

आयकर अपीलीय अधिकरण
कोलकाता 'ए' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 2119/KOL/2024
Assessment Year: 2016-17**

Prabha Trading Corporation	Vs.	Income Tax Officer, Ward-40(1), Kolkata
(Appellant)		(Respondent)
PAN: AAHFP2332H		

Appearances:

Assessee represented by : Harsh Poddar, Advocate.

Department represented by : Bonnie Debbarma, Addl. CIT, Sr. DR.

Date of concluding the hearing : 22-July-2025

Date of pronouncing the order : 02-September-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2016-17 dated 23.09.2024, which has been passed against the assessment order u/s 143(3) of the Act, dated 24.12.2018.



2. The assessee is in appeal before the Bench raising the following grounds of appeal:

“1. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 35,66,813/- made by the Learned Assessing Officer on account of excess commission paid.

2. In the facts and circumstances of the case the learned CIT(A) has erred in confirming the addition of Rs. 19,50,803/- made by the Learned Assessing Officer on account of undisclosed commission income.

3. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.”

3. Brief facts of the case are that the assessee had electronically filed the income tax return for Assessment Year 2016-17 on 15-10-2016 declaring total income of Rs 236280/- which was later selected for limited scrutiny under CASS. The assessee is Distributor of Paper of Paper Mills in India. The assessee has two types of transactions with these Paper Mills viz one in which the Paper mill raises Invoices on the assessee directly as well as the other when the Paper Mill Invoices to parties of assessee so that the parties can avail MODVAT benefits. The assessment was made at the total income of ₹ 58,61,610/- by making addition on account of commission expenses and suppression of commission income, besides others. Aggrieved with the assessment order, the assessee preferred an appeal before the Ld. CIT(A), who vide the impugned order deleted the addition of Rs.35,66,813/- on account of excess commission paid but confirmed other additions being suppression of profit and addition of Rs. 19,50,803/- on account of undisclosed commission income. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival submissions were heard and the record and the submissions made have been examined.



5. At the outset the Ld. AR submitted that Ground No. 1 of the appeal was not being pressed and the same was being withdrawn. The Ld. CIT(A) analysed the addition of ₹35,66,813/- on account of excess commission paid and held that the AO had made the addition on the assumption ignoring the submission made by the assessee. The relevant extract from the order of the Ld. CIT(A) is as under:

*“From the above, it is not clear as to how the AO has come to this conclusion that the commission of Rs.48,56,606/- has been purportedly given on sales of Rs.3,46,29,252/-. The AO has not stated anywhere as to how he has come to this finding. To that extent, the assessment order is non-speaking order. This addition is a pure assumption on part of the AO. Addition cannot be made on assumptions especially when there is proper compliance on the part of the assessee. In the case of the Appellant, it is evident that proper compliance has been made after the issue of notice u/s 271(1)(b) by the AO. The Appellant has made submissions before the AO on various queries raised. Copies of such submissions have been submitted in the course of present proceedings. Thus, I find the submissions and explanation offered by the Appellant on the issue convincing. The same were also submitted before the AO. The AO did not rebut the same, however, made an assumption that the commission of Rs.48,56,606/- has been paid by the Appellant on sales of Rs.3,46,29,252/- made by the Appellant. There is no corroborative evidence in possession of the AO in support of this assumption. In view of the same, the addition of Rs.35,66,813/- on account of excess commission paid, is directed to be deleted. **Ground is, thus, dismissed.**”*

6. Although it is erroneously concluded that the ground is dismissed, however, since the Ld. CIT(A) has allowed the relief to the assessee and the addition has been directed to be deleted, therefore, Ground No. 1 is treated as infructuous and is dismissed as “not pressed”.

7. As regards Ground No. 2, the Ld. CIT(A) has held as under:

“5.3. Ground 3

Vide this ground, the Appellant has objected to the addition of Rs. 19,50,803/- on account of undisclosed commission income. In this regard, the Appellant has submitted that the paper mills had allowed a rebate of Rs.19,65,426/- to the



Appellant. The paper mills committed mistake by deducting tax at source u/s194H on such rebate amount.

5.3.1. I have considered the submission made by the Appellant. I have also perused the assessment order. I am in agreement with the AO on his observation that there is no linkage of rebate on the commission received by the Appellant. The Appellant has also not furnished before the AO any documentary evidence in support of any rebate being allowed by the paper mills. Shifting the blame to the paper mills for wrongly deducting TDS on such amounts u/s 194H is a self-serving statement. In my considered opinion, in absence of any documents supporting the contention that the Appellant has received rebate from paper companies, the AO has rightly concluded that all such amounts on which the paper mills have deducted tax at source u/s 194H is, indeed, commission income in the hands of the Appellant and therefore, the Appellant should have shown such amounts as commission income and offered the same for taxation. In view of the same, I uphold the addition of Rs.19,50,803/- made by the AO. Ground is, thus, dismissed.”

8. The Ld. AR drew our attention to pages 13 and 14 of the paper book filed which give details of total commission received. The assessee claimed a sum of ₹ 19,65,426/- as trade discount, however, the relevant evidence in support of the claim could not be filed. The Ld. AR wanted to file a reconciliation statement while the Ld. DR relied upon the order of the Ld. CIT(A) and stated that there was no linkage of commission with the rebate and even before the Ld. CIT(A), no documentary evidence was filed. It was not apparent as to who had given the rebate. However, a perusal of page 14 of the paper book shows that M/s GRD Paper Industries (P) Ltd. had paid commission of ₹ 26,58,023/- and discount of ₹ 19,43,176/- is being shown while as per form No. 26AS, the amount is mentioned at ₹ 46,01,199/-. No such reconciliation was filed before us even though the Ld. AR requested for filing the necessary evidence in this regard.

9. We have heard the rival contentions. Since excess amount was appearing in Form No. 26AS, which could not be reconciled before the Ld. AO or even before the Ld. CIT(A), therefore, the addition made by



the Ld. AO was upheld by the Ld. CIT(A). However, as the Ld. AR wanted to file a reconciliation statement to explain the difference, this issue is remanded to the Ld. AO and the assessee is directed to furnish necessary evidence in support of the claim that the sum of ₹19,65,426/- related to trade discount. He is directed to file the same before the Ld. AO which will be verified by the Ld. AO and if satisfactory evidence is filed, the Ld. AO is directed to delete the addition made. Hence, this ground of appeal is partly allowed for statistical purposes.

10. Ground No. 3 is general in nature and does not require any separate adjudication.

11. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 2nd September, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 02.09.2025

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Prabha Trading Corporation, 3/1, Krishna Behari Sen Street, Kolkata, West Bengal, 700073.**
2. **Income Tax Officer, Ward-40(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata