

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: "B" NEW DELHI**

**BEFORE SHRI C.L.SETHI, JUDICIAL MEMBER  
AND  
SHRI A.K.GARODIA, ACCOUNTANT MEMBER**

**ITA No: 790 /Del/2010  
Assessment Year : 2005-06  
A n d  
ITA No: 791 /Del/2010  
Assessment Year : 2006-07**

Devki Nandan Bindal  
6224 C, Kucha Shiv Mandir  
Katra Baryan, Fatehpuri  
Delhi 110 006

vs. ITO, Ward 28 (3)  
New Delhi

**(Appellant)**

**(Respondent)**

**Appellant by : None  
Respondent by : Sri HK Lal, D.R.**

**ORDER**

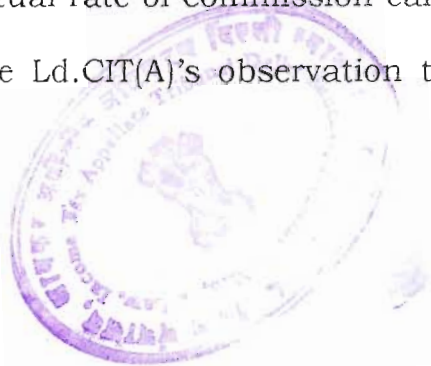
**PER C.L.SETHI, JUDICIAL MEMBER**

These two appeals are filed by the assessee against two separate orders dated 31<sup>st</sup> December, 2009 passed by the IdCIT(A) confirming the penalty amounting to Rs. 89,530/- and Rs. 52,680/- levied by the A.O. u/s 271(1)(c) of the Income Tax Act, 1961 for the A.Y. 2005-06 and 2006-07 respectively. In these cases the assessment was completed by the A.O. u/s 153A read with S. 143(3) wherein income from commission



on draft discounting was determined by adopting the rate of commission at Rs. 70 per lakh. Consequently, in addition of Rs. 2,98,422/- and Rs. 1,89,963/- was made in the assessment for the A.Y. 2005-06 and 2006-07 respectively. The AO also initiated penalty proceedings u/s 271(1)(c) with regard to the addition made by him. After issuing the show cause notice and hearing the assessee, he AO levied the penalty amounting to Rs. 89,530/- and Rs. 52,680/- which has been confirmed by the Id.CIT(A).

2. We have heard the Ld.D.R. None was present for the assessee. We have carefully gone through the material available on records. In the assessment order for both the A.Ys it has been mentioned by the A.O. that in the absence of details the assessee had agreed to determine the income from commission at Rs. 70/- per lakh and the AO then accordingly estimated the commission by adopting the rate of commission at Rs. 70/-. The A.O. in the assessment had mentioned that the rate of commission per lakh has been estimated at Rs. 70/-, in the light of the fact that the assessee's A.R. agreed that commission may be determined at Rs. 70/- per lakh, which was found to be reasonable considering the facts and circumstances of the case. It is thus clear that addition was made purely on the basis of estimate and not on the basis of any material found during the course of search indicating that the actual rate of commission earned by the assessee was Rs. 70/- per lakh. The Ld.CIT(A)'s observation that Rs. 70/- has been determined on the



basis of some material found during the course of search is without any basis. In the course of hearing, the Id.D.R. has not been able to point out any material found during the course of search from which it could be established that the assessee was earning commission @ Rs.70/- per lakh. We are, therefore, of the opinion that the addition made by the A.O. is purely based on the assessee's concession and not on the basis of any material detected by the department. Therefore, it is not a fit case where penalty u/s 271(1)(c) can be levied. We therefore cancel the penalty levied upon the assessee and allow these two appeals filed by the assessee.

3. In the result both the appeals filed by the assessee are allowed.

This decision was pronounced immediately after conclusion of the hearing on 9.6.2010.

**(A.K.GARODIA)**  
**ACCOUNTANT MEMBER**

**(C.L.SETHI)**  
**JUDICIAL MEMBER**

Dated: <sup>9th</sup> June, 2010  
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Copy of the Order forwarded to:

1. Appellant; 2. Respondent; 3. CIT; 4. CIT(A); 5. DR; 6. Guard File

By Order

Dy. Registrar

Accountant Registrar

// COPY // नदीतीय अयकरय  
Income Tax Appellate Tribunal  
दिल्ली सी. ५६ फ्लाई  
Delhi Bench, New Delhi



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