

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

**ITA No. 5010/Del/2018  
Assessment Year: 2013-14**

Freak Buildcon Pvt. Ltd. Sabharwal & Partners, Advocates, Delhi High Court, 4819/24, Ansari Road, Daryaganj, New Delhi. <b>PAN No. AABCF6031G</b>	vs	ACIT Central Circle 28, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No. 5011/Del/2018  
Assessment Year: 2013-14**

Shilpkar Buildtech Pvt. Ltd. Sabharwal & Partners, Advocates, Delhi High Court, 4819/24, Ansari Road, Daryaganj, New Delhi. <b>PAN No. AAACZ4478L</b>	vs	ACIT Central Circle 28, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No. 5012/Del/2018  
Assessment Year: 2013-14**

Jarf Infra Development Pvt. Ltd. Sabharwal & Partners, Advocates, Delhi High Court, 4819/24, Ansari Road, Daryaganj, New Delhi. <b>PAN No. AAACZ4477F</b>	vs	ACIT Central Circle 28, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA No. 5013/Del/2018**  
**Assessment Year: 2013-14**

Strop Creation Pvt. Ltd. Sabharwal & Partners, Advocates, Delhi High Court, 4819/24, Ansari Road, Daryaganj, New Delhi. <b>PAN No. AAPCS7752P</b>	vs	ACIT Central Circle 28, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

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**ITA No. 5014/Del/2018**  
**Assessment Year: 2013-14**

Rayan Garments Pvt. Ltd. B-76, Gali No. 4/3, Rama Garden, Karawal Nagar, Delhi. <b>PAN No. AAECR8602A</b>	vs	ACIT Central Circle 28, New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Shri V.K. Sabharwal, Advocate</b>
<b>Revenue by</b>	<b>Ms. Ekta Vishnoi, Sr. DR</b>

**ORDER**

The aforesaid assessees have filed the appeals against the respective orders passed by the Ld. CIT(A) confirming the orders of Assessing Officer relevant to AYs 2013-14.

2. Since facts involved in these appeals are same and identical, hence, the appeals were heard together and for the sake of convenience, all these appeals are being consolidated and

disposed of by this common order. In all the appeals there are similar grounds of appeal except the difference in figures. Therefore, for the sake of reference and facility, facts in the case of Freak Buildcon Pvt. Ltd. vs. ACIT in ITA No. 5010/Del/2018 (AY 2013-14) is being discussed and the grounds of appeal raised in this appeal are reproduced as under: -

1. *“That the assessment order passed u/s 143(3) of the Income Tax Act, 1961 on 30.03.2016 and appellate order passed on 30.05.2018 are perverse to the law and to the facts of the case because of not following proper law and procedure while completing the assessment and adjudication of appeal filed by the appellant company.*
2. *That the Assessing Officer has grossly erred in law and to the facts of the case in making lump-sum addition of Rs. 13,98,821/- being commission income in the hands of the appellant @ 0.60% merely on the basis of his presumption and guess work without the support of any material either collected or ever placed upon records, which the CIT(A) has further failed to appreciate while adjudicating the appeal of the appellant on merits.*
3. *That the addition made of Rs. 13,98,821/- were only on the basis of presumption and guess work of the Assessing Officer because the provision of law contained u/s 145 has never been invoked besides this the Assessing Officer has further failed to appreciate, that on the identical facts the declared income have already been accepted as correct in the preceding year and in the subsequent years also.*
4. *That the Assessing Officer and the Ld. CIT(A) has further failed to appreciate that on the basis of total credits appearing in the bank statement of the appellant company, the accounts of the appellant company have been audited and on the basis of which the Profit & Loss Account and Balance Sheet have been prepared and filed the ITR accordingly, which has not been viewed adversely, as the same has already been accepted as correct.*

5. *That the AO has further failed to appreciate while making illegal and impugned additions of Rs. 13,98,821/- in the declared income of the appellant being the commission charged on lump sum basis @ 0.60% on the total amount credited in the bank account of the appellant of Rs. 23,31,36,876/- without appreciating that the appellant company is maintaining and possessing proper books of account as required under the law wherein the entire transactions have already been reflected/recorded, as such no adverse inference if any, could be drawn only on the imagination and guess work, which the CIT(A) has also failed to appreciate.*
6. *That the Assessing Officer and ld. CIT(A) both have grossly erred on facts of the case as even after accepting profits as per books of account he presumed that the appellant company is in the business of providing accommodation entries without the support of any material either collected or ever placed upon records.*
7. *That no proper and reasonable opportunity if any was ever afforded by the Assessing Officer prior proceeded to complete the assessment proceedings arbitrarily capriciously and in a whimsical manner thereby making illegal and impugned additions in the declared income of the appellant.*
8. *That the further addition of Rs. 5,42,460/- made on the basis of interest income appearing in the Form 26AS of the appellant company is also perverse to the law and to the facts of the case, because of not taking into consideration the explanation given, evidence produced and placed upon records under Rule 46A of the I.T. Rules by the Ld. CIT(A), that the same is already forming part of the gross sale proceeds received and disclosed in the ITR.*
9. *That the order passed by the Ld. CIT(A) on 30.05.2018 was further illegal, as the remand report received on dated 01.05.2017 on the back of the appellant company were never confronted to the appellant for its rebuttal thereof, the contents of which have been used while adjudicating the appeal.*

10. *That the appellant company assails their right to amend, alter, change any grounds of appeal or take any further ground at any time even during the course of hearing of this instant appeal.”*

3. Original return of income declaring income of Rs. 1,95,600/- was e-filed on 03.12.2014 which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). Since the assessee has filed its return of income after the end of relevant assessment year i.e. 31.03.2014, the Assessing Officer has also initiated the penalty proceedings u/s 271F of the Act separately.

4. The case was taken up for scrutiny and notice u/s 143(2) of the Act was issued on 01.09.2015 and served upon the assessee. Notice u/s 142(1) along with questionnaire was issued on 03.12.2015. In response to the same, the Authorized Representative of the assessee appeared and attended the proceedings from time to time and filed details called for and the case was discussed by the Assessing Officer with the AR of the assessee.

5. The assessee company in its return of income filed for the year under consideration has not specified its nature of business or profession or activity. Further, as per the Income tax return and Profit & Loss Account, the assessee company has shown sales/gross receipts of business or profession against which it has claimed certain expenses which are general and administrative in nature. The Assessing Officer has mentioned that the assessee has not claimed any expense in the nature which is relating to its

business activities in general. Moreover, there is no opening stock, closing stock, raw materials, stock in progress or work in progress which in case of such company should exist, if it is performing day to day activities. Furthermore, the assessee company has shown purchases during the year in the ITR showing gross sales/receipts against it but no service tax, VAT/Sales tax or any other duty, tax or cess is reflected to have been paid by the assessee company in its return of income.

6. The Assessing Officer also noticed that the bank statement of the account of the assessee company in Axis Bank A/c No. 912020036005673 that the total credits and debits balances are almost equal amount during the period 01.04.2012 to 31.03.2013 i.e. 23,31,36,876. It is further noticed by the Assessing Officer that immediately after deposits or some funds are received (credited in the bank account) there is a payment (debit in bank account) of equivalent amount on the same day or immediately preceding days. Transactions of large amount running into several lakhs are passed through bank account of the assessee company. What is the nature of these transactions or how they are reflected in books of accounts is not known as neither the books were produced for examination nor was there any reply to the specific queries.

7. After examining the all documentary evidences produced by the assessee. The AO is of the view that all the transactions of assessee companies are sham and not as normal business

transactions. The AO further held that the assessee company is not doing any genuine business activities but merely acting as conduit to pass the funds may be for some ulterior motive/part of scheme of providing accommodation entries to some unscrupulous persons companies. In view of the above, the income of the assessee company is brought to tax as income from other sources and the Assessing Officer also observed that most of the entry operators are normally charging @ 60 paise to Rs. 1 per Rs. 100 as commission for providing accommodation entries. In view of the above facts, commission @ 0.60% on Rs. 23,31,36,876/-, being total credits appearing in the bank account of the assessee which comes to Rs. 13,98,821/-. The Assessing Officer added to the income of the assessee. AO also initiation the penalty u/s 271(1)(c) of the Act in the case of the assessee and also held that as per the 26AS data the assessee company has earned interest amounting to Rs. 5,42,460/- from two parties on which TDS have been deducted u/s 94A of the Act. Assessee has not shown the interest income in its return though it has claimed the TDS deducted on these payments in its return. Therefore, assessee has deliberately concealed interest income earned by it during the year amounting to Rs. 5,42,460/- and the AO has also added the same to the income of the assessee and completed the assessment u/s 143(3) of the Income Tax Act, 1961 on 30.03.2016.

8. Assessee aggrieved by the assessment order dated 30.03.2016 passed by the Assessing Officer u/s 143(3) of the Act filed an appeal before the Ld. First Appellate Authority who vide

impugned order dated 30.05.2018 dismissed the appeal filed by the assessee.

9. Assessee is aggrieved against the impugned order dated 30.05.2018 passed by the Ld. CIT(A)-31, New Delhi filed the present appeal before the Tribunal.

10. At the time of hearing, Ld. Counsel for the assessee stated that AO as well as the Ld. First Appellate Authority has passed the impugned orders against the facts and law which deserves to be cancelled. Ld. Counsel for the assessee reiterated the contention raised by the assessee in the grounds of appeal. In the alternative, Ld. Counsel for the assessee stated that exactly under the similar facts and circumstances of the assessee's case the ITAT Delhi Bench (SMC), New Delhi has passed an order on 06.11.2018 and decided the seven appeals by estimating the average commission @ 0.30% (30 paise to Rs. 1 per Rs. 100) on the credit entries appearing in the bank accounts. He has also filed a copy of the said order and requested that respectfully following this order the appeal of the assessee may be partly allowed and the same direction may be issued as has been issued in the aforesaid case.

11. Ld. Sr. DR relied upon the orders passed by the Revenue Authorities and stated that assessee has not filed a sufficient evidence before the authorities below, therefore, the addition in dispute has rightly been made by the Revenue Authorities and the



same may be upheld. But on the alternative request of the assessee she has not raised any serious objection.

12. I have heard the both parties and perused the relevant record available with me especially. I have considered the alternative request of the assessee after going through the order passed by the ITAT Delhi Bench (SMC), New Delhi in ITA No. 2773/Del/2017 AY 2013-14 M/s Sorus Power Pvt. Ltd. vs. ACIT, Central Circle 28, New Delhi and other six appeals. I am of the considered view that facts and circumstances of the assessee's case is almost similar to the facts of the case relied upon by the Ld. Counsel for the assessee passed by the ITAT Delhi Bench (SMC), New Delhi in the case of M/s Sorus Power Pvt. Ltd. vs. ACIT, Central Circle 28, New Delhi in ITA No. 2773/Del/2017 dated 06.11.2018. For the sake of convenience the relevant paragraphs six and seven at pages 7 & 8 of the said order are reproduced as under:

*“6. I have considered the rival submissions and gone through the orders of lower authorities. I find that the sole issue for adjudication is estimation of rate of commission on the business of providing accommodation entry. In the present case, as per the affidavit of the Director of the assessee company, it is established beyond doubt that assessee company is a paper company and not doing any real business. Further, on perusal of impugned order and assessment order, it is clear that assessee company is a conduit company operated by Sh. Vivek Jain and is engaged in providing accommodation entries to various beneficiaries. In these circumstances, I am inclined to approve the finding of Ld. CIT(A) and AO to the effect that assessee company is an entry provider. However, the next question to be answered is regarding estimation of commission income taxable in the hands of assessee*

*company which is engaged in the business of providing accommodation entry. The Assessing Officer and Ld. CIT(A) have applied 0.60% (60 paise to Rs. 1 per Rs. 100) on total credit entries appearing in the bank account whereas the Ld. AR is relying upon the assessment order for AY 2012-13 and affidavit of the Director wherein, it has been stated that appellant was charging 0.10% (10 paise to Rs. 1 per Rs. 100). However, on specific query from the Bench, neither of the sides could substantiate the basis for arriving @ 0.60% or 0.10%. I am also aware of the fact that in case of business of providing accommodation entry, there cannot be a single rate of commission and same vary from case to case and largely depends upon the quantum of entry.*

*7. Keeping in view of the facts and circumstances of the case, contention of both the parties and principle of equity and fairness, I deem just and proper to estimate the average commission @ 0.30% (30 paise to Rs. 1 per Rs. 100) on credit entries appearing in the bank account of the assessee. It is further noted that AO has made double addition to the extent that benefit of netting-off with respect to income already offered by the assessee in the return of income was not allowed. Accordingly, the AO is hereby directed to re-compute the income after allowing benefit of income already declared by the assessee in the return.”*

13. After going through the aforesaid findings passed by the Bench, I am of the considered view that facts and circumstances of the present case are exactly similar. Therefore, respectfully following the aforesaid order in the interest of justice, I am directing the AO to estimate the average commission @ 0.30% (30 paise to Rs. 1 per Rs. 100) on credit entries appearing in the bank account of the assessee.

14. In the result, the appeal filed by the assessee is partly allowed. Since in all the other four appeals there are similar facts and circumstances and the findings given by the Revenue authorities, therefore, my findings given above will apply *modus operandi* in other four appeals also recall the nature of transaction and documents are exactly same.

15. In the result, all the five appeals of different assesseees are partly allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated: 22/10/2019

\*Kavita Arora

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

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	16.10.2019/ 22.10.2019
Date on which the typed draft is placed before the dictating Member	16.10.2019/22.10.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	22.10.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	22.10.2019
Date on which the fair order comes back to the Sr. PS/PS	22.10.2019
Date on which the final order is uploaded on the website of ITAT	22.10.2019
Date on which the file goes to the Bench Clerk	22.10.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

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<b>APPELLANT</b>		<b>RESPONDENT</b>

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<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Shri V.K. Sabharwal, Advocate</b>
<b>Revenue by</b>	<b>Ms. Ekta Vishnoi, Sr. DR</b>

**CORRIGENDUM**

I note that due to typographical mistake in para no. 14 at page no. 11 of the Tribunal's common order dated 22.10.2019 passed in the aforesaid appeals, some mistakes have been crept in. The para no. 14 of the aforesaid order dated 22.10.2019 may now be read as under: -

14. In the result, the appeal filed by the assessee is partly allowed. Since in all the other four appeals

there are similar facts and circumstances and the findings given by the Revenue Authorities, therefore, my findings given above will apply *mutatis mutandis* in other four appeals also, because the nature of transaction and documents are exactly same.”

2. The rest of the contents of my aforesaid order dated 22.10.2019 will remain unchanged.

**Sd/-**  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated: 23/10/2019  
\*Kavita Arora

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