

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI
BEFORE SHRI R. P. TOLANI, JUDICIAL MEMBER
AND
SHRI J. S. REDDY, ACCOUNTANT MEMBER**

**I.T.A. Nos. 4636 & 4637/Del/2012
Assessment Years: 2003-04 & 2004-05**

Tarun Goyal
13/34, W.E.A. Karol Bagh,
New Delhi-110005
PAN: **AAPPG1505R**

Vs.

ACIT
Central Circle-4
New Delhi.

(APPELLANT)

(RESPONDENT)

**I.T.A. Nos. 4527 to 4531/Del/2012
Assessment Years: 2004-05 to 2008-09**

M/s Aparna Credits Pvt. Ltd.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005

Vs.

ACIT
Central Circle-4
New Delhi.

PAN: AADCA8334K

(APPELLANT)

(RESPONDENT)

**I.T.A. Nos. 4613 & 4543- 4544 /Del/2012
Assessment Years: 2007-08 to 2009-10**

M/s Aquarius Securities Pvt. Ltd.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005
PAN: **AAECA5016F**

Vs.

ACIT
Central Circle-4
New Delhi.

(APPELLANT)

(RESPONDENT)

**I.T.A. Nos. 4538 to 4540 /Del/2012
Assessment Years: 2005-06, 2006-07 & 2008-09**

M/s Aries Crafts Pvt. Ltd.

Vs.

ACIT

13/34, W.E.A. Karol Bagh,
New Delhi.-110005
PAN: AADCA5439P

Central Circle-4
New Delhi.

(APPELLANT)

(RESPONDENT)

I.T.A. No. 4614/Del/2012
Assessment Years: 2004-05

M/s Bhavani Portfolio Pvt. Ltd. Vs.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005
PAN: AADCA5439P

ACIT
Central Circle-4
New Delhi.

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4588-4590 & 4638/Del/2012
Assessment Years: 2004-05, to 2006-07 & 2007-08

M/s Campari Fiscal Services Pvt. Ltd. Vs.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005
PAN: AACCC1903B

ACIT
Central Circle-4
New Delhi.

(APPELLANT)

(RESPONDENT)

I.T.A. No. 4607/Del/2012
Assessment Years: 2008-09

M/s Chequer Marketing Pvt. Ltd. Vs.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005
PAN: AACCC8709M

ACIT
Central Circle-4
New Delhi.

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4596-4599/Del/2012
Assessment Years: 2005-06, to 2008-09

M/s Countrywide Credit & Securities Pvt. Ltd. Vs.
Pvt. Ltd. 4th Floor
13/34, W.E.A. Karol Bagh,

ACIT
Central Circle-4
New Delhi.

New Delhi.-110005
PAN: AABCC9595Q

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4608-4610 & 4646/Del/2012
Assessment Years: 2005-06, to 2007-08 & 2008-09

M/s Deepsea Drilling Pvt. Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005
PAN: AABCD6380N

Vs.

ACIT
 Central Circle-4
 New Delhi.

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4591-4595/Del/2012
Assessment Years: 2004-05, to 2008-09

M/s Delhi Share Shoppe. Ltd.
 4th Floor 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005
PAN: AABCD5060F

Vs.

ACIT
 Central Circle-4
 New Delhi.

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4600 & 4601/Del/2012
Assessment Years: 2003-04 & 2004-05

M/s DU Securities Pvt. Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005
PAN: AACCD0002E

Vs.

ACIT
 Central Circle-4
 New Delhi.

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4602 to 4606/Del/2012
Assessment Years: 2004-05 to 2008-09

M/s Dwarka Impex Pvt. Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AABCD6381P

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4533 to 4537, 4639-4640/Del/2012

Assessment Years: 2004-05 to 2007-08 & 2009-10 & 2003-04 & 2008-09

M/s Karol Bagh Trading Ltd.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005

Vs.

ACIT
Central Circle-4
New Delhi.

PAN: AAACK0511D

(APPELLANT)

(RESPONDENT)

I.T.A. No. 4612/Del/2012

Assessment Years: 2007-08

M/s Mahanivesh Pratibhuti Pvt. Ltd. Vs.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005

ACIT
Central Circle-4
New Delhi.

PAN: AADCM2286N

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4583 to 4586/Del/2012

Assessment Years: 2004-05 to 2007-08

M/s New Delhi Electronics Pvt. Ltd. Vs.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005

ACIT
Central Circle-4
New Delhi.

PAN: AAACN0676L

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4541, 4542 & 4611/Del/2012

Assessment Years: 2007-08 to 2009-10

M/s Rishabh Shoes Pvt. Ltd.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005

Vs.

ACIT
Central Circle-4
New Delhi.

PAN: AAACCR2358D

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4629 to 4634/Del/2012
Assessment Years: 2003-04 to 2008-09

M/s Sadguru Finman Pvt. Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AABCS4800J

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4643 & 4642/Del/2012
Assessment Years: 2007-08 & 2008-09

M/s Sai Baba Finvest Pvt. Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AAHCD6789E

(APPELLANT)

(RESPONDENT)

I.T.A. No. 4641/Del/2012
Assessment Years: 2004-05

M/s Tarus Iron & Steel Co.Pvt. Ltd. **Vs.**
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

ACIT
 Central Circle-4
 New Delhi.

PAN: AABCT7170N

(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 4645 & 4644/Del/2012
Assessment Years: 2003-04 & 2004-05

M/s Thar Steel Pvt. Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AABCT5923D
(APPELLANT)

(RESPONDENT)

I.T.A. No. 4635/Del/2012
Assessment Years: 2009-10

M/s Vertex Drugs Pvt. Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AAACK0511D
(APPELLANT)

(RESPONDENT)

I.T.A. Nos. 2522 & 2523/Del/2012
Assessment Years: 2008-09 & 2009-10

M/s Campari Fiscal Services Pvt. Ltd. Vs.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

ACIT
 Central Circle-4
 New Delhi.

PAN: AACCC1903B
(APPELLANT)

(RESPONDENT)

I.T.A. No. 2521/Del/2012
Assessment Years: 2009-10

M/s Kanha Fats & Oils Pvt. Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AACK2400M
(APPELLANT)

(RESPONDENT)

I.T.A. No. 2520/Del/2012
Assessment Years: 2009-10

M/s Ordinary Financial Services
 Pvt. Ltd. 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AAACO3637K

(APPELLANT)**(RESPONDENT)**

I.T.A. Nos. 2527 to 2533/Del/2012
Assessment Years: 2003-04 to 2009-10

M/s Mahanivesh (India) Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AAACM1750C**(APPELLANT)****(RESPONDENT)**

I.T.A. Nos. 2524 to 2526/Del/2012
Assessment Years: 2006-07, 2007-08 & 2009-10

M/s Tejasvi Investments Pvt. Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AABCT3249G**(APPELLANT)****(RESPONDENT)**

I.T.A. Nos. 3739 to 3741/Del/2012
Assessment Years: 2004-05, 2005-06 & 2008-09

M/s Tejasvi Investments Pvt. Ltd.
 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AABCT3249G**(APPELLANT)****(RESPONDENT)**

I.T.A. Nos. 3745 to 3749/Del/2012
Assessment Years: 2003-04 to 2007-08

M/s Adonis Financial Services
 Pvt. Ltd. 13/34, W.E.A. Karol Bagh,
 New Delhi.-110005

Vs.

ACIT
 Central Circle-4
 New Delhi.

PAN: AADCA5949G**(APPELLANT)****(RESPONDENT)**

I.T.A. Nos. 3750 to 3753/Del/2012
Assessment Years: 2005-06 to 2008-09

M/s Unique Capital Pvt. Ltd.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005

PAN: AAACU5693G
(APPELLANT)

Vs.

ACIT
Central Circle-4
New Delhi.

(RESPONDENT)

I.T.A. Nos. 3737 & 3738/Del/2012
Assessment Years: 2005-06 & 2006-07

M/s Vivek Plantations Pvt. Ltd.
13/34, W.E.A. Karol Bagh,
New Delhi.-110005

PAN: AAACV2617D
(APPELLANT)

Vs.

ACIT
Central Circle-4
New Delhi.

(RESPONDENT)

Assessee by: Shri. V. P. Gupta, Adv.
Revenue by: Dr. Sudha Kumari, CIT. DR.

ORDER

PER BENCH:

- These are 94 appeals and pertain to “Shri Tarun Goyal Group”.
2. They pertain to different assessee and are directed against the respective order of the CIT (A) – XXXIII, New Delhi. As common issues are involved and as the parties sought clubbing of the appeals, we heard the appeals together and dispose off the same by way of this common order.
 3. Facts in brief: A search and seizure operation was carried out u/s 132 of the IT Act 1961, on Tarun Goyal Group of Companies on 15.9.2008. Mr. Tarun Goyal is a tax consultant. He was running a racket of providing

accommodation entries. We extract para 4 of the assessment order of Shri Tarun Goyal for AY 2004-05 dated 24/12/2010 for ready reference as this would give a glimpse of the Modus Operandi followed by the assessee.

- “4. At the outset, it would be pertinent to mention the modus operandi of the assessee and Sh. Tarun Goyal who was managing the company.*
- (i) Sh. Tarun Goyal created a number of Private Ltd. companies and firms for providing accommodation entries. More than 90 companies were registered from the office premises of Sh. Tarun Goyal i.e. 13/34, W.E.A., Arya Samaj Road, Karol Bagh, New Delhi. The directors of these companies were his employees, who worked in his office as peons, clerks, receptionist etc. All the documents including blank cheques were got signed from these employees. A number of bank accounts were got opened in the names of these companies and his employees.*
- (ii) The general modus operandi was to accept cash from the beneficiary. The cash was deposited in bank account and cheques were issued to the beneficiaries. The assessee in order to disguise his transactions as genuine has been following ‘layering’ of accounts where in cash was introduced in various bank accounts of the assessee and through multiple cheque transactions passed from his*

various companies, cheques were issued to the beneficiaries from one of his companies.

(iii) The cheques issued were usually shown for the following purposes:-

(a) Share capital introduction.

(b) Introduction of capital as advance through booking of flats etc. These were later cancelled / transferred on account of payment of default, thereby reversing the entry. This is clear from the papers seized during the search. One of them, page 120 of Annexure-6 is attached with the order for ready reference (Annexure A-1 of this assessment order).

All companies of Tarun Goyal are having common address i.e. 13/34, WEA, Arya Samaj Road, Karol Bagh, New Delhi or 203, Dhaka Chamber, 2069/39, Naiwala, Karol Bagh, New Delhi. The office space at 13/34, WEA, Arya Samaj Road, 4th Floor, Karol Bagh, New Delhi is approx 440 sqft and many group companies are registered at this address. The employees who are also directors in these companies also denied to have any knowledge regarding capital and actual working of these companies and admitted that they are servant / employees in this group of companies and getting salary from Shri Tarun Goyal and sign the papers as per his direction. These companies are registered with ROC and main business of most of the companies was reflected as

share trading and investments. There were no physical assets of these companies. In fact, these are paper companies run by Shri Tarun Goyal for providing accommodation entries to the beneficiaries by taking cash and in order to disguise his transaction as genuine have been following layering of accounts through these companies.

4. Statements were recorded from Shri Tarun Goyal as well as some of the directors of Tarun Goyal Group of Companies.
5. Mr. Tarun Goyal confessed and admitted to the charge of providing accommodation entries by floating numerous companies and following layering of accounts, after cash was introduced in various companies.
6. Letter dated 14.12.2010 given by Mr. Tarun Goyal as given by the AO is extracted for ready reference:

“6. During the course of assessment proceedings the assessee submitted vide letter dated 14-12-2010,

“It is respectfully submitted:

1. *That the Investigation Wing of the Department during the search proceedings and during the post search Investigations, framed the case against the undersigned and its group of companies, that it collected cash from various companies and issued cheques in lieu thereof, known as “accommodation entry”. And that the undersigned and its*

companies earned a commission on the said accommodation entry. In order to have a peace of mind and to settle the matter for all times to come, the undersigned agreed to the commission income and accordingly, surrendered the commission income on accommodation entry of Rs.40 crores, with a commission income of Rs.10 lacs, which has been accounted for as income in the personal income tax return of the undersigned Mr.Tarun Goyal during the year of the search viz. A.Y. 2009-10.

2. *That a detail of all the cash deposits in various accounts has already been submitted before your honor.*
3. *That the commission can be taxed either at the time of cash receipt and deposit in the Bank, or at the time of issue of the cheques. The same income can not be taxed twice.*
4. *It is now requested that commission income be taxed only at the point of cash deposit because only the transactions originated with the cash deposits are the “accommodation entry” transactions. Other transactions are the genuine and bona fide business transactions on which income has accrued and accounted for in the*

books of account of each individual company and duly explained in each cash accordingly.

5. *That since the commission has already been surrendered and offered for tax at the entry point, it should not be taxed twice (against at the exit point).*
6. *That the undersigned agreed and offered to revenue in the voluntary disclosure, an addition income by treating a commission @ Rs.2.50 per thousand on Rs.40 crores of accommodation entry, whereby a total additional income of Rs.10 lacs was offered for tax in the voluntary disclosure. Any addition beyond this will put an undue hardship on the undersigned and its group of companies, and will lead unnecessary litigation, waste of precious time, money and entry.”*
7. Notices were issued u/s 153A to each of the above companies in the group. In response the assessee had filed returns of income u/s 139(1) r.w.s. 153A. The AO completed assessments in all the cases by making additions on account of; a) undisclosed commission earned and; b) unexplained credit being cash deposits etc. u/s 68.
8. Aggrieved the assessee carried the matter in appeal.
9. The first appellate authority dismissed all the appeals.
10. Aggrieved the assessee is before us on the following grounds:

- “1. *That the CIT (A) erred in upholding the addition of Rs.50,84,400/- being the cash deposited in the bank accounts of the appellant without appreciating that admittedly the appellant was carrying on the business of providing accommodation entries through bank accounts of various entities as well as his own bank accounts and the cash was deposited in the bank accounts of the appellant during the course of the above business for providing accommodation entries in respect of which commission income had also been declared in his income tax return for A.Y. 2009-10 and, therefore, cash deposited could not be added under section 68 of the Income Tax Act.*
2. *In the alternative and without prejudice to Ground No. 1, only the commission income could be considered in the case of the appellant for the year under appeal notwithstanding that the appellant had already voluntarily surrendered income on account of commission in his income tax return for A.Y. 2009-10 calculated @ Rs.2.50 per thousand.*
3. *That the appellant prays for addition / modification of any of the grounds at that time of hearing of the appeal.”*

11. We have heard Mr. V.P. Gupta the ld. counsel for the assessee at length. Papers books are filed by the assessee in support of his contentions.

12. The appeals have been categorized into 5 groups. The common ground in all the appeals is that addition can be made only in the case of Tarun Goyal. In 9 appeals, addition made on account of cash deposits in bank account and commission income are disputed. In 80 appeals grounds relate to addition on account of commission. 2 appeals involve grounds disputing addition of cash deposit. One appeal involve grounds for addition made on account of commission and entry given for purchase of flats. Two appeals are of Mr. Tarun Goyal.

13. Submissions of Mr. V.P. Gupta are as follows:

- “1. That assessment has to be made as a group considering the facts in totality and not separately for each of the entities;*
- 2. That depositing of cash in bank accounts for group entities is part of business of providing accommodation entries and accordingly, no addition can be made for the cash deposited;*
- 3. That commission income is to be added only in the case of Mr. Tarun Goyal and he has already surrendered income on account of commission in his return of income for A.Y. 2009-10 and accordingly, no addition is called for in other cases;*

4. *Commission income is to be determined on the basis of quantum of cash received and deposited in different entities as same represent the amount of accommodation entries; and*
5. *That the rate of commission of 2.25% is excessive and unreasonable and the prevailing rate of commission was 0.25% as stated by Mr. Tarun Goyal in his statement during the course of search (Page 52 of the Paper Book) and also during the course of assessment proceedings Para 1 and 6 of letter dated 14.12.2010 (Assessment Order Page 7 Para 5).”*

14. He prayed as follows:

- a. *There is no rational in considering each of the case independently and accordingly, this Hon’ble bench may be pleased to set aside the orders of assessments under appeals with the direction that assessment should be made in the hands of Mr. Tarun Goyal only. In similar circumstances the department has made assessments only in the hands of the person carrying on the business of providing accommodation entries [refer decision in the case of Manoj Aggarwal (Special Bench of 5 Members) and decisions of ITAT Delhi in the cases of Sanjay Kumar Garg and Sanjay Kumar Rastogi-copies given in the case law compilation].*

- b. *No addition on account of cash deposited in bank accounts can be made u/s 68 of the Act as depositing of cash is part of business of providing accommodation entries (refer decisions referred above).*
- c. *Rate of commission prevailing in the trade was of 25 paisa per hundred and this fact is corroborated by the decision in the case of Manoj Aggarwal and Sanjay Kumar Garg and also from the facts stated in the cases of Money Growth Investment (Delhi High Court) and Anchal Infrastructure (Assessment Order).*
- d. *The amount of commission should be determined with reference to amount of cash received and deposited in bank accounts of Group entities.”*

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, Id. 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 ld. 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 ld. 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 Id. 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.

25. In the result all the appeals are allowed for statistical purposes.

Order pronounced in the open Court on 18/10/2013.

Sd/-

**(R. P. TOLANI)
JUDICIAL MEMBER**

Dated: 18/10/2013

AK VERMA

Copy forwarded to:

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

Sd/-

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

ASSISTANT REGISTRAR