

**IN THE INCOME TAX APPELLATE TRIBUNAL  
GAUHATI BENCH "E" COURT AT KOLKATA**

**Before Shri S.S.Godara, Judicial Member and  
Dr. A.L.Saini, Accountant Member**

**ITA No.185 & 266/Gau/2013  
Assessment Years :2005-06 & 2006-07**

M/s Candida Enterprise Kaliram Medhi Road, Ranibari, Pan Bazar, Guwahati-781001 <b>[PAN No.AADFC 9880 N]</b>	<b>V/s.</b>	JCIT,Range-2, Aayakar Bhawan, G.S. Road, Christian Basti, Guwahati- 781005
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Appellant	Shri D.K.Biswas, Advocate
राजस्व की ओर से/By Respondent	Shri M.C Omi Ningshen, JCIT SR-DR
सुनवाई की तारीख/Date of Hearing	11-12-2019
घोषणा की तारीख/Date of Pronouncement	18-12-2019

**आदेश /ORDER**

**PER BENCH:-**

These two assessee's appeals for assessment years 2005-06 & 2006-07 arise against the Commissioner of Income Tax (Appeals)-Guwahati's separate orders dated 02.01.2013 and 14.02.2013 passed in case No.Guwa-400/07-08 and Guwa-200/2008-09 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file(s) perused.

2. The sole substantive issue canvassed in assessee's former appeal ITA No.185/Gau/2013 challenges both the lower authorities action disallowing / adding the amount of ₹16,57,539/- under the head "Commission Account" in

the course of assessment as affirmed in the lower appellate proceedings. The CIT(A)'s detailed discussion to this effect reads as under:-

*"5. The second ground of appeal is against addition of Rs.16,57,539/- to Commission Income account out of Net Credit Balance of Rs.4,298,124/-. The relevant portion of the assessment order is at paragraphs 2.1 to 2.10 of the assessment order (**pages 1-5**) and to avoid repetition, facts are not being reproduced. During the assessment proceedings, the assessee claimed that the credit balance in the names of Principals represented payment made to assessee by the principals to meet specific expenses for the principals and, therefore, they were not adjusted against commission receivable. The AO rejected the contention by observing that had it been for specific payments, the sum should have remained intact and, therefore, it should have been lying as cash-in-hand or as balance in the bank account; whereas cash and bank balance was only Rs.8,40,989/- (**far less than credit balances in the names of the principals**). The AO treated the credit balances lying in the account of the principals as assessee's commission since to the extent of commission due from the respective Principals. The total addition was Rs.16,57,539/-.*

*5.1 During the appellate proceedings, the appellant submitted that all the expenses for and on behalf of Principal were paid timely and no scarcity of fund was ever faced and hence no adverse view should be taken on the basis that advances received from principals were not kept as cash / bank balances.*

*5.2 I find the addition made by the Assessing Officer to be quite reasonable. It is not disputed that commission was due to the appellant. It is not disputed that money was received by the appellant and there is no evidence to prove that money received was only towards advances for expenses. There is no dispute that amount represented by credit balances were not fully kept in the form of cash / bank balance. There is no dispute that appellant maintains cash system of accounting. Under these circumstances; and when the amount of addition made by AO represented both commission due and money actually received; the addition is sustained. The second ground of appeal is **dismissed.**"*

3. Both the learned counsel vehemently reiterated their respective stands against and in support of the impugned commission amount. The fact however remains that neither the assessee has been able to prove each and every commission received or receivable nor the Assessing Officer and the CIT(A) have asked it to provide for list of prayer for necessary factual verification. We therefore deem it appropriate in these peculiar facts that a lump sum addition of ₹1,57,539/- on estimation basis would meet the larger interest of justice.

Consequential necessary computation shall follow as per law. The assessee gets part relief to the above limited extent.

4. Same reasoning to follow in latter appeal **ITA No.266/Gau/2013** in assessment year 2006-07. We restrict the impugned addition of ₹357,431.51 to a lump sum amount of ₹57431.51 only. It is made clear that our instant estimation shall not be treated as precedent in any assessment year in assessee's case.

5. These assessee's appeals ITA No.185 & 266/Gau/2013 are partly allowed in above terms. **A copy of the instants common order be placed in the respective case file.**

Order pronounced in the open court 18/12/2019

Sd/-  
(A.L.Saini)  
(Accountant Member)  
Kolkata,  
\*Dkp

Sd/-  
(S.S.Godara)  
Judicial Member)

दिनांक:- 18/12/2019 कोलकाता/

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. आवेदक /Assessee -M/s Candida Enterprise, Kaliram Medhi Road, Ranibari, Pan Bazar Guwahatii-781001
2. राजस्व/Revenue-JCIT, Range-2,Aayakar Bhawan,G.S. Road, Christian Basti Guwahati-781005
3. संबंधित आयकर आयुक्त / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Guwahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of  
Office/DDO  
आयकर अपीलीय अधिकरण,  
गूवाहाठी ।