

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER,
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 6869/DEL/2015
[Assessment Year : 2011-12]

DCIT
Jhandewalan,
New Delhi

Vs. M/s. S. G. Portfolio (P.) Ltd.
191, 2nd Floor, Naya Bans
Delhi

PAN No. AAHCS 6809 H

[Appellant]

[Respondent]

And

CO No. 177/DEL/2018
[Assessment Year : 2011-12]

M/s. S. G. Portfolio (P.) Ltd.
C/o RRA Taxindia, D-28, South
Extension, Part-I
New Delhi - 110006

Vs. DCIT
New Delhi

PAN No. AAHCS 6809 H

Date of Hearing : 07.06.2023
Date of Pronouncement : 09.06.2023

Assessee by : Dr. Rakesh Gupta, Adv.
and Shri Shrey Jain, Adv.
Revenue by : Shri Rajendra Jha, Sr. DR

ORDER**PER N. K. BILLAIYA, ACCOUNTANT MEMBER :**

This appeal by Revenue and Cross Objection by assessee are directed towards the order of the Commissioner of Income Tax (Appeals)-27, New Delhi dated 16.10.2015 pertaining to Assessment Year 2011-12. The appeal and Cross Objection were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. The grievances of the Revenue read as under:

- “(1) That the Ld. CIT(A) has erred in law and facts of the case in deleting the addition of Rs.2,32,36,150/- made by the Assessing Officer on account of unexplained deposits/loans.*
- (2) That the commissioner of Income Tax (Appeals) has erred in law and on facts in relying on the submissions filed by the assessee which were inadequate, incomplete, not genuine, not reliable and already rejected by AO during the assessment stage.*
- (3) That the commissioner of Income Tax (Appeals) has erred in law and on facts by neither conducting her own independent and effective inquiry nor giving a direction as per subsection 4 of section 250, Income Tax Act and ignoring Hon'ble Delhi High Court's judgment in the case of "The Commissioner of Income Tax-II Vs M/s Jansampark Advertising and Marketing (P) Ltd."*
- (4) (a) The order of the CIT(Appeals) is erroneous and not tenable in law and on facts.*

(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

3. Briefly stated facts of the case are that during the course of the scrutiny assessment proceedings, the assessee was asked to explain the deposits made in the bank account. Despite several opportunities given to the assessee for furnishing the details of credit entries in bank account with supporting evidences, no confirmation regarding sold investments were produced. The AO further observed that the assessee has failed to establish the genuineness and creditworthiness of the bank credit entries. The AO further observed that looking to the past history of the assessee it is established that the assessee is engaged in the business of providing of accommodation entries. The AO accordingly added the unexplained cash deposits and made addition of Rs.2,32,36,150/-.

4. The assessee challenged the addition before the CIT(A) and vehemently contended that the deposit of Rs.1,79,50,000/- was out of the liquidation of investments brought forward from earlier years. It was explained that the deposit of Rs.1,79,50,000/- is out of the sale of shares. Necessary details were furnished. After considering the submissions, the CIT(A) was convinced that the credit entries

appearing in the bank statement to the extent of Rs.1,79,50,000/- is explained. In respect of the balance amount of Rs.52,86,152/-, the CIT(A) observed that since the assessee is an entry provider the only addition that could be made is the commission charged by the assessee on providing accommodation entries and accordingly sustained the addition of Rs.2,32,361.00 and deleted the balance.

5. Before us, the DR strongly supported the findings of AO. It is the say of the DR that the assessee has grossly failed in explaining the credit entries in the Bank account. Strong reliance was placed on the decision of the Hon'ble High Court of Delhi in the case of Jansampark Advertising & Marketing (P) Ltd. in ITA No.525/2014 order dated 11.03.2015.

6. *Per Contra*, the Counsel for the assessee reiterated what has been stated before lower authorities.

7. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact and categorical finding of the AO show that the assessee is an entry provider. In our considered opinion when a person is engaged in the clandestine activities of providing accommodation entries he only charges commission whereas

the cash belongs to the person who is taking the accommodation entry, therefore, there is no error or infirmity in the findings of CIT(A) in sustaining the addition on account of commission earned on providing accommodation entries.

8. The Hon'ble High Court of Bombay in the case of Alag Securities (P.) Ltd. reported in 425 ITR 58 (Bombay) was seized with the following substantial question of law :

“3. The appeal has been preferred by the Revenue projecting the following questions as substantial questions of law :-

“1. Whether on the facts and in the circumstances of the case and in law. Tribunal erred in restricting the addition of Rs.4,78,94,000.00 made by the Assessing Officer on account of unexplained cash credits under section 68 of the Act to commission income calculated at 0.15% without appreciating that the assessee had failed to furnish satisfactory explanation with regard to identity of the parties, source and genuineness of the transactions?

2. Whether on the facts and in the circumstances of the case and in law, Tribunal erred in restricting the addition made by the Assessing Officer to the commission income at 0.15% without considering that the material found during the course of search clearly established that the net commission charged by the assessee varied between 1.5% to 3.6% and that the decision in Ms. Mihir Agencies (P) Ltd. relied upon by the First Appellate Authority was clearly distinguishable”

9. The Hon'ble High Court held as under:

“5. Respondent is an assessee under the Act having the status of resident company thence also referred to as assessee). Assessee

is engaged in the business of providing accommodation entries to entry seekers. A search and seizure operation under section 132(1) of the Act was carried out on 28-6-2006 in the case of one Shri Hitesh M Bagthariya who deposed that he was an entry operator and that he used to arrange cheques of the assessee and M/s. Goldstar Finvest (P.) Ltd. Following the same, assessment under section 143(3) read with Section 153C of the Act in the case of the assessee was made by the Assessing Officer for the assessment year 2003-04 on 26-12-2008 determining the total income of the assessee at Rs. 62,480.00 as against the returned loss of Rs. 14,596.00.

14. *During the assessment proceedings, the assessee submitted that it was involved in the business of facilitating and providing accommodation entries to the beneficiaries, details of which were explained during the search action. It was also explained that for such services rendered, assessee used to charge commission and the rate of commission was taken at 0.15% It was contended that assessee had deposited the cash received from the customers/beneficiaries and issued corresponding cheques to them for which it earned commission. This is the admitted case. Therefore, Section 68 of the Act would not be attracted in such a case because the cash credits did not belong to or formed part of the income of the assessee.*

20. *We are in agreement with the view taken by the Tribunal. In a case of this nature Section 68 of the Act would not be attracted Section 68 would come into play when any sum is found credited in the books of the assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by the assessee is not in the opinion of the Assessing Officer satisfactory. In such a situation the sum so credited may be charged to income tax as the income of the assessee of the relevant previous year. But that not the position here. It has been the consistent stand of the assessee which has been accepted by the Firs Appellate Authority and*

affirmed by the Tribunal that the business of the assessee centered around customers beneficiaries making deposits in cash amounts and in lieu thereof taking cheques from the assessee for amounts slightly lesser than the quantum of deposits, the difference representing the commission realized by the assessee. The cash amounts deposited by the customers ie, the beneficiaries had been accounted for in the assessment orders of these beneficiaries. Therefore, question of adding such cash credits to the income of the assessee, more so when the assessee was only concerned with the commission cared on providing accommodation entries does not arise.

21. *Coming to the percentage of commission. Tribunal had already held 0.1% commission in similar type of transactions to be a reasonable percentage of commission. Therefore Tribunal accepted the percentage of commission at 0.15% disclosed by the assessee itself. This finding is a plausible one and it cannot be said that the rate of commission was arrived at in an arbitrary manner. The same does not suffer from any error or infirmity to warrant interference, that too, under section 260A of the Act.*
22. *In so far the decision of the Supreme Court in NRA Iron and Steel (P) Ltd. (supra) is concerned, the same is not attracted in the present case in as much as facts of the present case are clearly distinguishable. Unlike the present case, the assessee in NRA Iron and Steel (P) Ltd. (supra) claimed the cash credits as its income. However, it was found that the creditors had meagre or nil income which did not justify investment of such huge sums of money in the assessee. The field enquiry conducted by the Assessing Officer revealed that in several cases the investor companies were non-existent. Thus, it was held that the assessee had failed to discharge the onus which lay on it to establish the identity of the investor companies and the credit worthiness of the investor companies. In such circumstances, the entire transaction was found to be bogus. But as already discussed in the preceding paragraphs, assessee never claimed the cash credits as its income. It admitted its business was to provide accommodation entries. In return for the cash credits it used to issue cheques to the*

customers/beneficiaries for slightly lesser amounts, the balance being its commission. Moreover, the cash credits had been accounted for in the respective assessment of the beneficiaries. Therefore, the decision in NRA Iron and Steel (P) Ltd. (supra) is clearly distinguishable and not attracted to the facts of the present case.”

10. On finding parity of the facts of the case in hand with the facts of the decision of the Hon’ble High Court of Bombay, we decline to interfere with the findings of CIT(A). Appeal filed by Revenue and Cross Objection filed by assessee are dismissed.

11. In the result, appeal filed by Revenue and Cross Objection filed by assessee are dismissed.

The order is pronounced in the open court on 09.06.2023

Sd/-

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 09th June, 2023

PY/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	07.06.2023
Date on which the typed draft is placed before the dictating Member	07.06.2023
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	