

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "C", अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.2240/Ahd/2018  
Assessment Year : 2015-16

M/s. Nikshal Properties Pvt. Ltd. 42-B, Triloknagar Society Near Arurvedik Hospital Outside Pani Gate, Vadodara - 390 019	Vs	The Dy. Commissioner of Income-tax Circle-3(1)(1) Ahmedabad
<b>PAN: AADCN 3151 F</b>		
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Paras F. Jain,AR
Revenue by :		Shri Ashok Kumar Suthar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 16/10/2024  
घोषणा की तारीख /Date of Pronouncement: 18/10/2024

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

This appeal filed by the Assessee is directed against the order of Learned Commissioner of Income-Tax (Appeals)-9, Ahmedabad [hereinafter referred to as "Ld. CIT(A)" for short] dated 25/09/2018 passed for Assessment Year (AY) 2015-16.

2. The assessee has raised the following grounds of appeal:

*"1 The Ld. CIT(appeals) has erred in law and facts in upholding the order of the A.O. assessing income at Rs. 1,25,45,835/- as against Nil returned income declared by the assessee after set off of brought forward business loss of Rs. 76,75,095/-*

*2. He has erred in upholding the estimation of commission @ 2% on total deposits in the bank as against 0.5% agreed by the assessee without properly appreciating the facts and estimation of income at 0.5% in similar other cases.*

*He has erred in law and facts in not properly appreciating and accepting the written submission furnished by the assessee during course of assessment proceedings.*

4 He has erred in observing that the appellant in the statements of facts of appeal memo has not given any justification for estimating the commission @ 0.5% inasmuch as that in the statement of facts, it has been stated by the assessee to accept estimation of commission @ 0.5% on the basis of assessment made in other companies on similar facts.

5 On the facts of the assessee, no interest u/s 234A, 234B and 234C ought to have been levied.

6 On the facts of the appellant, returned income ought to have been accepted.

7 The appellant craves leave to add to alter and/or to modify any ground of appeal."

3. At the outset, Ld. Counsel for the assessee stated that all the grounds raised above relate to a solitary issue of estimation of commission income earned by the assessee which was estimated by the AO @ 2% of the total bank deposits, while the assessee pleads the same to be estimated @0.5% of the deposits in the bank. It was pointed out that the order passed by the Ld.CIT(A) was an *ex-parte* order, but he contended that the Ld.CIT(A) while adjudicating the issue against the assessee had not rightly appreciated the facts of the case which were evident from the records itself before him.

4. Coming to a brief background of the facts of the case, the Ld.Counsel for the assessee pointed out that though the assessee had returned income from business and profession in the return of income filed for the impugned year disclosing a business loss of Rs.76,75,095/- but during assessment proceedings the assessee had admitted to have carried out no business transactions but, on the contrary, to be engaged only in providing accommodation entry to beneficiaries. The AO accepted this explanation of the assessee and proposed to tax commission income by estimating the same on the total deposits reflected in the various bank accounts of the assessee. It was pointed out that while the AO proposed to estimate the commission

income by applying the rate of 2% to the total bank deposits of Rs.24,35,36,961/- in three bank accounts of the assessee in three different banks noted at page-3 of the assessment order. The assessee, however, pleaded the estimation @ 0.5% and also pointed out various decisions of the ITAT holding 0.5% to be the appropriate rate of commission earned in the business of providing accommodation entry. The AO, however, rejected the contention of the assessee noting that during the assessment proceedings for AY 2014-15, the Auditor of the assessee had explained the assessee to be charged at 2% commission on transactions. Accordingly, the AO assessed the commission income of the assessee by applying of 2% to the total deposits in the bank account of the assessee. Thus, estimating the business income at Rs.48,70,740/-.

5. Before the Ld.CIT(A), the Ld.Counsel for the assessee pointed out that none appeared on behalf of the assessee and he, therefore, confirmed the order of the Ld.CIT(A). Our attention was drawn to the relevant finding of the Ld.CIT(A) contained at para-3 of his order as under:

*"3. The only effective ground of appeal is against estimating the commission @2% of total deposit of Rs. 24,35,36,961/- and making addition of Rs. 58,70,740/- The appellant has e-filed appeal on 19/1/2018. Notice was issued on 7/6/2018 fixing compliance on 27/6/2018. Another notice was issued on 21/8/2018 fixing compliance on 12/9/2018. Both the notices were issued on the address given in form 35. However, the notices were returned back with postal remark 'left'. As the appellant has not pursued the appeal, the appeal is decided on merit. In the assessment order the A.O has made an addition of 2% on the commission of total deposit in his bank account namely Indusind Bank Rs. 8,30,37,802/-, Rajkot Nagarik Sahkari Bank Rs. 9,11,05,736/- and RBL Bank of Rs. 6,93,92,424/-. The A.O in the assessment order has observed that the appellant is engaged in the business of providing accommodation entries and he accordingly estimated the Income @2% of the total receipt and commission. The appellant before the A.O itself has agreed for addition of commission @0.5%. Appellant during the appellate proceedings has not made any submission. The appellant in the statement of facts has stated that he has agreed for the estimation of commission @0.5%. The appellant has not given any justification*

*for estimating the commission @0.5%, therefore, addition made by A.O is confirmed."*

6. The contention of the Ld. Counsel for the assessee before us was that it was pointed out to the AO that in the case of other assesses admittedly providing accommodation entries, the Ld.CIT(A)'s themselves had held estimation of commission income @ 0.5% to be correct. He drew our attention to the submissions of the assessee before the AO reproduced at page 2 of the assessment order as under:

*"Kindly refer to your show cause notice dated 15.12.2017 in connection with the profit and loss account which is shown total receipts of Rs.33,37,173/- and claimed total loss of Rs.68,79,914/-. It was established and affirmed that the company is an entry provider for the beneficiaries charging 2% as commission as per Para 2(i).*

*In para 2(ii), as per ITS one bank account of Nikshal Properties Pvt Ltd has been traced in Rajkot Nagrik Sahkari Bank Ltd. The total receipts side transactions in the bank account comes to Rs.9,11,05,823/- and added to total income of Rs. 18,22,116/- which has been estimated @ 2% as commission of total receipts appearing in the bank of the company for the year.*

*In this connection the type of transactions the department has passed orders in various companies where these entries have been treated as accommodation entries only and a reasonable amount of income has been estimated for computing income and treated as commission has been earned which has been estimated @ 0.5% of the total receipts appearing in the bank of the company. In support of this the assessment order passed in the Central Circle has been enclosed including copy of decision of CIT(A) and the order submitted were as under :-*

1. Nexus Software Ltd A.Y. 2009-10 PAN: AAACN6974K: In this case assessed CC-2(2) the Assessing Officer had held as under: Para 4.3

*"In view of the discussion held above and the statement of the Director of the assessee company referred to above it is held that the assessee company is involved in the business of providing accommodation entries and acts as a pass*

*through entity. Thus as admitted by the direction of the assessee company in his statement referred to above that it gets a commission of 0.5% on providing accommodation entries and amount of Rs.26.35,726/- is hereby held to be the total income of the assessee being 0.5% of the total funds routed by the assessee company through its bank accounts."*

7. On the other hand, the Ld.DR stated that the assessee itself in assessment proceedings for the preceding year had admitted to having been earned commission income @ 2%.

8. To this, the Ld. Counsel for the assessee countered by stating that the 2% commission income was admitted by the assessee to have been earned in a specific transaction of sale of land with M/s.Ardor Overseas Pvt. Ltd. and not with respect to the other accommodation entry transactions.

9. We have heard the contentions of both the parties. We find merit in the contention of the Ld. Counsel for the assessee that the commission income earned by it on the admitted business of providing accommodation entries was to be estimated by applying at the rate of 0.5% to the total bank deposits of the assessee. The Ld. Counsel for the assessee has demonstrated that in the case of other assessee's undertaking identical transactions, the Ld.CIT(A) themselves had held commission income to be earned @ 0.5%. The Ld.Counsel for the assessee has also pointed out that the 2% commission rate admitted by the assessee in the preceding year was in relation to specific transaction of accommodation entry entered into with one M/s.Ardor Overseas Pvt.Ltd. The Ld.DR was unable to controvert the above contentions of the Ld.Counsel for the assessee before us. In view of the same, we do not find any justification in the estimation of commission income by applying the rate of 2%. The order of the Ld.CIT(A) confirming the estimation of

commission income @ 2% by the AO is, therefore, set aside and the AO is directed to estimate the commission income earned by the assessee by applying the rate of 0.5% to the total bank deposits of the assessee. All the grounds raised by the assessee are allowed.

10. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the Court on 18<sup>th</sup> October, 2024 at Ahmedabad.**

*Sd/-*

**(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

*Sd/-*

**(ANNAPURNA GUPTA  
ACCOUNTANT MEMBER**

Ahmedabad, Dated 18/10/2024

*टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-9, Ahmedabad
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad