

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No. 2118/Del/2018
(Assessment Year : 2012-13)

Trilok Goel B-73, Duggal Colony, Devli Road, Khanpur New Delhi PAN No. AFIPG 7839 N (APPELLANT)	Vs.	ITO Ward – 31(4) New Delhi (RESPONDENT)
--	-----	---

Assessee by	--None--
Revenue by	Shri Avikal Manu, Sr. D.R.

Date of hearing:	16.02.2023
Date of Pronouncement:	24.02.2023

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 08.02.2018 of the Commissioner of Income Tax (Appeals)-11, New Delhi relating to Assessment Year 2012-13.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is an individual who electronically filed his return of income for A.Y. 2012-13 on 07.06.2012 declaring total income

of Rs.4,83,920/-. The return of income was initially processed u/s 143(1) of the Act. AO has noted that information was received from DDIT (Inv.), Unit-II(2), New Delhi whereas it was conveyed that the assessee who was the proprietor of Kalka Udyog had made cash deposits aggregating to Rs.42,67,78,338/- in the four bank accounts. AO, thereafter, for the reasons recorded u/s 148 reopened the assessment by issuing notice u/s 148 of the Act. Thereafter, AO has noted that in the statement of the assessee which was recorded on 28.12.2016, assessee had admitted that he was in the business of providing accommodation entries to various persons and was charging commission for doing the same. AO has noted that assessee has shown commission of @0.40 to 0.45% in the revised computation and had not provided any basis for the same. AO, thereafter, rejected the books of account u/s 145(3) of the Act and, thereafter, estimated the rate of commission earned by the assessee @ 2.5% of the total turnover and computed the commission income of Rs.1,00,26,360/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) vide order dated 08.02.2018 in Appeal No.77/17-18 after considering the submissions of the assessee directed the commission income to be computed at 2% of the total receipt. The relevant findings of the CIT(A) are as under:

“4.3 I have considered the facts of the case and the submission made by the AR. It is contended that the appellant had shown the commission @ 0.40 to 0.45% and the AO has increased the same

to 2.5% without assigning any reason. The AR has relied upon the decision of Delhi High Court in the case of JRD Stock Brokers Pvt. Ltd. vs. CIT. In this context, it is observed that the appellant had shown total receipts of Rs. 18,97,340/- as per the original return filed by him and the appellant claimed to be doing the business of retail trading of edible oil and flour. However, after detailed investigation by the investigation wing and the AO, the appellant admitted that he indulged in the business of providing accommodation entries which included money laundering. The appellant filed revised computation before the AO showing total receipts of Rs. 42.04 crores, most of which related to the cash deposits in the bank accounts of the appellant for providing accommodation entries. The AO had repeatedly asked the appellant to provide supporting documents in order to justify his claim of commission income earned @ 0.40% to 0.45%. However, the appellant failed to provide any details. The AO therefore, rightly rejected the books of account of the appellant as the same did not reflect the true state of affairs of the business activities of the appellant. It is further observed that the case relied upon by the AR of Delhi High Court in the case of JRD Stock Brokers Pvt. Ltd. vs. CIT, has been perused and it is noted that the same has different facts from the present case. In that case, a search u/s 132 of the Act was conducted by the department and the ITAT had referred to the material gathered during search and the business activities of the appellant to arrive at a lower figure of commission in that case. In the present case, the main activity of the appellant is providing of accommodation entries and the appellant himself has failed to justify the rate of commission shown by him. The AO has rightly relied upon the decisions as per which the commission rate has been upheld at 2% to 3.02% and the AO has estimated the commission rate at 2.5% in this case. In this regard, reference is made to the decision of Hon'ble Delhi High Court in the case of Pratibha Finvest P. Ltd. vs Ito Ward 14(3), New Delhi on 5 December, 2012 in W.P.(C) 7538/2012, in which it has been held that-

“6. On the basis of

4.4 In view of the above facts and circumstances, it is reiterated that the appellant has miserably failed to justify the rate of commission earned by him from providing accommodation

entries/money laundering. The facts of the case are entirely similar to the above referred case of Hon'ble Delhi High Court in the case of Pratibha Finvest P. Ltd. vs Ito in which the commission rate of 2% in respect of accommodation & hawala entries has been upheld. Following the decision of jurisdictional High Court, the AO is directed to compute the commission income @ 2% of the total receipts and compute the total income accordingly. The ground of appeal is partly allowed.

5. Ground no. 2 of the appeal is related to the re-opening of the assessment u/s 147 of the Act. During the course of appellate proceedings, the AR has not filed any submission on this ground. Moreover, as per the facts of the case discussed in Para 4.1 above, it is observed that the AO had sufficient material to formulate reasons to believe that some income had escaped assessment, which were sufficient for re-opening the case u/s 147 of the Act. In view of this, the ground of appeal related to the re-opening of the assessment u/s 147 of the Act is dismissed.

6. Ground nos. 3 & 4 of the appeal are general in nature and do not require any separate comments.

7. As a result, the appeal is partly allowed.

5. Aggrieved by the order of CIT(A), assessee is now in appeal before the Tribunal and has raise the following grounds:

“1. That the assessee admitted that he was doing business of providing accommodation entry. In assessment order Page no.24 Para - 29.2, assessee admitted that he was charging gross commission ranging from 0.40% to 0.43% for providing accommodation entries. The AO increase the same i.e. gross commission at the rate of 2.5% without bringing any evidence on record. The CIT (A) gave relief of half percent i.e. reduced gross commission from 2.5% to 2.00% only on the basis of judgment of Delhi High Court in the case of Pratibha Finvest Pvt. Ltd. and ignore all other judgments. He even did not allow the expenses to be incurred in day to day business. The order has been passed in a hurry. The percentage of commission decided by the CIT (A) is on the very high side. Assessee is not satisfied with the order of the CIT (A) and prays your honor to reduce the percentage as held in

other cases such as Sanjay Kumar Garg by ITAT Delhi and JRD Stock Brokers Pvt. Ltd. by DHC, etc. Great injustice has been done with the assessee in deciding the percentage and hence the decision of CIT (A) is totally wrong, bad in law and needs to be quashed.

2. That the assessee prays permission to add, delete or amend one or more grounds of appeal.

3. That the assessee assures unstinted co-operation in all proceedings before your goodself.”

6. The case file reveals that the appeal was listed for hearing for the first time in the Year 2018 and there was no appearance. Thereafter, appeal was listed for hearing on 27.04.2021, 28.06.2021, 06.09.2021, 16.11.2021, 19.01.2022, 19.04.2022, 01.08.2022, 14.11.2022 & 16.02.2023. On all the occasions, the assessee did not appear before the Tribunal despite notices issued through RPAD nor any application was filed seeking for adjournment. Further, the notice issued by the Registry through RPAD was returned unserved by the postal authorities. Considering the aforesaid facts, we have no option except to dispose of the appeal on merits, after hearing the Ld. D.R.

7. Before us, Learned DR took us through the findings of lower authorities and submitted that no interference to the order of CIT(A) is called for.

8. We have heard the Learned DR and perused the material available on record. The issue in the present grounds is with

respect to the estimating the commission income in respect of accommodation entries. CIT(A) after considering the submissions of the assessee has given a finding that the main activity of the assessee was providing accommodation entries and assessee has failed to justify the rate of commission shown by him. He has further noted that the Hon'ble Delhi High Court in the case of Pratibha Finvest Pvt. Ltd. vs. ITO W.P.(C) 7538/2012 has upheld the commission rate @ 2% in respect of hawala entries. Before us, no material has been placed by assessee to point out any fallacy in the findings of CIT(A). We therefore, find no reason to interfere with the order of CIT(A) and **thus the grounds of assessee are dismissed.**

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 24.02.2023

Sd/-

**(YOGESH KUMAR US)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 24.02.2023

PY*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI