

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM**

आयकर अपील सं/ I.T.A. No.432/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2009-10)

Dilip Sayarchand Mehta C/o Marudhar Realities Co. Pvt. Ltd. 906, C Wing, One BKC, C-66, G Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400051.	<b>बनाम/</b> Vs.	DCIT, Central Circle-2(4) Mumbai.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACPM3965A</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri S. M. Bandi
Revenue by:	Smt. Mahita Nair (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 28/07/2022

घोषणा की तारीख /Date of Pronouncement: 05/09/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-53, Mumbai dated 22.02.2022 for the assessment year 2009-10.

2. Though the assessee has raised the legal ground against the action of the AO to have reopened the assessment u/s 148 of the Income Tax Act, 1961 (hereinafter "the Act"), the same is kept open.

3. On merits the issue is against the action of the Ld. CIT(A) confirming the addition of Rs.52,88,500/- being commission @ 0.70% of Rs.75.55 crores.



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4. Brief fact of the case is that the AO had reopened the assessment of the assessee by taking note of survey report (second survey which happened on 27.08.2014), wherein it came to the notice of the AO that the assessee was controlling twenty-four (24) companies [list given in the reasons recorded at page no. 57 of the P.B (infra)] from where/entities, he used to conduct business of providing accommodation entries in-lieu of commission. According to the AO, in this assessment year (AY 2009-10) the assessee had done business of providing accommodation entry to the tune of Rs.75.55 crores through his twenty-four (24) companies (bogus/non-existent). According to AO, even-though the assessee was the controller of the same/24 entities, he has not shown the commission derived there from in his return of income. Therefore, according to AO, the assessee failed to disclose the material facts truly and fully which were necessary for assessment.

5. After re-opening the assessment, the AO noted that the assessee had filed return of income on 25.09.2009 declaring Rs.23,11,030/- and that the case of the assessee was assessed initially u/s 143(3) of the Act vide order dated 29.12.2010 [copy of which is found placed at page no. 28 to 32 of the P.B]. The AO thereafter, taking note of the reason for re-opening, was of the opinion that assessee has not offered the commission income in his return from the business of providing accommodation entries through his twenty-four (24) companies to



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various entities. And therefore AO estimated commission income @ 0.70% of Rs.75.55 crores which worked out to be Rs.52,88,500/- which according to him had escaped assessment which was assessed to tax in the order passed u/s 143(3)/147 of the Act dated 28.12.2016. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the same. Aggrieved, the assessee is before us.

**6.** We have heard both the parties and perused the records. At the outset, the Ld. AR of the assessee submitted that the AO has made an addition of Rs.52.88 Lakhs (0.70% of Rs.75.55 crores) on the assumption that the assessee had earned commission income from providing accommodation entry for beneficiaries through his twenty-four companies whose names are as under: -

S. No.	Name of the company
1	Niti Merchantile P. Ltd.
2	Asha Multiutrade P. Ltd.
3	Watergate Merchantile P. Ltd.
4	Powantex
5	Color shop trading co. P. Ltd.
6	Subodh merchantile P. Ltd.
7	Superfine Trading Co. P. Ltd.
8	Infinite Merchantile P. Ltd.
9	Montreal Ddeg Co. P. Ltd
10	Geonet Trdg Co. P. Ltd.
11	Newtree Merchantile P. Ltd.
12	Worth Multitrade P. Ltd.
13	Laksh Merchantile P. Ltd.
14	Jayesh Multitrade P. Ltd.
15	Vinay Merchantile P. Ltd.
16	Akshar Merchantile P. Ltd.
17	Vetex Merchantile P. Ltd.
18	Real Star Trading Co. P. Ltd.
19	Star View Merchantile P. Ltd.
20	Sea View Merchantile P. Ltd.
21	Super House Trading Co. P. Ltd.
22	Everframe Trading Co. P. Ltd.
23	Inorbit Trading Co. P. Ltd.
24	Topcare Trading Co. P. Ltd.



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7. According to the Ld. AR, the Department has already taxed the commission income @ 0.7% on the entries provided by these twenty four (24) companies in their respective hands. For asserting this fact, he drew our attention to page no. 150 of the P.B and contended that all the twenty-four companies have accepted the commission income assessed by the department and they have been taxed accordingly. In the light of this relevant fact, according to Ld AR, the action of the AO to again tax commission of 0.70% of Rs.75.55 crores in the hands of the assessee would tantamount to double taxation of the same income.

8. Having perused the documents placed before us, we find that the Revenue has indeed assessed commission income @ 0.7% of the entries provided by the twenty four (24) companies in their assessment completed u/s 143(3)/147 of the Act. However it not clear as to whether these twenty four (24) companies have accepted the assessment of commission income in their hands and remitted tax accordingly or has challenged the orders passed by the revenue in appeal. In order to adjudicate the merits of the contention of Ld AR regarding double-taxation, this information is vital. So, we accordingly set aside the impugned order of the Ld. CIT(A) and remand the matter back to the file of the AO with the direction to verify as to whether the twenty-four (24) companies named (supra) have accepted the commission income assessed in their hands by the Department and have been taxed accordingly. If, the twenty-four (24) companies have accepted the commission income for the accommodation entries they



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provided which works out to aggregate the amount of Rs.75.55 crores, then taxing the same commission income again in the hands of the assessee would amount to double taxation of the same sum/commission, which doesn't have sanction of law and cannot be sustained. Therefore, with aforesaid observation, the appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 05/09/2022.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 05/09/2022.  
Vijay Pal Singh, (Sr. PS)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai