

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 2993/DEL/2017 [A.Y 2012-13]

Smt. Anju Sachdeva  
3/4C, Ashok Vihar, Phase - III  
Pocket B, New Delhi

Vs.

The A.C.I.T  
Circle 34(1)  
New Delhi

PAN: AAZPS 4886 P

(Applicant)

(Respondent)

Assessee By : Shri Shantanu Kanungo, CA

Department By : Shri Kanav Bali, CIT-DR

Date of Hearing : 25.08.2022

Date of Pronouncement : 29.08.2022

**ORDER**

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

This appeal by the assessee is preferred against the order of the  
of the CIT(A) - 34, New Delhi dated 28.02.2017 pertaining to  
Assessment Year 2012-13.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the addition on account of commission which was never received by the assessee and further erred in not considering the underlying facts in reversal of the entry made by the payer.

3. Briefly stated, the facts of the case are that the assessee is a resident individual and filed her return of income on 23.03.2013 declaring total income of Rs. 57,14,470/-. Return was selected for scrutiny assessment and, accordingly, statutory notices were issued and served upon the assessee.

4. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee is a director of the company and derived income from salaries and income from other sources.

5. On perusal of the AIR information, the Assessing Officer came to know that total commission amounting to Rs. 48,56,061/- was received by the assessee on which TDS amounting to Rs. 4,85,606/- was deducted by the payer M/s Laxmi Remote [India] Pvt Ltd. The Assessing Officer found that the assessee has shown only Rs.

20,12,260/- as total commission and, therefore, issued show cause notice to the assessee to show cause as to why difference of commission amounting to Rs. 28,43,801/- should not be added back to the income of the assessee.

6. In her reply, the assessee stated that during the year under consideration, the person who was responsible to deposit TDS in routine deposited TDS and filed TDS Return accordingly. But, later on, the company decided not to pay commission to the assessee but could not revise the return, as the same was barred by limitation.

7. The assessee strongly contended that she has not received any commission during the year under consideration.

8. The contention of the assessee was dismissed by the Assessing Officer who was of the firm belief that as per Form 26AS filed by the payer company, the assessee has been shown as recipient of commission of Rs. 48,56,061=00 on which TDS was duly deducted and paid to the Government and the assessee has also claimed credit of TDS. The Assessing Officer, accordingly, added the remaining amount of commission at Rs. 28,43,801/-.

9. The assessee challenged the addition before the ld. CIT(A) but without any success.

10. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities and drew our attention to the financial statement of M/s Laxmi Remote India Pvt Ltd, the payer company and pointed out that total commission paid by the company was Rs. 11,08,708/- and vehemently stated that if the company has paid a total commission of Rs. 11 lakhs, then how could the assessee receive commission of Rs. 48.56 lakhs.

11. The ld. counsel for the assessee once again stated that the entire addition has been made on the basis of Form 26AS and the lower authorities have completely ignored the fact that the payer company never paid commission but wrongly filed TDS return.

12. Per contra, the ld. DR strongly supporting the findings of the Assessing Officer vehemently contended that the assessee has taken full credit of TDS amount. The ld. DR further stated that the person responsible for deducting and depositing the TDS has rightly acted for

payment of commission and deducting TDS, and thereon depositing it in the Government account.

13. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that as per Form 26AS, the assessee has been shown as recipient of commission amounting to Rs. 48,56,061=00. It is also an undisputed fact that the assessee has shown only Rs. 20,12,260/-. It is also true that the assessee has taken full credit of TDS deducted by the payer on the commission shown in Form 26AS.

14. Though the financial statement of the payer company shows that the company has paid total commission of Rs. 11 lakhs, then the statement of the counsel is that the payer company could not have debited Rs. 48.56 lakhs commission in the name of the assessee.

15. If that being so, then how come the assessee has accounted for commission of Rs. 20.12 lakhs when the payer company has shown commission of Rs. 11.08 lakhs in his financial statement. These contradictory facts are emanating from the records. Therefore, it

becomes necessary to ascertain true facts and, therefore, we deem it fit to restore the entire issue to the file of the Assessing Officer.

16. The assessee is directed to demonstrate that the payer company never paid commission of Rs. 48,56,061=00 by bringing cogent material evidence on record.

17. The Assessing Officer is directed to examine the same and if satisfied with the claim of the assessee, then the Assessing Officer is directed to make addition of Rs. 4,85,606/- being TDS amount on which credit has been taken by the assessee in her return of income.

18. With these directions, we restore the matter to the file of the Assessing Officer to be decided after affording reasonable and adequate opportunity of being heard to the assessee.

19. In the result, the appeal of the assessee in ITA No. 2993/DEL/2017 is allowed for statistical purposes.

The order is pronounced in the open court on 29.08.2022.

Sd/-

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

Sd/-

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

Dated: 29<sup>th</sup> August, 2022.

VL/

Copy forwarded to:

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	