

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

**BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER  
AND  
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.764 & 765/Del/2016  
A.Y. 2005-06 & 2006-07**

Vivek Plantations(P) Ltd. 13/34, W.E.A. Karol Bagh, New Delhi- 110005 PAN:AAACV2617D	Vs.	Dy. Commissioner of Income Tax, Central Circle-29, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No.766 & 767/Del/2016  
A.Y. 2005-06 & 2006-07**

Unique Capital Pvt. Ltd. 13/34, W.E.A. Karol Bagh, New Delhi- 110005 PAN: AAACU5693G	Vs.	Dy. Commissioner of Income Tax, Central Circle-29, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

**ITA No. 770/Del/2016, A.Y. 2008-09**

Tejasvi Investments (P) Ltd. 13/34, W.E.A. Karol Bagh, New Delhi- 110005 PAN: AABCT3249G	Vs.	Dy. Commissioner of Income Tax, Central Circle-29, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. V.P.Gupta, Advocate Sh. Anubhav Kumar, Advocate
Respondent by	Ms. Jaya Chaudhary, CIT(DR)

Date of Hearing	19/11/2024
Date of Pronouncement	27/11/2024

**ORDER**

**PER Bench:**

These appeals pertaining to Tarun Goel group of cases are directed against orders dated 27.11.2015 and 23.12.2015 passed by the Commissioner of Income Tax (Appeals)-30, New Delhi [hereinafter, the 'CIT(A)']. As common issues are involved in these appeals; hence, these were heard together and are being disposed off by this common order.

2. Here, the case of Vivek Plantation (P) Ltd. is taken as a lead case. The relevant Assessment Years (hereinafter, the "AY") 2005-06 and 2006-07. Similar grounds have been taken in both years.

3. The grounds of appeal of Vivek Plantation (P) Ltd. for AY 2005-06 are reproduced as under:

*"1. That the CIT(A) erred in upholding the addition of Rs.4,60,99,500/- being the cash deposits in the bank account of the appellant company without appreciating that admittedly the appellant company was being controlled by Mr. Tarun Goyal and he was carrying on the business of providing accommodation entries through various entities, including the appellant company and the cash was deposited in the bank account of the appellant for the purpose of layering the transactions and entries have been transferred to other group entities from where accommodation entries have been provided and therefore, cash deposited could not be added under Section 68 of the Income Tax Act in the case of the Appellant.*

*2. That the CIT(A) also failed to appreciate that considering totality of the circumstance cash deposited in the bank account of Rs.4,60,99,500/- could not be added u/s 68 of the Act as the Assessing Officer has already considered commission income on the*

*amount of accommodation entries given to outside parties from other group entities to which entities entries had been transferred from the account of the Appellant and transactions of deposits and of giving entries are two sides of same transaction.*

*3. The CIT(A) failed to appreciate that there is no question of proving identity and credit worthiness of the parties in relation of cash deposits which deposits are admittedly part business of providing accommodation entry and, therefore, he has erred in taking a view that appellant has not been able to provide required information in regard to cash deposits. He also failed to appreciate the directions of ITAT in this regard.*

*4. That the CIT(A) also erred in not restricting the addition in respect of cash deposits with reference to peak credit as per directions of the Hon'ble ITAT vide order dated 18 10.2013.*

*5. That the CIT(A) also failed to appreciate that considering the cash deposits as income is also contrary to the stand taken by the Department while passing the assessment orders in Noida Charge, in the cases of Group, in which cases commission income has been determined with reference to credit entries in bank account including the cash deposits.*

*6. That the orders passed by the Assessing Officer and CIT(A) are bad in law and therefore, deserve to be quashed.*

*7. That the Appellant Company craves leave to alter, amend, vary and/or add any of the grounds of appeal at any time herein after.”*

3.1 Out of the above grounds, the Ld. Counsel pressed ground No. 4 only in case of Vivek Plantations (P) Ltd. of both years.

3.2 In Unique Capital Pvt. Ltd., 11 grounds were taken in each year. However, the ground Nos. 1 and 8 were pressed, which read as under (Unique Capital Pvt. Ltd. AY 2005-06):

*“1. That the CIT(A) erred in upholding the order of the Assessing Officer determining the commission income @ 2% on the amount representing the entries given to outside parties without correctly appreciating the facts of the case and following the directions of Hon’ble ITAT vide its order dated 18.10.2013.*

.....

*8. That the CIT(A) also erred in not restricting the addition in respect of cash deposits with reference to peak credit as per directions of the Hon’ble ITAT vide order dated 18.10.2013.*

.....”

3.3 Following grounds were pressed in the case of Tejasvi Investment Pvt. Ltd.:

*“1. That the CIT(A) erred in upholding the order of the Assessing Officer determining the commission income @ 2% on the amount representing the entries given to outside parties without correctly appreciating the facts of the case and following the directions of Hon’ble ITAT vide its order dated 18.10.2013.*

*2. That the CIT(A) erred in upholding the commission income @2% disregarding the directions of Hon’ble ITAT to apply the rate considering the precedence available in this regard, for which necessary evidence had been duly submitted before the CIT(A).*

*3. That the CIT(A) erred in taking a view that precedence available in the form of appellate/assessment orders in other cases could not be considered for the purpose of taking the rate of commission inspite of the fact that the Hon’ble Tribunal had directed to determine the rate of commission taking into consideration the precedence available in this regard.*

*4. That the CIT(A) also erred in upholding the order of Assessing Officer determining commission @ 2% on the basis of rough notings in seized papers without appreciating that the notings under reference could not be relied upon as neither same were specifically in regard to rate of commission nor details were*

*corroborated with other material and in any case the rates mentioned therein for a small amount could not be applied in all the cases of the Group for determining the rate of commission on total amount of accommodation entries and the notings under reference were also not relevant to all the assessment years.*

5. *That the CIT(A) erred in upholding the addition of Rs. 48,59,333/- under Section 69 of the Act without appreciating that entries in the form of booking of flats were also entries in the nature of accommodation and there was no actual investment made by the Appellant Company and, therefore, no addition on this account was called for.*

6. *That the CIT(A) failed to appreciate that accommodation entry could be given either in the form of investment in share capital or in any other form, including booking of flats and therefore, only commission Income in respect thereof could be taken.*

7. *That the orders passed by the Assessing Officer and CIT(A) are bad in law and therefore, deserve to be quashed.*

.....”

In nutshell, Unique Capital Pvt. Ltd., the appellant/assessee has challenged the working of commission income @ 2% on booking advances of Rs.63,62,00,000/- and taxability of booking amount paid for acquiring 25 flats under section 68 of the Income Tax Act, 1961 (hereinafter ‘The Act’).

3.4 In case of Vivek Planations (P) Ltd, the one only one issue is the taxability of entire credits appearing in books of account/bank account(s) as unexplained credits.

3.5 In case of Unique Capital Pvt. Ltd, two issues are in dispute (i) the taxability of entire credits appearing in books of account/bank account(s) as unexplained credits and (ii) chargeability of commission income @ 2.00%.

3.6 In case of Tejasvi Investment P. ltd., two issues are in dispute (i) the taxability of flat booking advance of Rs.48,59,333/- as unexplained investments and (ii) chargeability of commission income @ 2.00%.

4. The relevant facts giving rise to these appeals are that search & seizure operations were carried out, under section 132 of the Act, on Tarun Goyal Group of cases on 15.09.2008. Mr. Tarun Goyal, a tax consultant, was indulged in providing accommodation entries through his group companies/firms. The Modus Operandi adopted by this Group for providing accommodation entries is worth to narrate here for proper appreciation of facts of these cases. Shri Tarun Goyal got registered/created more than 90 business entities; such as Private Ltd. Companies and Firms, for providing accommodation entries at his office premises at 13/34, W.E.A., Arya Samaj Road, Karol Bagh, New Delhi. The Directors of such companies were his employees, who worked in his office as peons, clerks, receptionist etc. All the documents including blank cheques were got signed from these employees. A number of bank accounts were opened in the names of these companies and his employees. For providing accommodation entries this Group used to

accept cash from the beneficiaries. The cash was deposited in bank account of any of the business concerns of this Group. Later, the said sums were transferred from one concern to another within the Group before returning/providing the said sums to the beneficiaries through banking channels. Transferring the money from one concern to another was to camouflage the true nature of money and to avoid investigations by the Tax Authorities. The accommodation entries were provided in the garb of Share capital, etc. Mr. Tarun Goyal admitted the above-mentioned facts during the course of initial assessment proceedings, under section 153A, 153C and 148 of the Act, of this Group cases.

5. The AO taxed the entire accommodation entries/unexplained credits in each assessee of this Group and also the commission income @ 2,00% thereon, as required, in the initial assessments completed under section 153A, 153C and 148 of the Act. In first round appeals, the Ld. CIT(A) upheld the findings of the AO. However, the Tribunal, in cases of Tarun Goyal & others belonging to Tarun Goyal Group of cases (94 appeals) in I.T.A. Nos. 4636 & 4637/Del/2012, etc., including the appellants/assessee's cases decided these initial appeals vide consolidated order dated 18.10.2013 as under:

*“20. The undisputed fact accepted by the assessee is that Mr. Tarun Goyal was running a racket of providing accommodation entries by floating numerous companies. The modus operandi brought out by the AO in the assessment order, is not disputed by the assessee. The only issue before us is the quantification of the income in the hands of Mr. Tarun Goyal and each of the entities formed by him.*

*Each company is an assessee and an assessment order has to be passed separately in each case. The credits appearing in the books of each assessee have to be explained by that assessee. The Identity, creditworthiness and genuineness of the creditor has to be proved by that particular assessee and if the same is not proved, addition may be made u/s 68. The argument of the ld. counsel for the assessee that all the additions have to be made only in the hands of Mr. Tarun Goyal is not correct and hence cannot be accepted.*

*21. The contention that the totality of the circumstances have to be considered by arriving at the assessable income and that when the finding is that the assessee has indulged in circular and multiple transactions, by layering, what can be taxed is the peak credit and that too at the first point is acceptable and should be the manner of determining the correct income. If each of the layer is brought out tax, then it would be case of levy of income tax, multiple no. of times, on the same amount. Such levy of double or multiple taxes is against law and it would not be the right method of arriving at the correct amount of income. If income is taxed in the hands of Mr. Tarun Goyal, the taxed amount, when transferred to another company should be treated as explained credit. The multiple transfer of this amount should also be treated as explained. But the burden of proof lies on the assessee.*

*22. Admittedly certain assessment of Shri Tarun Goyal, the kingpin are at various stages and have not reached the Tribunal. Under these circumstances, it would not be possible to have in overall view of the matter and eliminate chain / multiple transaction, for arriving at the correct assessable amount. Thus, we have no other alternative but to set aside all these appeals to the file of the AO for fresh adjudication in accordance with law.*

*23. The AO shall after examining the evidence submitted by the assessee, consider all the cases together and;*  
*a) restrict the addition u/s 68 to only the peak unexplained credit in each case after elimination circular transaction.*

- b) *To eliminate taxation of the same amount multiple times, due to the chain transactions which resulted due to layering indulged by the assessee.*
- c) *Considerer the material on record and the precedence available on the issue and determine the percentage of commission, which the assesseees would have earned and bring the same to tax.*

*24. Before parting we make it clear that the burden of proof lay on the assessee. It is for the assessee to demonstrate the chain of transaction, the layering indulged by him, the calculation of peak unexplained credit etc. and to prove each credit in the books of each assessee. In the result all these appeals are set aside to the file of the AO for fresh adjudication in accordance with law.*

*25. In the result all the appeals are allowed for statistical purposes.”*

6. In pursuance of the above-mentioned Tribunal order, the Assessing Officer (hereinafter, the ‘AO’) completed assessments vide orders dated 17.02.2015 as detailed hereunder:

S. No.	Assessee	AY	Assessments completed u/s of the Act	Assessed income
1.	Vivek Plantation Pvt. Ltd.	2005-06	153C/153A/254	4,61,00,200/-
	Vivek Plantation Pvt. Ltd.	2006-07	153C/153A/254	1,94,37,884/-
2.	Unique Capital Pvt. Ltd.	2005-06	153C/153A/254	1,70,31,486/-
	Unique Capital Pvt. Ltd.	2006-07	153C/153A/254	91,08,458/-
3.	Tejasvi Investments (P) Ltd.	2008-09	153A/254	2,18,34,100/-

Aggrieved with assessments in remitted matters, appellants/assesseees filed appeals before the Ld. CIT(A), however, they did not succeed.

7. The Ld. Counsel submitted that two core issues in these appeals were (i) taxability of entire credits appearing in books of account/bank

account as unexplained credits and (ii) chargeability of commission income @ 2.00%. With respect to the first issue that whether the AO was justified in taxing the entire credits appearing in books of account/bank account as unexplained credits, the Ld. Counsel submitted that the AO erred in working out the peak credit. According to the Ld. Counsel, the peak of bank account(s) has to be assessed as per the directions of the Tribunal vide its order dated 18.10.2013; whereas the AO had taxed the entire credits appearing in books of account/bank account as unexplained credits in pursuance of the Tribunal order dated 18.10.2013. The Ld. Counsel, with the help of bank account transactions, submitted that the AO had erred in working out the peak credits and not allowing the set off of bank debits. His argument was for taxing the peak of bank credits as the black money received for accommodation entries were routed through the bank accounts only. Providing accommodation entries was the business of the appellants/assesseees; hence the peak of bank accounts had to be taxed in pursuance of the Tribunal order dated 18.10.2013.

8. The Ld. Counsel further submitted that the commission income had to be taxed @ 0.50% in the hands of respective assesseees of this group instead of @ 2.00% taxed by the AO. To buttress this argument, the Ld. Counsel placed reliance on the decision of the Hon'ble Delhi High Court in of the case of this Group; namely, Bhawani Portfolio Pvt.

Ltd. (ITA No. 158/2020& CM APPL. 7946/2020) and Tribunal order in the cases of Ordinary Financial Services Pvt. Ltd. (ITA No. 6719/Del/2016) wherein the rate of 0.50% of commission income. The Ld. Counsel drew our attention to para 9 of the Hon'ble High Court order in the case of M/s. Bhawani portfolio Pvt. Ltd. (supra), order dated 12<sup>th</sup> July, 2021. The finding of the Hon'ble High Court in para 9 is extracted as under:-

*“9. This court is of the view that none of the aforesaid findings are so perverse that they warrant an interference in appeal jurisdiction under Section 260A of the Income Tax Act, 1961. This Court is also of the view that the Tribunal, being the last fact-finding authority, was entitled to guess work and arrive at a ballpark rate of commission. Consequently, no substantial question of law arises in the present appeals. Accordingly, the appeals along with pending applications are dismissed.”*

9. The Ld. Counsel, emphasizing the fact that Tejaswi Investment Pvt. Ltd. provided accommodation entries in the garb of investment/through booking of flats. So, it had to be assessed on commission income @ 0.50% only. Therefore, he prayed for deletion of Rs. 43,59,333/-; accommodation entries provided to M Tech Developers Pvt. Ltd.

10. The Ld. CIT-DR submitted that the Ld. Sr. Counsel had not appreciated the finding of the Tribunal order dated 18.10.2013. She drew our attention to para 24 of the order of the Ld. CIT(A) and para 11 of the assessment order. She contended that the Tribunal has not given

any categorical finding to tax the peak of bank credits. She was surprised on the arguments of the Ld. Counsel that how set off of accommodation entries of 'X' can be given to the 'Y'. She contended that each accommodation entry was independent and it had to be assessed in case if the same was unexplained either in the hands of the appellants/assesseees providing accommodation entries or in the hands of beneficiaries. Since the Tribunal had given a categorical finding to tax the same in the hands of the appellants/assesseees providing accommodation entries if the same was not taxed in the hands of other business concerns of this Group. Therefore, the same had to be done accordingly. She, highlighting the relevant paras of the assessment orders and the Ld. CIT(A)'s orders, submitted that the appellants/assesseees failed to work out the peak as per the Tribunal order dated 18.10.2013 and also failed to demonstrate, with corroboratory evidence, the outgoing debits/transfer out of credits appearing in books of accounts/bank accounts of various assesseees; therefore, the actions of the AO and the Ld. CIT(A) was justified and prayed for dismissal of this ground. She placed reliance on the decision of the Hon'ble Delhi High Court in the case of D K Garg 300 CTR 510. For commission income and taxability of investment as mentioned above she placed reliance on orders of the AO and the Ld. CIT(A). Accordingly, she prayed for dismissal of all appeals.

11. In case of M/s. Tejasvi Investment P. Ltd., the Ld. CIT-DR submitted that the M Tech Developers Pvt. Ltd. had never come forward to own the transaction that it took accommodation entry of Rs. 48,59,333/-. Further, the appellant/assessee had not brought any corroboratory evidence to substantiate its claim and contradict the finding of the Ld. CIT(A). Further, the Ld. CIT-DR drew our attention to the finding of the Tribunal in the case of the appellant/assessee wherein the Tribunal had not held the same as accommodation entries.

12. We have heard both the parties and have perused the material available on the record. We also perused the above referred case laws.

13. The dispute before us is limited only with the determination of quantum of peak credits appearing in books of accounts/bank accounts of various assessees. Undisputedly, the appellants/assessees were involved in providing accommodation entries to various beneficiaries. The appellants/assessees used to receive cash and thereafter they deposited the said sums in their bank account(s). To launder such black money, they used to transfer the said sums to their sister concerns for camouflaging. After siphoning of such money from one concern to another, the same were refunded back to the beneficiaries in the garb of some make shift transactions. As per para 23 of the Tribunal order dated 18.10.2013, the AO was directed to

(i)examine the evidence submitted by the assesseees, (ii) consider all the cases together and (iii) restrict the addition under section 68 of the Act to only the peak unexplained credit in each case after elimination of circular transaction(s) within the sister concerns. The said direction of Tribunal order dated 18.10.2013 was not for taxing the bank credit. It was exclusively for restricting the addition under section 68 of the Act to only the peak unexplained credit after elimination of circular transaction(s), if any, within the Group concerns. In other words, the one and only one inference that emerged from the Tribunal order dated 18.10.2013 is that the entire credits appearing in the books of account/bank account(s) for providing accommodation entries to beneficiaries have to be assessed in the hands of the appellants/assesseees if the same was not taxed elsewhere in the hands of other business concerns of this Group involved in providing accommodation entries to beneficiaries.

14. In view of the above, we find merit in the arguments of the Ld. CIT-DR. We are of the considered view that the Ld. Counsel's argument that the peak of the bank credits has to be assessed as per the direction of the Tribunal order dated 18.10.2013 is devoid of any merit on the simple reasoning that the bank credits are not assessable as unexplained credits under section 68 of the Act and each accommodation entry is independent and separate transaction. The Tribunal vide order dated

18.10.2013 has directed the appellant/assessee to produce the evidence and demonstrate the chain of transactions before the AO during the course of remitted proceedings. Further, the Tribunal vide order dated 18.10.2013 has clarified that the burden of proof to produce the evidence and demonstrate the chain of transactions, layering indulged by him in the calculation of peak credits and to prove each credit in the books of each assessee is on the appellants/assessees. However, we have noticed that the appellants/assessees, during the second round of assessment proceedings, failed to follow the directions of the Tribunal vide order dated 18.10.2013. Therefore, the AO was constraint to assess the entire credits under section 68 of the Act.

15. In view of the above and in the interest of justice, without offering any comment on merit of the case, we deem it fit to set aside the impugned orders and remit the matter back to the file of the AO for deciding the issue of peak credit in light of the above observations/discussions/findings. The directions given in para 23 and 24 of Tribunal order dated 18.10.2013 have to be followed in verbatim.

16. In view of the decision of the Hon'ble Delhi High Court in of the case of Bhawani Portfolio Pvt. Ltd. (ITA No. 158/2020 & CM APPL. 7946/2020) and Tribunal order in the cases of Ordinary Financial Services Pvt. Ltd. (ITA No. 6719/Del/2016), we direct the AO to work

out the commission income @ 0.50% of accommodation entries provided by the concerned assesseees and to allow the consequential relief.

17. In case of M/s. Tejasvi Investment P. Ltd., we find merit in the arguments of the Ld. CIT-DR. M Tech Developers Pvt. Ltd. had never come forward to own the transaction that it took accommodation entry of Rs.48,59,333/- from M/s. Tejasvi Investment P. Ltd. Further, we have taken note of the fact that the investment documents were seized from the possession of the appellant/assessee and it has to be explained by the appellant/assessee. The appellant/assessee failed to bring any material on the record to contradict the finding of the lower authorities. We therefore, do not find any fault in the finding of the Ld. CIT(A) on this score. Thus, the same is upheld accordingly.

18. In the result the appeals of the assesseees are allowed partially as above.

Order pronounced in open Court on 27<sup>th</sup> November, 2024

**Sd/-**

**(YOGESH KUMAR US)  
JUDICIAL MEMBER**

**Sd/-**

**(AVDHESH KUMAR MISHRA)  
ACCOUNTANT MEMBER**

Dated:27<sup>th</sup>/11/2024

*Binita, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent

ITA No. 764/Del/2016  
and Ors.

3. CIT(Appeals)
4. CIT-DR

ASSISTANT REGISTRAR  
ITAT, NEW DELHI