

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.2752/DEL/2022 [ A.Y. 2016-17]**

**ITA No.2753/DEL/2022 [ A.Y. 2017-18]**

**ITA No.2754/DEL/2022 [ A.Y. 2018-19]**

**ITA No.2755/DEL/2022 [ A.Y. 2019-20]**

Vikas Gupta, C-63, Suraj Nagar, Azad Pur, Delhi-110033. PAN- AJWPG9155B	<u>Vs</u>	ACIT, Central Circle-32, Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri Nitin Gulati, Adv.	
<b>Department represented by</b>	Shri Om Parkash, Sr. DR	
<b>Date of hearing</b>	21.02.2023	
<b>Date of pronouncement</b>	22.02.2023	

**ORDER**

**PER KUL BHARAT, JM:**

The captioned appeals pertaining to the assessment years 2016-17 to 2019-20 have been preferred by the against separate orders, all dated 23.09.2022, of the learned Commissioner of Income-tax (Appeals)-30, New Delhi. Since common issues are involved for adjudication, all the appeals were heard together and are being disposed of by way of common order for the sake of convenience. ITA No. 2752/Del/2022 is taken as lead case.

ITA No. 2752/Del/2022 (A.Y. 2016-17):

2. In this appeal the assessee has raised following grounds of appeal:

*“1. That the reassessment order making the addition of Rs. 16,00,800/- by the Ld. AO is bad in law and on the facts and circumstances of the case and hence is liable to be set aside.*

*2. That the Ld. CIT(A) has erred in upholding the finding of the Ld. AO w.r.t initiation of reassessment proceeding in absence of any reasons to believe and tangible information.*

*3. That the Ld. CIT(A) has erred in upholding the finding of Ld. AO where the reassessment proceeding has been initiated on mere suspicion and in absence of any escapement of income subsequent to a survey conducted on the premise of the assessee.*

*4. That the Ld. CIT(A) has erred in upholding the finding of Ld. AO where the initiation of reassessment proceeding u/s 147 of the Income Tax Act, 1961 has been merely done on the basis of statement recorded during the survey.*

*5. That the present initiation of reassessment proceeding has been done in a mechanical manner on the basis of vague information and without independent application of mind by the Ld. AO and the Ld. CIT(A) has erred in upholding the same.*

*6. That the initiation of reassessment proceeding and additions made thereafter by the Ld. AO are wrong and void ab initio where there was no discovery of suppressed transaction or any incriminating material during the course of survey proceeding and Ld. CIT(A) has erred in upholding the same.*

*7. That in absence of any failure on part of the assessee to disclose fully and truly all material facts for its assessment, the Ld. AO lacks jurisdiction to initiate the reassessment proceeding beyond a period of four years from the end of the relevant assessment year in absence of sanction and approval from the specified authority u/s 151 of the Income Tax Act, 1961 and Ld. CIT(A) has erred in upholding the action of the Ld. AO.*

*8. That the Ld. AO has erred in not recording a valid reason for*

*initiation of reassessment proceeding prior to issuance of notice u/s 148 of the Act and the Ld. AO has also erred in not supplying the same reason to the assessee where the assessee could have filed its objection.*

9. *That the assumption of jurisdiction on the basis of the reasons given by the Assessing Officer is entirely unfounded and unjustified where the Appellant assessee has been alleged to be engaged in providing bogus accommodation entries in lieu of commission of 1-1.5% by providing entry through various shell companies.*

10. *That the statement recorded has no whisper w.r.t to engagement of the assessee in providing accommodation entries and it was Deepak Goel who was providing these entries through various concerns, since he has kept his material in our office as he was not having office during those days, the assessee herein has been duped into the said act by the Survey Team and the Ld. CIT(A) ignored the above said facts while upholding the finding of Ld. AO.*

11. *That the whole basis of making the addition in the present case is wrong as the assessee has no transaction with Kinshuk broker and the Ld. CIT(A) has erred in upholding the finding of Ld. AO on the above said facts and circumstances.*

12. *That the addition in the present case by the Ld. AO has been made on the statement of one Sh. Deepak Goel whereas no opportunity was given to the assessee of Cross Examining him which was must for arriving at conclusion and the Ld. CIT(A) has erred in upholding the same.*

13. *That the Ld. AO has erred in only issuing show cause notice and no draft assessment order was ever issued to the assessee and hence on this ground only, the present order has to be set aside.*

14. *That the appellant reserves the right to add alter and amend or to delete any or all the grounds of appeal on or before the date of hearing.”*

3. Facts giving rise to the present appeal are that in this case the assessee filed his original return of income on 31.3.2017 declaring total income of Rs. 5,58,160/-, which was processed u/s 143(1) of the income-tax Act, 1961, hereinafter referred

to as the “Act”. Thereafter, a survey was conducted on 1.2.2019 by the DDIT(Inv.), Unit-5(4), New Delhi on M/s Asian Bulls Capital Pvt. Ltd., along with M/s AVSL Securities Pvt. Ltd., M/s Vagabound Tradex Pvt. Ltd. During the course of survey statements of Deepak Goel, Director of M/s Asian Bulls Capital Pvt. Ltd. and M/s Vagabound Tradex Pvt. Ltd.; and Vikas Gupta, Director of M/s AVSL Securities Pvt. Ltd. were recorded. The Assessing Officer noticed that during the course of survey it was found that the Assessee was engaged in providing bogus accommodation entries in lieu of commission of 1-1.5% by providing entry through various shell companies. The Assessing Officer after considering the material available on record and after giving opportunity to the assessee treated commission income of 0.6% on total credit of Rs. 26.68 crores of M/s Kinshuk Stock Brokers to the tune of Rs. 16,00,800/- over and above the returned income of the assessee. Thus the AO assessed the assessee’s income u/s 147 at Rs. 21,58,960/-.

4. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who also sustained the additions made by the AO and dismissed the appeal filed by the assessee. Aggrieved against this the assessee is in appeal before this Tribunal.

5. Learned counsel for the assessee at the outset submitted that he does not wish to press grounds relating to validity of reopening of assessment. He submitted

that to end the litigation and looking to the quantum of addition, commission income may be taken at a lower rate as has been done by the Coordinate Benches of this Tribunal in number of cases. Learned counsel submitted that in some of the cases the Hon'ble High Court has confirmed the rate adopted by the coordinate Benches. He relied on the judgment of the Hon'ble Delhi High Court in the case of DCIT Vs. M/s Bhawani portfolio Pvt. Ltd. [ITA 158/2020 dated 12.7.2021]. He further placed reliance on the order of the coordinate Bench in the case of Adonis Financial Services Pvt. Ltd. [ITA no. 6507/15 dated 23.1.2019] & others.

6. On the other hand, learned DR opposed the submissions and supported the orders of the authorities below. He submitted that there is no infirmity into the order of the authorities below.

7. I have heard rival submissions and perused the material available on record. I find that the Assessing Officer had computed commission income by observing as under:

*“8. On perusal of the submission it is seen that assessee has denied being involved in any bogus accommodation entry activity in M/s Kinshuk Stock Broker. The reply of the assessee is considered and found not acceptable as whether for recovery of dues or for any other reason the assessee Shri Vikas Gupta has made transactions which have given bogus accommodation entries to various beneficiary and have earned commission income. However the submissions of assessee regarding inter company circulation of credits, unavoidable statutory expenses like STT, Exchange Trading/Broker Credit Stamp duty, Exchange Turnover Tax, GST and Sebi Cess, software expenses , Accounting Expenses , office expenses, Salary expenses, Office Rent and other expenses have been considered. Further, the bank statements of M/s Kinshuk Stock brokers have been perused and found that there have*

*been credits from M/s Asian Bulls Capital Pvt. Ltd. to the tune of Rs. 13,72,63277/-, M/s Vegabound tradex Pvt. Ltd. to the tune of Rs.9,50,64,000/- and other account of M/s Kinshuk Stock Brokers Pvt. Ltd to the tune of Rs.54,42,645/- for the F.Y.2015-16 to 2018-19 total amounting to Rs.23,77,69,922/-. Hence, out of total credit for F.Y.2015- 16 to 2018-19 amounting to Rs.99.57 crore, Rs.23.78 crore have been intercompany credits which constitutes 23.89%. Hence the assessee submission that the intercompany trading is Rs.20% is acceptable.*

9. *With the above observations, it is assessed that the assessee during the year under consideration has made unaccounted commission income of 0.6% on total credits of Rs. 26.68 Crore (i.e. 80% of total credit) of M/s Kinshuk Stock Brokers to the tune of Rs. 16,00,800/- over and above the returned income of the assessee the income of the assessee is computed as under:*

<i>Original/ revised returned income u/s 148 of the Act</i>	<i>: Rs. 5,58,160/-</i>
<i>Addition as discussed above</i>	<i>: Rs. 16,00,000/-</i>
<i>Assessed income u/s 147</i>	<i>: Rs. 21,58,960/-</i>

8. I find that the Division Bench of the Tribunal in the case of Adonis Financial Services Pvt. Ltd. (supra) had adopted 0.5% as a reasonable rate of profit 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.”*

9. Further, the Hon’ble Delhi High Court in the case of DCIT Vs. M/s Bhawani portfolio Pvt. Ltd. (supra) has confirmed the view of the Tribunal by observing as under:

“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. Therefore, in view of the binding precedents I hereby modify the assessment order, directing the Assessing Officer to adopt 0.50% as commission income as has been done by the coordinate Bench and recompute the income of the assessee accordingly.

11. Thus, the appeal of the assessee is partly allowed in terms indicated above.

**ITA No. 2753/Del/2022 [A.Y. 2017-18]:**

12. In this appeal the assessee has raised following grounds of appeal:

“1. That the reassessment order making the addition of Rs. 9,51,000/- by the Ld. AO is bad in law and on the facts and circumstances of the case and hence is liable to be set aside.

2. *That the Ld. CIT(A) has erred in upholding the finding of the Ld. AO w.r.t initiation of reassessment proceeding in absence of any reasons to believe and tangible information.*
3. *That the Ld. CIT(A) has erred in upholding the finding of Ld. AO where the reassessment proceeding has been initiated on mere suspicion and in absence of any escapement of income subsequent to a survey conducted on the premise of the assessee.*
4. *That the Ld. CIT(A) has erred in upholding the finding of Ld. AO where the initiation of reassessment proceeding u/s 147 of the Income Tax Act, 1961 has been merely done on the basis of statement recorded during the survey.*
5. *That the present initiation of reassessment proceeding has been done in a mechanical manner on the basis of vague information and without independent application of mind by the Ld. AO and the Ld. CIT(A) has erred in upholding the same.*
6. *That the initiation of reassessment proceeding and additions made thereafter by the Ld. AO are wrong and void ab initio where there was no discovery of suppressed transaction or any incriminating material during the course of survey proceeding and Ld. CIT(A) has erred in upholding the same.*
7. *That in absence of any failure on part of the assessee to disclose fully and truly all material facts for its assessment, the Ld. AO lacks jurisdiction to initiate the reassessment proceeding beyond a period of four years from the end of the relevant assessment year in absence of sanction and approval from the specified authority u/s 151 of the Income Tax Act, 1961 and Ld. CIT(A) has erred in upholding the action of the Ld. AO.*
8. *That the Ld. AO has erred in not recording a valid reason for initiation of reassessment proceeding prior to issuance of notice u/s 148 of the Act and the Ld. AO has also erred in not supplying the same reason to the assessee where the assessee could have filed its objection.*
9. *That the assumption of jurisdiction on the basis of the reasons given by the Assessing Officer is entirely unfounded and unjustified where the Appellant assessee has been alleged to be engaged in providing bogus accommodation entries in lieu of commission of 1-1.5% by providing entry*

*through various shell companies.*

10. *That the statement recorded has no whisper w.r.t to engagement of the assessee in providing accommodation entries and it was Deepak Goel who was providing these entries through various concerns, since he has kept his material in our office as he was not having office during those days, the assessee herein has been duped into the said act by the Survey Team and the Ld. CIT(A) ignored the above said facts while upholding the finding of Ld. AO.*

11. *That the whole basis of making the addition in the present case is wrong as the assessee has no transaction with Kinshuk broker and the Ld. CIT(A) has erred in upholding the finding of Ld. AO on the above said facts and circumstances.*

12. *That the addition in the present case by the Ld. AO has been made on the statement of one Sh. Deepak Goel whereas no opportunity was given to the assessee of Cross Examining him which was must for arriving at conclusion and the Ld. CIT(A) has erred in upholding the same.*

13. *That the Ld. AO has erred in only issuing show cause notice and no draft assessment order was ever issued to the assessee and hence on this ground only, the present order has to be set aside.*

14. *That the appellant reserves the right to add alter and amend or to delete any or all the grounds of appeal on or before the date of hearing.”*

**ITA No. 2754/Del/2022 [A.Y. 2018-19]:**

13. In this appeal the assessee has raised following grounds of appeal:

“1. *That the reassessment order making the addition of Rs. 66,720/- by the Ld. AO is bad in law and on the facts and circumstances of the case and hence is liable to be set aside.*

2. *That the Ld. CIT(A) has erred in upholding the finding of the Ld. AO w.r.t initiation of reassessment proceeding in absence of any reasons to believe and tangible information.*

3. *That the Ld. CIT(A) has erred in upholding the finding of Ld. AO where the reassessment proceeding has been initiated on mere suspicion*

*and in absence of any escapement of income subsequent to a survey conducted on the premise of the assessee.*

4. *That the Ld. CIT(A) has erred in upholding the finding of Ld. AO where the initiation of reassessment proceeding u/s 147 of the Income Tax Act, 1961 has been merely done on the basis of statement recorded during the survey.*

5. *That the present initiation of reassessment proceeding has been done in a mechanical manner on the basis of vague information and without independent application of mind by the Ld. AO and the Ld. CIT(A) has erred in upholding the same.*

6. *That the initiation of reassessment proceeding and additions made thereafter by the Ld. AO are wrong and void ab initio where there was no discovery of suppressed transaction or any incriminating material during the course of survey proceeding and Ld. CIT(A) has erred in upholding the same "*

7. *That in absence of any failure on part of the assessee to disclose fully and truly all material facts for its assessment, the Ld. AO lacks jurisdiction to initiate the reassessment proceeding beyond a period of four years from the end of the relevant assessment year in absence of sanction and approval from the specified authority u/s 151 of the Income Tax Act, 1961 and Ld. CIT(A) has erred in upholding the action of the Ld. AO.*

8. *That the Ld. AO has erred in not recording a valid reason for initiation of reassessment proceeding prior to issuance of notice u/s 148 of the Act and the Ld. AO has also erred in not supplying the same reason to the assessee where the assessee could have filed its objection.*

9. *That the assumption of jurisdiction on the basis of the reasons given by the Assessing Officer is entirely unfounded and unjustified where the Appellant assessee has been alleged to be engaged in providing bogus accommodation entries in lieu of commission of 1-1.5% by providing entry through various shell companies.*

10. *That the statement recorded has no whisper w.r.t to engagement of the assessee in providing accommodation entries and it was Deepak Goel who was providing these entries through various concerns, since he has kept his material in our office as he was not having office during those days,*

*the assessee herein has been duped into the said act by the Survey Team and the Ld. CIT(A) ignored the above said facts while upholding the finding of Ld. AO.*

*11. That the whole basis of making the addition in the present case is wrong as the assessee has no transaction with Kinshuk broker and the Ld. CIT(A) has erred in upholding the finding of Ld. AO on the above said facts and circumstances.*

*12. That the addition in the present case by the Ld. AO has been made on the statement of one Sh. Deepak Goel whereas no opportunity was given to the assessee of Cross Examining him which was must for arriving at conclusion and the Ld. CIT(A) has erred in upholding the same.*

*13. That the Ld. AO has erred in only issuing show cause notice and no draft assessment order was ever issued to the assessee and hence on this ground only, the present order has to be set aside.*

*14. That the appellant reserves the right to add alter and amend or to delete any or all the grounds of appeal on or before the date of hearing.”*

**ITA No. 2755/Del/2022 [A.Y. 2019-20]:**

14. In this appeal the assessee has raised following grounds of appeal:

*“1. That the reassessment order making the addition of Rs. 21,60,000/- by the Ld. AO is bad in law and on the facts and circumstances of the case and hence is liable to be set aside.*

*2. That the Ld. CIT(A) has erred in upholding the finding of the Ld. AO w.r.t initiation of reassessment proceeding in absence of any reasons to believe and tangible information.*

*3. That the Ld. CIT(A) has erred in upholding the finding of Ld. AO where the reassessment proceeding has been initiated on mere suspicion and in absence of any escapement of income subsequent to a survey conducted on the premise of the assessee.*

4. *That the Ld. CIT(A) has erred in upholding the finding of Ld. AO where the initiation of reassessment proceeding u/s 147 of the Income Tax Act, 1961 has been merely done on the basis of statement recorded during the survey.*

5. *That the present initiation of reassessment proceeding has been done in a mechanical manner on the basis of vague information and without independent application of mind by the Ld. AO and the Ld. CIT(A) has erred in upholding the same.*

6. *That the initiation of reassessment proceeding and additions made thereafter by the Ld. AO are wrong and void ab initio where there was no discovery of suppressed transaction or any incriminating material during the course of survey proceeding and Ld. CIT(A) has erred in upholding the same.*

7. *That in absence of any failure on part of the assessee to disclose fully and truly all material facts for its assessment, the Ld. AO lacks jurisdiction to initiate the reassessment proceeding beyond a period of four years from the end of the relevant assessment year in absence of sanction and approval from the specified authority u/s 151 of the Income Tax Act, 1961 and Ld. CIT(A) has erred in upholding the action of the Ld. AO.*

8. *That the Ld. AO has erred in not recording a valid reason for initiation of reassessment proceeding prior to issuance of notice u/s 148 of the Act and the Ld. AO has also erred in not supplying the same reason to the assessee where the assessee could have filed its objection.*

9. *That the assumption of jurisdiction on the basis of the reasons given by the Assessing Officer is entirely unfounded and unjustified where the Appellant assessee has been alleged to be engaged in providing bogus accommodation entries in lieu of commission of 1-1.5% by providing entry through various shell companies.*

10. *That the statement recorded has no whisper w.r.t to engagement of the assessee in providing accommodation entries and it was Deepak Goel who was providing these entries through various concerns, since he has kept his material in our office as he was not having office during those days, the assessee herein has been duped into the said act by the Survey Team and the Ld. CIT(A) ignored the above said facts while upholding the finding of Ld.*

AO.

11. *That the whole basis of making the addition in the present case is wrong as the assessee has no transaction with Kinshuk broker and the Ld. CIT(A) has erred in upholding the finding of Ld. AO on the above said facts and circumstances.*

12. *That the addition in the present case by the Ld. AO has been made on the statement of one Sh. Deepak Goel whereas no opportunity was given to the assessee of Cross Examining him which was must for arriving at conclusion and the Ld. CIT(A) has erred in upholding the same.*

13. *That the Ld. AO has erred in only issuing show cause notice and no draft assessment order was ever issued to the assessee and hence on this ground only, the present order has to be set aside.*

14. *That the appellant reserves the right to add alter and amend or to delete any or all the grounds of appeal on or before the date of hearing.”*

15. Admittedly the facts in all these appeals are identical. Even the learned authorized representatives of the parties have adopted the same arguments as in ITA No. 2752/Del/2022 [A.Y. 2016-17], wherein I have directed the AO as under:

*“Therefore, in view of the binding precedents I hereby modify the assessment order, directing the Assessing Officer to adopt 0.50% as commission income as has been done by the coordinate Bench and recompute the income of the assessee accordingly.”*

16. Facts of the case in all the appeals being identical, my above finding for A.Y. 2016-17 would apply mutatis mutandis in these assessment years as well. The Assessing Officer is accordingly directed to adopt 0.50% as commission income for the assessment years 2017-18, 2018-19 & 2019-20 as well and recompute the

income of the assessee accordingly. The appeals of the assessee are partly allowed accordingly, in terms indicated above.

17. In the result, all these appeals are partly allowed.

Order pronounced in open court on 22<sup>nd</sup> February, 2023.

**Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

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