

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, DELHI**

**BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWL, ACCOUNTANT MEMBER**

**ITA No.3616/Del/2024
(Assessment Year:2018-19)**

Brivan Consultants Private Limited, B 34, LGF, Panchsheel Enclave, South Delhi, Delhi- 110017	Vs.	ACIT, Central Circle-31 NCC DTS (S) Jhandwala Ext., New Delhi – 110055
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAFCB3684F		
Appellant	..	Respondent

**ITA No.3672/Del/2024
(Assessment Year:2018-19)**

DCIT, Central Circle-4(2) Room No. 384, CR Building, IP Estate Delhi – 110002	Vs.	Brivan Consultants Private Limited, B 34, LGF, Panchsheel Enclave, South Delhi, Delhi- 110017
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAFCB3684F		
Appellant	..	Respondent

Appellant by :	Sh. Pulkit Saini, Adv.
Respondent by :	Sh. Ajay Kumar Arora, Sr. DR

Date of Hearing	05.02.2026
Date of Pronouncement	08.04.2026

ORDER

PER ANUBHAV SHARMA, JM:

These cross appeals are preferred by the assessee and revenue against the common order dated 21.06.2024 of the Ld. CIT(A)-30, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in DIN: ITBA/APL/M/250/2024-25/1065896712(1) arising out of the order dated 22.03.2021 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by the ACIT, Central Circle-31, Delhi for AY: 2018-18.

2. Heard and perused the records. The assessee is a private limited company and is engaged in the business of providing financial consultancy services in the field of accounting, auditing, taxation, treasury, assurance and business advisory services. The return of assessee was picked up for scrutiny assessment and during the assessment proceeding the transaction of payment of commission to 77 persons for procuring bonds from different sellers were procured to be sold to U.P State Bridge Corporation Ltd. was examined and the assessing officer after issuance of notices to the persons to whom the commission was paid observed that only 17 persons have replied and 60

persons have not responded the notice u/s 133(6) of the Act. The statement of brokers were recorded and certain discrepancies were noticed by the assessing officer which are reproduced below:

- “6. *However, the statements of the brokers, who claimed to have provided the services, contained such glaring discrepancies that their assertion regarding providing of services to the assessee raises some valid doubts. These are:*
- a. First, it is seen from their ITR that income shown for the year inconsideration is around the commission received from the Brivan Consultants Pvt. Ltd in most of the cases.*
 - b. It is found from the Bank Statements that commission werewithdrawn by self cheques or transferred to other account by the HUF and individual within few days.”*

3. Thereupon assessee was called to respond to show cause notice and assessee’s reply was considered and was not found tenable. The relevant part of the assessee’s reply as directed in the assessment order is reproduced below:

“In this regard we would like to submit that the assessee is mainly engaged in the business of financial consultancy services in the field of Accounting, Auditing, Taxation, Assurance, Treasury and Business Advisory services. During the relevant assessment year 2018-19, the assessee provided following core services:

*Management Consultancy
Fixed Assets Management
Document Digitization
Business Project and Planning
Accounting and Book Keeping
Audit Support
Working Capital Management
Tax and Compliances Advisory
Staff Support*

During the relevant AY 2018-19, the assessee, through their network and liasoning, approached a prestigious organisation, UP State Bridge Corporation Ltd EPF Trust to expand its consultancy business. However, the assessee did not get any opportunity to serve financial professional consultancy but the assessee got another opportunity to sell investment products namely bonds to the organization. These bonds were not available as a primary issue and had to be purchased from the secondary market. Accordingly, the assessee started trading of Secondary Bond Market Securities with the view, anticipation and purpose to get more consultancy business from such a big organisation. The assessee had planned that with the help of this new consultancy business of trading in bonds would help to empanel itself in prestigious organisation and accordingly, business would grow. The copy of Note No. 17 (Revenue from Operation) of Financial Statement is enclosed as Annexure-1. From the Note No. 17, it is clear evident that the assessee has started trading in bonds first time during the year under consideration since incorporation.

But, the assessee did not have any knowledge of the industry functioning because it is the first time when the company traded in bonds. Therefore, the assessee has worked through market agents and experts. The assessee's client, UP State Bridge Corporation Ltd EPF Trust was sourced through its networks and their investment requirements were serviced by purchasing bonds from the secondary open market.

Based on verbal commitment related to empanelment, trade practices and limited knowledge of the industry functioning, a network of brokers/clients/ intermediaries provided the information and liaising for closing bond transactions to facilitate the trade of bonds. With the help of these brokers/clients/ intermediaries, the assessee was able to sell bonds of Rs. 1,18,75,49,043/- to UP State Bridge Corporation Ltd EPF Trust. The copy of the sales invoice and transaction statement is already submitted by the assessee as an annexure of reply dated 05.01.2021. The copy of sale invoice and transaction statement is again enclosed as Annexure-2.”

4. Assessing officer was not satisfied and made addition of Rs.5,11,63,000/- on the basis of following observations:

“8.1 The reply of assessee is not tenable from the facts that M/s Brivan Consultants Private Limited was incorporated on 26.09.2012; The company was founded by a team of experienced Chartered Accountants and has been in business for more than eight years. Citing reasons of not having any knowledge of the industry functioning because the assessee traded in bonds first time in spite of having vast experience of related industry, working on verbal commitments without agreements, trade practices which never

explained by assessee, cannot be accepted from the experienced practicing chartered accountants.

9. Concerted Scheme:

Thus, from the above facts and after taking into consideration all the factors into consideration a picture of a well crafted scheme for booking bogus expenditure and evading taxes is revealed. It is to be note that out of 77 brokers, 22 are Hindu Undivided family (HUFs) and remaining are mostly related to each other or to the company as business clients, employee or relatives of Directors. Many of the brokers did not give any details regarding the items for which they have been paid commissions. Further, replies of brokers, who replied, were identical in nature. Maximum ITR filed were restricted to amount of commission only. Withdrawal cycle of payments from their bank account were also identical.

9.1 One of the constant refrain of the reply of assessee has been that since the Tax has been deducted at source from the payments made as commission and the brokers in turn have reflected the amounts in their returns of income, the commission expenses should be allowed as genuine business expense. However, this argument does not hold much merit. In fact, a proper analysis of the returns of income and bank statements of the brokers shows that Income tax not only was evaded but also money was circulated through these brokers. As far as deduction of tax at source (TDS) is concerned, it can never be the real indicator of genuineness of expenditure. The assessee had to deduct the tax at source as failure to do so would have attracted the provisions of section 40(a)(ia) of the Income tax act, 1961. In fact, in many cases it gives veneer of genuineness to the expenditure. Thus, we see that assessee-company by deducting 5% of tax at source on commission expenses has been able to book bogus expenditure and minimized its tax liability by 25%.

10. Thus, what we see is concerted scheme to claim bogus expenditure and defraud the revenue. Therefore, the commission expenses of Rs. 5,11,63,000/- is treated as bogus expenses and an addition of Rs. 5,11,63,000/- has been made on account of bogus expenses. The Assessee has under-reported income is in consequence of misreporting, therefore, provisions of section u/s 270A(8) will be initiated on this count.”

5. Further, assessing officer examined the increase in expenditure of Rs.58,47,765/- and concluded that this increase in expenditure is only to meet profits earned during the year and accordingly disallowance of these expenditure was made.

6. Then, based on the scrutiny of record an addition of Rs.11,30,000/- was made on account of payment made to M/s Planwell Industries Corporation as a non-genuine expenditure to alleged paper company.

7. In appeal before the Id. First Appellate Authority the assessee received a part relief as doubted total commission expenses amounting to Rs.5,11,63,000/- and Rs.12,04,900/- were held to be bogus and from the remaining commission expenses of Rs.3,07,54,000/-, 25% i.e. Rs.76,88,500/- was considered disallowable on fair estimate basis.

7.1 Then, with regard to disallowable expenses of Rs.65,95,960/- assessee got a relief of Rs.25,00,000/-.

7.2 The addition of Rs.11,30,000/- are also allowed partly as payment of Rs.10,00,000/- was found to be non-genuine and with regard to reversal of service tax amounting to Rs.1,50,000/- issue was restore to assessing officer for verification from current and succeeding years record. Accordingly, the assessee and department, both are in appeal and have raised following grounds:

Appeal of assessee

- “1. That the Ld. CIT (Appeals) erred on facts and in law in partly dismissing the appeal against the assessment order u/s 143(3), by sustaining the addition of Rs.3,05,97,500/-.
2. That the Ld. CIT(A) as well as Ld. AO failed to specify the precise provision of the Income Tax Act under which the additions are being made which makes the impugned additions bad in law.
3. That the Ld. CIT (Appeals) has erred in law and on facts in sustaining the disallowance of Rs. 2,80,97,500/- being commission expenses incurred in relation with the trading of bonds on account of commercial expediency based on surmises and conjectures.
4. That the Ld. CIT (Appeals) has erred in law and on facts in disallowing the employment expenses to the extent of Rs.5,00,000/- being annual salary paid to a related party without examining her educational qualification, experience or work profile.
5. That the Ld. CIT(A) has erred in law and on facts in sustaining the disallowance of Rs.20,00,000 in respect of business promotion expenditure of Rs. 10,00,000 paid to M/s Planwell Industries Corporation based on borrowed satisfaction, without making any independent enquiry or application of mind.
6. That the Ld. CIT(A) has erred in law and on facts in not appreciating that the additions have been made by a deliberate disregard of the principles of natural justice and the directives of hon'ble Supreme Court with regard to cross examination of material/information being relied upon against the assessee.
7. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in charging interest u/s 234A and 234B of the Income Tax Act, 1961.
8. That having regard to the facts and circumstances of the case, Ld. A.O. has erred in law and on facts in initiating the provisions of section 270A(8) of the Income Tax Act, 1961.

That the appellant craves leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing.”

Appeal of Revenue

- “1. Whether the Ld.CIT(A) has erred in allowing the commission expense claimed by the assessee on fair estimate basis when the assessee has not discharged the burden of proof cast on the assessee?
2. Whether the Ld.CIT(A) erred in not considering the fact that for claiming any expense u/s 37 of the Act, the onus is on the assessee to prove the expense as genuine and incurred wholly and exclusively for its business?

3. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

8. We have considered rival contention and perused the material on record. Ground no. 2 in case of appeal of Revenue and ground no. 1 in appeal of department, relate to a common issue of disallowance of commission which was made by the assessing officer and for which assessee has succeeded partly in first appeal. The contention of Id. Counsel was that as it was a new venture of the assessee, assessee had to engage new persons for covering information from market through their own contacts and friends in sourcing the purchase and sale of bonds. It was submitted that since the trading activities do not meet the cost benefit analysis this activities was discontinued after 31st March, 2018. It was submitted that all necessary queries were specified that on presumption that as certain parties have not responded to notice u/s 133(6) of the Act assessing officer has made disallowance. Id. DR has taken us through the impugned orders pointing the reasons for which issue was decided by Id. tax authorities against the assessee.

9. On appreciating the material before us and the submissions we find that primarily the Id. tax authority had doubted the payment of commission on the

basis of lack of response of the concerned parties for which assessee has taken a plea that all the payments were made by banking mode deducting TDS and during the appellate stage by way of additional evidences assessee had filed confirmations of all the 75 persons except 1 persons who had passed away.

10. We find that ld. CIT(A) has admitted additional evidences observing that assessing officer had not given due opportunity to respond to the charges on account of non-response of the parties. We find that in para 11.2 ld. CIT(A) reproduced the response of assessing officer by way of remand report in regard to additional evidences. Assessing Officer has doubted the confirmation filed by submitting that they are similarly worded as if prepared by the same person and that assessee has failed to explain the modus operandi from purchase point to selling point and standard adopted for distributing the commission.

11. On a careful perusal of the findings of ld. CIT(A) it comes up that primarily it was the lack of KYC documents and proof of services rendered

by many brokers led to a belief that the commission payment was not genuine.

12. However, what is material is that all the payments were made by banking mode after deducting TDS. The confirmations of the parties were also filed at appellate stage. Now when assessee is making effort to collect confirmations from the parties then the language of the confirmations, if is similar cannot be made basis to doubt the confirmations as quite likely it was assessee's effort only which helped the assessee in getting the replies prepared.

13. We find that ld. CIT(A) has doubted commission paid to 5 parties of Rs.1,26,10,000/- for reasons that they were in some specialized health sector and having no connection with Bond market. Certainly, if the nature of expenses were related to a specialized product or industry the reasoning of ld. CIT(A) would have been appreciable, however, adventure in the nature of investment transactions can be taken up by any entity on one time basis and the nature of transaction was to provide assessee source of procurement of the bonds. This submission of assessee, that individuals of these companies

may have otherwise been beneficial with their contacts and negotiations to procure contracts in the clients is not a very unreasonable and not beyond human conduct probability.

14. Then, ld. CIT(A) has doubted Rs.67,99,000/- for reasons that KYC documents were not available. However, the PAN number of these parties was available along with confirmations. The bank details of the parties were also mentioned in the invoices raised by them. Ld. Counsel pointed out that MahakGutpa&Anuj Gupta had in fact filed confirmation before assessing officer. It was also pointed out that in fact commission paid to Sudhish Chug HUF, ld. CIT(A) has considered the commission of Rs.9,10,000/- in doubtful commission of Rs.1,26,10,000/- also for lack of KYC while in fact Sudhish Chug had died. Quite apparently the relevant documents like PAN and bank account of these parties were available. Thus, to call for KYC, without referring to any specific document cannot be base doubt the identity of the parties and the genuineness of the transaction on receipt of commission by them.

15. It further comes up that Id. CIT(A) had doubted Rs. 10,00,000/- as commission paid to related party Aditya Gupta HUF & Krunal Jindal HUF for which it is claimed that they are key persons running company and in their effort involved in procurement of the business so they had charged commission through their HUF accounts without disturbing the salary from other business of the company. Now without showing that this commission was excessive it has been doubted and disallowed u/s 40A(2)(b). If these persons had made personal effort in procuring business through their personal contacts as one time opportunity then certainly payment of commission was justified to them in individual capacity.

16. Coming to doubtful commission expense of Rs.76,88,500/- which has been disallowed on an estimate basis out of remaining commission expense of Rs.3,07,54,000/- the same is without any specific discrepancies and when Id. CIT(A) had examined the transaction of every individual separately such an approach of disallowance was not justified.

17. The commission expenses were incurred by the assessee towards carrying out a one time transaction of earning income by transacting into purchase and sale of bonds between institutions and when such a transaction itself is not doubted then it is not justified to doubt the claim of assessee that these bonds were procured by intervention of certain persons who had used their own contacts and bargained for the assessee. The expenses have been incurred wholly and exclusively for the purpose of earning business income. The suspicious circumstances pointed out by the ld. tax authorities that ITRs of certain beneficiaries were restricted to the amount of commission or that assessee himself being chartered accountant had knowledge of industry so did not require intermediary is unrealistic way of approaching the issue. Most importantly the as the commission is show to be paid to procure contracts of sell and purchases of the bonds, then in two interested sides, who were involved in placing their respective orders of selling or purchase of the shares should have been enquired to prove that there was no occasion to pay commissions to any intermediary. However, there is no such material to show that these sellers or purchased had submitted any response to show that payment of commission was not involved. Therefore, we are of the

considered view that commission expenses were found to be non-genuine on mere conjectures and surmises while conditions of Section 37 of the Act stood fulfilled. Thus, the ground raised by assessee deserves to be sustained while of department deserved to be rejected.

18. Ground No. 4 relates to disallowance of employment expense to the extent of Rs.5,00,000/- being annual salary paid to alleged related party M/s Nikita Jindal u/s 40A(2)(b) of the Act. It was submitted that she is post graduate from Delhi University and is working in the company at a position of marketing head. It appears that this disallowance was made without calling for any specific query and examining the issue in correct perspective about her education and qualification to render her professional services. Then, there is no allegation as to how this salary paid is excessive. Accordingly, this ground is allowed.

19. Ground No.5: Ld. Counsel has stressed for disposal of this ground qua disallowance of Rs.10,00,000/- in respect of business promotion expenses paid to Dinesh Garg HUF and Rajeev Garg HUF while of Planwell Industries Corporation was not pressed. In regard to payments made to Dinesh Garg HUF and Rajeev Garg HUF, the invoice and basic documents about the

identity of the parties were submitted before the learned first appellate authority. However without calling for any specific explanation, the expenses have been doubted. Blanket disallowance made by Id. AO was deleted by Ld. CIT(A) the purpose and reason for such a payment is not demonstrated. We are of the considered view that when invoices are raised and payments are made through banking mode, then without calling for any specific explanation and inquiry from the parties concerned, sustaining a disallowance of a business expenditure is not justified. Thus this ground is sustained partly in favour of the assessee.

20. The other grounds raised are general or consequential in nature and require no specific adjudication. As a consequence of aforesaid determination of the grounds, the appeal of assessee is allowed partly and the department's appeal is dismissed.

Order pronounced in the open court on 08.04.2026

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

Sd/-
(Anubhav Sharma)
JUDICIAL MEMBER

Dated 08.04.2026
Rohit, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI