

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

**BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER, AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No. 2/Del /2014
Assessment Year: 2004-05**

Rajesh Prasad
13/34, WEA, Karol Bagh
New Delhi

Vs.

The A.C.I.T.
Central Circle - 4
New Delhi

PAN : AALPR 2566 B

[Appellant]

[Respondent]

**Date of Hearing : 12.05.2016
Date of Pronouncement : 24.05.2016**

Appellant by : Shri V.P. Gupta, Adv
Respondent by : Ms. Rakhi Bimal, Sr. DR

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal filed by the assessee is directed against the order of the CIT(A)-VI, New Delhi, dated 29/11/2013 passed in first appeal No. 126/2012-13 for A.Y 2004-05.

2. At the very outset, the ld. AR pointed out that in the similar set of facts and circumstances of the case, out of 100, 99 cases of similar kind have been restored to the file of the AO for fresh adjudication by the ITAT, Delhi 'B' Bench vide order dated 18.10.2013 passed in ITA

No. 4636 & 4637/Del/2012 and other appeals and this order has also been followed subsequently by the ITAT Delhi 'Ç' Bench in ITA Nos. 2157 & 2159/Del/2013 for A.Ys 2002-03 and 2004-05 respectively in the case of GFC Finance Ltd Vs. ACIT dated 27.8.2015. The ld. AR further submitted that in the light of the said orders, this last appeal may kindly be restored to the file of the AO for fresh adjudication.

3. The ld. DR supported the action of the AO and the impugned order. However, he could not controvert the fact that in the similar set of facts and circumstances of the case, in other 100 appeals, the issue has been restored to the file of the AO for fresh adjudication.

4. On careful consideration of the above rival submissions, from the other of the ITAT 'B' Bench dated 18.10.2013 passed in the case of Tarun Goyal Vs ACIT and others, the issue has been restored to the file of the AO vide paras 15 to 24 by holding as follows:

"15. He relied on the assessment order in the case of Mr. Tarun Goyal for the AY 2007-08 and 2008-09 passed u/s 143(3) of the Act and pointed out that the AO has accepted commission income at the rate of declared by the assessee and pleaded that the same should be accepted in earlier year.

16. Dr. Sudha Kumari, ld. CIT DR on the other hand vehemently opposed the contentions of the assessee. She submitted that each assessee is an artificial juristic person in law or an individual and the request of the assessee to frame a single assessment in all the cases would be against law. She submitted that each assessee has to necessarily explain each credits in the books of account and in absence of proving the identity,

genuineness and creditworthiness of the creditor; the credit in questioned has to be added as income u/s 68 of the Act, in the hands of the assessee in whose books the entry is found. She submitted that the AO has correctly done such an exercise and made additions and the Id. CIT (A) has rightly upheld the same. She countered each and every contention of the assessee.

17. On commission income she submitted that the percentage adopted by the AO was reasonable and based on material, and that the assessment order of Shri Tarun Goyal for the assessment year 2007-08 and 2008-09, where commission @ 0.25%, was not questioned or investigated upon by the AO, cannot form the basis for claiming relief in the earlier assessment years. She submitted that these assessment orders dated 30.3.2013 for the AY 2007-08, 2008-09 and 2009-10 are not speaking order on this issue and that the ACIT Central Circle, Noida, passed these order without application of mind and without considering the material on record or findings in the previous assessment years as confirmed by the first appellate authority. She contended that such negligent acts of a AO cannot be relied as a precedent. Though not leaving her ground, on a query for the bench, she submitted that, in case of circular transaction or transactions where layering of the same amount is made multiple times, the transaction is to be taxed only at the first point and that the subsequent transfers of the very same amount from one company to another by way of layering, cannot be taxed at each point as it would amount to multiple taxation of the same amount.

18. In reply the Id. counsel for the assessee pointed out the assessment in the case of Tarun Goyal for some of the assessment years has not attained finality and that it would be appropriate and legally correct to pass assessment orders in all the group cases simultaneously by considering the totality of the facts and circumstances and by bring to tax only the peak amount of credit and by eliminating circular transactions. He submitted that as Mr. Tarun Goyal offered the entire income to tax in his hands, no separate addition is called for in any of the other companies, as the credits in those cases stand explained. On commission earned, on issue of accommodation entries, the Id. counsel reiterated in his contention.

19. Rival contention heard. On a careful consideration of the facts and circumstances of the case and perusal of the papers on record in the orders of the authorities below as well as the case

laws cited we hold as follows.

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 kin pin are at various stages and have not reached the Tribunal. Under these circumstances, it would not be possible to have in over all 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) Consider the material on record and the precedence available on the issue and determine the percentage of commission, which the assessee 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.”

5. In view of the above facts and circumstances of the case, we have no alternative but to set aside this appeal too to the file of the AO for fresh adjudication in accordance with law after affording due opportunity of being heard to the assessee. We order accordingly.

6. In the result, the appeal of the assessee stands allowed for statistical purposes.

The order is pronounced in the open court on 24.05.2016.

**Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER**

**Sd/-
(C.M. GARG)
JUDICIAL MEMBER**

Dated: 24th May, 2016

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi