

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,  
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 8132/DEL/2018  
[A.Y. 2011-12]

Shri Manish Gupta  
L-71 [LGP] South Extention  
Meerut

Vs.

The Dy. C.I.T  
Central Circle  
Meerut

PAN: AATPG 4474 F

(Applicant)

(Respondent)

Assessee By : Shri Rajkumar, CA  
Shri Sachin Jain, CA

Department By : Shri Kipgen, CIT-DR

Date of Hearing : 09.02.2022

Date of Pronouncement : 09.02.2022

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
Commissioner of Income Tax [Appeals] -IV, Kanpur dated 22.10.2018  
pertaining to Assessment Year 2011-12.

2. The grievances of the assessee is two fold:
  - (i) Firstly, the assessee has challenged the validity of the assessment order claiming that it is without jurisdiction, and
  - (ii) Secondly, on merits, the assessee has challenged the addition of Rs. 8,35,000/- as alleged income of the assessee.
  
3. At the very outset, the ld. counsel for the assessee did not press the legal ground and the same is dismissed as not pressed.
  
4. Coming to the merits of the case, we find that the assessee has E-filed return of income showing total income of Rs. 20,79,910/-. During the course of scrutiny assessment proceedings, the Assessing Officer found that in the case of Shri Manish Gupta, HUF of the assessee has shown commission income of Rs. 8,35,000/- from Ajnara India Ltd. On verification, the Assessing Officer found that such commission was received on account of a flat sold to different persons.
  
5. The Assessing Officer was of the opinion that such commission was not earned by the HUF of the assessee but by the assessee and,

accordingly, made an addition of Rs. 8,35,000/- in the hands of the assessee.

6. The assessee carried the matter before the ld. CIT(A) but without any success.

7. Before us, the ld. counsel for the assessee brought to our notice the decision of the ld. CIT(A) in the case of the brother of the assessee Shri Sanjiv Gupta and pointed out that on identical set of facts, similar commission income of Rs. 8.15 lakhs was assessed in the hands of HUF of Shri Sanjiv Gupta.

8. The ld. counsel for the assessee further drew out attention to the relevant documents to substantiate the earning of commission by the HUF of the assessee and not the assessee.

9. Per contra, the ld. DR strongly supported the findings of the ld. CIT(A).

10. We have given thoughtful consideration to the orders of the authorities below. We find force in the contention of the ld. counsel for the assessee. On identical set of facts, commission income in the case of the brother of the assessee was taxed in the hands of the HUF. A perusal of the computation of income of HUF of the assessee shows that the HUF has returned commission income and paid taxes thereon. Commission bill was submitted by the HUF to the Accounts Manager of Ajnara India Ltd. This bill is placed at page 27 of the paper book.

11. Page 28 of the paper book is copy of accounts of the HUF of the assessee in the books of Ajnara India Ltd showing payment of commission to the HUF. Page 29 is the TDS Certificate issued by Ajnara India Ltd showing TDS on commission paid to HUF of the assessee. Page 31 is copy of bank account of the HUF of the assessee with Oriental Bank of Commerce, wherein commission has been deposited after TDS.

12. Considering all these facts in totality, we are of the considered opinion that the commission income belonged to the HUF and rightly returned by it. Therefore, correct hand for taxing such income is HUF

and not the assessee. Accordingly, the Assessing Officer is directed to delete the addition from the hands of the assessee.

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

The order is pronounced in the open court on 09.02.2022 in the present of both the rival representatives.

**Sd/-**

**[AMIT SHUKLA]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 09<sup>th</sup> February, 2022.

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

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	