. Thus, assessee never discharged its liability to prove identity, creditworthiness and genuineness of the transactions as per

Section 68 of the Income Tax Act, 1961. The CIT(A) failed to look into all these aspects and without giving any cogent reasons simply deleted the addition. From the perusal of the order of the CIT(A), it can be seen that the details of the companies to whom the assessee was providing accommodation entries given in para 4 of the Assessment Order has not been looked into by the CIT(A). Besides that the CIT(A) failed to look into the aspect that the assessee has not provided the details of evidence of funds credited in the bank accounts belonging to any other entity/person and hence not discharged the liability to prove the genuineness of the transactions as per the provisions of Section 68 of the Act. In view of this, we set aside Ground No. 3 of the Revenue's appeal to the file of the CIT(A) to test the identity, creditworthiness and genuineness of transaction on the issues mentioned hereinabove. Needless to say the assessee be given opportunity of hearing before the CIT(A) by following the principle of natural justice. Thus, Ground No. 3 of the Revenue's appeal is partly allowed for statistical purpose.

9. In result, appeal of the revenue is partly allowed for statistical purpose.

Order pronounced in the Open Court on 06th day of January, 2020.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 06/01/2020
*Priti Yadav, Sr. PS **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI