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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 158/2020 & CM APPL. 7946/2020**

DY. COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr. Ajit Sharma, Advocate.

Versus

M/S BHAWANI PORTFOLIO PVT. LTD. ..... Respondent

Through: None.

AND

\+ **ITA 163/2020 & CM APPL. 8018/2020**

DY. COMMISSIONER OF INCOME-TAX, DELHI ..... Appellant

Through: Mr. Ajit Sharma, Advocate.

Versus

M/S. BHAWANI PORTFOLIO PVT. LTD. ..... Respondent

Through: None.

% Date of Decision: 12th July, 2021.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The appeals have been heard by way of video conferencing.

2. Present appeals have been filed challenging the orders dated 23rd January, 2019 passed by the Income Tax Appellate Tribunal [ITAT] in ITA No. 6351 of 2016 and ITA No. 6350 of 2016.

3. Learned counsel for the Appellant states that the Assessment orders established that the credit in the bank accounts of the respondent-Assessee were treated as accommodation entry transactions since the Assessee had failed to produce any satisfactory reply and confirmations for the said transactions.

4. He states that the Assessment Orders were upheld by the CIT(A) holding that the respondent-Assessee had failed to discharge his onus to establish the nature and source of each credit entry appearing in the bank accounts and therefore for want of necessary details and supporting evidence, the Assessing Officer was justified in treating all the credit entries appearing in the bank accounts as income for the purpose of estimating commission income at the rate of 2.25%.

5. He states that the ITAT vide the impugned orders dated 23rd January 2019 partially allowed the respondent-Assessee's appeals and set-aside the assessment orders and CIT(A) orders on the basis that in such illegal activities, no precedence of rate could be applied and further held that there cannot be any profit element in inter-group transactions.

6. He emphasises that the ITAT had overlooked the fact that the respondent-Assessee had admitted to providing accommodation entries. He adds that the error in the impugned order is that ITAT had failed to recognize that the respondent-Assessee had in fact failed to discharge his onus to establish the nature and source of each credit entry appearing in the bank accounts. He states that the Assessing Officer was therefore justified in treating all the credit entries including inter-group transactions appearing in the bank accounts as income for the purpose of estimating commission income and in applying the rate of 2.25%.

7. Having perused the paper book, this Court finds that the Tribunal in the impugned orders has upheld the appellant's contention that the respondent used to provide accommodation entries upon charging commission. However, the Tribunal has held that just because some loose sheets had been found stating that percentage of commission was 1.69% to 2.5% in some transactions, it cannot be presumed that for all transactions the respondent had earned a similar rate of commission.

8. Further relying upon past decisions by a number of Coordinate Benches of the Tribunal adopting a commission rate ranging from 0.15% to 0.50%, in similar matters, the Tribunal passed the impugned order.

9. This Court is of the view that none of the aforesaid findings are so perverse that they warrant an interference in appeal jurisdiction under Section 260A of the Income Tax Act, 1961. This Court is also of the view that the Tribunal, being the last fact finding authority, was entitled to guess work and arrive at a ballpark rate of commission. Consequently, no substantial question of law arises in the present appeals. Accordingly, the appeals along with pending applications are dismissed.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

JULY 12, 2021
AS