

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य  
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO.413/Chd/2021  
निर्धारण वर्ष / Assessment Year : 2012-13

Gaurav Pathak Flat No. 14, HIG Flats Near SBI Treasury Branch Ghumaar, Mandi, Ludhiana	बनाम	The Asst. CIT Central Circle-1, Ludhiana
स्थायी लेखा सं. / PAN NO:	AUKPG4792P (Old) AKFPP1963J (Current PAN)	
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Ashwani Kumar, C.A,  
Shri Aditya Kumar, C.a  
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 10/06/2024  
उदघोषणा की तारीख/ Date of Pronouncement : 06/09/2024

### आदेश/Order

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-5, Ludhiana dt. 20/10/2021 pertaining to Assessment Year 2012-13.

2. In the present appeal, Assessee has raised the following grounds of appeal:

1. That order passed u/s 250(6) of the Income Tax Act, 1961 by the learned commissioner of Income Tax (Appeals)-5, Ludhiana is against law and facts on the file in as much as he was not justified to arbitrarily uphold the action of the learned Assessing Officer in initiating proceedings u/s 148.

2. That the Ld. CIT(A) further gravely erred in upholding the action of the Ld. Assessing Officer in making an addition of Rs. 2,62,37,267/- computed @ 2 percent on the value of accommodation transactions of Rs. 1,31,18,63,341/-.

3. *That, on the facts and circumstances of the case, the addition of Rs. 2,60,000/- has been made arbitrarily and wrongly in spite of the fact that the return of income for the impugned assessment year was filed within time u/s 139 of the Income Tax Act, 1961 at taxable income of Rs. 1,79,248/- (Gross income Rs. 2,59,248/-) on the correct PAN: AKFPP1963J.*

3. Briefly the facts of the case are that the assessment proceedings were completed in this case under section 147 r.w.s 144 of the Act, dt. 17/12/2019 wherein an amount of Rs. 2,62,37,267/- was brought to tax in the hands of the assessee for the reason that the assessee was involved in doing business of accommodation entry and has earned commission income which was determined by the AO at the rate of 2% of Rs. 131,18,63,341/- being the quantum of the accommodation entry provided during the F.Y. relevant to impugned assessment year through number of concerns and operating different bank accounts by the assessee.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has since dismissed the appeal, against which the assessee is in appeal before us.

5. During the course of hearing, the Ld. AR referred to Ground No. 2 so taken by the assessee wherein the quantum of addition of Rs. 2,62,37,267/- has been computed by the AO at the rate of 2% of the value of accommodation transactions amounting to Rs. 131,18,63,341/- which has been confirmed by the Ld CIT(A). It was submitted by the Ld AR that rate of commission so determined by the AO @ 2% of the net value of accommodation transaction is not only exorbitant and unjustified but also stands nowhere near the reality and our reference was drawn to the decisions of Hon'ble Bombay High Court and the Coordinate Benches wherein the commission income has been upheld @ 0.15% of the value of accommodation entries. It was submitted that the said decisions were brought to the notice of the Ld. CIT(A) however he has failed to take cognizance of the same and has upheld the addition so made by the AO. In

this regard, reference was drawn to the written submissions filed before the Ld. CIT(A) and contents thereof read as under:

*"12. However, without prejudice to the above submissions, it is further submitted that it is the real income that has to be worked out and taxed and not the hypothetical amount on estimated basis and in a whimsical manner. It is a well known fact that in such cases of accommodation transactions, the rate of commission/service charges varies from 10 paisa to 15 paisa per hundred rupee and out of which too expenses are incurred to rotate the transactions which are deductible.*

*Reliance in this regard is placed on the following judgments: -*

*I. PCIT -14 Vs. Alag Securities Pvt.Ltd. ITA No.1512 of 2017 (Mumbai) Date of pronouncement :12.06.2020*

*In this case, it was held that, "in the case of an assessee engaged in providing 'accommodations entries', the entire deposits cannot be assessed as unexplained cash credits. Only, the commission income (0.15%) earned in providing the accommodation entries can be assessed as income".*

*Copy of judgment is enclosed for ready reference.*

*II. Goldstar Finvest(P). Ltd. Vs DCIT,CC(46), MUMBAI ITA No.74/Mum/2015(ITAT-G' Bench) Asstt. Year 2010-11 Order dtd:29.12.2016*

*In this case, though the issue related to penalty imposed u/s 271(1) (c) of the Income Tax Act, 1961 but the issue in the quantum appeal was discussed which related to the assessment of commission income on accommodation transactions. In the quantum appeals, the commission income was taken @0.15% and out of that too, expenses @50% of the commission income was allowed  
Copy of judgment is enclosed for ready reference.*

*III. Talent infoway Ltd. Vs DCIT,CC-46, MUMBAI ITA No.6384/Mum/2012(ITAT-ΛE' Bench) Asstt. Year 2005-06 Order dtd:24.01.2017*

*In this case too, the Hon'ble ITAT, following the judicial procedure, upheld the commission/ rate of net. profit from such activities of providing accommodation transactions at 0.15%.*

*Copy of judgment is enclosed for ready reference.*

**13.** *Accordingly, in the view of the above submissions, it is humbly submitted that the addition of commission income made @2% for Rs.26237267/- on the net value of accommodation transactions Rs.1311863341/- is not only exorbitant and unjustified but also stands nowhere near the reality. The A.O. is expected to assess the real income of the assessee and not the hypothetical one by making high pitched additions of income."*

6. The Ld DR submitted that the A.O in the reasons recorded for reopening the case has mentioned about the details received from Investigation wing with name of the concerns, bank account number and the amounts credited during F.Y. 2011-12, which were used by the assessee for providing accommodation entries. The total of such transaction was Rs. 1,49,39,53,341/-. During the assessment, the assessee vide his application dated 9.12.2019 clarified that the amount of Rs. 1,49,39,53,341/- includes double credit of Rs. 18,20,90,000/-, which was considered by AO and balance figure arrived at Rs. 131,18,63,341/-. In the meantime, the assessee filed an application u/s 144A before Range head i.e. 3CTT, Central Range, Ludhiana. Directions were received by AO on 12.12.2019 from the O/o CIT, Central Range, Ludhiana to provide final opportunity to the assessee to produce evidence based upon which he was claiming lower percentage of income and also to produce the concerned parties who had given such commission as to why commission @ 2% of the total transaction of Rs. 131,18,63,341/- i.e. Rs. 2,62,37,267/- should not be taken as income for the year under consideration. The final opportunity of being heard was given to the assessee, by way of issuing notice u/s 142(1) of the Act for 14.12.2019, falling which, the addition of Rs. 2,62,37,267/- would be made as unexplained commission receipts.

6.1 It was submitted by the Ld DR that for this query, the assessee replied that it will not be justified, if parties are called for investigation after lapse of more than 6 years, when the then concerned AO had not taken any cognizance of the impugned accommodation transactions in Genex group of cases searched. The assessee was taking a plea and mentioned number of cases, and the argument that action had not been taken against Genex Group in respect of transactions done by the assessee. The assessee filed copy of the assessment order in the case of Sh. Ramesh Gupta wherein the AO of that assessee has accepted commission of 0.12 paisa per 100 Rupees. The reliance on the

assessment order of the other persons was not found acceptable as the assessee has not disclosed any commission income. It is not a legal question but rate of commission charged is basically a question of fact. Like the GP varies in the same line of trade from case to case, likewise, the rebate, discount and commission also varies from case to case even in the same line of business or trade. Absence of addition in the case of Genex Group cannot be the sole ground for granting relief to the assessee especially when the assessee had himself accepted that he was engaged in providing the accommodation entries. In spite of specific queries and directions u/s 144, the assessee was failed to produce any of Principal Officers of alleged parties to whom sales had been made from whom commission income was earned to provide the accommodation entries. The AO was right in calculating the commission income in the hands of the assessee @2%, because the assessee did not provide any material for adopting lower figure in his case and also did not claim any expense against such proposed addition. If the assessee was earning less income than 2% proposed by the AO in the show-cause notice dated 12.12.2019 or was incurring any expense for earning such commission income, then proof of the same should have been provided to the AO during the assessment proceedings. Thus, it was considered by the AO that the assessee was involved in doing business of accommodation entries and has earned commission of 2% of total transaction (2% of Rs. 131,18,63,341/-) i.e. Rs. 2,62,37,267/-.

6.2 It was further submitted by the Id DR that the Ld. CIT(A) has duly observed in his appellate order at page 23-24 that the fact of re-opening of the case which is as under :

*"The menace of floating paper companies and through them laundering the black money has been wide spread as reported in the newspaper recently. Even the Central Government has acknowledged the existence of such shell companies and their use by the people for routing their unaccounted income by way of accommodation entries. Therefore, the Appellate Authorities also cannot*

turn a blind eye to such realities. As brought out on record by the AO, the assessee was involved in floating non-existence entities which do not carried out any real business and rather provide bogus bills and charge the commission for providing documents to give the color of genuinity to the transactions, when in fact all these are arranged transactions in collusion with the other assessees as detailed by the AO in the assessment order. The fact is that the assessee as entry provider/operator charged a price for arranging these types of transactions and creating the supporting document. This fact need not be over emphasized that for giving such type of services, the assessee has received commission, over and above the amount of cheque received from the beneficiary group. It is a known fact in the market that these are fake entries and still the beneficiary group take the risk fully knowing that these are not genuine transaction, because now-a days only a small fraction of return is subject to scrutiny/ investigation by the Department every year. Most of the parties taking such entries go unnoticed since the cases do not get selected for scrutiny. This fact acts as incentive for others who are allured to take these non-genuine entries. Such types of method are in fact colorable device to launder the unaccounted funds of the beneficiaries. The appellate authorities can also not turn a blind eye to realities around and the reality is that nobody will provide such entries without charging the adequate commission. Regarding the argument about other case of Sh. Ramesh Gupta, the issue was raised before the AO also duly considered in the assessment order. Regarding the adverse action in other cases, this is not a good argument to avoid payment of taxes by saying that other are also not paying taxes. As regards the addition of commission income in the hands of Genex Group, the AO is advice to take necessary action as permissible under Income Tax Act, 1961 against the assessee's of Genex Group and these may be considered as direction u/s 150 of the Income Tax Act, 1961. As far as, the rate of 2% is concerned, it is general practice in the market that the accommodation entry providers charge a commission of 2 to 5% on providing accommodation entries and arranging the bogus documents and such commission income and unexplained expenditure, has been upheld in various cases of accommodation entries dealt by this office in past so many years.

The appellate does not deserves any leniency because he has not only acted wrongly but also aided others to evade the taxes and helped them to circumvent the law by providing bogus bill and from the beginning he knew that these were totally fraudulent transactions with a view to evade payment of taxes and defraud the revenue. The saying that 'the law cannot persuade if it does not punish is squarely applicable in this case. There are so many entry operators who engaged from time to time in such activities because the entry operators are not punished/penalized adequately. Leniency towards one give rise to emergence of another entry operator. If a sufficient punishment is given, then it will act as deterrence for others. The appellate authorities also have a duty/responsibility to help curb this menace of providing of accommodation entries because if the law does not punish it cannot even persuade. Under the facts & circumstances of the case and in view of the above discussion, the addition of Rs. 2,62,37,267/- as commission income @ 2 percent of the amount of accommodation transaction for Rs. 131,18,63,341/-, is found sustainable and hence upheld."

6.3 It was further submitted that the case of M/s B.R. Spinners (P) Ltd (now known as M/s Genex Industries Ltd ) has been reopened by the AO u/s 147 and the assessment has been completed u/s 144 r/w 147 dated 18/12/2019 wherein addition has been made towards the bogus purchases as well as unaccounted expenditure paid to the assessee, Shri Gaurav Pathak. It was further submitted that the appeal against the said order has since been dismissed by the Id CIT(A)-5 Ludhiana vide order dated 04/05/2023. It was accordingly submitted that the contention of the assessee that no action has been taken against M/s B.R. Spinners (P) Ltd doesn't hold good any further. In view of the above, it was submitted that the ground of appeal raised by the assessee be dismissed as the AO has rightly made an addition of Rs. 2,62,37,267/- as commission income @ 2% of the amount of accommodation transaction for Rs. 131,18,63,341/-.

7. We have heard the rival contentions and perused the material available on record. It is an admitted and undisputed fact that the assessee has provided accommodation entries amounting to Rs 1,31,18,63,341/- to M/s B.R Spinners (P) Ltd (now known as M/s Genex Industries Ltd) through his various concerns and multiple bank accounts during the financial year relevant to the impugned assessment year. The limited issue under consideration relates to determination of rate of commission on providing such accommodation entries by the assessee through his various concerns and multiple bank accounts. The AO has determined rate of commission at the rate of 2% on the value of such accommodation entries. The only reasoning adopted by the AO which is discernable from the assessment order is that the assessee has failed to produce principal officers of the alleged parties to whom the sales have been made and from whom the commission has been earned and therefore, there is no basis to

lower the rate of commission as stated in the show-cause and the same was finally applied. The question that arise for consideration is what is the basis of arriving at the rate of 2% so determined by the AO which we find has been answered subsequently by the Id CIT(A). As per the Ld CIT(A), it is general practice in the market that the accommodation entry providers charge commission at the rate of 2-5% and the same has been upheld in various cases of accommodation entry providers dealt by his office in past so many years and where the AO has applied 2%, the same was found reasonable and upheld by the Id CIT(A). However, we find that the specifics of those cases dealt in the past has not been spelt out by the Id CIT(A) and therefore, the basis of arriving at rate of 2% is again not clearly discernable from the order of the lower authorities. As against that, the Id AR has referred to the decisions of the Hon'ble Bombay High Court in case of PCIT Vs. Alag Securities Pvt. Ltd. (*Supra*) wherein the Hon'ble High Court has upheld the findings of the Tribunal wherein the Tribunal has accepted the percentage of commission income for providing accommodation entries at 0.15% of value of accommodation entries as a plausible one and which has held by the Hon'ble High Court as reasonable and not been determined in any arbitrary manner. Similarly, in case of Goldstar Finvest(P). Ltd. Vs DCIT (*Supra*) and Talent Infoways Ltd vs DCIT (*Supra*), the Coordinate Benches have determined the commission income for providing accommodation entries at 0.15% of value of accommodation entries. In absence of anything contrary on record and any other authority on the subject, following the decisions referred supra, we find that the rate of commission at the rate of 0.15% of the value of accommodation entries as reasonable and the AO is hereby directed to apply the same while determining the income in the hands of the assessee. In the result, the ground no. 2 is partly allowed.

8. Regarding Ground no. 1 and 3, no arguments were raised during the course of hearing, hence, the same are dismissed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 06/09/2024

Sd/-

**आकाश दीप जैन**  
(AAKASH DEEP JAIN)  
उपाध्यक्ष / VICE PRESIDENT

Sd/-

**विक्रम सिंह यादव**  
(VIKRAM SINGH YADAV)  
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar