

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: H: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA Nos.4958 to 4962/Del/2019
Assessment Years: 2012-13 to 2016-17

The ACIT, Central Circle-26, New Delhi 110055	vs.	M/s Holeon Traders Pvt. Ltd., Shop No. 243, Shop No. 2, Ground Floor Pocket-26, Sector 24, Rohini, New Delhi PAN AADCP 4625 J
(Appellant)		(Respondent)

CO Nos. 95 to 99/Del/2022
In ITA Nos. 4958 to 4962/Del/2019
Assessment Years: 2012-13 to 2016-17

M/s Holeon Traders Pvt. Ltd., Shop No. 243, Shop No. 2, Ground Floor Pocket-26, Sector 24, Rohini, New Delhi PAN AADCP 4625 J	vs.	The DCIT, Central Circle-15, New Delhi 110055
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Adv. Shri Aman Jain, CA Ms. Akansha Birla, CA
Revenue For :	Ms. Sapna Bhatia, CIT(DR)

Date of Hearing :	13.07.2023
Date of Pronouncement :	21.07.2023

ORDER

PER BENCH:-

Above captioned appeals of revenue and cross objection of assessee have been filed against the order of CIT(A)-29 New Delhi dated 29.03.2013 for 2012-13 to 2016-17.

2. Since issues involved in revenue's appeal ITA No. 4958 to 4962/Del/2019 for AY's 2012-13 to 2016-17 are identical and similar, they were heard together and being adjudicated by this common order. As agreed by the learned representatives of both the sides we are taking up ITA No. 4958/Del/2019 for AY 2012-13 as lead case, wherein the revenue has raised following two effective grounds of appeal:-

1. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and on facts in deleting the protective addition of Rs. 54,64,44,954/- made by the AO on account of unexplained cash credits, without considering the fact that the assessee has failed to discharged the onus to satisfy the conditions laid on u/s. 68 of the I.T Act 1961 with regard to the nature and source of credit entries in respect of share capital/premium/unsecured loans and other credits in bank.

2. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and on facts in deleting the substantive addition of Rs. 13,66,112/- made by the AO without considering the fact that the assessee that assessee being a conduit concern, would have earned commission income for the transactions.

3. The Id. CIT(DR) supporting the assessment orders submitted that the Assessing Officer was right in making addition on protective basis in the hands of assessee and it was also justified and correct in making addition of Rs. 9,28,129/- on substantive basis being commission @0.25% of total impugned credits under facts and circumstances of the case which have been deleted by the Id. CIT(A) without any basis therefore impugned first appellate order may kindly be set aside by restoring that of the Assessing Officer.

4. Replying to the above the learned counsel of assessee submitted that the addition cannot be made in the hands of the conduit companies once the beneficiaries and accommodation entry provider are identified and addition of commission income has already been made in the hands of the accommodation entry provider. Further placing reliance on the order of ITAT Delhi 'A' Bench dated 28.04.2023 the Id. counsel submitted that in the case of Shri Anand Kumar Jain vs. ACIT in ITA No. 2888/Del/2019 and other connected appeals of revenue the deletion of addition made on protective basis by the Assessing Officer has been upheld by the Tribunal upholding the deletion of protective addition of credits therefore since facts and circumstances of present case are similar and identical therefore findings deleting the protective addition by the Id. CIT(A) may kindly be upheld.

5. Placing rejoinder to the above, the Id. CIT(DR) did not dispute the fact of deletion of protective addition by the CIT(A) and its confirmation by the Tribunal order dated 28.04.2023 in the case Shri Anand Kumar Jain (supra). The Id. CIT(DR) submitted that the ground no. 2 of revenue has been allowed under identical facts and

circumstances and order of Id. CIT(A) directing the deletion of commission addition has been reversed by making addition @0.47% to the turnover of accommodation entries after elimination of circular transaction. Therefore ground no. 2 of revenue may kindly be allowed reversing the conclusion of Id. CIT(A).

6. On careful consideration of above, following the order of Tribunal in the case of Shri Anand Kumar Jain (supra) deletion of protective addition on account of unexplained cash credits is upheld and ground no. 1 of revenue is dismissed for AY 2012-13.

7. Regarding ground no. 2 of revenue we note that identical grievance/ground of revenue under identical facts and circumstance has been decided by the Tribunal in favour of the revenue and against the assessee reversing the first appellate order. Relevant paras 21 & 22 of Tribunal order (supra) are as follows:-

21. Therefore , as per the explanation and submissions of the assessee , whole of the expenses incurred in earning commission income shall be allowed and accordingly the net rate of commission earned by the assessee i.e. 0 .47% is the best which can be applied on the turnover of the accommodation entries after elimination of circular transactions. Thus the maximum addition which can be made in the hands o f the assessee on account of commission earned on turnover o f the accommodation entries worked out as under:

Assessment Year	Assessment Year Turnover (after elimination of circular transactions)	Commission rate	Commission Income
AY 2010-11	115,610,968	0.47%	5,43,372/-
AY 2011-12	160,105,451	0.47%	7,52,496/-
AY 2012-13	114,700,597	0.47%	5,39,093/-
AY 2013-14	262,717,480	0.47%	12,34,772/-
AY 2014-15	245,616,875	0.47%	11,54,399/-
AY 2015-16	260,228,180	0.47%	12,23,072/-
AY 2016-17	717,246,284	0.47%	33,71,058/-

22. The AO is therefore directed to give effect to this order accordingly. Before parting we would like to clarify that the determination of expenses and the commission earned is based on the incriminating material specifically found and seized during the courses of search and hence the percentage of commission earned cannot be considered to be the same in other similar cases.

8. Therefore as per explanation and submissions of assessee, whole claim of expenses made in the P&L accounts towards earning of commission income shall be allowed and the net rate of commission earned by the assessee i.e., @0.47% of total turnover of accommodation entries after elimination of circular transaction is required to be add as income of assessee from commission. The Assessing Officer is therefore

directed to give effect to the above order. Accordingly, ground no. 2 of revenue is allowed reversing the first appellate order.

9. Since facts and circumstances of remaining four appeals pertaining to AYs 2013-14 to 2016-17 are similar and identical therefore our conclusion drawn in the earlier part of this order for AY 2012-13 would apply mutatis mutandis to the other four appeals. Accordingly, ground no. 1 of revenue is dismissed and ground no. 2 of revenue is allowed.

10. The Id. counsel submitted that the assessee does not want to press its cross objection for all five years therefore cross objections of assessee for 2012-13 to 2016-17 are dismissed as not pressed.

11. In the result, the appeals of revenue are partly allowed and cross objections of assessee are dismissed.

Order pronounced in the open court on 21.07.2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 21st July, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi