

**आयकर अपीलीय अधिकरण “ई ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“E” BENCH, MUMBAI**

**माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.6959/Mum/2014  
**(निर्धारण वर्ष / Assessment Year: 2010-11)**

<b>ITO ward – 4(3)(1)</b> R. No. 648, 6 <sup>th</sup> floor Aayakar Bhavan Mumbai-400 020	<b>बनाम/ Vs.</b>	<b>M/s Tac Technosoft Pvt. Ltd.</b> (Now merged with M/s Novus Tradestar Pvt. Ltd.) Shop No. 8, Crystal Court Building Near Powai Police Station, Chandivali, Andheri (E), Mumbai-400 072
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AABCT-4144-L</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Revenue by</b>	:	Shri Vijay Kumar Menon– Ld. DR
<b>Assessee by</b>	:	Shri Mihir Tanna– Ld. AR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	20/07/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	26/07/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by revenue for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income-Tax (Appeals)-18, Mumbai [CIT(A)], dated 18/09/2014 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 144 of the Act on 26/03/2013. The grounds of appeal read as under: -

- (i) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in restricting the quantum of commission to be charged towards accommodation entries provided by the assessee at the rate of 0.6% based on the

average of the past four years profits overruling Assessing Officer's estimation @ 1% thereby granting a relief of Rs. 27,47,974/- without appreciating that the profits shown by the assessee in such years were not held as the commission income received from bogus accommodation entries by the assessee?"

(ii) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that no reason or basis was given by the AO while adopting the rate of 1% as commission chargeable on bogus entries provided by the assessee ignoring that the basis for adopting net commission income from the activity of providing accommodation entries was clearly and elaborately explained at page 7 [para 21 to 23] of the assessment order dated 26.03. 2013?

(iii) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in enhancing the value of the bogus transactions by only Rs. 32,16,78,450/- as against Rs.35,14,51,708/- requested by the Assessing Officer (in the remand report dated 12.08.2014) pertaining to the assessee's transactions with M/s. Vakrangee Software Ltd. ignoring that the assessee had shown transactions with the aforesaid company only at Rs.42,28,78,000/- whereas M/s. Vakrangee Software Ltd. had admitted to have entered into transactions to the tune of Rs.77,43,38,708/- with the assessee-company?

(iv) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of brokerage and commission income of Rs.54,75,138/- by agreeing with the submission of the assessee that the said receipts were credited to Profit & Loss Account overlooking the fact that the entire turnover comprising of purchase / sale transactions has been held by the CIT(A) as bogus / accommodation entries' turnover?

(v) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of brokerage and commission income ignoring the ratio laid down by the decision of the Hyderabad ITAT on this issue in the case of *Totem Infrastructure Ltd. Vs ACIT-2(3) [ITA No.650/Hyd/2013] [order dated 07.03.2014]*?

(vi) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of brokerage and commission income allowing relief by relying on the objects of the Memorandum of Association without factually verifying the inclusion of such receipts by the assessee in its accounts ignoring the ratio laid down by the Hon'ble Apex Court's in the case of *Commissioner of Income-tax Vs Calcutta National Bank Ltd. [1959] 37 ITR 171 (SC)* that only the objects and clauses set out in the Memorandum of Association cannot be taken as the basis for heads of income to be assessed?

(vii) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Contractual Income of Rs.2,66,08,263/- not appreciating that by holding the contractual income to be part of the main business of dealing in computers he has contradicted his own previous finding on this issue that the assessee-company had failed to substantiate purchase / sale transactions shown in the return of income wherein he has also confirmed levy of commission income as a fixed percentage of such transactions / entries?

(viii) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that since he has endorsed the levying of commission income towards purchase and sale transactions shown by the assessee company, by deleting the addition of contract income, the CIT(A) has effectively allowed set off of contractual income against the sham / structured trading loss of Rs.3,02,08,661/- claimed by the assessee? Thus, the decision of the CIT(A) in

contradiction to its own decision on the issue of charging of commission income towards purchase / sales transactions.

ix) Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in ignoring his own decision in the case of M/s Realstone Exports Pvt. Ltd. for the AY 2010-11 [Appeal no. CIT(A)-18/IT-92/ITO-8(3)(3)/2013-14 dated 06.03.2014] involving similar facts wherein he has not only upheld the charging of net commission at the rate of 1% towards providing accommodation entries but also confirmed the addition of interest & contract income made separately by the Assessing Officer under the head income from other sources.

(x) The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the AO be restored.

As evident, the revenue is aggrieved by certain relief provided by learned CIT(A) in the impugned order while estimating the commission income.

2. We have carefully heard the rival submissions and perused relevant material on record including documents placed in the paper book. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

### **Assessment Proceedings**

3.1 The material facts are that the assessee being resident corporate assessee was assessed at Rs.482.36 Lacs as against returned income of Rs.4.23 Lacs filed by the assessee on 04/10/2010. The assessee is stated to be engaged in the business of trading of computer systems and software etc. It also engaged in providing manpower support to various clients in the area of data processing etc. The assessee reflected sales / operational income of Rs.6905.03 Lacs during the year.

3.2 During assessment proceedings, various details were called from the assessee, however, none attended and only part details were furnished. Notices issued u/s 133(6) to suppliers as well as major customer of the assessee did not elicit any satisfactory response.

3.3 On the basis of material on record, Ld. AO came to conclusion that the assessee did not carry out any actual sale / purchase transactions

and the financial transactions were only sham transactions. Accordingly, the books were rejected u/s 145(3). The assessee reflected purchase & sale transactions of Rs.5162.32 Lacs & Rs.6532.78 Lacs respectively with outside parties. The Ld. AO estimated net commission income of 1% against these transactions which came to Rs.116.95 Lacs. As per details available in Form 26AS, the assessee earned interest income of Rs.44.57 Lacs, Contract income of Rs.266.08 Lacs and Commission income of Rs.54.75 Lacs. All these items were separately added to the income of the assessee under the head Income from other sources. Finally, the income was determined at Rs.482.36 Lacs.

### **Appellate Proceedings**

4.1 During appellate proceedings, the assessee submitted further details against which a remand report was sought from Ld.AO. The assessee furnished certain other documents during remand proceedings which were in the shape of ledger account of 4 suppliers, copies of bills and payment of proofs etc. The assessee also tabulated turnover and profitability data of past 4 years and submitted that there was drastic increase in turnover which reduced the margins of the assessee. The Ld. AO while supporting the additions, make out a case of enhancement since discrepancy of Rs.3216.78 Lacs were noted. The Ld. AO noted that there was a direct billing from M/s Hindustan Continental Ltd. to M/s Vkrangee Software Ltd which was not reflected by the assessee in tis turnover. The Ld. AO also submitted that the goods purchased were sold at a loss of Rs.302.08 Lacs and the assessee could not furnish any quantitative details. Further the nature of sales / purchase transactions was quite vague and amorphous. Various discrepancies were noted in partial details submitted by the assessee.

4.2 The Ld. CIT(A), after due consideration of assessee' submissions and remand report concurred with Ld. AO's approach in rejecting the books and estimate the income earned by the assessee during the year. However, regarding estimation of 1% as made by Ld. AO, it was observed by Ld. CIT(A) that average net profit of previous four years was 0.52%. Therefore, the estimation was to be made 0.6% on total turnover including the enhanced amount. The same reduced the addition of Rs.116.95 Lacs to Rs.89.47 Lacs. The separate addition of interest income was upheld.

4.3 Regarding commission income of Rs.54.75 Lacs, the assessee pleaded that the same was to be considered as part of business income only. The Ld. CIT(A) concurred that the commission income was part of turnover of the assessee. The earning of commission was one of the main objects of the assessee company and therefore, the same was to be considered as part of total turnover only assessable as Business income only. Hence, separate addition of the same under the head Income from other sources was not sustainable. Similar was the adjudication for contract income of Rs.266.08 Lacs wherein Ld.CIT(A) held that the same was to be considered as part of total turnover only and separate addition thereof would not be sustainable.

4.4 Aggrieved as aforesaid, the revenue is in further appeal before us. It has been submitted that the assessee has accepted the verdict of Ld. CIT(A) and has not preferred any further appeal.

### **Our findings & Adjudication**

5. Upon due consideration of orders of lower authorities, so far as the rate of commission is concerned, we find that the estimation as made by Ld. CIT(A) was in accordance with average profits shown in earlier 4

years. Even if the transactions were sham transactions, the estimation, in our considered opinion, was to be on some rational basis. The basis as adopted by Ld. CIT(A) was more rational and plausible one. Therefore, no fault could be found in the said estimation.

6. So far as the contract receipts and commission income are concerned, Ld.CIT(A) has merely gone by the fact that the aforesaid receipts would be business income of the assessee keeping in view assessee's main objects. In the process, Ld. CIT(A) has overlooked the fact that no estimation of income was made by Ld. AO against these transactions and the estimation was only with respect to sale & purchase transactions. These items, as noted by Ld. AO, were separately credited to Profit & Loss Account and hence, constitute separate stream of income for the assessee. Therefore, a separate estimated income against these two items would certainly be required. We make the estimation @8% for both these streams of income. The same would work out to be Rs.25,66,672/- (8% of Rs.54,75,138/- + Rs.2,66,08,263/-). We direct Ld.AO to re-compute assessee's income in terms of our estimation.

7. The appeal stands partly allowed to the extent indicated in the order.

*Order pronounced on 26<sup>th</sup> July 2021*

**Sd/-**

**(Amarjit Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :26/07/2021  
Sr.PS, Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**