

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
&  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

I.T.A. No.2991/DEL/2017  
Assessment Year 2012-13

Prakash Chand Sachdeva, 3/4, Ashok Viahar, PH-III, Pocket-B, New Delhi.	Vs.	Asst. Commissioner of Income Tax, Circle-34(1), New Delhi
TAN/PAN: AAXPS6507P		
(Appellant)		(Respondent)

Appellant by:	Shri S.P. Gogia, Adv.		
Respondent by:	Shri R.S. Yadav, Sr.DR		
Date of hearing:	02	03	2023
Date of pronouncement:	10	03	2023

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-XXXIV, New Delhi, dated 28.02.2017 arising from the assessment order dated 28.02.2017 passed by the Assessing Officer u/s.143(3) of the Act, concerning Assessment Year 2012-13.

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

*“1. That the order is against the fact and law of the case.*

*2. That the assessee has not provided proper opportunity of being heard which is bad in law and against the principles of natural justice, more over no show cause notice has ever been issued by the A/A or the First appellant Authority for filling a particular document whereas on the other hand every thing is available on the Income tax portal and every Authority has an access to find out the same.*

3. That the A/A erred in making addition on a/c of Commission which has never been received nor accrued not only in the year under assessment even till date it has never been received by the assessee and not been paid by the Company which is against the ruling of State Bank of Travancore VS Commissioner of Income Tax (Appeal) (1986) 158 IT 102(SC) more over the first appellate authority has not taken any initiative to find out this facts.

4. That the A/A as well as the first appellate authority has not gone into the issue and not even consider the submission of the assessee before passing the order that why the commission was require to be reversed whereas the assessee has replied the same in his submission.

5. That the A/A erred in just relying on the 26 AS whereas the same is against the ruling decided by the Jabalpur Tribunal in the Case of Ravindra Pratap Thareja Vs Income Tax Officer War 1 (Rewa) 2015 (60) Taxman 304 and the First Apellant Authority has erred in not considered the same

6. That the A/A as well as first appellant authority further erred in stating that the T.D.S return can b revised without gone into the full facts and the limitation of revising the TDS return that the assese can not claim refund in the original as well as in the revised return of T.D.S and he further ignore th submission of the assessee that the no T.D.S. return can be revised claiming refund and changing th section or the source of Income.

7. That the first appellant authority further erred in ignoring the main issue involved in this case al giving his opinion regarding the T.D.S because asseseee has deposited all the due tax entitled for refund even if ignore the T.D.S deducted from the Commission.”

3. When the matter was called for hearing, the Id. counsel for the assessee submitted that an addition of Rs.77,89,711/- was made in the hands of the assessee on the ground that certain commissions has been allegedly earned by the assessee to the tune of Rs.97,12,121/- from one M/s. Laxmi Remote (India) Pvt. Ltd. and a TDS of Rs.9,71,212/- has been deducted and credited in favour of assessee as reflected in Annual Information Report (AIR) reported in Form 26AS maintained by the Department for this purpose. It is on this basis of the TDS entries reflected in

form 26AS, the Assessing Officer made the impugned additions on account of suppression of commission receipts. In this regard, the ld. counsel submitted that he has not received any commission whatsoever from the said company and the financial statements of the company itself also shows commission payment of only Rs.11,08,708/- and even this amount also has not been paid to the assessee. It was pointed out that the mistake is continuing and could not be rectified because the deductor / payer is not in a position to revise the TDS return in the absence of any module available in the IT software for doing so. The ld. counsel thus sought for suitable relief in the matter.

4. The ld. DR for the Revenue contended that the action of the Assessing Officer is justified having regard to the TDS deducted in the name of the assessee which has also been enjoyed by the assessee and thus the onus is on the assessee to dispute the contents of Form 26AS.

5. We have considered the rival submissions. The additions on account of unaccounted commission receipts is under challenge. It is the case of the assessee that it has not received any commission from M/s. Laxmi Remote (India) Pvt. Ltd. as wrongly reflected in the AIR and consequently no income is accrued or arisen in the hands of the assessee whatsoever. Having regard to unequivocal assertions made on behalf of the assessee, we deem it expedient to restore the issue back to the file of the Assessing Officer for suitable verification. It shall be open to the Assessing Officer to conduct suitable enquiry and verifications of the averments made by the assessee from the deductor and take the issue to logical conclusion. Where it is found that no commission has been paid by the deductor to the assessee, the impugned additions on account of

suppressed commission would not be justified. The Assessing Officer shall also examine the taxability of TDS credit, if availed, by the assessee and determine the taxability of TDS receipts in accordance with law. With these directions, the issue is remitted back to the file of the Assessing Officer for fresh decision in accordance with law and after giving commensurate opportunity to assessee. The assessee shall dutifully assist the Assessing Officer for determination of the issue without any demur. With these observations, the issue is restored to the file of the Assessing Officer.

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

**Order pronounced in the open Court on 10/03/2023.**

Sd/-

**[YOGESH KUMAR US]  
JUDICIAL MEMBER**

DATED: /03/2023

*prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**