

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 5486/Del/2015
(Assessment Year: 2010-11)**

Asstt. Commissioner of Income Tax, Circle- 34(1), New Delhi.	Vs.	Sh. Pawan Kumar Jain, BM-173, West Shalimar Bagh, Delhi-110088.
APPELLANT		RESPONDENT
PAN No: AAOPJ7853N		

Revenue By : Shri Avikal Manu, Sr. DR
Assessee By : Shri Tarun Kumar, Adv.

Per Anadee Nath Misshra, AM

(A) This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-12, New Delhi, ["Ld. CIT(A)", for short], dated 15/06/2015 for Assessment Year 2010-11. Grounds taken in this appeal of Revenue are as under:

"1. Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in not appreciating the facts of the case properly.

2. Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 5,51,09,413/- on account of commissioner ignoring facts that the assessee failed to prove the justification of payment of commission as he paid no commission in the preceding year and there was not enhancement in the turnover of the assessee.

3. Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 5,51,09,413/- made on account of commission ignoring the fact that the rate of commission @ 10% was much higher in comparison to gross profit of Rs. 26,01,235/- (0.4% of sales).

4. Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in appreciating the facts of the case that the assessee paid commission for extraneous reasons as he was also carrying out the business of equal turnover in the preceding years without any payment of commission.

5. Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in not appreciating the provisions of explanation 2 to section 9(1) (vii) (which were application on the assessee as the commission agents were also providing managerial services to the assessee as per MOU.

6. Whether on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in holding that the provision of deduction of TDS u/s 195 r.w.s 40a(ia) would not apply to the facts of the case.

7. Whether on the facts and in circumstances of the case, and in law, the Ld. CIT(A) erred in not appreciating the provisions of explanation 2 to section 9(2) and explanation 2 to section 195 in holding its non-applicability to non-resident agent."

(B) At the outset, the Ld. Counsel for the Assessee informed us that the assessee has filed a declaration under Vivad Se Vishwas Scheme ("VSVS", for short) for the settlement of subject matter of the disputes in this appeal and filed a declaration in Form- 1. A copy of declaration filed by assessee in Form-1 has also been filed from assessee's side in Income Tax Appellate Tribunal ("ITAT", for short). The Ld. Counsel for the assessee also informed in oral submissions at the time of hearing, that the aforesaid declaration filed by assessee has been accepted by Revenue; and that accordingly Form-3 has been issued. However, copy of Form-3 remained to be filed by the assessee in ITAT. At the time of hearing before us, the Ld. Counsel for assessee submitted before us that this appeal may be dismissed on account of the aforesaid VSVS. The learned Senior Departmental

Representative ("Ld. Sr. DR", for short) did not express any objection to this. However he had no intimation that Revenue has already issued Form-3 and had settled the disputes covered in this appeal. After due consideration, and in view of the foregoing; we treat this appeal as withdrawn by Revenue on account of the aforesaid VSVS, subject to settlement of the disputes in the appeal, under the aforesaid VSVS. Accordingly, the appeal is dismissed being treated as withdrawn.

(B.1) Before we part, we hereby clarify, by way of abundant caution, that if for some reason it is found by Revenue that the disputes under this appeal before us are not fully settled under the aforesaid VSVS, then Revenue will be at liberty to approach ITAT for restoration of this appeal, in accordance with law.

(B.2) With these directions, the aforesaid appeal of Revenue is dismissed, being treated as withdrawn.

(C) For statistical purposes, this appeal is dismissed.

This order was already pronounced on 9th December, 2020 in Open Court, in the presence of Representatives of both sides; after conclusion of the hearing.

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated: 09/12/2020
Pooja/-

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	9/12/20
Date on which the typed draft is placed before the dictating Member	9/12/20
Date on which the typed draft is placed before the Other Member	9/12/20
Date on which the approved draft comes to the Sr. PS/PS	9/12/20
Date on which the fair order is placed before the Dictating Member for pronouncement	9/12/20
Date on which the fair order comes back to the Sr. PS/PS	9/12/20
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	