

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

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

I.T.A. No. 768 /DEL/2016 (A.Y 2003-04)

&

I.T.A. No. 769/DEL/2016 (A.Y 2004-05)

(THROUGH VIDEO CONFERENCING)

M/s Adonis Financial Services Pvt. Ltd. 13/34, W.E.A, Karol Bagh New Delhi-110005 PAN: AADCA5783E (APPELLANT)	Vs	Dy. Commissioner of Income Tax, Central Circle-29 New Delhi
---	----	--

Appellant by	None
Respondent by	Sh. H. K. Choudhary, CIT DR

Date of Hearing	28.06.2021
Date of Pronouncement	16.07.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 27/11/2015 passed by CIT(A)-30, New Delhi for assessment year 2003-04 & 2004-05 respectively.

2. The grounds of appeal are as under:- **I.T.A. No. 768 /DEL/2016**

1. *“That the CIT(A) erred in upholding the order of the Assessing Officer determining the commission income @ 2% on the amount representing the entries given to outside parties without correctly appreciating the facts of the case and following the directions of Hon’ble ITAT vide its order dated*

18.10.2013.

2. That the CIT(A) erred in upholding the commission income @ 2% disregarding the directions of Hon'ble ITAT to apply the rate considering the precedence available in this regard, for which necessary evidence had been duly submitted before the CIT(A).

3. That the CIT(A) erred in taking a view that precedence available in the form of appellate / assessment orders in other cases could not be considered for the purpose of taking the rate of commission inspite of the fact that the Hon'ble Tribunal had directed to determine the rate of commission taking into consideration the precedence available in this regard.

4. That the CIT(A) also erred in upholding the order of Assessing Officer determining commission @ 2% on the basis of rough notings in seized papers without appreciating that the notings under reference could not be relied upon as neither same were specifically in regard to rate of commission nor details were corroborated with other material and in any case the rates mentioned therein for a small amount could not be applied in all the cases of the Group for determining the rate of commission on total amount of accommodation entries and the notings under reference were also not relevant to all the assessment years.

5. That the CIT(A) erred in upholding the addition of Rs. 52,41,000/- being the cash deposits in the bank account of the appellant company without appreciating that admittedly the appellant company was being controlled by Mr. Tarun Goyal and he was carrying on the business of providing accommodation entries through various entities, including the appellant company and the cash was deposited in the bank account of the appellant during the course of the above business and for providing entries from the account of appellant as well as from other companies and, therefore, cash deposited in the facts of the case could not be added under Section 68 of the Income Tax Act in the case of the Appellant.

6. That the CIT(A) also failed to appreciate that since the Assessing Officer has already considered commission income on the amount of accommodation

entries, cash deposited in the bank account of Rs.52,41,000/- cannot be added as transactions of deposit and of giving entries are two sides of same transaction and, therefore, addition made on account of cash deposits ought to have been deleted.

7. The CIT(A) failed to appreciate that there is no question of proving identity and credit worthiness of the parties in relation of cash deposits which deposits are admittedly part business of providing accommodation entry and, therefore, he has erred in taking a view that appellant has not been able to provide required information in regard to cash deposits. He also failed to appreciate the directions of ITAT in this regard.

8. That the CIT(A) also erred in not restricting the addition in respect of cash deposits with reference to peak credit as per directions of the Hon'ble ITAT vide order dated 18.10.2013.

9. That the CIT(A) also failed to appreciate that considering the cash deposits as income is also contrary to the stand taken by the Department while passing the assessment orders in Noida Charge, in the cases of Group, in which cases commission income has been determined with reference to credit entries in bank account including the cash deposits.

10. That the orders passed by the Assessing Officer and CIT(A) are bad in law and therefore, deserve to be quashed.

I.T.A. No. 769 /DEL/2016

1. "That the CIT(A) erred in upholding the order of the Assessing Officer determining the commission income @ 2% on the amount representing the entries given to outside parties without correctly appreciating the facts of the case and following the directions of Hon'ble ITAT vide its order dated 18.10.2013.

2. That the CIT(A) erred in upholding the commission income @ 2% disregarding the directions of Hon'ble ITAT to apply the rate considering the precedence available in this regard, for which necessary evidence had been duly submitted before the CIT(A).

3. That the CIT(A) erred in taking a view that precedence available in the

form of appellate / assessment orders in other cases could not be considered for the purpose of taking the rate of commission inspite of the fact that the Hon'ble Tribunal had directed to determine the rate of commission taking into consideration the precedence available in this regard.

4. *That the CIT(A) also erred in upholding the order of Assessing Officer determining commission @ 2% on the basis of rough notings in seized papers without appreciating that the notings under reference could not be relied upon as neither same were specifically in regard to rate of commission nor details were corroborated with other material and in any case the rates mentioned therein for a small amount could not be applied in all the cases of the Group for determining the rate of commission on total amount of accommodation entries and the notings under reference were also not relevant to all the assessment years.*

5. *That the CIT(A) erred in upholding the addition of Rs. 75,10,400/- being the cash deposits in the bank account of the appellant company without appreciating that admittedly the appellant company was being controlled by Mr. Tarun Goyal and he was carrying on the business of providing accommodation entries through various entities, including the appellant company and the cash was deposited in the bank account of the appellant during the course of the above business and for providing entries from the account of appellant as well as from other companies and, therefore, cash deposited in the facts of the case could not be added under Section 68 of the Income Tax Act in the case of the Appellant.*

6. *That the CIT(A) also failed to appreciate that since the Assessing Officer has already considered commission income on the amount of accommodation entries, cash deposited in the bank account of Rs.75,10,400/- cannot be added as transactions of deposit and of giving entries are two sides of same transaction and, therefore, addition made on account of cash deposits ought to have been deleted.*

7. *The CIT(A) failed to appreciate that there is no question of proving identity and credit worthiness of the parties in relation of cash deposits which*

deposits are admittedly part business of providing accommodation entry and, therefore, he has erred in taking a view that appellant has not been able to provide required information in regard to cash deposits. He also failed to appreciate the directions of ITAT in this regard.

8. That the CIT(A) also erred in not restricting the addition in respect of cash deposits with reference to peak credit as per directions of the Hon'ble ITAT vide order dated 18.10.2013.

9. That the CIT(A) also failed to appreciate that considering the cash deposits as income is also contrary to the stand taken by the Department while passing the assessment orders in Noida Charge, in the cases of Group, in which cases commission income has been determined with reference to credit entries in bank account including the cash deposits.

10. That the orders passed by the Assessing Officer and CIT(A) are bad in law and therefore, deserve to be quashed.

3. As both the assessment years are identical on facts, we are taking facts of A.Y. 2003-04. The assessee is a part of Tarun Goyal Group. The Group was being managed by Mr. Tarun Goyal. It is an admitted position that during the relevant previous year Mr. Tarun Goyal was carrying on the business of providing accommodation entries through its various entities including the assessee. In the case of Tarun Goyal Group a search had taken place on 15.09.2008. Thereafter assessments were made in the case of entities including the assessee company under Section 153A of the Act. The submission of Mr. Tarun Goel has been that he had earned commission income in respect of accommodation entries provided by him and for this purpose he has been receiving cash from the parties and after layering the same through his various entities has been providing accommodation entries from one of his Group companies. In the year of search he had also offered commission income of Rs. 10lac calculated at 25 paisa per hundred rupees on estimated business of rupees 40 crores. The Assessing Officer while passing the order of assessment in the case of Appellant under section 153A of the Act had determined

commission income in respect of all the entries given outside the Group @ 2.25% disregarding claim of Mr. Tarun Goel that commission income is to be taxed only in the case of Mr. Tarun Goel and at the rate of 25 paise per hundred rupees. Against the order of assessment passed by the Assessing Officer, appeal was filed before Commissioner of Income Tax (Appeals). The CIT(A) had upheld order of the Assessing Officer. Against the order of CIT(A), appeals were filed before Tribunal. The Tribunal vide its combined order passed in the case of 94 appeals, dated 18.10.2013 had remanded the matter back to the Assessing Officer with the direction that he should look into the credit entries and all the credit entries received from the Group entities should be excluded and on such credit entries which the assessee is not able to explain commission income should be determined. The commission income may be determined as per the precedence in this regard. Before the Tribunal the assessee had submitted that rate of commission in the trade of providing commission entries was about 0.25%. In this regard certain decisions and copy of assessment order had also been submitted wherein the Department / Appellate authorities had accepted the rate of commission ranging from 25 paise per hundred to 50 paise per hundred. The Assessing Officer has passed the impugned order pursuant to the directions of Tribunal. During the course of proceedings before the Assessing Officer the assessee had submitted a statement giving nature-wise categorization of all credit entries in its bank account wherein it had categorized the same with reference to accounting entries received from Group entities and credit entries which could be explained and other credit entries on the basis of which commission income could be calculated. The assessee had submitted that commission income may be determined at 0.25% i.e. 25 paise per hundred keeping in view the appellate and assessment orders in the case of other assesses who were also in the trade of providing accommodation entries. The Assessing Officer had passed the Assessment order thereby determining the commission income @ 2% with respect to entries given to outside parties during the year.

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

5. Despite giving notice, none appeared on behalf of the assessee. Therefore, we are proceeding on the basis of assessment order and order of the CIT(A) and the submissions along with evidences reproduced in the order of the CIT(A) as well as the paper book filed by the assessee on earlier occasions. The Assessing Officer has passed the order under appeal. In the order the Assessing Officer has again determined the commission income @ 2% with respect to entries given to outside parties during the year. He has also included in the taxable income amount of cash deposits in the bank account. In view of the appellant addition on account of commission as well as cash deposits is contrary to each other. Admittedly, the cash was received during the course of carrying on the business of accommodation entries. Same had been deposited in the bank account. After layering the transactions, entries were given to the beneficiaries. Further, rate of commission ought to have been taken as per the directions of ITAT at the rate prevailing in the trade and considering the precedence. Accordingly, the Assessing Officer has not passed the order in compliance to the directions of ITAT. These were submissions set out in Form No. 35 of the appeal before the CIT(A).

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard the Ld. DR and perused all the relevant material available on record. From the perusal of the Assessment order and the order of the CIT(A), it can be seen that there is a clear finding of the revenue authorities that on perusal of the bank statement and the details furnished by the assessee, the credit entries relating to cash, the name of the alleged person from whom cash has been received, is given but the claim of the identity is not substantiated by way of filing PAN, ITR, confirmation etc. and therefore, identity is not proved by the assessee in second round of assessment proceedings as well. The cash has been deposited in various names, but the

assessee failed to prove their identity. Therefore, sources of deposits were not proved. Thus, though the Tribunal has given opportunity to the assessee for establishing three ingredients that of, identity, creditworthiness and genuineness, the same were not established by the assessee relating to cash deposits before the Assessing Officer as well as before the CIT(A). Therefore, the CIT(A) has rightly held that cash deposited in the bank account of the assessee remained unexplained as per Section 68 of the Act. As regards the unexplained cash deposits which has to be restricted to peak relating to addition u/s 68, the same is also not proved by the assessee before the Assessing Officer as well as before the CIT(A). Thus, CIT(A) rightly rejected the said claim. As regards the stand taken by the Revenue in Noida charge group cases, the same is rightly rejected as the assessee could not prove as to how the same will be applicable in assessee's case relating to credit entries in bank account including cash deposits. Thus, the appeal of the assessee for A.Y. 2003-04 being ITA No. 768/Del/2016 is dismissed.

8. As regards ITA No. 769/Del/2016 for A.Y. 2004-05, the same is identical to that of A.Y. 2004-05 and there are no distinguishing facts emerging from the orders of the CIT(A) and the assessment Orders as well as the submissions made by the assessee before the Revenue authorities. Hence, the appeal of the assessee for A.Y. 2004-05 being ITA No. 769/Del/2016 is also dismissed.

9. In result, both the appeals of the assessee are dismissed.

Order pronounced in the Open Court on this 16th Day of July, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 16/07/2021
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI