

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.1084/Del/2021
Assessment Year: 2011-12

Krishna Enterprises,
202, Bhaigrathi Apartment,
Sector-9, Rohini,
New Delhi.

Vs. ACIT,
Circle-37(1),
New Delhi.

PAN: AAHFK4892P

(Appellant)

(Respondent)

Assessee by	:	Shri Suresh Kumar Gupta, CA
Revenue by	:	Shri Mithalesh Kr. Pandey, Sr. DR
Date of Hearing	:	14.09.2022
Date of Pronouncement	:	20.09.2022

ORDER

This appeal filed by the assessee is directed against the order dated 06.12.2019 of the CIT(A), Delhi-13, relating to Assessment Year 2011-12.

2. The grounds raised by the assessee read as under:-

“1. The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with legal requirements of the provisions of the Income Tax Act therefore such assessment is void ab initio and liable to be quashed.

2. The impugned assessment has been completed u/s 143(3) of IT Act without complying with provisions of sec 143(2) of IT Act and therefore the reassessment proceedings need to be quashed.

3. *The Ld. CIT(A) has erred both in law and circumstances of the case in upholding the reassessment proceedings initiated u/s 147 of the IT Act ignoring the fact that the proceedings have been initiated by the AO without application of independent mind on the material. In view of the above defects in the compliances the resultant reassessment proceedings are required to be set aside.*

4. *The Ld. CIT(A) has erred both in law and in facts of the case in upholding the impugned reassessment proceedings ignoring the fact that the sanction u/s 151 of IT Act shows mechanical satisfaction by the approving authority and such mechanical approval vitiates the reassessment proceedings.*

5. *The Ld CIT(A) has erred both in law and on facts in confirming the estimated addition of Rs.24,87,067/- ignoring the fact that the estimation by the AO is arbitrary, without any basis and therefore the same need be set aside.*

6. *The action of the Ld CIT(A) in confirming the estimated addition is unsustainable in law as the same has been made without complying with mandatory provisions of sec 145(1) of IT Act in absence of any finding that the books of account not found to be reliable for computation of income.*

7. *The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority."*

3. The ld. Assessee's representative submitted that the assessee does not want to press grounds No.1 to 4. Therefore, the same are dismissed as 'not pressed.'

4. Apropos grounds No.5 and 6, the ld. AR submitted that the ld.CIT(A) has erred both in law and on facts in confirming the estimated addition of Rs.24,87,067/- ignoring the fact that the estimation by the AO is arbitrary, without any basis and therefore the same need be set aside. The ld. AR also submitted that the estimated addition is unsustainable in law as the same has been

made without complying with mandatory provisions of sec 145(1) of IT Act in absence of any finding that the books of account not found to be reliable for computation of income. Placing reliance on the various orders and judgements, the ld. AR submitted that as per the order of the Hon'ble Bombay High Court in the case of PCIT vs. Alag Securities P. Ltd., ITA No.1512 of 2017, dated 12.06.2020, the Hon'ble High Court considering the fact of accommodation entries provided by the assessee considered various cases for estimating the commission income in such cases ranging from 0.15 to 0.25% of the aggregate credits as the reasonable profit attributable to such activities of the assessee. Therefore, the estimation made by the AO and confirmed by the ld.CIT(A) in estimating the profit @8% of the entire impugned amount without rejecting the books of account of the assessee may kindly be set aside or the same may kindly be reduced to 0.15% to 0.25%.

5. Replying to the above, the ld. Sr. DR strongly supported the assessment and first appellate order and submitted that the estimation made by the AO @8% of the impugned amount as commission is quite correct and the same cannot be disturbed or set aside. He has further submitted that the ld.CIT(A) was right in confirming the addition made by the assessee. Therefore, the assessment as well as the first appellate order may kindly be confirmed. However, the ld. Sr. DR agreed to the factual situation that various High Courts and coordinate Benches

of the Tribunal, in the identical facts and circumstances, has reduced the estimation of commission to a reasonable percentage.

6. On careful consideration of the above submissions, I am of the considered view that in the identical facts and circumstances, the coordinate Bench of ITAT Delhi, in the case of Vishnu Goel, vide ITAs No.3929 to 3932/Del/2015, order dated 15.10.2018 has held that 'where as the AO initially estimated income at 2% which was reduced by the Id.CIT(A) to 1% in first appeal.' At this juncture, I take respectful cognizance of the judgement of the jurisdictional High Court of Delhi, dated 04.03.2015, in the case JKD Brokers P. Ltd. vs. CIT, vide ITA No.134/2014, CM App.5666/2014 that the profit/commission was to be estimated at 1% of the aggregate credits. Therefore, respectfully following the judgement of the jurisdictional High Court of Delhi in the case of JKD Brokers P. Ltd. vs. CIT (supra) the estimation made by the AO is reduced to 1% of aggregate credits and the AO is directed to recompute the addition accordingly. Grounds No.5 and 6 of the assessee are, thus, partly allowed.

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

Order pronounced in the open court on 20.09.2022.

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 20th September, 2022.

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi