

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.5352/Del/2014  
(Assessment Year : 2006-07)

Pramod Kumar 13/34, W.E.A. Karol Bagh New Delhi-110 005  PAN : ALJPK 6448 A <b>(APPELLANT)</b>	Vs.	DCIT Central Circle - 4 New Delhi  <b>(RESPONDENT)</b>
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**And**

ITA No.5353/Del/2014  
(Assessment Year : 2005-06)

Rajesh Prasad 13/34, W.E.A Karol Bagh New Delhi - 110 005  PAN : AALPR 2566 B <b>(APPELLANT)</b>	Vs.	DCIT Central Circle - 4 New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Shri B. P. Gupta, Adv. Shri Arnav Kumar, Adv.
Revenue by	Shri R. K. Gupta, Sr. D.R.

Date of hearing:	07.10.2021
Date of Pronouncement:	13.10.2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

These two appeals filed by the different assessees are directed against the order dated 23.06.2014 of the Commissioner

of Income Tax (Appeals)-XXXIII, New Delhi relating to Assessment Years 2006-07 & 2005-06.

2. Before me, at the outset, Learned AR submitted that though the appeals are of different assesseees but the issue involved in both the appeals are identical except for the assessee, assessment years and amounts involved and therefore submitted that the submissions made by him for one appeal would be applicable to the other appeal also. Ld DR did not controvert the aforesaid submissions of Ld. AR. In view of the aforesaid submissions of the Counsel, I for the sake of convenience proceed to dispose of both the appeals by a consolidated order but for the sake of reference, refer to the facts of Pramod Kumar for A.Y. 2006-07 (ITA No.5352/De//2014).

3. The relevant facts as culled from the material on records are as under :

4. Assessee is an individual who filed his return of income for A.Y. 2006-07 on 31.07.2006 declaring total income at Rs.98,910/-. AO has noted that on 15.09.2008, a search and seizure operation u/s 132 of the Act was conducted at various premises of "Tarun Goyal Group of Companies". During the course of post search / assessment proceedings of various entities of Tarun Goyal Group of companies, it was found that a cash aggregating to Rs.7,75,000 was deposited in assessee's bank account maintained with Kotak Mahindra Bank Ltd. and Bank of

Rajasthan Ltd. Since the income returned by the assessee did not substantiate or explained the source of deposits with the bank proceedings u/s 148 of the Act was initiated by issuing notice on 26.03.2013. Thereafter assessment was framed u/s 143(3)/148 of the Act vide order dated 17.02.2014 and the total income was determined at Rs.12,23,910/- by *inter alia* making addition of Rs.11,25,000/- on account of unexplained cash credit u/s 68 of the Act. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 23.06.2014 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

*“1. That the CIT(A) erred in not appreciating that since the appellant is admittedly part of Tarun Goyal Group, which Group has been carrying on the business of providing accommodation entries during the relevant year and the amount of cash deposited in the bank account of appellant was representing part of above business and, therefore addition in respect thereof could not be made under section 68 of the Act and the case of the appellant could not be considered independently.*

*2. That the CIT(A) erred in upholding the addition of Rs.11,25,000/- being the cash deposits in the bank account of the appellant observing that the appellant has not given list of beneficiaries. He failed to appreciate that as per the admitted position duly accepted by Mr. Tarun Goyal who had appeared before the Assessing Officer, the cash deposits were part of business carried on by him of providing accommodation entries and, therefore only the commission income thereon was to be assessed and the CIT(A) also failed to appreciate that it was not possible at this stage to give list of beneficiaries or the parties with whom the business was done. That the CIT(A) also failed to appreciate that after deposits of cash in the bank account of the appellant the funds had been transferred to other accounts of the group company for the purpose of utilizing the same for providing accommodation entries.*

3. *That the CIT(A) also failed to appreciate that considering the financial status of the appellant there was no possibility to earn such an amount as an income and, therefore, addition on account of cash deposits could not be made as undisclosed income u/s 68 of the Act in the case of the appellant in view of the decisions of Supreme Court in the cases of CIT vs Smt. P. K. Noorjahan, 237 ITR 570 (SC) and CIT vs. Bharat Engineers & Construction Co. 83 ITR 187 (SC).*

4. *That the CIT(A) also erred in not adjudicating the appeal following the order of this Hon'ble Tribunal dated 18.10.2013 passed in the cases of Tarun Goyal Group in accordance with which holistic view is to be taken considering the Group as a whole and only the commission income is to be assessed in respect of cash received and deposited in bank accounts as a part of business of providing accommodation entries by the Group at the rate of percentage to be determined considering the precedence available in this regard.*

5. *That the Appellant crave leave to add, amend or alter any of the grounds at any time hereinafter."*

5. Before me, at the outset, Learned AR submitted that identical issue arose in assessee's own case for A.Y. 2005-06 before the Co-ordinate Bench of Tribunal. The Co-ordinate Bench of Tribunal vide order in ITA No.5351/Del/2014 dated 18.12.2017 and following the order of Tribunal in assessee's own case for A.Y. 2004-05 (in ITA No.6126/Del/2013 order dated 17.04.2015) had restored the matter to the file of AO for fresh adjudication. In support of his contention that the facts being identical to that of earlier years, he pointed to the grounds raised in appeal in the year under consideration and the grounds of appeal raised before the Tribunal for A.Y. 2005-06 (which are reproduced in the order in ITA No.5353/Del/2014). He therefore submitted that since the facts and issues raised in the present

appeal being identical to that of earlier years, following the Tribunal's order of earlier years, the matter be restored back to AO.

6. Learned DR on the other hand did not controvert the submissions made by the Learned AR but however supported the order of lower authorities.

7. I have heard the rival submissions and perused the materials available on record. I find that the grounds raised in the present appeal are identical to the grounds raised by the assessee before the Tribunal in A.Y. 2005-06. The Co-ordinate Bench of Tribunal while deciding the appeal for A.Y. 2005-06 by following the order of Tribunal in assessee's own case for A.Y. 2004-05, had restored the matter back to the file of AO for fresh adjudication. The relevant observation of the Co-ordinate Bench are as under:

*"6. We have heard both the parties and perused the records. We find considerable cogency in the submissions of the assessee's counsel that in the case of assessee for the assessment year 2004-05, the ITAT vide its order dated 17.4.2015 passed in ITA No. 6126/Del/2013 has restored the matter to the file of AO for fresh adjudication, on the similar and identical issues. For the sake of convenience, we are reproducing the operative portion of the order as under :-*

*"4. It was submitted on behalf of the appellant that in the similar cases this Hon'ble Tribunal in ITA No. 4636 & 4637/Del/2012 has restored the matter to the file for fresh adjudication. The operative portion of the order is as under:-*

*"22. Admittedly certain assessment of Shri Tarun Goyal, the kin pin are at various stages and have not reached the Tribunal. Under these circumstances, it would not be possible to have in over all view of the*

*matter and eliminate chain / multiple transaction, for arriving at the correct assessable amount. Thus we have no other alternative but to set aside all these appeals to the file of the AO for fresh adjudication in accordance with law.*

*23. The AO shall after examining the evidence submitted by the assessee, consider all the cases together and;*

*a) restrict the addition u/s 68 to only the peak unexplained credit in each case after elimination circular transaction.*

*b) To eliminate taxation of the same amount multiple times, due to the chain transactions which resulted due to layering indulged by the assessee.*

*c) Consider the material on record and the precedence available on the issue and determine the percentage of commission, which the assessee would have earned and bring the same to tax.”*

*5. Therefore, in this case also since the case also belongs to the same group and having nexus with the assessment proceedings of Mr. Tarun Goyal, we restore the matter to the file of the AO with a direction that to consider the explanation offered, if any, in the light of provision of section 69 of the Income Tax Act and redo the assessment.”*

*7. Respectfully following the aforesaid precedent, we restore the matter to the file of the AO with the direction that to consider the explanation offered, if any, in the light of provision of section 69 of the Income Tax Act, 1961 and redo the assessment.”*

8. I therefore, following the order of Tribunal for A.Y. 2006-07 and with similar directions, restore the issue back to the file of AO for him to re-adjudicate the issue on merits and in accordance with law. Needless to state that AO shall grant adequate opportunity of hearing to the assessee. In view of my decision to set aside the issue back to the file of AO, the grounds raised on

merits are not adjudicated. **Thus the ground of assessee is allowed for statistical purposes.**

**9. In the result, the appeal of the assessee is allowed for statistical purposes.**

**10. As far as ITA No.5353/Del/2014 for A.Y. 2005-06** is concerned, before me, both the parties have submitted that the issue raised in the present appeal for A.Y. 2005-06 is identical to that of ITA No.5352/Del/2014. I have hereinabove while deciding the appeal for A.Y. 2006-07 in ITA No.5352/Del/2014 for the reasons stated therein have restored the issue to the file of AO. I for similar reasons and with similar directions also restore the present appeal of the assessee. **Thus the ground of the assessee is allowed for statistical purposes.**

**11. In the result, both the appeals of the assessee are allowed for statistical purposes.**

**Order pronounced in the open court on 13.10.2021**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

*Date:- 13.10.2021*

*PY\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI