

**आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“F” BENCH, MUMBAI**

**माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No.6410/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2011-12)

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आयकरअपील सं./ I.T.A. No.6411/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2012-13)

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आयकरअपील सं./ I.T.A. No.6412/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2013-14)

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आयकरअपील सं./ I.T.A. No.6413/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2014-15)

<b>M/s. Jump Networks Ltd.</b> (Earlier known as IRIS Mediaworks Ltd) B-302, Western Edge-II Western Express Highway Borivali (E), Mumbai-400 066	<b>बनाम/ Vs.</b>	<b>DCIT-CC-2(2)</b> 8 <sup>th</sup> Floor, Pratihtha Bhawan M.K. Road Mumbai-400 002
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AAACB-4506-D</b>		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Neeraj Mangla- Ld. AR
Revenue by	:	Shri Yashwant Bhaskar-Ld.CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	14/07/2021
घोषणा की तारीख / Date of Pronouncement	:	08/09/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 Aforesaid appeals by assessee for Assessment Years (AY) 2011-12 to 2014-15 contest separate orders of learned Commissioner of

Income Tax (Appeals)-48, Mumbai {CIT(A)} dated 31/07/2019 on common grounds of appeal. The impugned order is common order for AYs 2010-11 to 2013-14 whereas the order for AY 2014-15 has been passed separately. It is admitted position that adjudication in any one year shall substantially apply to the other years also.

1.2 The ground raised in appeal for AY 2011-12 read as under: -

1. That the Ld. CIT (A) erred in law and under the circumstances of the fact in confirming the order of the assessing officer which is bad in law and must be quashed.
2. That the Ld. CIT(A) grossly erred in law in not adjudicating the substantial ground of appeal challenging the computation of commission income assessed by the Ld. AO in the case of the assessee company.
3. That the Ld. CIT(A) grossly erred in law in not adjudicating and allowing telescoping of assessed commission income with the income recorded in its books of account despite the fact that the business activities were assessed as non-existent.
4. That the Ld. AO grossly erred in law in making addition of commission income only on presumptions without any incriminating material being found or seized evidencing earning of commission by the assessee company.
5. That the Ld. AO grossly erred in making addition of Rs.1,47,27,600/- at a presumed rate of commission of 1% against the admitted rate of commission @ 0.30% despite the fact that all other facts narrated in statement relied upon have been accepted to be true and correct.
6. That the Ld. AO grossly erred in law in disallowing the losses of Rs.54,98,814/- incurred by the assessee company in business.

1.3 During hearing, Ld. AR urged for adjudication of ground nos. 2, 3 & 6 whereas other grounds have not been pressed. Accordingly, all the other grounds stand dismissed as being not pressed.

1.4 The Ld. AR, at the outset, relied upon the orders of Tribunal rendered in case of group concern namely M/s Empower India Limited (ITA Nos.3205/Mum/2019 & ors. for Assessment year 2011-12, order dated 23/10/2019) which has subsequently been followed in ITA Nos.3646 to 3651/Mum/2019 order dated 18/12/2020 for Assessment Years 2008-09 to 2010-11 & 2012-13 to 2014-15. The orders passed by learned first appellate authority for all these years, in the case of M/s

Empower India Limited, have also been placed on record to draw similarities. The Ld. AR has sought similar relief under this appeal as granted by Tribunal in group concern. The Ld. CIT-DR, on the other hand, pleaded for dismissal of appeal and submitted that no further relief could be granted to the assessee. However, no distinction in facts could be pointed out and nothing could be brought on record to demonstrate that the aforesaid orders passed by the Tribunal in the case of group concern, are not applicable to the facts of present appeals before us.

1.5 Having heard rival submissions and after due consideration of material on record including the cited decisions of Tribunal in the case of group concern, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

### **Assessment Proceedings**

2.1 The material facts are that the assessee was earlier known as M/s. IRIS Mediaworks Limited. The assessee is admittedly into the business of providing accommodation entries. It belongs to Shri Shirish C. Shah group who was subjected to search action u/s 132 as well as survey action u/s 133A by the department. Accordingly, an assessment was framed against the assessee for AY 2011-12 u/s 143(3) r.w.s. 153C on 22/03/2016. The details of returns filed by the assessee u/s 139 and in response to notice u/s 153C for various AYs was as under:-

A.Y.	Date of filing return u/s 139	Returned Income	Date of filing return u/s 153C	Returned Income
2008-09	29.09.2008	-33,68,984/-	16.01.2015	-34,34,146/-
2009-10	29.09.2009	-78,28,431/-	01.09.2015	-81,05,940/-
2010-11	16.10.2010	---	02.09.2015	---
2011-12	30.09.2011	-62,43,621/-	04.09.2015	-54,98,814/-
2012-13	27.03.2014	-4,82,440/-	04.09.2015	---
2013-14	04.09.2015	---		
2014-15	30.09.2014	-19,75,501/-		

It is evident that for this year, the assessee declared business loss of Rs.54.98 Lacs in the return filed in response to notice u/s 153C. The set-off of this loss was not allowed by Ld. AO in view of the fact that the assessee did not carry out any genuine business activities.

2.2 During assessment proceedings, it transpired that there were circular sale & purchase transactions within the group companies including transactions with M/s Empower India Ltd. and M/s Avance Technologies Ltd. The assessee also advanced bogus loans / share capital by way of investments to other entities. The assessee's transactions have been summarized on page nos. 9 and 10 of the assessment order. The Ld. AO estimated commission income of 1% on these transactions carried out during the year which was worked out as follows: -

New investment during the year	Rs.77,47,50,810
Total sales shown during the year	Rs.69,80,08,789
Total	Rs.147,27,59,599
1% thereof comes to	Rs.1,47,27,595

Accordingly, the assessment was framed determining income at Rs.147.27 Lacs in the aforesaid manner.

2.3 The income has been estimated for all the years, in the same manner which, for ease of reference, could be tabulated in the following manner: -

A.Y.	Investment	Sales	Total	Commission @ 1%
2011-12	77,47,50,810	69,80,08,789	1,47,27,59,599	1,47,27,596
2012-13	36,20,43,000	59,68,23,031	95,88,66,031	95,88,660
2013-14	-	99,57,72,833	99,57,72,833	99,57,728
2014-15	23,21,15,000	89,79,88,128	1,13,01,03,128	1,13,01,031

Accordingly, the assessments were framed for various years determining the income in the above manner.

## **Appellate Proceedings**

3. The assessee assailed the action of Ld. AO by way of elaborate written submissions which have already been extracted in the impugned order. The Ld. CIT(A) upheld the validity of assessment proceedings and held the estimation of 1% as made by Ld. AO to be very reasonable in terms of decision of Hon'ble Supreme Court in **Commissioner of Sales Tax V/s H.M.Esufali Ali H.M.Abdulali**. Since the assessee was not doing any genuine business, the set-off of business loss as reflected in the return of income could not be allowed to the assessee against assessed income. Finally, the appeal was dismissed against which the assessee is in further appeal before us.

## **4. Our findings & Adjudication**

Before us, Ld. AR has urged grounds nos. 2,3 & 6 and seek partial relief as granted by the bench in the case of group concern namely M/s Empower India Limited. The same is dealt with as follows: -

## **5. Ground No.2: Exclusion of inter-group transactions of sales and investments**

5.1 It is plea of Ld. AR that while estimating the commission income, the inter-group circular transactions must be eliminated since no commission would be earned by the assessee from the group concern. In other words, the assessee seeks exclusion of commission income on circular transactions of sales and investments carried out by the assessee with group companies on the ground that no person could earn out of himself. We find that this similar plea has been accepted at the level of learned first appellate authority in case of M/s Empower India Ltd which is evident from following observations of Tribunal in ITA No.3646/Mum/2019 as under: -

4.2. We find that assessee had pleaded before the Id. CIT(A) by conceding and accepting that it earned commission income on bogus entries but further pleaded that the said commission income should have been restricted only to transactions with outside companies and not to transactions with group companies controlled by Shri Shirish C Shah. This was on the logic that no one can earn profit from one self. The Id. CIT(A) duly appreciated this contention of the assessee and gave a categorical finding that the internal movements of funds within the companies controlled by Shri Shirish C Shah / Shri Dewang Master would be for window dressing or layering of movement of funds and would not yield commission income. Accordingly, he held that the computation of commission income should be restricted only to investments and sales to outside companies / parties. He also observed that assessee has given details of amounts of investments and sales to outside companies in his written submissions which was directed to be verified by the Id. AO and compute commission income accordingly. The Id. CIT(A) however, upheld the rate of commission at 1% as adopted by the Id. AO.

5.2 We find that Ld. CIT(A) has not adjudicated this issue in the impugned order. However, the facts as well as issues are identical and therefore, there is no reason as to why the similar benefit is not extended to this assessee. Therefore, concurring with the submissions of Ld. AR, we direct Ld. AO to verify the sales & investments made by the assessee to group companies and exclude the same while computing the commission income. The assessee has placed on record a chart to submit the details of inter-group transactions for various years which are as follows: -

<b>A.Y.</b>	<b>Inter-group Investment</b>	<b>Inter-group Sales</b>	<b>Total</b>	<b>Commission @ 1%</b>
2011-12	34,26,00,000	-	34,26,00,000	34,26,000
2012-13	36,20,43,000	55,01,59,109	91,22,02,109	91,22,021
2013-14	-	98,16,68,100	98,16,68,100	98,16,681
2014-15	23,21,15,000	89,18,60,262	112,39,75,262	1,12,39,075

5.3 Respectfully following the decision of Tribunal as aforesaid, Ld. AO is directed to verify these figures and exclude inter-group investment as well as sales while estimating the income of the assessee. This ground, for all the years, stand allowed for statistical purposes.

## **6. Ground No.3: Benefit of Telescoping of income declared in the books**

6.1 The Ld. AR submitted that assessee along with M/s Empower India Ltd. was held to be one of the conduit companies operated and maintained by Shri Shirish C. Shah. The commission income was estimated on aggregate of turnover and new investments made during the year under consideration. The Ld. AR submitted that keeping in view the nature of transactions, the benefit of telescoping of commission income declared in the books of account should be allowed against the commission income assessed by Ld. AO. Similar benefit is stated to have been extended by the Tribunal in ITA No. 3646/Mum/2019 in case of M/s Empower India Ltd.

6.2 The Ld. AR submitted that income declared in the books comprises of Gross Profit on Sales and interest income on loans and advances which has been assessed as accommodation entries by Ld. AO. The income declared in the books is stated to be as follows: -

AY	Income as per books of account		
	GP	Other Income	Total
2011-12	19,66,104	8,17,886	27,83,990
2012-13	18,32,874	44,53,416	62,86,290
2013-14	38,80,189	39,70,622	78,50,811
2014-15	38,46,967	8,32,750	46,79,717

6.3 We find that, in this regard, following directions have been given by Tribunal in ITA No. 3646/Mum/2019 in case of M/s Empower India Ltd.: -

4.8. We find lot of force in the aforesaid argument of the Id. AR and in view of the decision of this Tribunal for A.Y.2011-12 where the benefit of telescoping is granted, we direct the Id. AO to allow telescoping of commission income against income declared in the books of accounts for all the assessment years.

Respectfully following the same, we direct Ld. AO to verify the claim and allow benefit of telescoping in the similar manner. This ground, for all the years, stand allowed for statistical purposes.

7. Ground No.6: Set-off of business loss of Rs.54.98 Lacs

7.1 This issue arises only in AY 2011-12. In this ground, the assessee seeks set-off of business loss of Rs.54.98 Lacs as reflected in the return of income. The Ld. AR submitted that the returned loss comprise-off of unabsorbed depreciation. Further, administrative expenditure was also debited in the Profit & Loss Account and claimed as expenditure. It was submitted that Ld. AO had assessed commission income in the hands of Shri Shirish C. Shah on the basis of incriminating material found and seized during the course of search action. Shri Shirish C. Shah claimed expenses against the commission which have been disallowed on the pretext that the said expenses have already been allowed as deduction in the companies operated and maintained by him. Therefore, the expenditure may be allowed here.

7.2 After going through the submissions, we are of the considered opinion that the these expenditure are stated to be have been disallowed in the hands of Shri Shirish C. Shah on the ground that the deduction of the same in the hands of the entities being operated and maintained by him has already been allowed. However, the expenditure has been disallowed here also. Therefore, Ld. AO is directed to verify the expenditure and allow the same. The assessee is directed to file requisite details and documents. This ground arises only in AY 2011-12 and the same is allowed for statistical purposes.

**8. Additional Ground in AY 2014-15**

8.1 The Ld. AR has submitted that amount of increase in investment during the year has wrongly been taken by Ld. AO as Rs.2321.15 Lacs on which commission of Rs.23.21 Lacs has been estimated. The Ld. AR placed on record following chart in support of the plea that there was no increase in investment during the year: -

	Amount as on 31/03/2014	Amount as on 31/03/2013	Difference
<b>Non-Current investments</b>	99,58,08,000/-	76,36,93,000/-	23,21,15,000/-
<b>Current Investments</b>	2,17,000/-	32,60,15,000/-	(-)32,57,98,000/-
	<b>99,60,25,000/-</b>	<b>1,08,97,08,000/-</b>	<b>(-)9,36,83,000/-</b>

8.2 We find that the plea raised before is matter of fact and verification. Therefore, we direct Ld. AO to verify the investments and re-compute the income, if required. This ground arises only in AY 2014-15 and the same stands allowed for statistical purposes.

8.3 No other grounds have been urged in the appeals.

**Conclusion**

9. The appeal for all the assessment years stands partly allowed in terms of our above order.

*Order pronounced on 8<sup>th</sup> September, 2021*

**Sd/-**

**(Amarjit Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 09/09/2021  
Sr.PS, Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**