

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI  
BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER  
and  
SHRI SUDHIR KUMAR, JUDICIALMEMBER**

**ITA No.2457/DEL/2022  
(Assessment Year : 2012-13)**

ACIT, CC – 13,  
Delhi.

vs.

M/s. Decent Agencies Pvt. Ltd.,  
1/4233, Plot No.5, S/F,  
Ansari Road, Darya Ganj,  
Delhi – 110 076.  
**(PAN: AACCD6715E)**

**ITA No.1334/DEL/2023  
(Assessment Year : 2010-11)**

**ITA No.1335/DEL/2023  
(Assessment Year : 2012-13)**

**ITA No.1336/DEL/2023  
(Assessment Year : 2013-14)**

M/s. Decent Agencies Pvt. Ltd.,  
1/4233, Plot No.5, S/F,  
Ansari Road, Darya Ganj,  
Delhi – 110 076.

vs.

ACIT, CC – 13,  
Delhi.

**(PAN: AACCD6715E)**  
**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : None

REVENUE BY : Ms. Sapna Bhatia, CIT DR

Date of Hearing : 11.09.2024

Date of Order : 06.11.2024

**ORDER**

**PER S. RIFAUR RAHMAN, AM :**

1. The assessee has filed three appeals against the separate orders of Id.

Commissioner of Income-tax (Appeals)-28, New Delhi (hereinafter referred to 'Ld. CIT (A)') all dated 28.07.2022 for Assessment Years 2010-11, 2012-13 & 2013-14 and the Revenue has filed appeal against the aforesaid order of ld. CIT(A) for AY 2012-13.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order.
3. At the time of hearing, none appeared on behalf of the assessee even though notice was served on the assessee for the hearing. The matter was called several times but none appeared on behalf of the assessee. While going through the record, we observed that the appeal was filed by the assessee on 01.05.2023 and defect notice was issued on 02.05.2023 indicating the defects as well as it was noted that the appeal was filed with delay of 157 days. The assessee removed the defects vide letter dated 04.05.2023 and on 11.10.2023 the appeal was fixed for hearing and Shri Vipul Pathak, ld. AR for the assessee attended and taken an adjournment. Subsequently, the case was put up for hearing on 28.12.2023, 20.03.2024, 09.04.2024, 12.06.2024, 19.06.2024 and today 11.09.2024. In all above said date of hearing, none appeared on behalf of the assessee neither there is any request for adjournment. Several RAPD notices were issued to the assessee and all the notices were returned unserved. Further, we observed that Revenue has

preferred an appeal in AY 2012-13 and filed an appeal on 03.10.2022 and the Revenue has removed the defect vide letter dated 17.10.2022 and subsequently, the appeals were fixed for hearing on 10.05.2023, 20.07.2023, 30.08.2023, 07.09.2023, 04.01.2024, 21.02.2024, 15.03.2024, 09.04.2024, 12.06.2024, 19.06.2024 and on 11.09.2024 but none appeared on behalf of the assessee even several notices were issued and also notices were served through Department. All notices were returned unserved. Considering the above facts on record, we proceeded to hear the case with assistance of Id. DR of the Revenue.

4. First, let us take up Revenue's appeal in ITA No.2457/Del/2022 for AY 2012-13 in which brief facts of the case are, pursuant to the warrant of authorization issued by Director of Income Tax (Inv.)-II, New Delhi, a search and seizure operation u/s 132 of the Income-tax Act, 1961 (for short 'the Act') was conducted on 23.07.2015 and on subsequent dates, in different business and residential premises of Deepak Aggarwal, Mukesh Kumar and others, group of cases. It was found by the Investigation Wing that a group of entry operators were providing accommodation entries to beneficiaries. They found various incriminating papers/documents and seized during the abovesaid search and seizure operation in the group of cases, as per the statements recorded during the course of search and post-

search proceedings, it was found that the group was involved in providing accommodation entries. The AO observed that many incriminating material/documents were found from the assessee also. Based on the above findings, notice u/s 153C of the Act was issued and served on the assessee. Subsequently, notices u/s 143(2) and 142(1) were issued and served on the assessee. Based on the incriminating material found during the search and verification during assessment proceedings, the AO came to the conclusion that assessee is only a shell company operated and managed by Deepak Aggarwal for providing accommodation entries such as share capital, share application money, share premium, sale/purchase of security loans etc. in lieu of certain amount of commission. Accordingly, he determined various accommodation entries provided by Deepak Aggarwal and made additions based on the commissions would have earned by him to the extent of Rs.210,39,771/-. Out of the above amount, the AO has made protected assessment to the extent of 80% and substantive basis @ 20% out of total commission presumed to have earned by Deepak Aggarwal. Accordingly, AO made addition of Rs.1,68,31,816/- on protective basis and to the extent of Rs.42,07,954/- on substantive basis in the hands of the assessee. Further, he disallowed certain bogus expenditure claimed by the assessee to the extent of Rs.7,56,059/-.

5. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) and Id. CIT (A) after considering the detailed submissions of the assessee deleted the protective and substantive addition made by the AO in the hands of the assessee relating to the commission and sustained the other additions.
6. Aggrieved with the above order, Revenue is in appeal before us.
7. At the time of hearing, Id. DR for the Revenue brought to our notice relevant facts on record. With regard to findings of Id. CIT (A), he objected to the same and submitted that protective and substantive addition made by the AO may be sustained owing to the complexities of the issues involved in this case. Further, he submitted that the issue involved is of accommodation entries provided by Deepak Aggarwal and this issue presently has not reached finality.
8. With regard to other appeals filed by the assessee in AYs 2010-11, 2012-13 and 2013-14, the issues involved are similar to AY 2012-13 and the additions are directly linked to the search and seizure operation conducted in the case of Deepak Aggarwal. Id. DR for the Revenue submitted that all the issues are connected to the incriminating material found during the search and it is an established fact that assessee is involved in providing accommodation entries on the behest of Deepak Aggarwal and he prayed

that the appeal may be dismissed.

9. Considered the submissions of Id. DR for the Revenue and material placed on record. Since none appeared on behalf of the assessee and assessee chose not to pursue the case, after analyzing the appeals under consideration, we find it proper to dispose off these appeals after considering the relevant material on record. We observed that in AY 2012-13, the issue involved in this case is relating to accommodation entries provided by Deepak Aggarwal by utilizing various dummy entities/shell companies to provide accommodation entries to various parties. After search operation, based on the statement of Deepak Aggarwal, the commission was determined and brought to tax in the case of Deepak Aggarwal on substantive basis and additions were made in the hands of the shell companies on protective basis and certain amounts were made on the basis of substantive basis. On careful consideration, in AY 2012-13, Id. CIT (A) has considered the detailed submissions and found that protective additions as well as substantive additions made in the hands of assessee is unwanted on the basis of following findings :-

*“7.7 The next relevant question is whether action of charging commission in respect of sale/ purchase, receipt of /increase in share capital, debit/credit in the bank accounts maintained in the name of appellant company is sustainable.*

*The AR also argued that the AO has not made out a case as to how the appellant company has charged commission. I agree with the contention*

*of the appellant's AR that although, the material on record conclusively proves that the transactions were carried out through the bank accounts in the name of the non-descript companies(including the appellant company under consideration) with a view to colour these transactions and to show them as genuine transactions in form of sale/ purchase, receipt/ payment of share capital/share premium/ loan etc. It is also logical to conclude that the commission was being charged from the beneficiaries of these accommodation entries. This commission was being charged in cash. However, it is not proved that any part of this commission was income of the appellant company.*

*In my considered opinion, none of the material cited in the assessment order suggested that the appellant company were entitled to receive any part of the said commission. In order to assess any part of the said commission in the hands of the appellant company which are artificial juridical persons, either the appellant company should have legal right to receive such part of commission (then, it 'accrues' to the appellant company) or some part the said commission should become property of the company (by way of route of share capital or any other receipt which is claimed to be tax free). Therefore, in spite of confirming the conclusion arrived at by the AO as mentioned earlier, including the following conclusions,*

- i) no sign of real existence of the company or of any activities carried out was noticed during pre-search/search/post search visits to the premises purportedly connected with the companies managed by Sh. Mukesh Kumar, including the registered office address.*
- ii) the company was not having any supporting vouchers/bills. Books of account were being manufactured by the CA (Shri Girish based on the statement of the bank of the director and entry*
- iv) the appellant company had no real employees.*
- v) all the directors {except Shri Mukesh Kumar (entry operator)} of the companies including this one (which were being managed by him for providing accommodation entry) were petty people and were directors only for the namesake.*
- vi) the company had no specific business premises either owned by it or rented.*
- vii) the company had no electricity connection in its name.*

viii) *the appellant company had not been paying any society maintenance bill.*

ix) *None of the purported director or employee or even Legal consultant was ever paid through cheque.*

*Considering the above findings, I am of the considered opinion that the AO erred in making the impugned addition in terms of charging commission in the hands of the appellant company. Such commission should have been rightly charged in hands of actual beneficiary that is individual accommodation entry operator(Shri Mukesh Kumar).*

*In view of the above discussion, the above question is answered in negative and consequently, actions of the AOs in terms of making additions of Rs.2,10,39,770/- on account of commission (out of which, 80% on protective basis & 20% on substantive basis) in the hands of appellant company is not sustained and hence deleted.*

*Further, since the 20% of the unaccounted commission (Rs.42,07,954/-) was added in the case of the appellant on substantive basis, the summary of which has been provided in the table in Para 7.4 above, is not sustainable in the hands of the appellant company and the same should be considered in the hands of the Individual entry operator, Sh. Mukesh Kumar in respective assessment year. The AO, therefore, directed u/s 250 of the IT Act, 1961 to take remedial action in the hands of Sh. Mukesh Kumar in the relevant assessment year and make addition of unaccounted commission of Rs.42,07,954/- .Therefore, in view of the above, these grounds i.e. 4, 5, 6 & 7 of appeals are Partly Allowed.”*

10. We observed that even the assessee is in appeal before us raising several grounds on the same issues on merit as well as raised the issue of approval granted u/s 153D of the Act. Since none appeared on behalf of the assessee, we dismiss the appeals filed by the assessee on both counts.
11. Coming to the appeal filed by the Revenue, we observed that Id. CIT (A) has

granted relief by holding the protective additions on account of commission in the hands of the assessee with detailed findings, however since there was no representation from the assessee side, we refrained from giving any relief to the assessee including in Revenue's appeal. Accordingly, the appeal filed by the assessee is dismissed and the appeal filed by the Revenue is allowed at this stage even though there is specific findings by the Id. CIT (A) on allowability of issue raised by Revenue before us.

12. With regard to other appeals filed by the assessee in other assessment years i.e. 2010-11 and 2013-14, the issues involved in these appeals are exactly similar to the appeal filed in the AY 2012-13. Since there was no representation from the assessee we deem it fit and proper that all these appeals be dismissed as discussed in above paragraphs.
13. In the result, all the three appeals filed by the assessee in AYs 2010-11, 2012-13 and 2013-14 are dismissed and the appeal filed by the Revenue in AY 2012-13 is allowed.

**Order pronounced in the open court on this 6<sup>th</sup> day of November, 2024.**

**Sd/-  
(SUDHIR KUMAR)  
JUDICIAL MEMBER**

**sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Dated : 06.11.2024  
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-28, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI