

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT
&
MRS. RENU JAUHRI, HON'BLE ACCOUNTANT MEMBER**

ITA No. 6308/DEL/2025; Assessment Year: 2018-19

ITA No. 6341/DEL/2025; Assessment Year: 2019-20

Sh. Ankit Jain 1157/1124, Kucha Mahajani, Chandni Chowk Delhi- 110006	Vs	ACIT, Central Circle-7 New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AEWPJ5290D		

Assessee by : Sh. Debarshi Chakraborty, Advocate

Revenue/Department by : Shri Jitender Singh, CIT DR

Date of Hearing: 19.01.2026

Date of Pronouncement: 19.01.2026

ORDER

PER RENU JAUHRI :

- The above captioned appeals filed by assessee are preferred against the orders of Ld. CIT(A)-24, New Delhi passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as, "Act") dated 13.08.2025 in Appeal No. CIT(A), Delhi- 24/10579/2018-19. Assessment in the respective appeals was framed by the Ld. AO u/s 143(3)/153A of the Act. Since identical grounds are involved in both the years, these appeals are being disposed off vide a common order and A.Y. 2018-2019 is taken as the lead case.

2. The assessee has raised following grounds of appeal which are reproduced as under:

- “1. On the facts and in the circumstances of the case and in law, the order of Ld. lower authorities is bad in law & against the facts and circumstances of the case and hence is unsustainable.*
- 2. On the facts and circumstances of the case and in law, the Ld. CIT Appeal and AO erred in not appreciating the fact the statement recorded under section 132(4) was not independent, and it was forcefully recorded thus retracted immediately thereafter. In light of the same, no addition could be made in the hands of the appellant merely de the basis of alleged statements under section 132(4) of the Act which was immediately retracted and without any corroborating evidences and incriminating material on record. Such statement ought not be relied upon for making addition of unaccounted commission and no cognizance of such retraced statement ought to be taken in absence of independent supporting or corroborative evidence on record.*
- 3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) and AO failed to appreciate that there was no validity of the retracted statements and unverified WhatsApp chats, in the absence of any independent valid supportive documents, thus the addition is merely based upon surmises, conjectures and based upon the forceful admission in statement under section 132(4) of the Act and without any material or evidence.*
- 4. On the facts and circumstances of the case and in law, the Ld. CIT (A) and AO erred in relying merely on the basis of WhatsApp chat and message which has no evidentiary value unless the same is procured from some verified sources and met the requirement applicable for any electronic device derived from optical and magnetic media under that Act. The addition made on the basis of unreliable data is erroneous, bad in law and liable to be quashed.*
- 5. On the facts and in the circumstances of the case Ld. CIT (A) and AO erred both on facts and in law, in alleging the genuineness of turnover and calculating commission on such bogus sales without appreciating the fact that the sales are already part of turnover and if its genuineness is disputed than it should be excluded first from the turnover of the appellant and then any addition can be made for unaccounted commission. The Ld. CIT(A) erred in sustaining the action of Ld. AO which tantamount to double*

addition which is erroneous, bad in law and is thus liable to be quashed.

6. *On the facts and in the circumstances of the case Ld. CIT (A) and AO erred both on facts and in law, in treating the sales of the appellant as bogus sales without having any corroborating evidences in form of independent witnesses and incriminating material on record and without making any enquiry and confirmation from other parties. The action of Ld. CIT (A) and AO is erroneous, bad in law and liable to be quashed.*
 7. *On the facts and in the circumstances of the case Ld. CIT (A) is erred in law and not justified in sustaining the action of the AO on account of unaccounted commission at the rate of 1.25 percent on arbitrary basis without having any evidence, tangible and valid material on record. The additions have been made on surmises and conjectures and have no merit. Thus, the said addition is liable to be quashed.*
 8. *On the facts and circumstances of the case and in law, the CIT (A) erred in sustaining addition of Rs. 21,35,273 calculated at the rate of 1.25 percent on alleged bogus sales on the basis of retracted statements and unverified WhatsApp chats, purely on arbitrary basis without having any evidence, tangible and valid material on record. Thus, the said addition is liable to be quashed.*
 9. *That on the facts and circumstances of the case and in law, the Assessing Officer erred in levying interest under Section 234A, 234B and 234C of the Act.*
 10. *That the Ld. AO and Ld. CIT(A) has erred on the facts and circumstances of the case and in law in initiating the penalty proceedings under section 270A of the Act. ”*
3. Brief facts of the case are that the survey u/s 133A of the Act was conducted on the business premises of the assessee on 07.11.2019 which was subsequently converted into search action u/s 132 of the Act on 08.11.2019. The assessee had furnished his original return for A.Y. 2018-19, on 30.09.2018, declaring an income of Rs. 3,63,500/-. After

the search, a notice u/s 153A of the Act was issued on 18.12.2020. Accordingly, pending scrutiny proceedings u/s 143(3) were abated. The assessee filed return in response to the notice u/s 153A of the Act on 26.03.2021, declaring an income of Rs. 3,63,500/-, same as in the original return.

3.1 Based on the information collected during the search/survey proceedings and the statement of the assessee recorded on oath, Ld. AO made an addition of Rs. 40,36,874/- on account of commission income computed @ 2.5% on the bogus accommodation entries provided by the assessee. The assessment was accordingly completed at an income of Rs. 79,02,534/- vide order dated 21.09.2021, u/s 153A of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A).

3.2 Before Ld. CIT(A), the assessee contended that no addition could have been on the basis of his retracted statement and claimed that regular business sales have been treated as bogus sales without any valid material and evidences by the Ld. AO. Ld. CIT(A) rejected the assessee's submission but allowed partial relief to assessee by reducing the rate of commission income to 1.25% vide appellate order dated 13.08.2025. Further aggrieved, the assessee preferred an appeal before the Tribunal.

4. Before us, Ld. AR has submitted that the statement u/s 132(4) of the Act was retracted soon after the search and therefore such a statement could not be relied upon for making addition on account of undisclosed commission income in the absence of any independent supporting or corroborative evidence. It was further claimed that the Ld. AO merely relied on whatsapp messages which have no evidentiary value and thus the addition made on the basis of unreliable and unverified data is liable to be deleted.
- 4.1 On the other hand, Ld. DR strongly relied on the orders of lower authorities and pointed out that Ld. CIT(A) has already allowed substantial relief to the assessee by reducing the rate of commission to 1.25% from 2.5%, and therefore it deserves to be upheld.
5. We have heard the rival submissions and perused the material available on record. In the interest of justice, we deem it appropriate to restore the matter to Ld. AO for *de novo* assessment after giving reasonable opportunity of being heard to the assessee. The assessee is also directed to make requisite compliance before the Ld. AO.
6. In the result, the appeal of the assessee is allowed for statistical purposes.

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7. As the grounds of appeal and the facts and circumstances involved in this year are identical to A.Y. 2018-19, the above order shall apply *mutatis mutandis* to this appeal as well. Accordingly, the assessment for A.Y. 2019-20 is also restored to Ld. AO for *de novo* assessment after giving due opportunity to the assessee.
8. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 19-01-2026.

**Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT**

**Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER**

Dated: 22.01.2026

Pooja Mittal

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi