

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

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

I.T.A. No. 6719/DEL/2016 (A.Y 2009-10)

(THROUGH VIDEO CONFERENCING)

Ordinary Financial Services Pvt. Ltd. 13/34, W. E. A Karol Bagh New Delhi AAACO6367K (APPELLANT)	Vs	ITO Ward-19(2) New Delhi (RESPONDENT)
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Appellant by	Sh. V. P. Gupta, Adv & Sh. Anunav Kumar, Adv
Respondent by	Sh. Gaurav Pundir Sr. Dr.

Date of Hearing	30.09.2021
Date of Pronouncement	15.11.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 07/10/2016 passed by CIT(A)-36, New Delhi for assessment year 2009-10.

2. The grounds of appeal are as under:-

“1. That the CIT(A) erred in upholding the order of the Assessing Officer determining the commission income at Rs.53,91,000/- as against income of Rs.42,33,526/- determined in the original order of assessment, which order had been subject matter of appeal before the Hon’ble ITAT and was set aside by the Hon’bie ITAT with the directions contained in its order dated 18.10.2013.

2. That the CIT(A) failed to appreciate that in remand proceedings pursuant to

order of Hon'ble ITAT income determined in the original not be increased for the obvious reason that the appellant appeal before ITAT against the original order to get relief and the Hon'ble Tribunal could not enhance the amount of income assessed in the order of assessment.

3. That the CIT(A) also erred in upholding determination of commission income at Rs.53,91,000/- calculated by the A.O. on the basis of debit entries including the transfer entries to other group company(s), without appreciating that transfer entries between the group companies had neither been considered by the A.O. in original order of assessment , nor same have been considered in other cases of the group and such entries had also to be excluded as per directions of Hon'ble ITAT contained in order dated 18.10.2013.

4. That the CIT(A) erred in upholding the commission income calculated @ 2.25% 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 A.O. and CIT(A).

5. 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.

6. That the CIT(A) also erred in upholding the order of Assessing Officer determining commission @ 2.25% 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.

7. That the CIT(A) also failed to appreciate that in other cases of the group

A.O. had determined commission income in remand proceedings @ 2% as against rate of 2.25% determined in original proceedings.

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

3. 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 Appellant. 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 appellant company under Section 153C 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. 10 lacs calculated at 25 paise per 100 rupees on estimated basis of Rs. 40 crores. The Assessing Officer while passing the assessment order in the case of assessee under section 153C of the Act had determined commission income in respect of all the entries given outside the Group @ 2.25% disregarding the 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 100 rupees. Thus, the Assessing Officer made addition of Rs. 53,93,144/- on account of unexplained commission.

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. The Ld. AR submitted that the appeal before CIT(A) was filed by the Company against order dated 19.03.2015 passed by Assessing Officer

pursuant to directions of this Tribunal vide order dated 18.10.2013 passed in 94 appeals of the group, including the appeal of the assessee Company. Accordingly, this appeal is the second round. In the original assessment order dated 30.12.2010 passed by the Assessing Officer, the Assessing Officer had made addition of Rs.42,33,526/- on account of commission determined with reference to investments made outside the group companies aggregating to Rs.18.81 crores calculated at 2.25%. The Tribunal had directed the Assessing Officer to re-determine the rate of commission and also to determine commission income, excluding the entries / investment among the group companies as in certain other cases the AOs had also included group entries. In the order dated 19.03.2015 passed by the Assessing Officer pursuant to the order of Tribunal, the Assessing Officer adopted the same rate of commission i.e. 2.25% and made the addition of Rs.53,91,000/- as against addition of Rs.42,33,526/- made in the original order. He determined above amount with reference to total amount of investments of Rs.23.96 crores, including the entries between the group companies of Rs.5.16 crores, whereas in the original order he had determined the commission only with reference to entries with outside the group companies of Rs.18.81 crores. The assessee filed appeal before CIT(A). The CIT(A) vide order dated 07.10.2016 uphold the order of the Assessing Officer without appreciating the correct legal position and the directions of ITAT. The Ld. AR submitted that the Appeals against orders passed in the second round have already been considered and adjudicated by the 'B' Bench of the Tribunal in the cases of the group and a consolidated order dated 23.01.2019 has been passed in 86 appeals, out of which 64 appeals were against orders in second round. The Tribunal has mentioned the facts regarding the second round of litigation in para 4 of the order. Vide the aforesaid order the Tribunal has held as under: -

- 1, Rate of commission is to be taken at 0.50% or 0.50 paise (refer para 16).
2. Transactions with outside parties only have to be considered to compute the profit i.e. commission income (para 17).

Thus, the Ld. AR prayed that in view of above order of the Tribunal in the cases of the group this bench may be pleased to hold that rate of commission is to be taken at 0.50% and same is to be determined only with reference to transfer / investment entries outside the group of Rs. 18.81 crores as were taken by the Assessing Officer in the original order of assessment. The Ld. AR further submitted that the Department had filed appeal in the case of one of the company of the group, namely, Bhawani Portfolio Pvt. Ltd. in the Hon'ble High Court against the order of the Tribunal dated 23.01.2019 determining rate of commission of 0.50%. The Hon'ble High Court dismissed the appeal of the Department vide order dated 12.07.2021 upholding the rate of commission determined by the Tribunal.

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

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the similar factual aspects in respect of Tarun Goel has been decided by the Tribunal in ITA No. 483/2015 and in case of Bhawani Portfolio Pvt. Ltd. Vs. DCIT order dated 23/1/2019 and the same was confirmed by the Hon'ble Delhi High Court in ITA No. 158/2020 and ITA No. 163/2020 vide order dated 12/7/2021. The Tribunal held as under:-

“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.”*

The Hon'ble Delhi High Court held as under:-

“6. He emphasizes that the ITAT had overlooked the fact that the respondent-Assessee had admitted to providing accommodation entries. He - adds that the error in the impugned order is that ITAT had failed to recognize that the respondent-Assessee had in fact failed to discharge his onus to establish the nature and source of each credit entry appearing in the bank accounts. He states that the Assessing Officer was therefore justified in treating all the credit entries including inter-group transactions appearing in the bank accounts as income for the purpose of estimating commission income and in applying the rate of 2.25%.

7. *Having perused the paper book, this Court finds that the Tribunal in the impugned orders has upheld the appellant's contention that the respondent used to provide accommodation entries upon charging commission. However, the Tribunal has held that just because some loose sheets had been found stating that percentage of commission was 1,69% to 2.5% in some transactions, it can not be presumed that for all transactions the respondent had earned a similar rate of commission.*

8. *Further relying upon past decisions by a number of Coordinate Benches of the Tribunal adopting a commission rate ranging from 0.15% to 0.50%. in similar matters, the Tribunal passed the impugned order.*

9. *This Court is of the view that none of the aforesaid findings are so*

perverse that they warrant an interference in appeal jurisdiction under Section 260A of the Income Tax Act, 1961. This Court is also of the view that the Tribunal, being the last fact finding authority, was entitled to guess work and arrive at a ballpark rate of commission. Consequently, no substantial question of law arises in the present appeals. Accordingly, the appeals along with pending applications are dismissed.”

Since the Tribunal has taken a view in the other entities' cases to that of present assessee's case, in present appeal also the commission has to be determined at 0.50% as the assessee herein also is part of Tarun Goyal Group as there is no material brought on record by the Ld. DR as to the grounds raised in Revenue's appeal. Thus, the issue is identical in the present assessee's case as well and no distinguishing facts were pointed out by the Ld. DR at the time of hearing. Hence, appeal of the assessee is allowed.

8. In result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on this 15th Day of November, 2021.

sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 15/11/2021

R. Naheed *

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

