

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI K.N. CHARY, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.97/Del/2018
Assessment Year: 2013-14

Ordinary Financial Services Pvt. Ltd., 13/34, W.E.A. Karol Bagh, New Delhi	Vs.	ITO, Ward-19(2), New Delhi
PAN :AAACO6367K		
(Appellant)		(Respondent)

Appellant by	Sh. V.P. Gupta, Adv. Sh. Anunav Gupta, Adv.
Respondent by	Sh. Gaurav Pundir, Sr.DR

Date of hearing	16.08.2021
Date of pronouncement	27.08.2021

ORDER

PER O.P. KANT, AM:

This appeal filed by the assessee is directed against order dated 07/09/2017 passed by the learned CIT (Appeals)-38, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14, raising following grounds:

1. *That the CIT(A) erred in upholding addition of Rs.24,22,248/- made by the Assessing Officer i.e. 2% of Rs. 12,11,12,443/- without correctly appreciating the facts of the case and the submission made before CIT(A).*
2. *That the CIT(A) failed to appreciate that the allegation made by the Assessing Officer that the transactions relating to sale and*

purchase of shares were in the nature of accommodation entry is without any basis and any evidence and was only his hypothetical presumption.

3. *That the CIT(A) failed to appreciate that the factual observation made by the Assessing Officer that shares purchased were sold on the following day at very low rate in order to buy loss is also not correct.*
4. *That the CIT(A)/AO also erred in referring to decisions of Supreme Court / Punjab & Haryana High Court which are not relevant to the facts of the case.*
5. *That the orders passed by the Assessing Officer and CIT(A) are bad in law and therefore, deserve to be quashed.*
6. *That the Appellant Company craves leave to alter, amend, vary and/or add any of the grounds of appeal at any time herein after.*

2. Briefly stated facts of the case are that assessment under section 143(3) of the Income-Tax Act, 1961 (in short 'the Act') was completed by the Assessing Officer on 21/03/2016 holding the assessee as engaged in providing accommodation entries. The Assessing Officer assessed income for commission earned at the rate of 2% on sale transaction of ₹ 12,11,12,443/-. The Ld. CIT(A) upheld the rate of the commission assessed by the Assessing Officer. Aggrieved, the assessee is before the Tribunal, raising the grounds as reproduced above.

3. Before us, the parties appeared through Video Conferencing facilities and filed documents and cases relied upon through email. The learned counsel of the assessee submitted that assessee is one of the members of the Tarun Goyal Group, wherein the Tribunal in ITA Nos. 6507/2015 & Ors. (Adonis Financial Services Pvt. Ltd. & Ors.), vide order dated 23.01.2019, restricted the rate of the commission on accommodation entries at the rate of 0.50% or 0.50 paise of the sale transaction. Accordingly, he submitted that in the case of the assessee also rate of the commission may be determined accordingly.

4. The learned DR, on the other hand, submitted that Assessing Officer has invoked the rate of 2.25% based on the seized document whereas the Tribunal has applied the rate of commissioner arbitrarily without any documentary evidences.

5. We have heard rival submission of the parties on the issue in dispute. The only dispute is regarding invoking of rate of commission by the Assessing Officer. Before the Assessing Officer, the assessee duly admitted that it is a part of the 'Tarun Goyal Group' of the companies and this fact has not been disputed either by the Assessing Officer or by the Learned DR. The Tribunal in ITA No. 6507/2015 & Ors. (supra), after considering the statement of Tarun Goyal under section 132(4) of the Act, has restricted the rate of the commission to 0.50% observing as under:

"8. There is no dispute that the appellants were engaged in clandestine activities in the illegal business of providing accommodation entries to the beneficiaries. The beneficiaries purchased cheques from the appellants by paying cash. We are of the considered opinion that in such illegal activities, there cannot, and should not be any precedence. However, the Assessing Officer has referred to some loose sheets on which the percentage was mentioned at 1.69% to 2.5%.

9. The evidentiary value of loose sheets have been considered at length by the Hon'ble Supreme Court in the case of CBI Vs. V.S. Shukla [1998] Taxmann.com 2155.

10. In the case of V.C. Shukla [supra] the Hon'ble Supreme Court held as under:

"A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person. Keeping in view the above principles, even if we proceed on the assumption that the entries made in MR 71/91 are correct and the entries in the other books and loose sheets which we have already found to be not admissible in evidence under Section 34) are admissible

under Section 9 of the Act to support an inference about the formers' correctness still those entries would not be sufficient to charge Shri Advani and Shri Shukla with the accusations levelled against them for there is not an iota of independent evidence in support thereof. In that view of the matter we need not discuss, delve into or decide upon the contention raised by Mr. Altaf Ahmed in this regard. Suffice it to say that the statements of the for witnesses, who have admitted receipts of the payments as shown against them in MR 71/91, can at best be proof of reliability of the entries so far they are concerned and not others. In other words, the statements of the above witnesses cannot be independent evidence under Section 34 as against the above two respondents. So far as Shri Advani is concerned Section 34 would not come in aid of the prosecution for another reason also. According to the prosecution case itself his name finds place only in one of the loose sheets (sheet No. 8) and not in MR 71/91. Resultantly, in view of our earlier discussion, section 34 cannot at all be pressed into service against him."

11. Similar view was taken by the Hon'ble Supreme Court in the case of Common Cause, A registered Society Vs. UOI 394 ITR 220.

12. In the light of the ratio laid down by the Hon'ble Supreme Court [supra], notings found in the loose sheets would not do any good to the Revenue. The assessee has claimed 25 paise or 0.25% on the strength of the statement of kingpin Shri Tarun Goyal, who in his statement recorded under oath u/s 132(4) of the Income tax Act, 1961 has categorically stated that the rate of commission charged on accommodation entries provided through various companies was 0.25%.

13. However, the statement of Shri Tarun Goyal recorded u/s 132(4) of the Act can be a good piece of evidence in the case of Shri Tarun Goyal only.

14. The Id. counsel for the assessee also relied heavily on various decisions of the co-ordinate bench wherein the Tribunal has adopted rate ranging from 0.15 paise to 0.50 paise i.e 0.15% to 0.50%.

15. As mentioned elsewhere, in such illegal activities, there cannot be any precedence and the rate varies from facts of each case.

16. To put an end to the litigation and in the interest of justice and fair play, in our considered opinion, 0.50 paise or 0.50% should be taken as the reasonable rate of profit/commission in such clandestine activities. We, accordingly, direct the Assessing Officers to adopt 0.50% or 0.50 paise and compute the profit accordingly,

17. We are of the opinion that there cannot be any profit element in intra-group transactions. We, therefore, direct the Assessing Officers to consider the transactions with outside parties only and then compute the profit.”

5.1 The assessee being a company of the ‘Tarun Goyal Group’ of the companies, respectfully following the finding of the Tribunal (supra), we restrict the rate of the commission assessed by the Assessing Officer to 0.50 % of the transactions carried out by the assessee in the year under consideration. The ground of the appeal of the assessee is accordingly partly allowed.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 27th August, 2021.

Sd/-
(K.N. CHARY)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 27th August, 2021.

RK/-(DTDC)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi