

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.99/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2003-04)

Shri. Gagan Khemka 101 Kapadia Apartments, S.V. Road, Vile Parle (W), Mumbai 400056	बनाम/ v.	DCIT CEN CIR 39 R.No. 32(1), Aayakar Bhavan, M.K Road, Mumbai- 400020
स्थायी लेखा सं./ PAN : ADTPK4224E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Shri Narayan Atal
Revenue by :		Shri V. Vidhyadhar (Sr.DR)

सुनवाई की तारीख /Date of Hearing : 09.05.2018

घोषणा की तारीख /Date of Pronouncement : 30.05.2018

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 99/Mum/2012, is directed against appellate order dated 24.10.2011 passed by learned Commissioner of Income Tax (Appeals)-41, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2003-04, the appellate proceedings had arisen before learned CIT(A) from penalty order dated 10.12.2010 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s 147 of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2003-04.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

“1.The Learned Commissioner of Income-tax (Appeals)-41 , Mumbai [hereafter referred to as the CIT(A)] erred in confirming the addition of an amount of Rs. 17,55,127/- made by the Assessing Officer (AO) as undisclosed income in respect of the alleged bogus transactions in securities on the wrong appreciation that the aforesaid amount is unexplained Long Term Capital Gains.

Your appellant submits that on the facts and circumstances of the case and in law no such disallowance is warranted and the AO may be directed to delete the addition.

2 The Learned CIT(A) erred in not appreciating the facts of the case correctly and in the right perspective and particularly wrongly arriving at the conclusion that the appellant had earned a long term capital gains of Rs. 17,55,127/- and thereby have confirmed the addition made by the AO on the basis of wrong and incorrect facts of the case.

Your appellant submits that on the basis of the correct facts of the case, the CIT(A) could have arrived at a different conclusion and therefore the addition of Rs. 17,55,127/- ought to be deleted.

3 The Learned CIT(A) erred in confirming the addition of Rs. 35,103/- as unexplained expenditure u/s. 69C of the Act on the presumption that 2% of Rs. 17,55,127/- have been paid as commission to arrange the bogus transactions.

Your appellant submits that on the facts and circumstances of the case and in law, the addition made by the AO ought to be deleted.

Your appellant craves leave to add to, alter or amend any of the aforestated grounds of appeal.”

3. The brief facts of the case are that information was received by the AO from DDIT(Inv.) vide letter no. DDIT(Inv.)/U-I(4)/Mahasagar Info Sharing/09-10 dated 15.03.2010 wherein it is stated that the search and seizure action u/s. 132 was conducted in the case of Alang Securities Pvt. Ltd. (formerly known as Mahasagar Securities P. Ltd and Richmond Securities Pvt. Ltd.) on 25.11.2009 . During the course of search action , it was observed by the AO that the assessee is one of the beneficiaries of the accommodation bills provided by said company through its Directors. The assessment was reopened by the AO u/s. 147 of the 1961 Act, notices u/s. 148 dated 24.03.2010 was issued and served to the assessee . The assessee was asked by the AO to submit following details as under:-

(i) Details of share purchase transactions in respect of Goldstar Finvest Pvt. Ltd., Mahasagar Securities Pvt. Ltd. (now Alang Securities Pvt. Ltd.), Alliance Intermediaries & Network Pvt. Ltd., Mihir Agencies

Pvt. Ltd., Richmond Securities Pvt. Ltd., etc. and other group companies of Mukesh M. Choksi and Jayesh K. Sampat and details of payments along with copy of relevant bank accounts, contract notes and other supporting evidences.

(ii) Copy of all your demat account.

(iii) Copy of all your bank account statement.

(iv) Copy of ledger accounts of the above companies.

(v) Treatment of shares so purchased in your books and subsequent transaction thereof.

The assessee was confronted with the statement of Shri. Mukesh M. Choksi, aged 55 years recorded u/s. 131 of the Act on 11.12.2009. The assessee was asked to prove genuineness of the transaction entered into with Shri. Mukesh M. Choksi group of companies . The assessee submitted that the purchases of shares were shown as investment and profit on trading has been offered to tax as speculation profit on shares. The assessee submitted copies of 21 bills of Mahasagar Securities Pvt. Ltd in respect of share transactions . The AO after considering the submissions of the assessee held as under:-

“ 4.3 The assessee's submission has been considered. The facts of the case are briefly mentioned hereunder. Search & seizure action u/s.132 was carried out in the case of Mahanagar Securities Pvt. Ltd. & Others on 25.11.2009. The directors of these companies were one Mr. Mukesh M. Chokshi and Mr. Jayesh K. Sampat. During the course of search, it was revealed that Mahanagar Securities Pvt. Ltd. and its related companies (Goldstar Finvest Pvt. Ltd., Richmond Securities Pvt. Ltd., etc. all run by Shri Mukesh M. Chokshi) were engaged in fraudulent billing activities and in the business of providing bogus speculation profit / loss, short term / long term capital gains etc. During the search, it was discovered that Mr. Mukesh Chokshi had floated 34 companies from his office at Block-H, Shri Sadashiv CHS, Santacruz (East), Mumbai-400 055. Two of these companies i.e. M/s. Talent Infoway Ltd. and M/s. Buniyad Chemicals Ltd. were listed on Ahmedabad and Pune Stock Exchanges respectively. There was no genuine business being carried out by any of these concerns and they were all engaged in the business of issuing bogus bills for providing long term capital gains / loss and speculation profit / loss. In addition, some of these companies were engaged in providing bogus share application money to other companies (in return for cash), and some other concerns like Mihir Agencies Pvt. Ltd., and Vijayalaxmi Corporation were engaged in issuing bogus sales bills to various entities. The companies run by Mr. Mukesh Chokshi were receiving commission for all these activities. It was also found that none of the companies run by Mr. Mukesh Choksi has a valid licence as a broker to trade on any stock exchange as on date or during the period when the alleged transactions were carried out for the beneficiaries. M/s. Goldstar Finvest Pvt. Ltd., Mahanagar Securities Pvt. Ltd. and Alliance

Intermediaries and Network Pvt. Ltd. claim to be sub-brokers of Inter Connected Stock Exchange of India which in turn is a broker for National Stock Exchange, but these transactions have not been done through this broker. In fact the transactions have not taken place at all on any stock exchange. Only fictitious bills have been prepared to show that transactions are taking place on stock exchange. Thus, the speculative profit / loss is totally on account of fictitious transactions without involving any stock exchange. So far as entries of capital gains are concerned wherever the shares have been transferred to beneficiaries by the Chokshi group of companies, they have been transferred 'off market'. Also, such transfers have been done a few days before the sale of shares by beneficiaries and not before one year of the date of sale as shown by the beneficiaries. Thus, on the alleged date of purchase, or even months after this, no delivery of shares has taken place.

4.4 A copy of the statement (5 pages) of Shri Mukesh M. Chokshi, aged 55 years, recorded u/s. 131 of the Act on 11.12.2009 is enclosed as Annexure-1 to this order. The relevant portion of statement (5 pages) of Shri Mukesh M. Chokshi, aged 55 years, recorded u/s. 131 of the Act on 11.12.2009 is reproduced hereunder wherein he has explained the modus operandi –

Q.2 Kindly state your educational, and the nature of business being carried out by you at, Bock No.H, Shree Sadashiv CHS Ltd., 6!h Road, Santacruz(East) Mumbai-55.

Ans. I am a Chartered accountant by training, having completed my Chartered Accountancy in 1978. I am engaged in the business of providing the accommodation entries through various companies floated by me like Mahasagar Securities. P. Ltd, Mihir Agencies Ltd, Alliance Intermediaries & Network P. Ltd, Gold Star Finvest P. Ltd, etc., which all are run by me from the officer at 6th Road santacruz (E) above. In brief the various business activities carried out by my companies are as below;

- i) Speculation Profit adjustment entries*
- ii) Short term profit adjustment entries*
- iii) Long term capital gains adjustment entries*
- iv) Share application adjustment entries*

Q.3 Kindly describe in details the modus operandi followed by you in providing these different types of entries, details of receipt of cash/cheques and details of services provided by you to the beneficiaries.

Ans. 1) Speculation Profit

- a) Our agents send us the names of entry seekers & their respective amount of entries desire by them. We receive this information either through phone or fax.*
- b) On receipt of the information we prepare the bills*
- c) We deliver the bills to the agents*
- d) Agents issue cheques to the beneficiaries. The signed cheque books are kept with the agents*

e) The agents receive the fund and deposit the same in the bank account. The cheques issued by them are then cleared;

f) We receive the commission on the total amount of bank transaction on monthly basis.

When the agents are new, we request them to carry out transactions through us. Few Agents are getting bills printed outside also and doing transaction less paying commission to us.

2) Short Term Profit :-

a) We receive the information about short Term Gain desired by the beneficiaries.

b) We then select the script whose prices have appreciated the most during the last 6 months;

c) We then request the parties to deliver the funds or manage the shares by themselves;

d) They receive the shares in their demat a/c out of their own funds;

e) They then sell the shares in the open market

J) The difference between purchase price and sale price is the Short Term Gain.

3) Long Term Gain: -

a) The party first decides the amount of LTG required by them

b) We then decide the script

c) They acquire the shares in their demat account out of their own funds

d) They sell them in the open market

e) We simply provide purchase bill in STG & LTG

4) Share Application adjustment entry: -

a) The party / agent provide us the name of the company which desire such entries;

b) We sign the application forms & provide the necessary documents. Then party complete the bank transaction out of their own funds.

Q.6 I am showing you by way of example, note-book No. A-60, which contain written pages from 1 to 170. Kindly explain the entries in various pages.

Ans. Page-1- It is titled S.M. which is the name of one of any agent-Sandeep Merchant

Page 2- Contains the entries/bogus contract notes issued on 14/04/2005 from Mahasagar Securities P. Ltd., Alliance Intermediaries & Network P.Ltd

Here "SP" refers to speculation Profit, "pur" refers to purchase, "sal" refers to sale "S/L" or "D/L" refers to speculation loss or Delivery Loss. The method of marking entries is to mark purchase, speculation profit or sale followed by the name of the company in which the alleged purchase, speculation or sale has taken place. Here "maha" refers to Mahasagar Securities P.Ltd., "Alliance" or "All*" refers to Alliance intermediaries & Network P. Ltd, "Gold" refers to Goldstar Finvest Pvt Limited. On the left hand side of the page is written the Numbers of the Shares allegedly purchase or sold, the name of the company whose

shares were purchase or sold, the date on which the bogus purchase/sale has been booked, bill and transaction no./valan no., name of beneficiaries, amount purchased/sold/transacted. For e.g the entry on Pg 2-3 of Annexure 'A-60 'is

14/4/05 'Purchase Alliance
e.g. 50,000-Prrenta Industries 16/8/04 157/2 Shailesh Vaishnav
355575/51

As explained above this represents the fact that 50000 shares of Prrenta Industries have been purchase on 14/04/2005 with the bill dated 16/8/2004, bearing Bill no.157/2 for Shri Shailesh Vaishnav and the amount of this purchase which took place in the company M/s Alliance Intermediatories & Network Pvt Limited is Rs.355575.51

E.g 2 On Page 93 of the same notebook, a dale of 20500 shares of Karuna has been made vide bill no.155/5 dated 12/8/2005 for Ms Meena Chetna Kumar Bhadra and the amount of such sale is Rs. 1004808/26.

In cases of Speculation Profit, the details of shares are not recorded as it intraday transaction.

Q. 7 How genuine are these sales and purchases (of shares) ?

Ans Both sales and purchase bills issued by me are bogus transactions. I would like to clarify here that the client may have acquired the shares from elsewhere in cash but most definitely the transaction as mentioned by me in my sale/purchase bill is not a genuine one.

Q.8 Kindly explain the meaning of the entries which are scored out after being written. For e.g.; page 92 of Notebook titled Annexure A-60.

Ans. These represent transactions which did not go through i.e. after placing an order for (bogus) sale/purchase of shares the client/beneficiary did not claim the bogus contract note. However I had generated the same which was entered in my notebook. Hence the same has been scored out.

Q. 9 Where are the physical copies of such bitl(which are not claimed) ?

Ans. They are destroyed.

Q.10 Has the cash component/component of commission been received in respect of these transactions?

Ans. No. we receive our commission only when the deal goes through.

4.5 It was found that in all cases, the consideration for purchase of shares has been paid in cash. In these cases there are no share purchase transactions. It was further found from the bank accounts that there was no corresponding entry for payment in the assessee's bank accounts.

4.6 *Modus operandi of providing speculation profit entries - The staff of the above companies of Shri Mukesh M. Chokshi would prepare a list of scrips having sizable price difference in day. When a client approached the company for bogus speculative profit, they would feed bogus 'saudas' in their Leeda-Deedha software by entering a bogus date, time, no. of order showing purchase and sale of scrips. These transactions are not done through the stock exchange but the bills show them to be so and appear to be genuine transactions done through the stock exchanges. The client gives cash against these profit bills. The cash is deposited in the subsidiary accounts like Talent Infoway Ltd., Buniyad Chemicals Ltd., Mihir Agencies Ltd. etc. and then the funds are transferred to the bank account of the alleged broking company issuing the bill (i.e. Mahanagar Securities Ltd., Goldstar Finvest Pvt. Ltd., etc.). The cheque equivalent to the amount of profit issued to the client from the account of the alleged broking company like Mahanagar, Goldstar, etc. thus enabling the client to generate speculation profit.*

4.7 *Shri Mukesh M. Chokshi has also provided bogus short term capital gain/loss, bogus long term capital gains, bogus commodity bills, bogus derivatives profits/loss, one time entry/share application money and bogus sales invoices using the above-mentioned companies.*

4.8 *As per inquiry carried out by the Department in the case of Shri Mukesh M. Chokshi, the assessee is one of the beneficiaries of bogus transactions carried out through Goldstar Finvest Pvt. Ltd. in F.Y.2002-03 where bogus transactions amounting to Rs. 17,55,127/- has been carried out by the assessee. The assessee has not submitted any details of his transactions through Goldstar Finvest Pvt. Ltd. and other companies of Shri Mukesh M. Chokshi. Further, as per very few details submitted by the assessee in respect of Mahanagar Securities Pvt. Ltd., it can be seen that share transactions of Talent Infoway Ltd. and other companies have been shown for which no payments are appearing. As discussed above, these transactions carried out through Mahanagar Securities Pvt. Ltd. are bogus transactions.*

4.9 *As per his return of income, Mr. Gagan Khemka has shown speculation profit of Rs. 2,61,592/-. As discussed above, he has not furnished details of transactions carried out by him through various companies of Shri Mukesh M. Choksi except for few bills/notes of Mahanagar Securities Pvt. Ltd. As per inquiry of the Department, Mr. Gagan Khemka has entered into bogus transactions amounting to Rs. 17,55,127/- in respect of companies of Shri Mukesh M. Choksi which include Goldstar Finvest Pvt. Ltd.*

4.10 *Having regard to the above discussion, it is held that the above amount of Rs. 17,55,127/- represents undisclosed income of the assessee. Accordingly, the same is added to the total income of the assessee. In this type of bogus billing activities commission @ 2% is generally charged by the bogus bills providers which also remains unaccounted. Considering this aspect, an amount of Rs. 35,103/- (2 % of Rs. 17,55,127/-) is held as unexplained expenditure u/s. 69C of the Act. The same will not be allowed to the assessee as per proviso to section 69C of the Act.*

The AO thus brought to tax income to the tune of Rs. 17,55,127/- towards bogus transactions entered into by the assessee with Mukesh M Choksi group of companies as an undisclosed income of the assessee and further 2% of the said amount of Rs. 17,55,127/- was brought to tax as commission income to the tune Rs. 35,103/- as an unexplained expenditure u/s. 69C, vide assessment order dated 10.12.2010 passed by the AO u/s 143(3) r.w.s. 147 of the 1961 Act.

4. Aggrieved by the assessment order dated 10.12.2010 passed by the AO u/s 143(3) r.w.s. 147, the assessee filed an appeal before the learned CIT(A) which was dismissed by learned CIT(A), vide appellate order dated 24.10.2011 passed by learned CIT(A).

5. Aggrieved by the appellate order dated 24.10.2011 passed by learned CIT(A) , the assessee has now come in an appeal before the tribunal .

It is stated by leaned counsel for the assessee that Rs. 17.55 lakh is being held to be income from undisclosed sources on account of alleged bogus transactions which the assessee has entered into towards sale and purchase of share with Shri. Mukesh M. Choksi Group of Companies. It was submitted that the assessee earned as speculation profit of Rs. 2.61 lakh on sale and purchase of shares which was offered for taxation. It was submitted that out of these speculations profits , the assessee purchased 2 lakh shares of Talent Infoway Ltd. for Rs. 261826.08 which is shown in the books of accounts and were not sold by the assessee. The assessee drew our attention to page no. 4 and 5 of paper book filed with tribunal to submit that the assessee has not sold the shares of Talent Infoway Ltd. till 31-03-2003 which were continued to be held as on 31.03.2003. Our attention was drawn to assessment order of the AO to submit that the assessee purchased shares to the tune of Rs. 12.59 lakh which was sold for Rs. 15.2 lakh and the resultant profit of Rs. 2.61 lakh was used for making investment in 2 lakhs shares of Talent Infoway Ltd. . It was submitted that the assessee did not took delivery of shares on purchase of said shares of Rs. 12.59 lacs and consequently no delivery of shares were released when the said shares were sold for Rs. 15.20 lacs and hence the profit was declared as speculative profits. It was also submitted that no payments for shares purchased to the

tune of Rs. 12.59 lacs was made and it is only the differential profits of Rs. 2.61 lacs which was utilised for making investments in 2,00,000 equity shares of Talent Infoways Limited. It was submitted that even if it is held that speculation profit is bogus but the same was offered to taxation in any case and the taxes were duly paid and hence no prejudice is caused to Revenue. It was submitted that search took place in the case of Shri Mukesh M. Choksi group of companies in the year 2009 while the assessee purchased shares of Talent Infoway Ltd. in the year 2003. The assessee has placed on record appellate order of learned CIT(A) in the case of one Shri. Ashoo Khemka wherein similar additions were deleted by Ld. CIT(A) . The Ld. DR submitted that the entire purchases and sale of shares dealt with by the assessee with Shri Mukesh M Choksi group of companies are bogus. The learned DR submitted that information was received by Revenue that the assessee is beneficiary of bogus transactions to the tune of Rs. 17.55 lacs with Shri Mukesh M Choksi group of companies. The learned DR relied upon the decision of Mumbai tribunal in the case of Disha N. Lalwani v. ITO in ITA no. 6398/Mum/2012 dated 22.03.2017.

6. We have considered rival contentions and perused the material on record . We have observed that the AO has received information from DDIT (Inv.) that the assessee is beneficiary of accommodation entries provided by Alang Securities Pvt. Ltd. (formerly known as Mahasagar Securities P. Ltd and Richmond Securities Pvt. Ltd.) . The information was received by the Revenue that the assessee is beneficiary of bogus transactions in sale and purchase of shares to the tune of Rs. 17,55,127/- in dealings with Mukesh M Choksi Group of companies , which represented undisclosed income of the assessee . The assessee was confronted with said information alongwith statement of Shri. Mukesh M Choksi, wherein said Mr Mukesh M Choksi has admitted to be involved in providing bogus accommodation entries in sale and purchase of share and commodities , where the records were manipulated and bogus bills were issued to manipulate capital gains/profit-loss etc. in securities. It was represented that the said companies of Sh Mukesh M Choksi group of companies were dealing through Interconnected Stock Exchange of India Ltd. which was sub-broker of National Stock Exchange but the said information was also proved to be wrong as his companies were not registered with Interconnected Stock Exchange of India

Ltd. and only bogus bills were issued by Shri Mukesh M Choksi group of companies . Shri Mukesh M Choksi and Shri Jayesh K. Sampat were the main kingpins of the said bogus transactions in securities market wherein several companies were opened by Shri. Mukesh M. Choksi and Shri. Jayesh K. Sampat to undertake these bogus and manipulated transactions in securities market . The detailed modus operandi is explained by said Sh. Mukesh M Choksi in his statement recorded which found mentioned in the assessment order and the extract of said statement is reproduced above by us. In preceding para's of this order. The said statement of Sh. Mukesh M Choksi is placed in the file. The assessee was confronted with this statement and the assessee never denied to have dealt with Sh Mukesh M Choksi nor sought cross examination of Mr Mukesh M Choksi. The assessee has purchased 2,00,000 equity shares of Talent Infoways Limited for Rs. 2,61,826.08 and proceeds of speculation profit of Rs. 2.61 lacs were utilised to pay for acquisition of 2,00,000 equity shares of Talent Infoways Limited on an average price of Rs. 1.30 per share as against par value of Rs. 10 per share of Talent Infoways Limited. The assessee never paid any sum of money to Mahasagar Securities Private Limited for purchasing shares to the tune of Rs.12.58 lacs on which speculation profit of Rs. 2.61 lacs was stated to be earned. The assessee never took delivery of shares to the tune of Rs. 12.58 lacs after its purchase and these shares were stated to be sold without making any payment or taking delivery and it was through book adjustments , the profits of Rs. 2.61 lacs arose without going through the normal process of settlements as is prescribed by Stock Exchanges/SEBI. It is pertinent to mention that these are the only transactions claimed to be entered into by the assessee with Sh. Mukesh M Choksi group of companies. The assessee never had dealings prior to the said dealings with Sh Mukesh M Choksi group of companies and the assessee never had the dealings subsequent to these transactions. It is incomprehensible that the assessee was extended credit of Rs. 12. 58 lacs by Mahasagar Securities Private Limited without any security/payments. The claim of Sh Mukesh M Choksi that his companies were registered with Inter Connected Stock Exchange of India Limited who were sub-brokers to National Stock Exchange of India Limited had also proved to be false. The assessee's conduct in dealing with Mukesh M Choksi group of companies is not a normal conduct of dealings in securities market. The transactions in securities market are regulated ,

monitored and controlled by Stock Exchanges , SEBI , RBI etc and there is a systems of KYC, Settlement etc which is to be adhered with , which in the instant case has not been complied with and the conduct/ dealings are far away then normal conduct/dealings in stock/ securities market. The onus under these circumstances is very heavy on the assessee as the assessee is asking to accept conduct/behaviour which is far away from normal conduct/behaviour of dealing in securities market. The problem of the assessee further got aggravated by the admission by Sh. Mukesh M Choksi that he is indulging in fraudulent and manipulation in securities market wherein bogus accommodation bills for purchase and sale of shares are issued to manipulates gains/losses etc which are offered to various persons to defraud Revenue. The assessee was confronted with this information and the assessee never denied transacting with Mr Mukesh M Choksi group of companies nor cross examination of said Mr Mukesh M Choksi was sought. The onus under these situations is very heavy on assessee as the Revenue has got incriminating information that the assessee is beneficiary of bogus accommodation entries in sale and purchase of shares wherein he converted his undisclosed income of Rs. 17,55,127/- through Mr. Mukesh M Choksi group of companies. The proceeds of speculation profits earned to the tune of Rs. 2.61 lacs were utilised by the assessee to buy 2,00,000 equity shares of Talent Infoways Limited for Rs. 2.61 lacs which translates into price of around Rs. 1.3 per share as against par value of Rs. 10 per share. The shares of Talent Infoways Limited were listed on Ahmadabad and Pune Stock Exchanges. It is pertinent to mention that Talent Infoways Ltd is a company promoted , managed and controlled by Sh. Mukesh M Choksi. It is admitted by Shri Mukesh M Choksi that he was manipulating the prices and dates of share transactions while issuing bogus bills for purchase and sale of shares to generate fictitious profits/losses for clients with an intent to defraud Revenue. The entire modus operandi is explained by him in his statement which extracts are reproduced in preceding para's of this order and are not repeated again. The Mukesh M Choksi group of companies have admittedly declared the entire transactions undertaken by their group of companies as bogus accommodation bills in sale and purchase of shares and commodities on which income was declared @0.15% of these alleged bogus accommodation entries, which is stated in learned CIT(A) order and the said income was also stated to be accepted by tribunal in some of his group

companies. The collusion between assessee and Sh Mukesh M Choksi/companies promoted by him is at writ large from the analysis of the factual matrix surrounding this appeal. Thus, the onus now on the assessee is very heavy under these circumstances as there is a specific information received by Revenue that the assessee is beneficiary of bogus accommodation bills in shares wherein the assessee converted its undisclosed income to the tune of Rs.17.55 lacs through Mukesh M Choksi group of companies. The assessee did not give complete details/evidences before the authorities below to discharge its onus and we have observed that only bills issued by Mahasagar Securities Private Ltd were submitted and it is claimed that 2,00,000 share of Talent Infoways Limited purchased for Rs. 2.61 lacs were not sold as the end of the year. The assessee did not brought on record the share price movements of Talent Infoways Limited as is reflected on the stock exchanges of Ahmadabad and Pune Stock Exchange on the relevant date of purchase of said shares on 12-02-2003 as well over a period of time prior and subsequent to the purchase say period of six months prior and after the date of purchase of shares of Talent Infoways Limited, as admittedly Mr Mukesh M Choksi group of companies were manipulating the prices and date of bills for purchase and sale of shares which were all accommodation share transactions to generate bogus loss/profits with an intent to defraud Revenue. There is no mention of time of dealing of said share and neither stock exchange reference numbers are there in the said bills of Mahasagar Securities Private Limited which are placed by the assessee in paper book page no. 15 and 16. The assessee only brought on record his statement of affairs as at 31-03-2003 to contend that shares of Talent Infoways Limited continued to be held till the end of the year and were not sold. This is not conclusive evidence to support his contentions. The assessee did not brought on record evidences to show conclusively, when the shares of Talent Infoways were registered in his names in records of Talent Infoways Limited, when the said shares were dematted in his demat account and finally when the said shares were sold by him and at what price and when exit of shares took place from his demat account. The information which the Revenue received about the indulgence of the assessee in clandestine activities of conversion of his undisclosed income to the tune of Rs. 17.55 lacs through Mr Mukesh M Choksi remained uncontroverted as the cogent evidences were not brought on record to rebut

the said incriminating information. Thus, under these circumstances the matter need to be set aside and restored to the file of the AO for de-novo determination of the issue on merits in accordance with law . The assessee is directed to produce cogent material/evidences to prove its contentions which shall be admitted by the AO in the interest of justice . The AO shall provide proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law . We order accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.05.2018

आदेश की घोषणा खुले न्यायालय में दिनांक: 30.05.2018 को की गई ।

Sd/-

(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 30.05.2018

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI