

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, F: NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER**

**ITA No.1137/Del/2016
[Assessment Year: 2008-09]**

Asstt. Commissioner of Income Tax, Central Circle-06, New Delhi.	Vs	Sh. Anil Aggarwal, H. No. 67, Sector-1, Vaishali, Ghaziabad, UP.
PAN- AFGPA3349M		
Revenue		Assessee

Revenue by	Ms. Monika Singh, CIT(DR)
Assessee by	None

Date of Hearing	22.09.2025
Date of Pronouncement	24.10.2025

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the Revenue is directed against the order dated 09.12.2015 of the Ld. Commissioner of Income Tax (Appeals)-24, New Delhi, [hereinafter referred to as the 'ld. CIT(A)] arising out of the

order dated 28.03.2014 passed by the DCIT, Central Circle-11, New Delhi, ('AO') under Section 153A of the Income Tax Act, 1961(hereinafter referred to as 'the Act'), pertaining to Assessment Year (A.Y.) 2008-09.

2. During the course of hearing, none appeared on behalf of the assessee, nor was any application for adjournment placed on record. This is an old appeal and, therefore, the case is being heard after hearing the Revenue and on the basis of material available on record.

3. Ground no. 1 of the appeal is general in nature. Hence, this ground of appeal needs no adjudication and is dismissed.

4. Brief facts of the case are that: A search & seizure operation under section 132 of the Act was conducted at business premises of companies of Rockland Group as well as at the residential premises of directors of the companies on 06/09/2011. A consequential search action was conducted on Sh. Anil Aggarwal, an entry operator based in Laxmi Nagar, New-Delhi, on 21/10/2011. Thereafter, notice under section 153A of the IT Act, 1961 was issued on 14/02/2014. In response thereto, return declaring income of Rs. 241260/- was filed by the assessee vide letter dated 06.03.2014.

4.1 During the course of search operation at the residential premises of Sh. Anil Aggarwal, statement of the assessee, Sh. Anil Aggarwal was recorded u/s-132(4) of the I.T. Act 1961 with regard to the business carried out by the companies controlled and managed by him. According to the AO, the assessee clearly admitted that his companies did not carry out any business activity and transactions shown in these companies were accommodation entries only and was earning commission income on the same.

4.2 In view of the facts discussed in the assessment order, the AO found that Sh. Anil Aggarwal had provided accommodation entries to the tune of Rs. 19.18 crore during the year. Accordingly, commission income was worked out of 60 paise per 100 rupees which came to Rs 11,50,800/- (19,18,00,000/- x 60 paise) and accordingly, commission income amounting to Rs. 11,50,800/- was added back to the total income declared by the assessee

5. Aggrieved with the said order, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) noted that it is an undisputed fact that the assessee had provided accommodation entries totaling Rs. 19,18,00,000/- for the A.Y. 2008-09. It was further noted by the

Ld. CIT(A) the assessee had disclosed 0.1% as commission income for providing the said accommodation entries to the tune of Rs. 19,18,00,000/-, but the AO adopted commission @ 0.6%. The Ld. CIT(A) upheld the said enhancement made by the AO, but observed that the AO had added the entire 0.6% commission as undisclosed income, instead of the excess of 0.6% over the admitted commission rate of 0.1%. Accordingly, he restricted the addition to the difference of 0.5% on Rs. 19,18,00,000/- and upheld the addition to the extent of Rs. 9,59,000/-, and deleted the balance addition of Rs. 1,91,800/- . The relevant extract of the order of the Ld. CIT(A) in para no. 4.2.2. is reproduced as under:

“ 4.2.2 As brought out in the preceding paras, the appellant has chosen not to represent its case and has been avoiding service of hearing notices. After considering the facts as available on the records, I find that it is an undisputed fact that the appellant has provided accommodation entries total Rs. 19,18,00,000/- for the A.Y 2008-09. This is also reflected in the "statements of facts" filed along with the appeal application. The appellant has admitted providing accommodation entries for a commission, and this admission is incriminating material unearthed during the search action. The next point is regarding the rate of commission. The appellant has offered only 0.1% as commission. However, the A.O. has clearly brought out evidence that admitted market rate for providing similar accommodation entries is 0.6% and not 0.1% as claimed by the appellant. I am of the view that the action of the A.O. in adopting 0.6% commission rate is not arbitrary, but based on evidence unearthed during the search action at the Rockland Group and clearly establishes the market rate for such accommodation entries. I therefore confirm the adoption of 0.6%

commission rate by the A.O. However, I note that the A.O. has added the entire 0.6% commission as undisclosed income, instead of the excess of 0.6% over the admitted commission rate of 0.1%. Therefore the addition has to be restricted to the difference of 0.5% on Rs. 19,18,00,000/-. In other words, the addition is upheld to the extent to Rs. 9,59,000/- only for the A.Y. 2008-09.”

6. Aggrieved with the said order, the Department is in appeal before us, on the following ground no. 2 of appeal, which is reproduced as under:

“ 2. On the facts and circumstances of the case, the CTT(A) has erred in law in restricting the addition amounting to Rs. 9,59,000/- out of total addition of Rs. 11,50,800/- made by the AO on account of commission.

7. The Ld. DR supported the order of the AO and the ground of appeal.

8. We have heard the Ld. DR and perused the material available on record.

8.1 In view of the facts stated by the Ld. CIT(A) and discussed above, we find no infirmity in the order of the Ld. CIT(A), and the same is upheld. Accordingly, ground no. 2 of the Revenue's appeal is dismissed.

9. Further, the AO made an addition of Rs. 19,18,00,000/- (the total accommodation entries provided by the assessee during the F.Y.

2008-09) on a 'protective basis' u/s 68 of the Act, on the ground that the assessee had not discharged its liability to prove the genuineness of the transaction within the provision of section 68 of the Act.

10. Aggrieved with the same, the assessee filed an appeal before the Ld. CIT(A).

11. The Ld. CIT(A) noted that the amount of Rs. 19,18,00,000/- was added by the AO u/s 68 of the Act on 'protective basis', but observed that the AO had not indicated in the assessment order, in whose case substantiative addition was made. The Ld. CIT(A) further noted that it is an admitted position that the assessee was only passing on amounts received in his account for which he was getting commission and the onus of the assessee to prove that the said amount was not belonging to him stood discharged by the very fact that the business of the assessee has been accepted to be commission agent business only by the AO. The Ld. CIT(A) also noted that the AO has not brought out the results of any enquiries made about the source of the cheques that has been received, to show if indeed the sum credited to the bank account was indeed the assets of the assessee. In view of these facts, the Ld. CIT(A) deleted the

addition of Rs. 19,18,00,000/- . The relevant para no. 4.3.1 of the order of Ld. CIT(A), is reproduced as under:

“ 4.3.1 The A.O. has also considered the sum of Rs. 19,18,00,000/- credited to the bank statement of the appellant as undisclosed income of the appellant u/s 68 of the Income Tax Act "on protective basis". The A.O. has not indicated in the assessment order, in whose case substantive assessment has been made. However, in any case, since the appellant has submitted that the modus operandi of the appellant was that he was intermediary in the accommodation entry business wherein he has received cheques which was organized by one Sh. H.P. Aggarwal from Kolkata and then passed accommodation entry cheques to the Rockland Group (for which received the commission only) and which the Assessing Officer does not dispute, it would naturally follow that the sum of Rs. 19,18,00,000/- cannot be the undisclosed income of the appellant. It is admitted position that the appellant is only passing on amounts received in his account for which he gets commission. The onus on the appellant to prove that the appellant (sic amount) is not belonging to him stands discharged by the very fact that business of the appellant has been accepted to be commission agent business only. The A.O. has not brought out the results of any enquiries made about the source of the cheques that has been received, to show if indeed the sums credited to the bank account is indeed the assets of the appellant. Therefore, the amount of Rs. 19,18,00,000/- added in the hands of the appellant has to be deleted. I direct accordingly.”

12. Aggrieved with the said order, the Revenue is in appeal before us on the following ground of the appeal, which is reproduced as under:

“3. On the facts and circumstances of the case, the CIT(A) has erred in law in deleting the addition of Rs. 19,18,00,000/- made by the AO on account of unexplained cash credit.”

13. The Ld. DR supported the order of the AO and the ground of appeal.

14. We have heard Ld. Sr. DR and perused the material available on record. We agree with the findings of the Ld. CIT(A) that in this case it has been accepted by the AO that the assessee was only passing on amounts received in his account for which he was getting commission income, which the AO had assessed accordingly. The Ld. CIT(A) also noted that no facts have been brought out by the AO that the cheques credited in the bank accounts of the companies controlled by the assessee were indeed the assets of the assessee. Moreover, no facts have been stated in the assessment order to indicate in whose case(s) the addition of Rs. 19,18,00,000/- was made on a 'substantive basis'. Therefore, in the absence of information about the said fact, we are of the considered view that no 'protective addition' can be made in the case of the assessee as has been done by the AO. Furthermore, the reasoning given by the Ld. CIT(A) in deleting the said addition is justified and requires no interference. We, therefore, uphold the order of the Ld. CIT(A) and dismiss the ground no. 2 of the revenue's appeal.

15. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 24th October, 2025.

SD/-
[MAHAVIR SINGH]
VICE PRESIDENT

SD/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Dated- 24.10.2025.

Pooja.

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi,