

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

Before Sh. R. K. Panda, Accountant Member

ITA No. 5350/Del/2014 : Asstt. Year : 2010-11

M/s Kanha Fats & Oils Pvt. Ltd., 13/34, W.E.A. Karol Bagh, New Delhi-110005	Vs	DCIT, Central Circle-4, New Delhi
C/o M/s V.P. Gupta & Co., Adv. & Solicitors, 501, Ansal Bhawan, 16, K. G. Marg, New Delhi-110001		
(APPELLANT)		(RESPONDENT)
PAN No. AACCK2400M		

**Assessee by : Sh. Annunav Kumar, Adv. &
Sh. Sanjay, Adv.**

Revenue by : Sh. Om Prakash, Sr. DR

Date of Hearing: 31.03.2022

Date of Pronouncement: 31.03.2022

ORDER

This appeal filed by the assessee is directed against the order dated 10.07.2014 of Id. CIT(A)-XXXIII, New Delhi relating to A.Y. 2010-11.

2. The only ground raised by assessee in this appeal reads as under:

"1. That the CIT(A) erred in upholding commission income of Rs. 14,85,000/- calculated by the Assessing Officer at 2.25% on the total amount of Rs. 6.60 crores considered as accommodation entries without appreciating and following the directions of the Hon'ble Tribunal vide order dated 18.10.2013 in accordance with which the rate of commission was to be determined taking into consideration precedence on the issue and the appellant had duly submitted

number of precedence before the CIT(A) in accordance with which the rate of commission in the business of providing accommodation entries is ranging 0.25% to 0.5%. He also erred in mentioning the rate of commission while confirming the addition as 2.5% instead of 2.25% taken by the Assessing Officer."

3. Facts of the case, in brief, are that the assessee company belongs to Tarun Goyal Group of Cases which is engaged in providing entries in the shape of share capitals, loans etc. The assessee had not filed the return of income. During the course of assessment proceedings, the AO noted that the assessee has provided accommodation entries to various parties amounting to Rs.6,60,00,000/-. Applying the commission rate of 2.25%, the AO made addition of Rs.14,85,000/- to the total income of the assessee which was upheld by the Id. CIT(A) by observing as under:

"I have considered the assessment order, written submission and oral arguments of Ld. AR. In the grounds of appeal the appeal has raised mainly two issue i.e. no cash has been deposited in appellant's bank account during the year as after the search. Sh. Tarun Goyal and his group companies has stopped accommodation entry business. Second issue raised in grounds of appeal is that only commission income should be assessed. However, during the appellate proceedings, entire arguments of Id. AR is that commission income should be assessed at lower rate i.e. 0.25% as per the statement of Sh. Tarun Goyal and relied upon various judicial pronouncements of hon'ble Tribunal.

I have considered the arguments of Ld. AR and grounds of appeal. The issue of only cash receipt in the bank account is not only indicative factor for getting commission income. First it is not established that whether cash has been received

during the year or not. It is also not proved whether Sh. Tarun Goyal and his associate group company has stopped accommodation entry business. Sh. Tarun Goyal and his associate group concerns mainly private limited company could be said to have stopped accommodation entry business if they could have reversed the entries in its books of accounts. Unless, the books of accounts is corrected, I do not agree with the arguments of Ld. AR that the appellant and Sh. Tarun Goyal has stopped entry operation. I have perused the statement of Sh. Tarun Goyal u/s 132(4) which is part of the paper book. In his statement he has only mentioned the beneficiary as Best Group etc. He has not given comprehensive list of beneficiary of accommodation entries. Therefore, by maintaining forged books of accounts which is nothing but to help the beneficiaries of accommodation entries. Therefore, in subsequent year, the appellant is helping the beneficiary of accommodation entries for which the appellant company must have charged some fees. Hence, in my view taxing the commission income by the assessing officer is proper.

Now coming to the rate of commission income, Ld. AR himself has stated that hon'ble ITAT has restored the matter to the file of the Assessing Officer to determine commission income on the basis of material on record. Therefore, reliance on other hon'ble ITAT decisions on facts are not applicable. The assessing officer has not decided set-a-side matter in Tarun Goyal group of cases.

Ld. AR's argument that hon'ble High Court of Delhi in Nova Promoters (P) Ltd in cited supra is not applicable as the issue was not determination of commission income but confirmation of commission expenses. In my view, commission expense and commission income are nothing but two sides of the coin. The appellant has not separately claimed any expense, neither has stated from whom and how much commission income is earned and what is the quantum of expenses. Under these

circumstances, I confirm the action of the assessing Officer to tax commission income @ 2.5% on amount advanced. Therefore, these grounds of appeal are dismissed."

4. Aggrieved with such order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

5. I have heard the rival arguments made by both the sides and perused the record. I find the Tribunal in the group concerns in a batch of appeals vide order dated 23.01.2019 has decided the issue and directed the AO to adopt 0.50% as commission by observing as under:

"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 Officer to adopt 0.50% or 0.50 paise and compute the profit accordingly."

6. I find in one of the group concerns, the revenue preferred appeal before the Hon'ble High Court who dismissed the appeal filed by the Revenue by observing as under:

"2. Present appeals have been filed challenging the orders dated 23rd January, 2019 passed by the Income Tax Appellate Tribunal [ITAT] in ITA No. 6351 of 2016 and ITA No. 6350 of 2016.

3. Learned counsel for the Appellant states that the Assessment orders established that the credit in the bank accounts of the respondent-Assessee were treated as accommodation entry transactions since the Assessee had failed to produce any satisfactory reply and confirmations for the said transactions.

4. He states that the Assessment Orders were upheld by the CIT(A) holding that the respondent-

Assessee had failed to discharge his onus to establish the nature and source of each credit entry appearing in the bank accounts and therefore for want of necessary details and supporting evidence, the Assessing Officer was justified in treating all the credit entries appearing in the bank accounts as income for the purpose of estimating commission income at the rate of 2.25%.

5. He states that the ITAT vide the impugned orders dated 23rd January 2019 partially allowed the respondent-Assessee's appeals and set-aside the assessment orders and CIT(A) orders on the basis that in such illegal activities, no precedence of rate could be applied and further held that there cannot be any profit element in inter-group transactions.

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 cannot 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.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail."

7. I find after the order of the Hon'ble High Court, the Tribunal in the case of another group concerns namely, Ordinary Financial Services Pvt. Ltd. Vs ITO vide in ITA No. 6719/Del/2016 order dated 15.11.2021 has directed the AO to adopt commission rate of 0.50% by observing as under:

"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 cannot 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."

8. Respectfully following the decision of the Co-ordinate Bench of the Tribunal which has been upheld by the

Hon'ble High Court in one of the cases, I set aside the order of the Id. CIT(A) and direct the AO to adopt rate of commission 0.50% as against 2.25% adopted by him and upheld by Id. CIT(A).

9. The ground raised by the assessee is accordingly allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order Pronounced in the Open Court at the time of hearing on 31/03/2022.

Sd/-

(R. K. Panda)
Accountant Member

Dated: 31/03/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR