

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**DELHI BENCH: 'F' NEW DELHI**  
**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**  
**AND**  
**SMT SUCHITRA KAMBLE, JUDICIAL MEMBER**  
**I.T.A .No.-1089/DEL/2013**  
**(ASSESSMENT YEAR-2009-10)**

ITO Ward-36(3), H-Block, Vikas Bhawan New Delhi <b>(APPELLANT)</b>	Vs	Rakesh Kumar Aggarwal U-141, Flat No. 12, Shakarpur Delhi ABOPA5261G <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Raman Kant Garg, Sr. DR</b>
<b>Respondent by</b>	<b>Sh. Rakesh Gupta &amp; Sh. Somil Aggarwal, Advs.</b>

<b>Date of Hearing</b>	<b>02.03.2016</b>
<b>Date of Pronouncement</b>	<b>20.05.2016</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 07/11/2012 passed by CIT(A) XXVII, New Delhi.

2. The grounds of appeal are as follows:-

- “1. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in allowing commission expenses of Rs.1,24,08,773/- (Rs.1,34,00,273/- Rs.9,91,500/-) out of total commission receipts of Rs.1,70,89,387/- and other expenses in the revised computation filed during the appellate proceedings, figures of which are totally different as declared in the return and as furnished during assessment proceedings.*”
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) had allowed the commission expenses and other expenses as per revised computation filed during the appellate proceedings, even when the accounts were not audited u/s 44AB and complete details of expenses/receipts not furnished/verification not made and expenses and receipts are not fully vouched and books of account/vouchers were not maintained as clearly pointed by A.O. in the order. Any revision in computation can be made by way of filing revised return as held by Hon'ble Supreme Court decision in the case of Goetze India Ltd.*
3. *On the facts and in the circumstances of the case, the Ld. CIT (A) had erred in allowing commission expenses ignoring the facts that the assessee had not deducted tax at source u/s 194H on commission/brokerage paid and the expenses on commission/brokerage was required to be disallowed u/s40a (ia) of the Income Tax Act, 1961.*”
3. The appellant is engaged in the business of procurement of deposits/ investments in mutual funds from different clients for which he earns commission income. The A.O. during the course of the assessment proceedings asked the appellant to file details of commission received along with copies of bank accounts. The appellant vide his reply dated 22.11.2011 submitted copies of three bank accounts, i.e., A/c No. 10733 with Axis Bank in the name of Rakesh Kumar Agarwal, A/c No. 22792 with Axis Bank in the name

of Agarwal Investment Consultants and A/c No. 1255 with Kotak Mahindra Bank in the name of Agarwal Investment Consultants.

4. The A.O. called for copies of the appellant's bank accounts from banks and found out that the appellant was in fact maintaining six active bank accounts as per details given below:-

<u>Sr. No.</u>	<u>Name of the Bank</u>	<u>Name of Holder</u>	<u>Bank A/c No.</u>	<u>Amount of the receipts/brokerage</u>
<b><u>Disclosed accounts</u></b>				
1.	Axis Bank	Aggarwal Invst. Const.	22792	44,26,460/-
2.	Axis Bank	Rakesh Kumar AGarwal	10733	1,32,83,844/-
<b><u>Undisclosed accounts</u></b>				
3.	Kotak Mahindra	Rakesh Kumar Agarwal	103	175/-
4.	Kotak Mahindra	Agarwal Invs. & Const.	1255	28,60,385/-
5.	Axis Bank	Rakesh Kumar Agarwal	18912	20,290/-
6.	Axis Bank	Agarwal Invs. & Const.	9843	9,93,979/-
7.	Axis Bank	R. K. Agarwal	240086	79,46,330/-

5. As far as bank accounts at Sr. No. 3 to 7 are concerned the A.O. held that the appellant had not disclosed these accounts in his balance sheet and submissions filed during the course of the assessment proceedings particularly dated 22.11.2011. He added the total of all the credits in these bank accounts to the appellant's income on the ground that the appellant had not explained the credit entries in these accounts resulting in an addition of Rs. 1,18,21,159/-. Further, with respect to bank accounts at Sr. No. 1 and 2, the A.O. observed that the total credit entries in these

accounts came to Rs. 1,77,10,405/- whereas the appellant had shown commission receipts of Rs. 34,08,651/- only. He, therefore, added the difference of Rs. 1,43,01,754/- to the income of the appellant on account of undisclosed commission receipts.

6. Further, the appellant had claimed an amount of Rs. 18,26,251/- on account of brokerage paid to different persons. The A.O. asked the appellant to file details in respect of these persons. The A.O. disallowed this amount and added it to the appellant's income on the ground that the appellant vide his letter dated 15.12.2011 had provided only names and addresses of the persons to whom commission had been paid. Commission amounting to Rs. 6,26,251/- was paid in cash which was disallowed on the ground that the source of cash payment had not been established by the appellant.

7. Aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A).

8. The appellant submitted before the CIT(A) that due to lack of knowledge in presenting the accounts in systematic and proper manner by his counsel all the facts and figures could not be disclosed fully and correctly. The appellant, therefore, filed a paper book having more than 300 pages, including copy of cash book and ledger and copies of all the bank accounts in the name

of Sh. Rakesh Kumar Agarwal and Agarwal Investment Consultants. It was submitted that he was receiving commission from various clients who made investments in mutual fund through him. The appellant inturn paid back a major part of such commission to such investors or persons directed by these investors. It was submitted that all the commission received from the various mutual fund houses had been received through account payee cheques and was duly reflected in various bank accounts of the appellant. The A.O. had added all the credit entries in the different bank accounts of the appellant by treating them as the appellant's income without taking into account debit entries with respect to payment of commission to the clients. The details of such payments of commission were filed at page no. 36 - 40 and 146 - 148 of the paper book. The details of commission received were filed at pages 41, 42 and 149-167 of the paper book. On the basis of these details, it was submitted that the appellant had received the total commission of Rs. 1,70,89,387/- (Rs. 4,81,812/- in Agarwal Investment & Consultants and Rs. 1,66,07,574/- in the hands of Sh. Rakesh Kumar Agarwal). Against these receipts, the appellant had paid commission amounting to Rs. 1,34,00,273/- i.e., Rs. 70,65,823/- through Agarwal Investment Consultants and balance through Sh. Rakesh Kumar Agarwal. The names and complete addresses of the persons to whom commission had been paid was also filed along

with application under Rule 46A of the I T Rules for admission of additional evidence.

9. The appellant's application filed under Rule 46A along with paper book before the CIT(A) was forwarded to the A.O. for comments who vide report dated 05.09.2012 submitted that the additional evidence filed by the appellant should not be admitted because sufficient opportunity had been provided to the appellant during the course of the assessment proceedings to file various details in support of his claim. It was further submitted that the appellant had failed to bring on record any sufficient cause that prevented him to produce relevant documents during the course of assessment proceedings.

10. The appellant filed details before the CIT(A) which demonstrated that he had received commission amounting to Rs. 1,70,89,387/- out of which he had passed on commission of Rs. 1,34,00,273/- to various persons. An enquiry was conducted by the A.O. in respect of claim of payment of commission to various parties. The A.O. issued notice u/s 133(6) of the Act to various parties to whom commission had been paid. It has been stated by the A.O. that confirmations had been received from these persons. However, the A.O. submitted that in spite of confirmations received from various persons the same should not be accepted at this

stage because the appellant had failed to furnish these details during the course of the assessment proceedings.

11. A copy of the remand report was supplied to the appellant for filing his rejoinder. In his rejoinder, the appellant submitted that on the basis of the additional evidence filed by him, the A.O. had conducted various enquiries as stated by her in the remand report. Confirmations were called for from various persons which were duly received. The appellant submitted that having made the enquiries in respect of the additional evidence, the A.O. should not have objected to the admission of the same. It was further submitted that the appellant was prevented by sufficient cause from filing the necessary evidence and documents as could be seen from the show cause notice issued by the A.O. on 12.12.2011. In response to this notice the appellant had attended the proceedings on 20.12.2011 and the assessment was finalized on 26.12.2011. Complete details with regard to the name, address and PAN of the person to whom commission had been paid were not available with the appellant at the time of assessment proceedings and same were collected from the bank accounts through which payment had been made to the persons.

12. The CIT(A) admitted the appellant's application under Rule 46A and additional evidence. The CIT(A) observed that copies of

the bank accounts in which the commission had been received and from which commission had been paid to various persons were already available with the A.O. during the course of the assessment proceedings as is evident from the additions made by the AO on the basis of these bank accounts. Therefore, the appellant has only explained and clarified various aspects of commission received and commission paid. Moreover on the basis of additional evidence filed by the, appellant and after getting further details from the appellant during the course of the remand proceedings, the A.O. has conducted enquiries by issuing notice u/s 133(6) of the Act. Therefore, keeping in view the complete facts of the case, the additional evidence filed by the appellant was admitted by the CIT(A).

13. On merit CIT(A) held that the first addition of Rs. 1,18,21,159/- was made on account of all the credit entries in undisclosed bank accounts of the appellant and the second addition of Rs. 1,43,01,754/- was made on account of undisclosed commission from the two disclosed bank accounts of the appellant. The CIT(A) further observed that the A.O. added all the credit entries appearing in all the bank accounts of the appellant treating them as his income without considering the nature of the credit entries and without taking into account the debit entries. All the credit entries in various bank accounts are not on account of

receipt of commission only. Many of the entries are in respect of inter-bank and inter-entity transactions (from Rakesh Kumar Aggarwal to Aggarwal Investment Consultants and vice versa) which obviously are not in the nature of income. The CIT(A) further observed that all the commission was received by the appellant from mutual fund houses through account payee cheques. The total of these receipts amounts to Rs. 1,70,89,387/- which have been reflected in the different bank accounts of the appellant. Against these receipts, the appellant paid back a major part of the commission amounting to Rs. 1,34,00,273/- through the same bank accounts. The A.O. after conducting enquiries from persons to whom commission was paid, failed to point out any instance where the payment of commission was in doubt or needed to be disallowed. The major part of the commission was paid through cheque from the bank accounts. The CIT(A) further observed that a perusal of the commission paid account at Page No. 36-46 of the paper book in respect of Aggarwal Investment Consultants reveals that the commission amounting to Rs.1,26,500/- was paid in cash. Thus the CIT(A) partly allowed the appeal of the assessee.

14. The Ld. DR submitted that the substantial amount of commission was claimed as paid by the assessee and the same contention was accepted by the CIT (A), by ignoring the fact that there was no confirmation filed. The said commission was not in

respect of earning income and the CIT (A) should have verified each entry of the corresponding commission receipt which the CIT (A) has not done properly. The CIT (A) has not verified the nexus between the commission received and the commission paid and has also not examined the character of the commission paid. TDS was not made. The acceptance of the revised computation by the CIT (A) was not as per the Supreme Court judgment in the case of Goetze (India) Ltd. vs. CIT 2006 (284) ITR 323 (SC).

15. The Ld. AR relied on the ld. CIT (A)'s order. The Ld. AR submitted that as per Para 11 there was a finding recorded by the CIT(A) that the A.O has received the confirmation from those persons who received commission and that this was not refuted during the course of hearing. The Ld. AR also relied upon the Explanation 1 of Section 194H and stated that the commission received by the assessee is not being securities, does not come under the purview of statute of TDS provisions under the Income Tax Act. The amount was paid from the same bank account in which the commission income was deposited and hence the nexus was formed. The assessee also relied upon the case of CIT vs Jai Parabolic Springs Ltd. decided on 7 April, 2008 by the Jurisdictional High Court. The Ld. AR further submitted that the factual finding was properly recorded by the CIT (A). Therefore, the Ld. AR prayed for dismissal of the appeal of the Revenue.

16. In rejoinder, the Ld. DR submitted that there was no remand report taken out from the Assessing Officer regarding verification and confirmations and as per this; the commission paid cannot be treated as Revenue expenditure. The Ld. DR also relied upon the Assessing Officer's order. The figures reflected in assessment order and in CIT (A)'s order are different.

17. We have heard both parties and perused all the documents. The findings and elaborate discussions along with the documents on record indicate that the CIT (A) has rightly allowed the claim of the assessee. The A.O has received the confirmation from those persons from whom the assessee paid commission. The same was at no point of time refuted during the course of hearing before the CIT (A), the commission received by the assessee not being one securities, will not come under the purview of TDS under Income-tax Act, as per Explanation I to Section 194H. It was clear from the records that the amount was paid from the same bank account in which the commission amount was received and hence the nexus is formed. The case relied upon by the Ld. AR that of CIT vs Jai Parabolic Springs Ltd. decided on 7 April, 2008 of the Jurisdictional High Court held as under:

*“17. [In Goetze \(India\) Limited v. Commissioner of Income Tax](#) wherein deduction claimed by way of a letter before Assessing Officer, was disallowed on the ground that there was no provision under the Act to make amendment in the return without filing a revised return. Appeal to the Supreme Court, as the decision was upheld by the Tribunal and the High Court, was dismissed making clear that the decision was limited to the power of assessing authority to entertain claim for deduction otherwise than by revised return, and did not impinge on the power of Tribunal.*

*18. Further, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessed has written it off in his books over a period of years. [Reliance can be placed on [Madras Industrial Investment Corporation Ltd. v. Commissioner of Income Tax](#) ]*

*19. In view of the above discussion, it is very clear that there is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arises in the matter and for the just decision of the case. Therefore, there is no infirmity in the order of the Tribunal.*

*20. Accordingly, the appeal of the Revenue is hereby dismissed.”*

Thus the assessee's case is covered by the jurisdictional High Court judgment. The claim has been made before the First Appellate Authority and this is legally permitted. Therefore, the

grounds on merit are rightly allowed by the CIT(A) taking cognizance of all the relevant documents produced by the assessee as well as the report filed by the Assessing Officer.

18. In result, the appeal of the Revenue is dismissed.

**The order is pronounced in the open court on 20<sup>th</sup> of May, 2016.**

**Sd/-**

**(J. SUDHAKAR REDDY)  
ACCOUNTANT MEMBER**

Dated: 20/05/2016

*R. Naheed \**

Copy forwarded to:

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

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	02/03/2016	PS
2.	Draft placed before author	04/03/2016	PS

3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	31.05.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	31.05.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		