

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.5065/Del/2019  
Assessment Year: 2010-11

<b>ITO Ward- 16 (2) New Delhi</b>	<b>Vs</b>	<b>Mahanivesh Stock &amp; Shares Pvt. Ltd. 13/34, WEA, Karol Bagh, New Delhi PAN No.AADCM7110M</b>
<b>(APPELLAN</b>		<b>(RESPONDENT)</b>

ITA No.5334/Del/2019  
Assessment Year: 2010-11

<b>Mahanivesh Stock &amp; Shares Pvt. Ltd. 13/34, WEA, Karol Bagh, New Delhi PAN No.AADCM7110M</b>	<b>Vs</b>	<b>ITO Ward- 16 (2) New Delhi</b>
<b>(APPELLAN</b>		<b>(RESPONDENT)</b>

<b>Appellant</b>	Sh.Anunav Kumar, Advocate
<b>Respondent</b>	Sh. Vivek Sharma, CIT DR

Date of hearing:	03/08/2022
Date of Pronouncement:	03/08/2022

**ORDER****PER N.K. BILLAIYA, AM:**

ITA No.5065/Del/2019 and 5334/Del/2019 are cross appeals by revenue and the assessee preferred against the order of the CIT(A)- 37, New Delhi dated 29.03.2019 pertaining to A.Y.2010-11.

2. The grievance of the revenue read as under :-

(1) Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 31,36,50,000/- made by the AO.

(2) Whether on the facts and circumstances of the case the CIT(A) has erred in restricting addition to extent of Rs. 15,68,250/- being 0.5% of Rs. 31,36,50,000/- as commission.

(3) Whether the facts and circumstances of the case the Ld. CIT(A) fell into error in ignoring the decision of the Hon'ble High Court in the case of the NDR Promoter Pvt. Ltd.

(4) On the facts and circumstances of the case, the Ld. CIT(A) fell into error in relying upon the decision of Hon'ble ITAT dated 23.01.2019 by B-Bench.

(5) That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal raised above at the time of hearing.

3. The grievance of the assessee read as under :-

Sl. No.	Grounds of Appeal	Tax Effect
1 HR	That the CIT(A) in the facts and circumstances of the case erred in upholding the proceedings u/s 147 of the Act	Rs. 5,17,522/-
2	That the CIT(A) erred in directing the Assessing Officer to determine commission income at Rs.15,68,250/- @ 0.5% on the amount of Rs.31,36,50,000/- without appreciating that in view of the judgement of Hon'ble ITAT commission income was to be determined with reference to accommodation entry provided outside the group companies which amount was only Rs.25,00,000/- given to Sonrishi Infrastructures Pvt. Ltd. and, therefore, commission income could be only Rs.12,500/- on aforesaid amount @ 0.5%.	-
3	That the appellant seeks the liberty to add, amend and modify any of the grounds at any time before hearing of the appeal.	-

4. The conspectus reading of grounds of both the appeals show that the underlying facts in the issues are identical, therefore, both the appeals are disposed of by this common order for the sake of convenience and brevity.

5. As per information available the AO came to know that the Bank account of the assessee in Axis Bank reflects huge deposits amounting to Rs.33.47 crores are made. On analysis of the

deposits the AO noticed that the account in Axis Bank was opened on 14.11.2009 and the assessee has following deposits during the period under consideration :-

Name of Party	Cash Deposited	Other than Cash Deposited	Total Deposits
Bhavani Portfolio Pvt. Ltd.	Nil	2,18,00,000	2,18,00,000
Sai Dwarka Finman Pvt Ltd	Nil	15,00,000	15,00,000
New Delhi Credits Pvt. Ltd.	Nil	2,18,,00,000	2,18,,00,000
Pilot Consultants Pvt. Ltd.	Nil	1,25,00,000	1,25,00,000
Tarun	Nil	25,00,000	25,00,000
Taurus Iron & Steel Co. Pvt. Ltd.	Nil	14,37,00,000	14,37,00,000
Tejasvi Investments Pvt. Ltd	Nil	10,00,000	10,00,000
Cash	51,000	Nil	51,000
Transfer	Nil	4,99,50,000	4,99,50,000
Total	51,000	25,47,50,000	25,48,01,000

6. Invoking the provisions of section 68 of the Act and drawing support from various judicial decisions discussed in the assessment order the AO made addition of Rs.313650000/- u/s. 68 of the Act.

7. Assessee agitated the matter before the CIT(A) it was strongly contended that the assessee is in the business of providing accommodation entries and, therefore, only commission earned from providing accommodation entries should be added.

8. Strong reliance was placed in a group of cases which included Bhawani Portfolio Private Limited in ITA No.6351/2016 and 6350/2016. The CIT(A) was convinced with the reliance on the decision of this Tribunal (supra) and held as under :-

**5.3.3** I have carefully gone through the order of the ITAT. This order is passed in connection with 86 appeals of various companies operating from the address 13/34-A, WEA, Karol Bagh, New Delhi. The appellant's address is also 13/34-A, WEA, Karol Bagh, New Delhi. The AO in the assessment order in Para 4 mentioned that this is the address of Tarun Goyal. These facts establish that the appellant company is a shell company and operated and managed by Tarun Goyal for providing accommodation entries. Accordingly, in such scenario only commission income on providing accommodation entry can only be taxed in the hand of appellant. Therefore, respectfully following the decision of Hon'ble ITAT dated 23.01.2019 by B-Bench of ITAT, New Delhi in the case of various companies Vs. DCIT, Central Circle-29, New Delhi, 0.50 paisa or 0.50% should be taken as reasonable rate of profit/commission. This comes to Rs.15,68,250/- (0.5 % of Rs.31,36,50,000/-). The addition made by the AO is restricted to Rs.15,68,250/- and treated as unexplained income in the hands of the appellant. **This ground of appeal is partly allowed.**

9. We find that the aforesaid order of this Tribunal was challenged by the revenue before the Hon'ble High Court of Delhi and the Hon'ble High Court of Delhi in ITA 158/2020 and CM APPL. 7946/2020 and ITA 163/2020 and CM APPL. 8018/2020 has considered the challenge of the revenue as under :-

1. The appeals have been heard by way of video conferencing.
2. Present appeals have been filed challenging the orders dated 23<sup>rd</sup> 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 23<sup>rd</sup> 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 emphasises 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.

10. Respectfully following the decision of the Hon'ble High Court of Delhi (supra) we decline to interfere with the findings of the CIT(A). The appeal of the revenue is accordingly dismissed.

11. In so far as the appeal of the assessee is concerned we are of the considered opinion that in line with the decision of this

Tribunal (supra) we direct the AO to restrict the addition in respect of commission income @ 0.5% on the amount of accommodation entry given to parties outside the group after due verification and after affording a reasonable opportunity of being heard to the assessee.

12. In the result, the appeal of the assessee is treated as allowed for statistical purpose and that of the revenue is dismissed.

13. Decision announced in the open court on 03.08.2022.

Sd/-  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

\*NEHA, Sr. Private Secretary\*

Date:- .08.2022

Copy forwarded to:

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

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI