

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.3291/Del/2016
(ASSESSMENT YEAR 2003-04)**

Income Tax Officer Ward-45(1) New Delhi	Vs.	Sh. Ashok Kumar Gupta Prop. M/s New General Trading Co. & Nupur Enterprises C/o 101, 3 rd Floor, Commercial Chamber, Old Rajender Nagar, New Delhi PAN-AESPG 1229B
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Mr. P. Praveen Sidharth, CIT-DR

Date of Hearing	18/07/2023
Date of Pronouncement	21/07/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-17, New Delhi ["Ld. CIT(A)", for short], dated 22/02/2016 for Assessment Year 2003-04. Grounds taken in this appeal are as under:

“1. Whether on facts and circumstances of the cases, the CIT(A) was correct in deleting the addition of Rs.11,00,58,100/- made by the Assessing Officer under section 68 of the Income Tax Act, 1961, despite the fact that the assessee could not prove the identity and creditworthiness of creditors as well as the genuineness of transactions in respect of deposits in its various bank accounts ?

2. The appellant craves leave for reserving the right to amend, modify, alter add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”

3. None appeared for the assessee, it is found from the record several notices have been sent to the registered address of the Assessee, a direction has also been given to the Department of Revenue to serve the notice to the assess through affixture, the notice order to be issued by way of affixture has been complied by the Department and a letter along with the enclosures of affixture has been produced by the Department vide letter dated 13/04/2023. Even after service of notice by way of affixture, the assessee failed to appear before the Tribunal, therefore, we deem it fit to decide the matter on hearing the Ld. Departmental Representative.

4. Brief facts of the case are that, the original assessment was completed u/s 144/147 of the Income Tax Act, 1961 ('Act' for short) Act on 15/12/2010 at the total income of Rs. 6,71,84,200/-. The A.O. thereafter initiated proceedings u/s 147/148 of the Act on the basis of information received from DI (INV.) that the bank account of the assessee maintained with Ratnakar

Bank Karol Bagh, was credited by cheques with an amount of Rs. 6,71,84,200/-. After recording the reasons, notice u/s 148 of the Act was issued, no compliance was being made by the assessee, therefore, it was held by the A.O. that the assessee had given its unaccounted cash to the entry providers and the same had been received by cheques. After considering the facts of the case, the A.O. made addition of Rs. 6,71,84,200/- as income from undisclosed sources. Similarly M/s New General Trading Co., WZ-48, Basaidara Pur, New Delhi and M/s Nupur Enterprises, WZ-48, Basaidarapur, New Delhi, information was also received by the then AO from DIT (Inv.) that amounts of Rs. 2,07,34,000/- and Rs. 2,21,39,000/- respectively were found credited in the bank a/c of the assessee through instrument/cheques issued by different parties. After recording the reasons, notice u/s 148 were issued. As no compliance was made to the notices, therefore, the AO had completed the assessment in these cases u/s 144/147 at Rs. 2,07,34,900 (in the case of M/s New General Trading Co.) and at Rs. 2,21,39,000/- (in the case of M/s Nupur Enterprises).

5. An order u/s 263 of the Act was came to be passed on 26/03/2013 by the CIT(A)-IX, New Delhi with following directions:

“Pass one consolidated assessment order in the case of Sh. Ashok Kumar Gupta, Proprietor of M/s Nupur Enterprises & M/s New General trading Co., afresh after affording opportunity of being heard to the AR of the assessee as new facts have emerged in the

*written submissions filed during the course of proceedings u/s 263
of the Act before the undersigned"*

In compliance with the direction made u/s 263 of the Act, an assessment order came to be passed u/s 263/143(3) of the Act by adding an amount of Rs. 11,00,58,100/- to the income of the assessee as the assessee failed to discharge the onus to prove the genuineness of the transaction.

6. Aggrieved by the assessment order dated 31/03/2003 passed u/s 263/143 of the Act, the assessee preferred an appeal before the CIT(A). The Ld. CIT(A) vide order dated 22/02/2016, partly allowed the appeal by directing the A.O. to take the rate of commission at 0.60% on total turnover of Rs. 5,28,16,917/- which worked out to Rs. 3,16,801/- and directed the A.O. to restrict the addition to Rs. 3,16,801/- and deleted the balance addition.

7. Aggrieved by the deletion of the addition made by the CIT(A), the Revenue preferred the present appeal on the grounds mentioned above.

8. The Ld. Departmental Representative vehemently submitted that the CIT(A) committed an error in deleting the addition of Rs. 11,00,58,100/- made by the A.O. u/s 68 of the Act despite the fact that the assessee could not prove the identity and creditworthiness of creditors as well as the genuineness of the transaction in respect of deposits in its various bank accounts. The Ld. Departmental Representative taken us through the assessment order and the

findings of the A.O. and submitted that the CIT(A) has committed grave error in deleting the addition.

9. We have heard the Ld. Departmental Representative and perused the material available on record. It is found that the bank account of the assessee and his proprietary concern namely M/s New General Trading Company and M/s Nupur Enterprises, found credited by total amount of Rs. 11,00,58,100/- (6,71,84,200 + 2,07,34,900/- + 2,21,39,000/-). The assessee was asked to furnish the complete details i.e. name and address of all the person/firm who had given cheques along with the nature/purpose thereof along with their ID particulars. But the assessee has not provided any such details and no response to the summons issued u/s 131 of the Act was made by the assessee. Therefore, the A.O. was of the opinion that the assessee was unable to prove the genuineness of the transaction with the persons/firm/companies and opined that the assessee had introduced its own moneys through the said entities using the bank channel in the shape of cheques. The Ld. CIT(A) while deleting the addition held that the assessee doing the business of accommodation entries to the various person/beneficiaries, therefore, directed the A.O. to take the rate of accommodation entry at 0.60% on total turnover of Rs. 5,28,16,917/- (which is worked out to Rs. 3,16,801/-) thereby directed the A.O. to restrict addition to Rs. 3,16,801/- and deleted the balance addition in following manners:-

“3.2 There is only one issue involved in all the grounds of appeal, which relates to contention of the appellant against addition of Rs.11,00,58,100/- made by the AO u/s 68 of the Act. The order was passed u/s 263/143(3) of the Act. The fact of the case is that the AO found that the appellant was having three bank accounts in Ratnakar Bank, Karol Bagh, New Delhi in the names of Sh. Ashok Kumar Gupta (the appellant), M/s. New General Trading Co. and M/s. Nupur Enterprises (both Proprietary concerns) respectively. He further found that there were cash credits in the impugned bank accounts during the year of Rs.6,71,84,200/-, Rs.2,07,34,900/- and Rs.2,21,39,000/- respectively. Since, the appellant failed to explain the nature and source of the aforesaid cash credits, therefore, he made addition of Rs.11,00,58,100/-. However, the appellant submitted that it is an admitted fact that the appellant was engaged in providing accommodation entries to various persons, The total deposits in the three bank accounts was of Rs.5,28,16,917/- as against Rs. 11,00,58,100/- taken by the AO. After going through the facts and circumstances of the case, submission/rejoinder of the appellant and perusal of the assessment order/remand report of the AO, it is clear that the appellant was engaged in the business of providing accommodation entries to the various persons/beneficiaries. This fact was admitted by the appellant during the course of investigation carried out by the DI (Investigation) wing, New Delhi, on perusal of the bank statement of the appellant, it is gathered that there is deposits and withdrawal on day to day basis of almost the same amount. All these details make it clear that the appellant was engaged in the business of providing accommodation entries. Further, the AO has also not brought any material on record to establish that the cash credits were out of unaccounted income of the appellant and the appellant

was not an entry operator, Now the question remains that what was the rate of commission received by the appellant in lieu of providing accommodation entries. In this regard, reliance is placed on the judgment of ITAT, Delhi 'C' Bench in the case of JRD Stock Brokers Pvt. Ltd. Vs. ACIT, reported in 124 TTJ (Del) 566, in which the, rate of commission was taken at 0.6% of the total turnover. Therefore, following the judgment of jurisdictional ITAT, the A.O. is directed to take the rate of Commission at 0.60%, on total turnover of Rs.5,28,16,917/-, which is .worked out to Rs.3,16,801/-. Thereby the AO is directed to restrict the addition to Rs.3,16,801/- and the balance addition is directed to be deleted.

5. *In the result, the appeal is partly allowed.”*

10. Considering the above facts and circumstances, we are of the opinion that, there was no basis for the above observations and the conclusion made by the CIT(A). The CIT(A) ought to have verified the persons/firm/Companies from whom the alleged amount has been credited along with the details of the PAN numbers and also should have verified the details of the persons to whom the said amount has been paid later on. The CIT(A) should have also verified the fact as to whether the amount has been paid to the very same person from whom the said amount got credited to the Assessee or to some other persons for any consideration to arriving a conclusion that, the ‘assessee is an entry provider’ and the said amount is the part of ‘accommodation entry’. In the absence of the details of the persons regarding credits and the payments made by the assessee, we are not in a position to uphold the order of the CIT (A). Accordingly, the order of the CIT(A) is reversed and the issue in dispute is

restored to the file of the A.O. with a direction to the assessee to furnish the details of the deposits and withdrawals to the A.O. and details of the persons/firm/company so as to decide the issue afresh. Accordingly, the grounds of Appeal of the Revenue are partly allowed for statistical purpose.

11. In the result, the Appeal of the Revenue is allowed for statistical purpose.

Order pronounced in open Court on 21st July, 2023

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 21/07/2023

Pk/R.N, Sr. ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI