

**IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, MUMBAI
BEFORE D.T.GARASIA, JM AND SHRI G.MANJUNATHA, AM**

आयकर अपील सं./ I.T.A. No. 5739 to 5745/Mum/2012

(निर्धारण वर्ष / Assessment Year: 2001-02 to 2007-08)

Shri Dilip Shah 401, Spenta Towers, 55/57 Forgett Street, Gowalia Tank Mumbai 400036.	बनाम/ Vs.	Deputy Commissioner of Income Tax, Central Circle-11 Mumbai
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No.		ACWPS4146B
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

आयकर अपील सं./ I.T.A. No. 5713 to 5719/Mum/2012

(निर्धारण वर्ष / Assessment Year: 2001-02 to 2007-08)

Shri Atul Sanghvi B, 1607, Shanker Seth, Palace, 16 th Floor, Nana Chowk, Mumbai 400007	बनाम/ Vs.	Deputy Commissioner of Income Tax, Central Circle-11 Mumbai
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No.		AHZPS2788P
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri Rakesh Joshi, A.R
प्रत्यर्थी की ओर से/ Respondent by	:	Shri R.P. Meena, D.R

सुनवाई की तारीख/ Date of Hearing	:	02/08/2017
/ घोषणा की तारीख Date of	:	25 /09/2017

Pronouncement		
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आदेश / ORDER

PER G. MANJUNATHA, AM:

These bunch of appeals filed by two different assessee's are directed against two common orders passed by the CIT(A)-37, Mumbai dated 24.07.2012 for the assessment years 2001-02 to 2007-08. Since, the facts are identical and issues are common, these appeals were clubbed, heard together and disposed of by this common order for the sake of convenience. The grounds of appeal raised by the assessee, Shri Dilip Shah are as follows:

- 1. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in passing a consolidated order for all seven assessment years from 2001-02 to 2007-08, ignoring the statutory provisions and requirement.*
- 2. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in law and on facts for not passing separate assessment orders for each of the seven assessment years from 2001-02 to 2007-08, ignoring the statutory provisions and requirement.*
- 3. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in law and on facts in inferring and holding that the Appellant was indulged in the business of issuance of bogus bills.*
- 4. On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in making an addition of Rs.35,46,36,038/- on account of alleged sales on protective basis, without considering the facts and circumstances of the case.*

5. *On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in inferring and holding that the appellant earned commission @ 2% on account of services rendered by him, ignoring the prevailing commission rate in the steel market ranging between 0.02% - 0.05%, especially having regard to the fact that the Appellant is a registered broker in the market.*
 6. *On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in making an addition of Rs.70,92,721/- to the income of the Appellant, being Commission earned @ 2% on the bogus sales bills issued during the year to various parties.*
 7. *On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in holding that the cash deposits in the bank accounts of the persons other than assessee (third parties) as undisclosed income of the appellant.*
 8. *On the fact and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in making an addition of Rs.7,01,650/- to the income of the Appellant on the basis of the cash deposits in the various bank accounts of the persons other than assessee (third parties), ignoring the fact that the Appellant was merely a commission agent of those persons.*
 9. *The appellant craves leave to add, amend alter or delete the said ground of appeal.*
2. Brief facts of the case extracted from ITA No. 5739/Mum/2012 in the case of Shri Dilip C. Shah for the assessment year 2001-02 are that search and seizure u/s 132 of the Income tax Act, 1961 was carried out in the case of Shri Dilip C. Shah and Shri Atul Sanghvi on 05.02.2007. During the course of search and seizure operation incriminating materials were found which revealed that

the assessee along with Shri Atul Sanghvi involved in providing accommodation entries to various beneficiaries. The incriminating documents found further revealed that the assessee has operated more than 100 bank accounts in various names and also tampered documents like PAN card and other evidence in support of address proof to open and operate bank accounts in the name of various persons. Earlier a survey action was carried out at the office premises at 78/80, Motor garage Bldg. Mota Compound, Gaushala, C.P. Tank, Mumbai-4. During the course of survey keys of three bank lockers were found in the possession of the assessee and Shri Atul A. Sanghvi. Accordingly, a warrant by u/s. 132 was executed and total cash of Rs.47.30 lacks along with some incriminating documents were found. During the course of search u/s 132, statement u/s 132(4) of the Income tax Act was recorded from the assessee and confronted the incriminating materials found like bank account, and signed cheque books and also bill books of various concerns. The assessee while recording statement u/s 132(4) admitted that he along with Atul Sanghvi were engaged in the business of commission agents in steel market arranging business between the sellers of goods and buyers of goods for which they charged commission ranging between 0.02% to 0.05%. The assessee further admitted that he and Shri Atul Sanghvi operated this business jointly, however there is no written agreement entered into between them. The assessee

further submitted that he is a reputed commission agent in the market and the prospective sellers of goods approach him at his office with various offer to sell their goods. He identifies the buyer for the goods for which he takes necessary precautions to protect the business accordingly collects various information from the buyers as well as sellers in the form of ration card, PAN card, VAT registration papers, bank account details, as also the cheque books as well as letter heads, bills, vouchers etc of such persons. It is only after submitting the documents as mentioned, he entertained the parties. This is the reason why during the search proceedings, the department came across with these documents in the premises. The assessee further submitted that the documents found during the course of search was belonging to the various suppliers of goods who kept the documents in his possession to facilitate the transaction expeditiously. Therefore, these documents cannot be considered as his documents to hold that he floated dummy concerns in the name of fictitious/existing persons so as to issue bogus bills.

3. Consequent to search proceedings notice u/s. 153A of the Income tax Act 1961, was issued directing the assessee to file the return of income for the six assessment years immediately preceding the assessment years in which the search took place. In response to notice, the assessee has filed returns of income for the assessment years 2001-02 to 2007-08 on 15.02.2008. The case

has been selected for scrutiny and accordingly notice u/s 143(2) and 142(1) along with detailed questionnaire were issued to the assessee. In response to the notices authorized representative for the assessee appeared from time to time and furnished various details, as called for.

4. During the course of assessment proceedings, the A.O noticed that the assessee is operating more than 100 bank accounts in various entities name in different bank accounts and the total sum found credited in these bank accounts was worked out at Rs.21,22,27,57,495/-. The A.O further observed that the assessee had issued sales bills in the name of 51 entities for an amount of Rs.8,59,99,06,373/-. The A.O has summarised the details of companies/firms operated by the assessee along with shri Atul Sanghvi and the names of persons of concerns are listed in the assessment order dated 31.12.2008 at paragraph 5.1. Similarly, the A.O has listed the total sales bills issued by the assessee in the name of various concerns at paragraph 5.2 of assessment order dated 31.12.2008. The A.O also listed the names of companies/firms and corresponding bank accounts operated in various banks at paragraph 5.3 of his order dated 31.12.2008. As per the information gathered during the course of search coupled with further inquiries conducted during the course of assessment proceedings, the A.O came to the conclusion that the assessee along with Shri Atul Sanghvi is involved in providing

accommodation entries of bogus purchase bills to various entities. The information gathered during the course of search and assessment proceedings revealed that the assessee has issued sale bills worth Rs.856,64,49,533/- in the name of M/s Varun Industries Ltd. 13, Sankeshwar Darshan, A.G. Pawar Cross Lane, Byculla/Mumbai. The total sale bills issued from various concerns name to M/s Varun Industries Pvt. Ltd., were seized at the time of search are marked as Annexure A1 to Annexure A19 which are reflected in the assessment order at paragraph 5.1.

5. During the course of the assessment proceedings, the A.O called upon the assessee to explain credits found in the bank account and sales bills issued to M/s Varun Industries Ltd. In response to show cause notice, the assessee submitted that he is a registered commission agent in the steel market. He along with Shri Atul Sanghvi are engaged in the business of commission agent facilitating sale and purchase between the persons manufacturing steel goods and persons buying steel goods. The assessee further submitted that he charged commission ranging from 0.05% to 0.15% depending upon the size of the business for which he collected various details from the prospective sellers of goods including their PAN card, sales bills, bank account details, address proof etc. The assessee further submitted that the bank account found during the course of search and sale bills found in various names do not belong to

him, but the same were belonging to the entities manufacturing goods which are kept in our in custody for easy facilitation of business, therefore, the same cannot be construed as dummy entities floated by me for facilitating issue of bogus bills.

6. The A.O, after considering the submissions of the assessee and also taking into account the seized material found during the course of search, came to the conclusion that the assessee along with Shri Atul Sanghvi was engaged in the activity of providing accommodation entries of bogus purchase bills to various beneficiaries. The A.O further observed that the *modus operandi* of the assessee is that he opens bank accounts in various fictitious / existing persons name by fabricating address proof and PAN card, which is evident from the fact that he has opened bank account's in one persons name in different bank accounts by fixing his photograph on the fabricatéd address proof and PAN No. The A.O further observed that the statement recorded during the course of search from one Mr. Yashwant Pandya who claimed to be the accountant of the assessee indicates that the assessee is issuing sales bills in various names. Shri Yashwant Pandya accountant of the assessee who has clearly stated in his statement that he had under instruction from Shri Atul Sanghvi and Shri Dilip C. Shah, bills in respect of the various companies were prepared in the office of the assessee. The bills were prepared in the name of

various concerns whose blank cheques were found during the course of search. The A.O further relied upon the statement of Shri Pradip M Jabalia who had given his address for correspondence for some of the bank accounts operated by shri Atul Sanghvi and Shri Dilip C. Shah. In the statement he has confirmed that the letters from the bank were collected by Shri Atul and Dilip Sanghvi. The sum and substance of the statement given by the Shri Pradip M Jabalia is that Shri Atul Sanghvi and Shri Dilip Sanghvi floated various dummy concerns at the address of Shri Pradip M Jabalia. The A.O also relied upon the statement of Shri Vinod Kumar Uttamlal Shah who is the person responsible for introducing the account in the name of Shri Sandeep P. Shah in Bank of Maharashtra, Jhavery Bazar branch. Shri Vinod Kumar Shah has stated that he has seen Shri Dilip Shah only ones in his life. Shri Sandeep P. Shah came to his office with account opening form. He did not know who he was, but Shri Atul Sanghvi who was relative stated that he knows Shri Sandeep P. Shah very well and was from his village. The A.O further gathered information which revealed that the photo appearing in the account opening form of Shri Sandeep P Shah is appearing in three different accounts in the three different names and all the cheques books found in the possession Shri Atul Sanghvi and Dilip Shah. The A.O further referred to the statement recorded from Shri N. V. Neelakantan who is the person responsible for opening accounts of concerns run by Shri

Atul Sanghvi and P. Shah on the National Cooperative Bank, Fort branch. In question No. 3 he has stated that the duo Shri Atul Sanghvi and Shri Dilip Shah approached the bank for opening account of the concern in their group. Further it has been stated that the person in whose name accounts were opened never came forward to operate the account which was in fact done by Shri Atul Sanghvi and Shri Dilip Shah. The A.O further noted that even the summons issued to all these addresses were returned unserved; however the letter sent by the DRI were received and had been found in the possession of the assessee indicating that these two persons are managing the affairs of all the companies whose letterheads and bank accounts have been found from the assessee's possession.

7. From the above inquiries and evidences gathered during the search and post search enquiries, the A.O came to the conclusion that Shri Atul Sanghvi and Shri Dilip Shah were the persons, who had operated 100 bank accounts in different entities name to facilitate the issue of bogus bills to various beneficiaries. The A.O further observed that the seized documents found during the course of the search undoubtedly proved that the duo were involved in providing accommodation entries of bogus purchase bills in the name of dummy concerns. The A.O further observed that the duo have fabricated documents like PAN card, signature etc, to open bank accounts in

the name of different persons who had nothing to do with those transactions. The assessee and Shri A. Sanghvi have operated bank accounts in different persons' names, however the real transactions have been carried out by the assessee along with Shri Atul Sanghvi. All these sequence of events and evidences clearly indicates that the assessee is engaged in the activity of providing accommodation entries therefore, he opined that the total sum found credited in these bank accounts is the gross turnover of the assessee from the activity of issuing bogus bills. The A.O has concluded assessment in the following manner:-

(I) Commission on bogus billing:-

The A.O has worked out commission on bogus billing issued in the name of different entities to the tune of Rs.856,64,69,533/- at the rate of 2% on total bill amount and divided for a period of 7 years from assessment year 2001-02 to 2007-08 and added 50% on total commission in the hands of the assessee and 50% in the hands of Shri Atul Sanghvi.

(II) Additions towards Bank Credit:-

During the years there are bank credits to the tune of Rs. Rs.21,22,27,57,495/-. The A.O has taken total bank credits and reduced the value of bogus sales bill issued to M/s Varun Industries Ltd. and others to the extent of Rs.856,64,49,533/- and the balance amount of Rs.1388.09 crores bank credits has been treated as unexplained credits for the assessment year 2001-02 to 2007-08 and made additions on protective basis.

(III) The A.O also estimated commission @2% on total unexplained bank credit and added 50% in the hands of the assessee for the assessment year 2001-02 to 2007-08 and remaining 50% in the hands of the Shri Atul Sanghvi.

(IV) Unexplained cash deposit in bank accounts :-

The A.O made additions of Rs.17,73,36,779/-towards unexplained cash deposits in bank accounts for the assessment year 2001-02 to 2007-08 and added 50% in the hands of the assessee and remaining in the hands of shri Dilip Shah.

(V)Additions towards cash found during the course of search:

During the course of search cash amounting to Rs.47,30,000/- has been found and seized. The assessee has admitted that the amount found seized and during the course of search representing his unexplained business income. In this fact, the sum of Rs.47,30,000/- has been treated as unexplained income of the assessee for the assessment year 2007-08 and added 50% in the name of the assessee and remaining 50% has been added in the hands of the Shri Dilip Sanghvi.

8. Aggrieved by the assessment order the assessee preferred an appeal before the CIT(A). When the appeals filed by the assessee were pending before the CIT(A) for adjudication, the CIT [Central Circle(1)], Mumbai had issued a show cause notice u/s 263 of the Act, and on the ground that the assessment order passed by the A.O u/s 143(3) r.w.s. 153A was erroneous insofar as it is prejudicial to the interest of the revenue, as the A.O has not considered the issue of bogus sales bills issued in the name of M/s Varun Industries Ltd. and also unexplained credits found in the bank accounts operated by the assessee. The CIT Mumbai, after considering the explanations of the assessee, set aside the order passed by the A.O u/s 153A r.w.s. 143(3) and directed the A.O to redo assessment with the following directions:

“4.2.1 The total amount included in the bills raised in the name of M/s. Varun Industries Limited should be assessed protectively in the hands of the assessee to the extent of his share in the business, to safe guard the interest of the revenue. The commission income on the said transactions should be assessed proportionately on substantive basis in the hands of the assessee, as already done in the original assessment.

4.2.2 Regarding the deposits aggregating to Rs.1.388.09 crores in the assessment years comprised in the block period for which the assessee has not been able to furnish proper explanation, this amount should be taxed in the hands of the assessee proportionately to the extent of his share in the business on substantive basis as his own unexplained or unaccounted income.

4.2.3 Assessee should be allowed opportunity to prove that the deposits are accounted for or/are no the assessee's own income but income of some other person, by submitting proof of identity of such other person, creditworthiness of such person, business operation carried out and that the transaction is genuinely carried out by such other person, in which. case, the said amount or amounts would be reduced from the aggregate amount of unexplained bank deposits and taxed only on protective basis in the respective year or years. The remaining amount that remains unexplained, would be taxed in the respective years in the hands of the assessee proportionately, on substantive basis as mentioned in the foregoing para.”

9. The CIT, [Central Circle(1)] in his order u/s 263 dated 29.03.2011, directed the A.O to make additions towards sales bills raised in the name of M/s Varun Industries Ltd. on protective basis in the hands of the assessee to the extent of his share of business to safeguard the interest of the revenue and that the commission income on the said transactions should be added proportionately on substantive basis in the hands of the assessee as already

done in the original assessment order. Regarding cash deposits aggregating to Rs.1388.09 crore in the assessment years comprised in the period for which the assessee has not been able to furnish proper explanation, the same should be taxed in the hands of the assessee proportionately to the extent of his share in the business on substantive basis as his own unexplained and unaccounted income. The CIT(A) further directed the A.O to allow opportunity to the assessee to prove that the deposits are accounted for and declared as the assessee's own income or income of some other persons by submitting proof of identity of such other persons, creditworthiness of the such persons, business operation carried out and that the transaction is genuinely carried out by such other person. In the case the said amounts explained, the same would be amounts would be reduced from the aggregate amount of unexplained bank deposits and taxed on protective basis in respective year or years.

10. The assessee has challenged 263 orders passed by the CIT, for all the assessment years before the ITAT. The ITAT Mumbai 'A' Bench in IT(SS)A No. 30/Mum/2011 for the assessment years 2001-02 to 2007-08 upheld the revision order passed by the CIT(A) and dismissed appeals filed by the assessee. The relevant portion of the order of the ITAT, is reproduced as under:-

"7. We have considered the rival submissions. A perusal of the assessment order reveals that the AO had given a categorical finding that the total credit in the assessee's various bank accounts was amounting to Rs.2122,27,57,495/out of this a sum of Rs.856,64,49,533/- had been

treated as bogus sales for which sales bills were found and were duly impounded. However, the remaining sum of Rs.1388,09,01,411/- had remained unexplained in spite of various opportunities given to the assessee. The AO had treated the same as unexplained income of the assessee and decided to bring it into tax in various assessment years. He also worked out the additions for different assessment years. However, he made the said additions on protective basis observing that the assessee had not been able to establish the source of these credits. He, however, made the addition of 2% of the said amount as commission income of the assessee on substantive basis. A perusal of the above findings itself reveals that the order of the AO was erroneous. In the absence of any evidence, on the file-Is to source of the credits of the amount in question in the various bank accounts of the assessee, the AO had treated the said amount as unexplained income of the assessee. Once the AO had treated so, the AO was required to make the addition of this amount on substantive basis. Even without making the addition of the amount in question on substantive basis in any other persons' account, the AO could not have made the addition of the amount on protective basis in the assessee's account. From the above facts, the Ld.CIT was justified in holding that the order of the AO was not only erroneous but also prejudicial to the interest of the Revenue. Hence, we do not find any infirmity in the order of the Ld.CIT while invoking provisions of section 263 of the Act and thereby revising the order of the AO. The same is therefore, upheld."

11. In the meantime, the appeal filed by the assessee against the order passed by the A.O u/s 143(3) r.w.s. 153A has been dismissed by the CIT(A). The assessee carried the matter in further appeal before the ITAT. The ITAT Mumbai 'A' Bench in ITA No. 4721 to 4726/Mum/2011 for assessment year 2001-02 to 2007-08 had dismissed the appeals filed by the assessee by observing as under:-

"3. We have heard the parties, and perused the material on record.

3.1 The primary and relevant facts, which are the same as in the case of Dilip Shah v. A 'IT (supra), with reference to which the Id. AR argues the instant case, are not in dispute. As would be

*apparent from the operative part of the said order, reproduced hereinabove, the tribunal decided in the manner it did on the premise that pending a decision on the merits of the revision order cancelling the assessments, considering the assessee's appeals thereagainst as not maintainable, as held by the first appellate authority, would operate to the prejudice the assessee if it were to succeed in its challenge to the revision order inasmuch as the assessments, since cancelled, would stand to be restored, while the assessee's action in appealing there against on merits would stand barred by time. We are in full agreement with the said premises, which can be said to represent the ratio decendi of the said decision. The proper course under the circumstances would be to prevent such a prejudice were such an eventuality to arise in future. However, that may not necessarily imply a requirement to decide the assessee's appeals on merits by the first appellate authority, need or occasion for which would arise only where the assessee's impugned assessment/s, since set aside, stand restored by accepting his challenge to the revision order, and which is not certain, so that it may never arise, resulting in his decision on merits becoming futile or unfruitful. Reserving the assessee's statutory right to contest its assessment/s under the appellate procedure, which is what we understand, as also afore-stated, to be the also intent and purport of the tribunal's order in *Di/ip Shah v. ACIT (supra)*, would in our view present a reasonable and equitable course under the circumstances.*

3.2 The above course, besides being in conformity with that by the tribunal in the cited case, i.e., in principle, would also be in consonance with law inasmuch as the assessments impugned in the instant appeals stand since set aside by the revision order, which holds as on date, so that the action of the Id. CIT(A) in dismissing the same as not maintainable cannot be faulted with. The exclusion of the jurisdiction of the Administrative Commissioner qua an assessment, it needs to be borne in mind, is only where the same stands modified in appeal, so that it stands merged with the appellate order, and then, again, only to that extent (refer Explanation (c) to s. 263(1)). No appellate order had admittedly been passed by 13/1/2011, i.e., on which date the revisionary authority issued the show cause to the assessee in the instant case.

3.3 Under the circumstances, we only consider it fit and proper to dismiss the instant by the assessee, subject to the condition that in case the appellant, who has admittedly also challenged the section 263 orders/s before the tribunal, is successful in his challenge, so that the impugned assessment/s stands restored/revived, he shall be at liberty to pursue his appeal/s before the first appellate authority, and who shall, in that case, decide the same on merits, i.e., in accordance with law, and after affording proper opportunity of hearing to the assessee. That is, the assessee's appeals before the first appellate authority contesting its said assessments would also stand consequentially revived where the assessee intends to prosecute the same. Further, the same having been filed before the first appellate authority in the first instance in time, no question or issue with regard to the same being delayed, would, in that case, ensue or arise. Subject to the foregoing we confirm the impugned order."

12. In pursuance of the order of the CIT u/s 263 of the Act, the A.O issued notice u/s 143(2) calling for various details from the assessee. In response to show cause notice, the assessee's authorized representative appeared and submitted the details, as called for. The assessee more or less reiterated its submissions made before the A.O at the time of original assessment u/s 143(3) r.w.s. 153A of the Act. The assessee also filed confirmation from certain persons stating that some of the concerns bank accounts considered as dummy concerns operated by the assessee in his own name are in fact operated and controlled by them and the bank accounts were considered in their income-tax returns filed for the respective assessment years. The assessee also filed copies of I.T. returns of few persons and claimed that those

assesseees have considered the bank accounts in their Income tax returns for the respective assessment years.

13. The A.O, after considering the explanation of the assessee, observed that the assessee has not discharged his onus of proving the identity, genuineness and creditworthiness of any of these transactions pertaining to sum total found credited in the bank accounts operated in various entities name of Rs.1388.09 crores. Though the assessee has simply relied on the stand that some parties were produced during the original assessment proceedings or that certain annual account and copies of I.T. returns have been submitted in some cases, it however does not discharge the onus of proving the credits found in the bank accounts. The A.O further observed that the assessee has merely made his submissions which were made even at the time of original assessment proceedings and have been rejected there itself without any further corroborative evidence to explain the credits found in the bank accounts. The A.O further observed that the purpose of the present proceedings is merely to make fresh assessment only with respect to the deposit in the bank accounts and hence, the assessee is having an obligation to discharge his onus by furnishing identity, genuineness, and creditworthiness of the transactions. Since, the assessee has failed to file any evidence to explain the credits found in the bank accounts, the AO completed the assessment by

treating 50% of total unexplained bank credits of Rs.1388.09 crores and divided it amongst the assessment years 2001-02 to 2007-08, as per the actual credits found in the respective years and added in the hands of the assessee as unexplained cash deposit u/s 68 of the Act.

14. In so far as sale bills issued in the name of M/s Varun Industries Ltd. amounting to Rs. 856,64,49,533/- the A.O added total amount of sales bills issued in the name of M/s Varun Industries Ltd as unexplained income of the assessee on protective basis. Further 50% of the commission income @2% of total sales bills issued in the name of M/s Varun Industries Ltd has been added in the hands of the assessee. Insofar as commission on total bank credits, the A.O has added 2% commission and total bank credits of Rs.1388.09 crore and divided equally among the assessee and Shri Atul Sanghvi and spread it over the assessment year 2001-02 to 2007-08 on the basis of unexplained bank credits found for the respective assessment years. However, further observed that in case the assessee is to be granted relief in the appellate stages on the unexplained bank credits, the assessee would still have to be treated as bogus bill provider and income at 2% of the said bank deposits need to be treated as earned for providing and facilitating the said bills, would survive. The other additions made in the course of regular assessment remain untouched in toto and added under same heads of income.

15. Aggrieved by the assessment orders, the assessee has preferred appeals before the CIT(A). Before the CIT(A), the assessee has taken a legal plea by raising the ground challenging the common order passed by the A.O for the assessment years 2001-02 to 2007-08, by stating that the assessing officer was erred in passing a consolidate assessment order for all seven assessment years, ignoring the statutory provisions and the requirement thereof. The assessee also challenged each and every additions made by the A.O. The assessee has filed written submissions and contended that the A.O was erred in treating him as hawala operator involved in providing accommodation entries ignoring all the evidences filed by him to prove that he is registered commission agent in the market involved in the business to facilitate sales and purchase of various entities by selling goods. The assessee also challenged additions made by the A.O towards total sum found credited in the bank accounts of various individuals. The assessee submitted that the bank accounts found and seized during the course of search are in fact belong to entities manufacturing goods which are kept in his custody for easy facilitations and business therefore, the same cannot be considered as his own documents used for issuing bogus bills. The assessee further submitted that insofar as estimation of commission of total sales bills in the name of M/s Varun Industries Ltd and others and also additions made towards total sales bills on protective basis, once he was

treated as bogus bills provider, and commission income is estimated on total sales, additions cannot be made towards total sales bills on protective basis when substantial additions has been made in the hands of persons receiving the bills. The assessee further submitted that a substantial addition has been made towards total value of sale bills found in the name of M/s Varun industries Ltd; hence, and protective addition made in its hands, should be deleted. As regards addition made towards bank credits, the assessee submitted that the bank accounts found during the course of search are, in fact, belong to some other persons and further, they have categorically admitted before the A.O by filing confirmation letter and their I.T. returns, therefore the A.O was erred in treating total sum found credited in the bank account as his unexplained income.

16. The CIT(A) after considering the assessee's submissions and also taking into account the facts of the case has observed that there is no merit in the legal ground raised by the assessee challenging the validity of assessments, as though the A.O has passed a consolidate order, the order passed by the A.O is noticeably separate insofar as the additions / computation of total income are concerned. The CIT(A) referring to the persons of Section 292B of the Act, observed that no assessment made in pursuance of any of the provisions I.T. Act, shall be invalid or shall be deemed to be invalid merely because on any

mistake, defect or omission in such assessment, if the said assessment in substance and in effect is in conformity with or according to the intent and purpose of the Income-tax Act. Admittedly, the Id A.O had issued separate notice u/s 153A for all the years and it was only for the sake of brevity and consolidation of the fact that one single order was passed, though manifestly additions for all the assessment years have been made separately and computation of income for each year has been done separately. Therefore, there is no doubt that the intent and purpose of passing of such an order is, in substance and effect, in conformity with the intent of the I.T. Act and squarely covered u/s 292B of the I.T. Act, even if a hyper technical plea has arisen that there should be a separate order for each year on individual sheets of paper. Accordingly the legal ground raised by the assessee has been dismissed.

17. Insofar as other ground of appeal challenging additions made by the A.O towards sales bills raised in the name of M/s Varun Industries Ltd. and estimation of commission on sales bills, additions towards unexplained bank credits, the CIT(A) for the detailed reasons recorded in this order dated 24-07-2012 observed as under:-

2.6.1 Vide ground No.3 the appellant has raised an issue regarding an inference drawn by the Ld. A.O. that he indulged in the business of issuance of bogus bills. From the facts of the case, it is apparent that appellant was found in possession of several bank accounts and other

related documents of fictitious persons and a large number of sale bills issued to various concerns including those of M/s. Varun Ind. Ltd. were found alongwith a number of cheque books and bank lips. Evidence was also found of tampering of documents such as PAN cards by substitution of names and photographs. In one of such case, same person's photo was used in three different bank accounts in three different names. Thus, it cannot be said that appellant was not indulged in the business of issuance of bogus bills. By making a mere averment that he was not involved in such activity in spite of a host of such evidence found in his possession would not cut much ice and cannot lead to an inference which the appellant wants the revenue authorities to hold. In view of the above facts there is not even of iota of truth in the pleadings made by the appellant and hence ground No 3 is dismissed.

2.7.1 Ground No.4 relates to making of protective assessment of Rs.35,46,36,038/- on account of sales made to M/s. Varun Inds. Ltd. The only plea which has been made by the appellant is that because a substantive addition has been made in the hands of M/s. Varun Ind. Ltd., the protective assessment in the hands of the appellant, would not survive. It is true that a substantive addition has now been made in the hands M/s Varun Ind. Ltd., but as long as the issue has not attained finality, on facts and in law, it cannot be said that the protective assessment in the hands of the appellant is wrong because the very basis of making a protective assessment is to protect the interest of revenue which even the appellant has not denied. Only if the substantive addition made in the hands of M/s. Varun Ind. Ltd. survives all possible rounds of litigation and attains a finality, would the appellant be documents relieved of its liability. It is a stated position that- documents relating to various bogus bank accounts and dummy accounts alongwith PAN cards and other documents were seized from the appellants premises suggesting that he was engaged in a scam of mammoth proportion in the steel market and therefore, I do not find any infirmity in the order of the Ld. A.O. in making a protective assessment in the hands of appellant's hands. Hence, for the purpose of deciding this appeal, addition made by the Ld. A.O. is confirmed. Nevertheless, the appellant shall be entitled to a relief if the substantive addition made in the

hands of M/s.Varun Inds. Ltd. is confirmed after all rounds of litigation.

2.8.1 Ground Nos. 5 & 6 relate to addition on account of commission 2% on bogus sales made. During the course of search, it was found that the appellant was in possession of signed cheque books and other related documents such as PAN card etc. of various entities and when he was asked to produce the persons, the appellant was unable to produce them. Although, the appellant is stated to have filed certain confirmations, the Ld. A.O. was not satisfied with the same and he informed the appellant to produce the parties for verification of their existence as well as for carrying on of business relating to the sale bills found from the appellant's possession. As per the original assessment order framed by the Ld. AC. and which appears as an attachment to the impugned Assessment order pending adjudication before me, Ld. A.O. has pointed out that none of the parties except one had filed his/its return of income and therefore nothing turns on the fact that some of the parties were produced before him during the course of original assessment. Ld. A.O. has further pointed out that the parties had not been able to establish with any documentary evidence regarding delivery of manufactured goods to different parties and no books of accounts were produced before him for verification. According to the Ld. A.O., entries in various books of accounts remained unexplained and therefore appellant's version that the various entities/persons were carrying out genuine business activities remained unsubstantiated.

2.8.2 The same facts have been reiterated by the Ld. A.O. during the assessment framed which has been appealed against before me.

2.8.3 The Ld. A.R. in his submission has dealt with ground Nos. 5 to 8 together, as according to him, the some are interlinked. According to him, the appellant is .a commission agent in the metal market where the rate of commission is not fixed and varies between 0.02% to 0.05 %. However, there is no written agreement entered into

between commission agent and the clients. Even in the grounds of appeal, the appellant has mentioned that the prevailing commission rate in the steel market ranges between 0.02% to 0.05%. Thus, there is no denying the fact that the appellant earns commission and the services rendered by him. It is also a matter of fact that during the course of search, the appellant was found in the possession of signed blank cheques, sale bills issued by various dummy companies which went on to prove that the appellant was engaged in issuing bogus bills and therefore it is obvious that the normal rate of commission would not be charged by him to the perspective bill seekers. The persons using these bills would be saving substantial amount of tax by claiming bogus deduction. They would be happy to part with at least 2%, an estimation which cannot be stated to be out of sync with the benefit earned by the bill seekers. Therefore, as far as commission of 2% estimated by the Ld. A.O. is concerned not find any fault with the same and accordingly ground Nos. 5&6 are confirmed.

2.9.1 As regards ground Nos.7 & 8 they are in respect of additions made on account of cash deposits in the bank account of the persons other than the appellant which were found from the possession of the appellant during the course of search along with signed bank cheques, sale bills, PAN cards etc. and which remained unexplained by the appellant despite giving substantial opportunities. Ld.A.O., on the basis of directions issued to him u/s.263 has framed denovo assessment and in doing so he provided adequate opportunities to the appellant for submitting proof of identity, creditworthiness of such persons and the business operations claimed to have been carried out by them alongwith genuineness of the same. During the years under appeal, the bank credits total to Rs.13,88,09,01,411/-, the source of which was to be explained by the appellant alongwith necessary documents. The appellant submitted before the Ld. A.O that these credits were found in the bank account of persons other than the appellant and hence the credits appearing in those accounts could not be attributed to the appellant's business or profession. He further asserted before the Ld. A.O. that the appellant

worked as agents for purchases in respect of some of their seller principals and in order to facilitate the transactions for such principals, especially purchase transactions where prompt and in time payments were of utmost significance, signed cheque books duly signed by third parties were kept with the appellant in confidence. In view of the above facts, it was pleaded that the bank accounts found during the course of search at the appellant's premises were not benami accounts and the signed cheque books were kept only to facilitate smooth trade.

2.9.2 Ld. A.O. was not satisfied with the submissions made and for the following reasons he made the addition in the various assessment years pertaining to the search:

"1. The assessee has not discharged his onus of proving the identity, genuineness and creditworthiness of any of these transactions pertaining to Rs.1388. 09 crores.

- 1. Assessee representative has simply re//ed on the fact that some parties were produced during the original assessment proceedings or that certain audited annual accounts and cop/es of IT returns have been submitted in some cases. This too however, does not discharge his onus.*
- 2. has merely made his submissions which were made even at the time of the original assessment proceedings and have been rejected there itself.*
- 3. The purpose of the present proceedings is merely to make fresh assessment only with respect to the deposits in the bank accounts and it is beyond by jurisdiction to comment or delve on the other issues which have already achieved finality so far as this office is concerned.*
- 4. The Delhi High court in the case of CTT vs. Oasis Hospital Pvt. Ltd. (reported in itatonlin.org) has while deciding on an issue of addition u/s. 68 of the I T Act has categorically held that S. 68*

provides that if the assessee is not able to give satisfactory explanation as to the nature and source" of a sum found credited in his books, the sum may be treated as the undisclosed income" of the assessee. The initial burden is on the assessee to explain the source" of the credit and to do so, the assessee is required to prove (a) Identity of the shareholder; (b) genuineness of transaction; and (c) credit worthiness of shareholder..."

5. *Once it has been proven that the assessee is indulging in providing bogus bills and more so he has not discharged his onus of neither proving the identity, genuineness and creditworthiness of these transactions nor disclosed the names of the beneficiaries his conduct, he is not providing the details of the persons in whose hands the transactions may be examined or added substantively.*
6. *Under the given circumstances, the only recourse left to this office is to proceed on making the assessment on the basis of the instructions of the Hon'ble CIT as mentioned in the order passed u/s. 263 of the I.T Act i.e. by adding the said bank deposits amounting to Ps. 1,388.09 crores substantively in the hands of the two persons to divide proportionately as per, his share of his profits in the said business.*
7. *It would be pertinent to mention here that since the said deposits are being added substantively, the commission income 2% shall not be added further on these deposits. However in case the assessee is to be granted relief in the appellate stages on this addition, he would still have to be treated as a biller and income @ 2% of the said bank deposits being commission earned for providing and facilitating the said bills would be eligible to be added in his hands proportionately as per the share of his profits in the said business.*

2.9.3 I have considered the rival submissions and after perusing the record, I am completely in agreement with the view taken by the Ld. A.O. that the appellant was engaged in issuing bogus bills and for that purpose he was maintaining benami bank accounts in the names of different persons, dummy or existing. Further, the appellant was engaged in such transactions and earned substantial commission on the same. To me it appears to be a pure case of money laundering and nothing else as the appellant despite being given a number of opportunities failed to produce

all the parties in whose names the bank accounts were being maintained and the letters issued by the Ld. A.O. from time to time to these parties at the addresses mentioned were returned back unserved. Even the parties who were produced before the Ld. AG. did not file any return of income except in one solitary instance and no books of accounts or other documents were produced to substantiate the claim made by the appellant and his witnesses that they carried out independent identifiable genuine business. That being the case, it can be safely presumed that the onus which was cast on the appellant to substantiate the claim made was not discharged and therefore no fault can be found with the action taken by the Ld. A.O. in bringing to tax the amounts as in the assessment order. The case laws cited by Id. A.1. are distinguishable on facts as none of them deal with hawala racket.

2.9.4 Even as per the statement of Shri Pradeep M. Jobalia recorded on 8.3.2007 having office at Podar Chambers, Ground flr Parsi Bazar St., Fort, Mumbai 400001, it is apparent that his office address was being used by the appellant for receiving correspondence from bank Shri Jobaha in reply to question No .2 clearly mentioned that he did not know any of the parties and it was only Shri Dilip Chunhal Shah and Shri Atul Amrutlal Sanghvi who were collecting the correspondence apart from his office. Even in the cross examination of Shri Jobalia done by Shri Atul Sanghvi and his Authorized representative it was clear that none of the persons whose correspondence address was given as that of Shri Jobalias office had met Shri Jobalia and it was only Shri Atul Sanghvi who used to visit Shri Jobalia's office with Shri Dilip C. Shah for collecting the correspondence. Further, a sum of Rs.300/- was given by Shri Atul A. Sanghvi to Shri Jobalia for each such concern. Thus, it is clear from the sequence of events that Shri Atul A. Sanghvi and Shri Dilip C. Shah were master mind behind maintaining of the fictitious bank accounts for which different address were given. Similar statements were also recorded of Shri Vinodumar Uttamial Shah on 21.3.2007, and Shri N.V. Neelakantan on 26.02.2007 where it was confirmed that various accounts were operated/handled by Shri Atul A. Sanghvi and Shri Dilip C. Shah Former introduced one Shri Sandeep Poonamchand

Shah at the behest of Shri Atul Sanghvi for opening bank account. It is important to note that the photograph appearing in the account opening form of Shri Sandeep Poonamchand Shah with Bank of Maharashtra Jhaveri Branch was also appearing in three different names and all the cheque books pertaining to the same have been found from the possession of Shri Atul Sanghvi and Shri Dilip C. Shah. Shri Neelkantan was working with National Co-operative Bank, Fort Branch and he stated that a number of accounts were being operated by Shri Atul A. Sanghvi and Shri Dilip C. Shah in various branches including his branch and that these accounts were never operated by any person other than Shri Atul A. Sanghvi and Shri Dilip C. Shah. All the cheques in these accounts were deposited by them and the cheques for withdrawal or transfer were also submitted by them further confirmed that accounts were never operated or handled by the actual account holders. This statement was also shown to Shri Atul A. Sanghvi and Shri Dilip C. Shah who confirmed, during the course of cross examination, that the statement was correct. Id. A.Q. had discussed at length in the original assessment the seized documents at para 11 thereof to come to the following conclusion:

"1. That in fact Sh. Atul Sanghvi and Sh. Dilip Shah were the persons who had operated the over hundred bank accounts and different entities.

2. That Shri Dilip Shah and Shri Atul Sanghvi were in fact involved in issuing mere bills in the name of different entities.

3. Shri Dilip Shah and Shri Atul Sanghvi (duo) was fabricating documents like PAN cards signatures etc. to open bank accounts in the name of different persons, who had nothing to do with those transactions, in fact they were mere name lenders or dummies.

4. The duo were handling all the correspondence of the different concerns.

5. The duo were operating the bank accounts and cash withdrawal and other transactions were carried out by the assessee.' dismissed the appeal filed by the assessee. The sum and substance of the observations of the CIT(A), the evidences collected during the

course of search, and inquiry conducted during the course of the assessment proceedings undoubtedly prove the fact that the assessee along with Shri Atul Sanghvi are involved in providing accommodation entries in the form of bogus bills to various persons. The CIT(A) further observed that the statement recorded from the assessee and other associate and the statements Shri P.M. Jobalia, Shri N.V. Neelakantan, and Shri Vinod Kumar Uttamal Shah further supported the findings of the A.O that the assessee is a hawala operator issued bogus bills in the name of dummy/fictitious concerns and operated more than 100 bank accounts various names by fabricating documents like ration card, PAN card, and photograph on individual of these evidence leads to a conclusion that the assessee is a hawala operator issued bogus bills to various beneficiaries and assessment order passed by the A.O treating the total activity as a hawala operator and additions made by the A.O towards estimation of commission on total sales bills, additions towards total sales on protective basis, additions towards unexplained bank credits, additions towards 2% commission on protective basis on total bank credits and additions towards unexplained cash deposits to bank account has been confirmed.

18. *The CIT(A), for the detailed reasons in his order vide paraa 2.6.1 to 2.9.4 upheld additions made by the AO and dismissed appeal filed by the assessee for all assessment years from 2001-02 to 2007-08. Aggrieved by the CIT(A) order the assessee is in appeal before us.*

19. The first issue that came up for our consideration is legality of consolidated order passed by the A.O for all seven assessment years from 2001-02 to 2007-08. The Id. A.R for the assessee though raised the ground challenging validity of consolidated order for all seven assessment years, submitted that he do not want to fresh ground no. 1 and 2 challenging the

consolidated order passed by the A.O; hence grounds No. 1 or 2 raised by the assessee are dismissed, as not pressed.

20. Even on merits, we find that though the A.O had passed consolidated order, insofar as additions and computation of total income are concerned noticeably separate order has been passed for each assessment year which can be ascertained independently from the order of the A.O. The Id. CIT(A) after considering the fact and also provisions of Section 292B, observed that no assessment made in pursuance of any of the provisions of I.T. Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, if such assessment is in substance and effect is in conformity with the intent and purpose of the I.T. Act, 1961. In this case, admittedly, the A.O had issued separate notice u/s 153A for all the years and it was only for the sake of brevity and consolidation of the fact that one single order was passed though manifestly additions for all the assessment years have been made separately and computation of income of each year in the block period has been done separately. There is no error in the order of the CIT(A). Therefore, we are inclined to uphold the findings of the CIT(A) and dismiss the grounds raised by the assessee.

21. The next issue that came up for our consideration from grounds No. 3 to 7 revolves around one common issue of activity of the assessee and

computation of income from such activity. The lower authorities came to the conclusion that the assessee is a hawala operator involved in providing accommodation entries to various parties by issuing bogus purchase bills and engaged in money laundering activities, therefore concluded that the assessee is a hawala operator and income from such activities has to be computed by taking into account of total sum found credited in the bank account of the assessee and also income from estimation of income from such total receipts. The factual matrix of the case which lead to the dispute are that initially a survey operation u/s 133A of the Income Tax Act, 1961 was carried out in the office premises of the assessee, wherein information about three bank lockers were found. Subsequently, the case has been converted into search by issuing warrant u/s 132 and conducted search in the premises of the assessee. During the course of search incriminating documents in the form of more than 100 bank accounts and also information about more than 130 dummy/fictitious concerns incorporated/operated by the assessee to facilitate issue of bogus bills were found. The department also seized sales bills issued to M/s Varun Industries Ltd. in the name of various concerns. Based on all these evidences, coupled with further inquiries conducted during the course of search and during assessment proceedings the AO drawn an undisputed conclusion that the assessee is a hawala operator involved in providing accommodation

entries. Therefore the A.O has concluded the issue by determining the income from such activity by estimating the commission at 2% on total sales bills issued in the name of M/s Varun Industries Ltd. and added 50% of the same in the hands of the assessee and remaining 50% in the hands of Shri Atul Sanghvi. The A.O also added total value of sales which was amounting to Rs.856,64,49,533/- on protective basis to protect the interest of the revenue. Insofar as the total credits appearing in the bank accounts, the A.O has made additions towards total credits found in the bank account after reducing sales bills issued in the name of M/s Varun Industries Ltd. in the hands of the assessee and his partner Shri Atul Sanghvi in the ratio of 50% each.

22. The Ld.AR for the assessee submitted that the Ld.AO was erred in estimating commission on total sale bills issued in the name of M/s Varun Industries Ltd @2% ignoring the fact that the prevailing common rate in the steel market ranging between 0.2% to 0.5% shall be having regard to the fact that the assessee is a registered broker in the market. The Ld.AR referring to the paper book filed, submitted that the assessee is a registered broker in the steel market involved in facilitating business of prospective manufacturer of steel goods to the buyers in the market for which he charges commission. The AO ignoring the fact has concluded that the assessee is a hawala operator engaged in providing accommodation entries and estimated commission

income @2% without any basis. Insofar as addition made by the AO towards total sale bills issued in the name of M/s Varun Industries Ltd on protective basis, when a substantive addition made in the hands of M/s Varun Industries Ltd, making an addition on protective basis in the hands of the assessee is incorrect, more so, when the assessee is treated as an hawala operator and income from such activity has been estimated at 2% on total sale bills issued. In this regard, he relied upon the decision of ITAT, Chennai Bench in the case of Parasmal Dangi alias Parasmal Jain 100 TTJ 508.

23. The Ld.DR, on the other hand, strongly supporting the order of the CIT(A) submitted that evidences gathered during the course of search and post search investigation conducted during the course of assessment proceedings clearly establish the fact that the assessee, a hawala operator, issued bogus purchase bills in the name of various dummy / fictitious concerns and operated more than 100 bank accounts in the names of various persons whether existing or fictitious, therefore, the AO has rightly treated the assessee as a hawala operator and estimated income from such activity and his order should be upheld.

24. We have heard both the parties and perused the material available on record. It is an undisputed fact that incriminating materials found and seized

during the course of search clearly indicates that the assessee is engaged in issuing bogus bills in the name of various dummy / fictitious concerns / companies and operated more than 100 bank accounts in different banks in the name of various companies / firms and this fact has not been rebutted by the assessee with any evidences. Though the assessee claims to have involved in the business of commission agent in steel market, the evidences collected during the course of search undisputedly proves the case of the revenue that it is a case of hawala entry operator and issued bogus bills in various entities' name. The AO has recorded clear fact to the effect that the assessee has issued bogus purchase bills in the name of M/s Varun Industries Ltd and this fact has been accepted by the directors of M/s Varun Industries Ltd in the statement recorded during the course of search and accordingly a substantive addition has been made in the hands of M/s Varun Industries Ltd. This fact was also further supported by the fact that the department had recorded statements from various persons, who had accepted that Shri Dilip Shah and Shri Atul Sanghvi have issued bills in the name of various concerns and operated bank accounts. The statement given by Shri Yashwant Pandya, who is an accountant of the assessee has clearly stated in his statement that under instruction from Shri Atul Sanghvi and Shri Dilip Shah, the bills in respect of various companies were prepared in the office of the assessee and those bills

were prepared in the name of various concerns, whose blank cheques have been found with the assessee during the course of search. The statement of Shri Pradip M Jabalia recorded during the course of survey on 05-02-2007 also leads to an undisputed conclusion that Shri Pradip M Jabalia had given his address for correspondence for some of the accounts being operated by the duo, Shri Atul Sanghvi and Shri Dilip Shah. In his statement, Shri Pradip M Jabalia has confirmed that the letters from the banks were collected by Shri Atul Sanghvi and Shri Dilip Shah. Further, statement of Shri N.V. Neelakantan recorded on 26-02-2007 throws light on the modus operandi of the assessee that he fabricated various documents including address proof, PAN cards and ID proof of various individuals to open bank accounts in different names by fabricating the documents. This fact was confirmed by Shri N.V. Neelakantan, who categorically admitted that the assessee has operated number of bank accounts in the National Co-operative Bank. All these facts lead to a conclusion that the assessee has floated various dummy companies / firms to facilitate issuing of bogus purchase bills and operated bank accounts by fabricating documents. The assessee has not been able to rebut any of the findings recorded by the AO, though he claims that he is a registered broker in the steel market. Therefore, we are of the considered view that the lower authorities were right in concluding that the assessee is engaged in the activity

of providing accommodation entries. Hence, we are inclined to uphold the findings of CIT(A) and dismiss the ground raised by the assessee.

25. Coming to the additions made by the AO towards estimation of commission @2% on total sale bills issued in the name of M/s Varun Industries Ltd on substantive basis and addition made towards total sale value on protective basis in the hands of the assessee, the AO has estimated commission @2% on total sale bills issued in the name of M/s Varun Industries Ltd and made additions in the hands of assessee and his partner, Shri Atul Sanghavi @50% each. The AO has estimated 2% commission by taking into account the fact that the assessee has earned substantial income in the form of commission which is evident from the fact that the assessee has withdrawn substantial amount of cash from the bank. Though assessee claims that commission in the steel market is ranging from 0.02% to 0.05%, but failed to justify the rate of commission with any corroborative evidence in the form of some comparable cases or in the form of written agreements between the parties for charging commission. Under these circumstances, the lower authorities came to the conclusion tht it is fair and reasonable to estimate commission at 2% as assessee's income from the activity of issuing bogus bills. Before us, the assessee has not been able to rebut the facts recorded by the AO as well as the CIT(A). Though the assessee has relied upon certain

decisions of co-ordinate bench, on going through the case laws relied upon by the assessee, we came to the conclusion that the facts of those cases are entirely different from facts of the case of the assessee; hence, cannot be applied to this case. Therefore, we are of the view that the AO was right in estimating commission @2% on total sale bills issued in the name of M/s Varun Industries Ltd. The CIT(A) after considering the facts has rightly upheld the order of the AO. We do not find any infirmity in the order of the CIT(A). Hence, we are inclined to uphold the order of the CIT(A) and dismiss the ground raised by the assessee.

26. Coming to addition made towards total sale bills issued in the name of M/s Varun Industries Ltd on protective basis. The AO has made additions towards sale bills issued in the name of M/s Varun Industries Ltd on protective basis in the hands of the assessee to protect the interest of the revenue. Assessee claims that once substantial addition has been made in the hands of M/s Varun Industries Ltd, protective addition made in the hands of the assessee cannot survive in the eyes of law. We do not find any merits in the arguments of the assessee for the reason that though substantial addition has been made in the hands of M/s Varun Industries Ltd, the outcome of addition made by the revenue authorities will only be clear once it has been decided in appellate forums. The assessee has not been able to furnish any evidences

with regard to additions made in the hands of M/s Varun Industries Ltd except furnishing an assessment order copy. The fact with regard to nature of dispute and the stages of outcome in appellate forums is not ascertainable at present. Therefore, we are of the considered view that though the Act, does not provide for protective assessments, in the interest of revenue, the AO can make protective additions to protect the interest of the revenue. Therefore, we are of the view that the AO was right in making protective additions towards sale bills issued in the name of M/s Varun Industries Ltd. Nevertheless, the assessee shall be entitled to relief as and when the substantive addition made in the hands of M/s Varun Industries Ltd is confirmed once all rounds of litigation ends. The CIT(A) after considering the relevant facts has rightly upheld additions made by the AO. We do not find any error in the order of the CIT(A); hence, we are inclined to uphold the findings of the CIT(A) and reject ground raised by the assessee.

27. The next issue that came up for our consideration is addition made on account of deposits in the bank account of the persons other than the assessee which were found from the possession of the assessee during the course of search along with signed blank cheques, sale bills, PAN cards, etc. which were remained unexplained by the assessee. The AO made additions towards credits found in the bank account for Rs.1388,09,01,411 on the ground that

the assessee has failed to explain the sources of credits found in the bank account with necessary evidence.

28. The facts which lead to the impugned addition are that the assessee along with Shri Atul Sanghvi are found in possession of various documents like blank cheques, sale bills, PAN cards, ration cards, etc. During the course of search, these documents were found and seized. When these documents were confronted to the assessee, the assessee claimed that the documents belong to the firms / companies, who manufacture goods and traded through him. The assessee further contended that the prospective sellers of the goods have kept those documents with the assessee to facilitate easy movement of sales of their goods which cannot be considered as fabricated documents to operate dummy / fictitious concerns and open bank accounts in various firms / companies' name. The AO made addition on the ground that the assessee has not discharged his onus of proving the identity and genuineness and creditworthiness of any of these transactions pertaining to Rs.1388.09 crores. The assessee claims that the credits found in the bank accounts of various persons are in fact not belonging to him as some of the parties have appeared before the AO and accepted that the bank accounts are operated by themselves and considered in their income-tax returns filed for the respective assessment years. The assessee further contended that the AO has accepted

the fact in the original assessment order passed u/s 143(3) r.w.s. 153A dated 28-12-2011 wherein he has categorically accepted that certain parties have appeared before him and filed confirmation with regard to the bank account found in the possession of the assessee.

29. Having heard both the sides and considered material on record, we find that the assessee has not been able to discharge onus by filing necessary evidence to prove the credits found in the bank account. It is incumbent upon the assessee to explain each and every credit found in the bank accounts and sources of such credits. In this case, the assessee has failed to furnish any evidences to identify credits, genuineness of such credits and creditworthiness of any of the credits found in the bank account. Therefore, we are of the view that the AO was right in treating the sums found credited in the bank accounts as unexplained credits in the hands of the assessee. As regards the claim of the assessee that some of the parties have appeared before the AO and filed their income-tax returns explaining bank accounts found in the possession of the assessee and hence those bank accounts, should be excluded. We do not find any merits in the argument of the assessee for the reason that the evidences gathered during the course of search and further enquiries conducted in the course of post search investigation clearly establishes the fact that the assessee has operated more than 100 bank accounts in different

banks. All evidences gathered during the course of search clearly indicates fabrication of various documents like PAN card, ration card, etc. and photographs of certain individuals to open bank accounts in different banks with the help of one, Shri Pradip M Jabalia, who had categorically admitted in his statement recorded on 08-03-2007 tht correspondence with regard to bank accounts are made by Shri Dilip Shah and Shri Atul Sanghvi. Shri Jabalia, in reply to question No.2 clearly mentioned that he did not know any of the parties and it is only Shri Dilip Shah and Shri Atul Sanghvi, who were collecting the correspondence from his office. Similar statements were also recorded from Shri Vinod Kumar Shah and Shri N.V. Neelakantan on 26-02-2007 ad 21-03-2007 wherein it was confirmed that various accounts were operated / availed by the assessee. All these facts lead to an undisputed fact that the assessee is indulging in providing bogus bills and more so, operated all bank accounts. Therefore, it is on the assessee to explain the credits found in those bank accounts. Further, the assessee has filed details of confirmation filed by some parties along with their I.T. returns filed for the respective assessment years. On perusal of the details, we find that certain parties have filed their income-tax returns after the date of search and the income declared in said returns is meager. Therefore, we are of the view that by filing some I.T. returns of certain parties, the assessee cannot prove the genuineness of

credits found in the bank accounts. Therefore, we are of the view that the AO was right in treating credits found in the bank accounts as unexplained income of the assessee.

30. The CIT(A) after considering relevant facts and also relying upon a plethora of judgements including the decision of Apex Court in the case of CIT vs Durgaprasad More 82 ITR 540 (SC) and Sumati Dayal vs CIT 214 ITR 801 (SC) wherein it was held that apparent must be considered real unless it is shown that there are reasons to believe that the apparent is not real and that taxing authorities are entitled to look into surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. The Hon'ble Court also held that it is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies on the department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden to prove that it is not taxable because it falls within the exemption provided by the Act lies on the assessee. Further, the provisions of section 68 of the Act, is clear inasmuch that where any sum is found credited in the books of account of the assessee for any previous year, the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the AO, is not satisfactory. The assessee

could not prove credits found in the bank accounts. Therefore, we are of the view that the CIT(A) has rightly upheld the additions made by the AO towards total credits found in the bank account amounting to Rs.1388.09 crores as unexplained credits in the hands of the assessee. We do not find any error in the order of the CIT(A). Hence, we are inclined to uphold the findings of the CIT(A) and reject the ground raised by the assessee.

31. The next issue that came up for our consideration is addition towards cash deposits to the bank accounts. The AO made additions towards total cash deposits in the bank account amounting to Rs.7,01,650 being 50% share of the assessee on the ground that the assessee has not filed any evidences to prove the identity, genuineness of transaction and creditworthiness of the creditors. The AO has taken total cash deposits for the year and divided into 50% in the hands of the assessee and 50% in the hands of Shri Atul Sanghvi and made additions u/s 68 of the Act. The assessee claims that he has source of income to explain credits found in the bank accounts. Therefore, the AO was not correct in making additions towards cash deposit u/s 68 of the Act.

32. Having heard both the sides and considered material on record, we find force in the argument of the assessee for the reason that, the AO has made substantial additions towards commission income on total sales made and the

source of income in the form of commission is available to explain cash deposits to the bank account. The AO made additions towards commission on one hand and addition towards cash deposit on the other hand without telescoping the source available in the form of estimation of income towards commission. Therefore, we are of the view that there is a merit in the claim of the assessee that telescoping has to be allowed towards cash deposits to the income estimated for the relevant assessment years. Hence, we are of the view that the issue needs to be examined by the AO in the light of the explanation of the assessee and hence, we set aside the issue to the file of the AO for the limited purpose of examining whether the income estimated for the year is in excess of cash deposits found in the bank accounts. If the income is more than the cash deposit, then the AO is directed to telescope the sources available in the form of income to the cash deposits and allow relief accordingly towards addition to cash deposits.

33. The next issue that came up for our consideration for the assessment year 2007-08 is additions towards cash found at the time of search. During the course of search cash to the extent of Rs.47,30,000 has been found and seized. The AO made additions towards cash found at the time of search on the ground that the assessee has agreed for addition and also failed to explain source of cash found at the time of search. The assessee claims that the AO

has made addition towards income on estimation basis and also made addition towards cash found without allowing telescoping the sources available in the form of income. We find force in the arguments of the assessee for the reason that if the source available in the form of income, the AO is bound to telescope the sources with cash found at the time of search. Therefore, we are of the view that the issue needs to be examined by the AO in the light of the claim of the assessee and hence, we set aside the issue for the limited purpose of verification of sources available in the form of estimation of income with cash found at the time of search. If the source is in excess of cash found during the course of search and if it is not floated to any other assets or not expended elsewhere, then the AO is directed to allow telescoping towards income to the cash found at the time of search and allow relief accordingly.

34. The facts and circumstances narrated above are identical to all other appeals under consideration, therefore, the decision arrived at above applies *mutatis mutandis* to all other appeals in this consolidated order.

35. ITA Nos 5713 to 5719/Mum/2012 – Ays 2001-02 to 2007-08

The facts and circumstances narrated above are identical to all other appeals under consideration, therefore, the decision arrived at above applies *mutatis mutandis* to all other appeals in this consolidated order.

36. In the result, all the appeals filed by the assessee are partly allowed for statistical purpose.

Order pronounced in the open court on 25th September , 2017.

Sd/-

sd/-

(D.T. Garasia)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 25th September, 2017

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai