

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'बी', मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'B' MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री राजेश कुमार, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Rajesh Kumar, Accountant Member**

**ITA Nos.150 to 154 & 166/Mum/2018
Assessment Years: 2008-09 to 2013-14**

Ashok Mohanbhai Patel, R. No.19, 1 st Floor, 142 F Lalwani Haveli, Kabutarkhanna, Bhuleshwar, Mumbai-400002	बनाम/ Vs.	DCIT, Central Circle-2(4), 802, Old. CGO Bld.(Annexe), 8 th Floor, M. K. Road, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व /Revenue)
PAN. No.ARQPP9049K		

निर्धारिती की ओर से / Assessee by	Shri Manoj Pandit
राजस्व की ओर से / Revenue by	Shri S.K. Bepari-DR

सुनवाई की तारीख / Date of Hearing :	04/09/2018
आदेश की तारीख /Date of Order:	19/09/2018

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

This bunch of six appeals is by the assessee against the impugned order dated 30/10/2017 of the Ld. First

Appellate Authority, Mumbai, for Assessment Years 2008-09 to 2013-14.

2. During hearing of this appeal, the Ld. Counsel for the assessee, Shri Manoj Pandit, contended that the expenses incurred for carrying on the business has to be allowed and the disallowances made by the Ld. Assessing Officer and confirmed by the Ld. Commissioner of Income Tax (Appeal) are not out of bona-fide reasons. It was contended that the assessee is dealing in transfer of own cash and no Hawala trading is done by the assessee. Our attention was invited to the statement recorded from the assessee as well as one of the employee. It was pleaded that as per section 30 of the Act, the rent has to be allowed and as per section 37 of the Act, other business expenses has to be allowed. On the other hand, the Ld. DR, Shri S. K. Bepari, strongly defended the impugned order by contending that the assessee is involved in Hawala trading business, which is illegal, therefore, no expenses are allowable. Our attention was invited to the statement tendered by the assessee and also one of the employees. It was contended that even till today, the statements has not

been retracted. In reply, the ld. counsel for the assessee pleaded that, in view of section 30 of the Income Tax Act, 1961 (hereinafter the Act), at least rent expenses are to be allowed.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that a search and seizure action under section 132 of the Act was carried out in the case of M/s Gold Sukh Safety Vaults Ltd., who are in the business of providing locker on rent, without verification of KYC details. It was subsequently found that number of lockers has been given on rent to Hawala operators, who are involved in illegal transfer of cash. The statement of the assessee was recorded, wherein, he admitted that he was involved in the business of angadia, involved in transferring the money from one place to another, with respect to various parties, with the help of another angadia service providers. Ultimately, the Ld. Assessing Officer framed assessment by disallowing various expenses claimed by the assessee and the commission involved in this business. The assessee carried the matter in appeal before the Ld. Commissioner of

Income Tax (Appeal), wherein, the appeal of the assessee was dismissed. The assessee is in further appeal before this Tribunal.

2.2. Before adverting further, we are reproducing hereunder the relevant portion of the statement of Shri Asok Mohanbahi Patel (assessee) is reproduced hereunder for ready reference and analysis:-

Statement on oath recorded under section 131 of the Income-tax Act, 1961 of Ashok Mohanbhai Patel, aged 56 years, son of Shri Mohanbhai Lilachand patel, at Room No. 429, 4th Floor, Scindia House, Ballard Estate, Mumbai on 04.02.2013 in the case of Patel Ashokkumar Mohanlal Ni Co.

OATH ADMINISTERED. I swear in the name of God that I will tell the truth, the whole truth and nothing but the truth.

BEFORE ME

DEPONENT



Sudhanshu Shekhar, आयकर अधिकारी (अन्वेषक) एकक V, इ. व. 3, मुंबई
Sudhanshu Shekhar, Director of Income Tax (Inv.)
EIT (Inv.) Unit-V-3, Mumbai (3), Mumbai

Ashok Mohanbhai Patel
5/2/2013
(Ashok Mohanbhai Patel)

Q1. Kindly identify yourself and confirm that the oath has been administered to you. Kindly also confirm that you have been made aware of the consequences of giving false statement on oath.

Ans. Sir, I am Ashok Mohanbhai Patel, aged 56 years, son of Shri Mohanbhai Lilachand Patel. I reside at 1st Floor, 142-F Block, Lal Baba Haveli, Bhuleshwar, Mumbai-2. My contact number is 9032901510. I confirm that the oath has been administered to me and I have been made aware of the consequences of giving false statement on oath. I am the proprietor of Patel Ashokkumar Mohanlal Ni Co.

Q.2. What is your educational qualification? Please confirm whether you can read, write and understand English? Furnish a document viz PAN Card/Driving Licence/Voter ID Card/Aadhar card etc. as your ID proof.

Ans. Sir, my educational qualification is M.Com. I confirm that I can read, write and understand English language. I am submitting copy of PAN no. ARQPP9049K as identity proof.

Q.3. Kindly submit whether you are in a fit condition to depose statement on oath?

Ans. Sir, I submit that I am physically and mentally fit to depose statement on oath.

Q.4. Kindly state your Nickname, date / year of birth, place of birth, address of ancestral house (telephone number, if any), names of and relationship with close family members residing at ancestral place and the year of shifting to Mumbai.

Ans. Sir, I do not have any other name or nickname. I born on 21.10.1956 at Murughvi (Myamar). My ancestral address is House no. 3, Juna Rampura Unjha, Dist. Mehsana (Phone no. 9825679273). My wife, mother and son reside there. I shifted to Mumbai in 2007.

Q.5. Kindly provide your present and permanent residential address and also provide copies of any one of the following documents in support of the same: Ration Card, Driving License, Electricity Bill, Receipt for Gas / Water Connection.

Sir, my present address is 1st Floor, 142-F Block, Lal Baba Haveli, Bhuleshwar, Mumbai-2 and my permanent address is House no. 3, Juna Rampura Unjha, Dist. Mehsana-384170.



Sudhanshu Shekhar
05-02-2013

Ashok Mohanbhai Patel
5/2/2013
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Q.6. Kindly state Name, age, educational qualification, annual income, PAN and contact number of each member of your family staying with you and relationship with you.

Ans. Sir, the required details is as follows:

Relation	Name	Age (years)	Qualification	Annual Income	PAN	Contact number
Mother	Smt Heera Ben	72	Illiterate	No income	No PAN	NIL
Wife	Smt Chandrika Ben	50	Class VIIIth	No income	No PAN	NIL
Son	Mihir Patel	17	Studying in Std. XI	No income	No PAN	NIL

Q.7. Whether your present and permanent residence as mentioned in Q.No. 10 are owned or taken on rent? If on rent, kindly submit monthly rent, name of owner, advance/lump sum deposit etc.

Ans. Sir, my present address is on rent from Mr. Ramesh Bhai at Rs. 12,000/- per month. No advance or lump sum deposit has been paid by for this premise. Only verbal agreement is there and the rent is being paid to him in cash.

My permanent address if owned by my mother.

Q.8. What is your household expense ?

Ans. Sir, my household expenses are of Rs. 6,000/- per month.

Q.9. What is your annual savings, viz. LIC policies, PPF, mutual funds, FD's etc. ?

Ans. Sir, I have one LIC with Rs. 6,000/- annual premium and one Metlife insurance with Rs. 12,000/- annual premium.

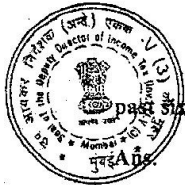
Q.10. Please state whether you and your family members own any movable assets viz vehicle car, motorbike, scooter etc.), jewellery, furniture, household articles like TV, fridge, washing machine etc. If yes, give complete details of the same?

Ans Sir, I have a Car (Hyundai Accent, 2006 model) which was gifted to me by Mr. Bakul Patel (not my relative) in 2007-08 without any consideration. In my house I have TV, fridge and furniture.

Q.11. Furnish the details of immovable property owned by you and your family.

Ans. Sir, my mother own a house at House no. 3, Juna Rampura Unjha, Dist. Mehsana-384170. It is a ancestral property, which was acquired decades back.

Q.12. Name of the bank and address of the branch in which you and each member of his family is holding accounts / deposits either singly or jointly in the past 6 years.



Name Bank and branch Account Number

Further submit the bank details of the accounts in which you are/were a signatory in past six years.

Ans. Sir, the required details are as follows :

Bodha She

Ambarish
12/2013 Page 2

<u>Name</u>	<u>Bank and branch</u>	<u>Account Number</u>
Ashok Mohanbhai Patel	Corporation Bank, Unjha	SB- 1405
Mihir Patel	Corporation Bank, Unjha	SB-1344

Sir, I confirm that there is no other bank account either in my name or in my family member name.

Q.13. Kindly submit the name, registered address of the concerns in which you are /were engaged as director, partner, proprietor etc. during the past 6 years.

Ans. Sir, I am proprietor of M/s Patel Ashokkumar Mohanlal Ni Co. Except this I am not engaged with any other concern director, partner, proprietor etc. during the past 6 years.

Q.14. Kindly explain business of M/s Patel Ashokkumar Mohanlal Ni Co. in detail.

Ans. Sir, I am involved in Hawala activity. I transfer cash of different parties on the basis of commission. I charge a commission of Rs.3/- per Rs. 1000/- money transfer.

Q.15. For how many years you are involved in this activity.

Ans. I am engaged in this activity for last six years.

Q.16. What is your average annual commission income from this activity. Do you file return of income?

*Ans. Sir, per year my average annual income is Rs. 7,00,000/-. I do not file my return of income.

Q.17. What is the modus operandi of your activity ?

Ans. Sir, the party which comes to me for transferring cash gives me number of a note of Rs. 10/-. I intimate that number to my person at the location where the cash is to be delivered. The person of the party arrives at my office at the delivery location along with the 10/- Rs. note. After verifying the number we deliver the cash to the party.

Q.18. You are being shown the statement of Pravin Patel recorded u/s 132(4) of the Income-tax Act on 08.11.2012 during the course of search u/s 132 in the case M/s Patel Ashokkumar Mohanlal Ni Co. at 1st Floor, 142-F Block, Lal Baba Haveli, Bhuleshwar, Mumbai-2. Kindly confirm and comment.

Ans. Sir, I confirm that I have been shown the statement of Pravin Patel recorded u/s 132(4) of the Income-tax Act on 08.11.2012 during the course of search on M/s Patel Ashokkumar Mohanlal Ni Co. at 1st Floor, 142-F Block, Lal Baba Haveli, Bhuleshwar, Mumbai-2. I confirm that the contents of the above mentioned statement are true and I agree with this statement.

Q.19. During the course of search u/s 132 on M/s Patel Ashokkumar Mohanlal Ni Co. at 1st Floor, 142-F Block, Lal Baba Haveli, Bhuleshwar, Mumbai-2 on 08.11.2012, a laptop as per Annexure-A was seized. Kindly confirm.

Ans. Sir, I confirm that a laptop as per annexure-A was seized from 1st Floor, 142-F Block, Lal Baba Haveli, Bhuleshwar, Mumbai-2 on 08.11.2012 during the course of search u/s 132 on M/s Patel Ashokkumar Mohanlal Ni Co. However, I submit that the laptop does not belong to me. It belongs to my friend, Mr. Deepak, who has left it at my premises on 06.11.2012. I have nothing to do with the



Sudhanu Shrivastava
05.02.2013

Ans. Patel
5/2/2013 Page 3

Address of Mr. Deepak is B-13, Punam Building, Nariman Road, Opp. Jain
Lane, Vile Parle (E), Mumbai. Contact number of Mr. Deepak is 9819117766.

explain your relationship with Paresh Kalyanbhai Shah.

not anybody Mr. Paresh Kalyanbhai Shah.

explain your relationship with Locker no. 596, M/s Gold Sukh Safety Vault Ltd.,
Mumbai-02.

have no relationship with Locker no. 596, M/s Gold Sukh Safety Vault Ltd., 65,
Mumbai-02.

do you want to say anything else?

No, please.

Whatever stated above is deposed without fear, coercion and undue influence. I have read the
entire statement and the same has been understood correctly by me to the best of my knowledge. I
understand the contents therein. The statement has been made in sound state of mind and health.

BEFORE ME

Sudhanshu Shekhar
(Sudhanshu Shekhar, IRS)
DDIT (Inv.) Unit-V-3, Mumbai.
सुधांशु, शेखर, भा.स.स. /Sudhanshu Shekhar, I.R.S.
उप आयकर निदेशक (अन्वेष) एकक-V (3),
Deputy Director of Income Tax (Inv.)
Unit - V (3), Mumbai

DEPONENT

Ashok Mohan Bhai Patel
(Ashok Mohanbhai Patel)

2.3. We are also reproducing hereunder the statement tendered by Shri Pravikumar Babulal Patel:-

Statement of Shri Pravinkumar Babulal Patel, s/o Shri Babulal Patel, aged 43 years, residing at A / 304, Roop Apartment, Panchal Nagar, Opp. St. Francis School, Patankar Park Road, Nallasopara (W), Taluka Vasai, Dist : Thane recorded u/s 132 of the I.T. Act, 1961 on 08/11/2012.

OATH ADMINISTERED

"I swear in the name of God that I will speak truth, only truth and nothing but the truth. I further confirm that I have been made aware of the consequences of making a false statement under oath".

Before Me

Santosh Karnani
21/11/12
(Santosh Karnani)
ADIT, Unit-II(1), Mumbai
संतोष करनानी / SANTOSH KARNANI
आयकर उप-निदेशक (अन्वेष), एकक-II (1) & II (2), मुम्बई
Deputy Director of Income Tax (Inv.)
Unit-II (1) & II (2), Mumbai



Pravin B Patel
(Pravin B Patel)
Deponent

8/11/2012

Q.1 Please identify yourself and confirm that oath has been administered to you and also that you have been made aware of consequences of giving false statement or concealing material facts.

Ans. I am Shri Pravinkumar Babulal Patel, s/o Shri Babulal Patel, aged 43 years, residing at A / 304, Roop Apartment, Panchal Nagar, Opp. St. Francis School, Patankar Park Road, Nallasopara (W), Taluka Vasai, Dist : Thane. I confirm that oath has been administered to me and I have been made aware of consequences of giving false statement on oath.

Q.2 What is your educational qualification and also state whether you understand English?

Ans: I have studied upto 12th standard at Ladol, Taluka Vijapur, Dist : Mensana, Gujarat. I do not understand English much.

Q.3 Are you known by any other name or nickname?

Ans: No, I am not known by any other name.

Q.4 Please give details of name and address of each member of the family and your relationship with them?

Ans: I am staying here with my family members which consist of my wife, Mrs. Rashmi Patel aged 31 years, one daughter Nirali aged 11 years and son Aryan aged 7 years.



Pravin B Patel
8/11/12
8/11/2012

Santosh Karnani
8/11/12

Pravin B Patel

Page 1 of 7 8/11/12

6 Please give your complete present and permanent residential address.

Ans. Presently I am staying at A / 304, Roop Apartment, Panchal Nagar, Opp. St. Francis School, Patankar Park Road, Nallasopara (W), Taluka Vasai, Dist : Thane. My permanent residential address is at Harshidpura, Ladol, Taluka Vijapur, Dist : Mehsana, Gujarat.

Q.7 Please state whether present residence is owned or taken on rent by you, and furnish the details thereof.

Ans. My present address i. e. A / 304, Roop Apartment, Panchal Nagar, Opp. St. Francis School, Patankar Park Road, Nallasopara (W), Taluka Vasai, Dist : Thane, which is owned by me. I had brought the said residential premises in the year 2006. The cost of acquisition of the property was Rs. 4,00,000/- I had purchased the property by obtaining a loan of Rs. 3,00,000/- from Besan Catholic Bank, Nallasopara, Mumbai.

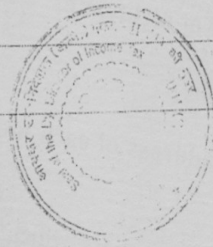
Q.8 Please state where is your native place and whether you own any property there?

Ans: My native place is at Ladol, Taluka Vijapur, Dist : Mehsana Gujarat. We have a residential house at Ladol which is our ancestral house. The address is Harshidpura, Ladol, Taluka Vijapur, Dist : Mehsana, Gujarat.

Q.9 Please give sources of income and approximate annual income of each member of your family and their contribution towards household expenses.

Ans. My source of income is from salary and my monthly income is Rs. 8,000/- My wife is a housewife and is not employed. The family expenses are taken care of me

Sr. No.	Name	Approximate Annual Income	Contribution towards expenses
1	Myself, Pravin Patel	1,00,000	Rs.1,00,000
2	Mrs. Rashmi Patel	House wife	Nil
3	Nirali Patel	Studying in 6 th Standard.	- NIL -
4	Aryan Patel	Studying in 3 rd standard	- NIL -



Pravin Patel

8/11/20

Rashmi Patel
8/11/20

W1
Pravin Patel
8/11/20

W2
Rashmi Patel
8/11/20

Q.10 Please give details of the school in which your children are studying and the total fees payable for their education.

Ans. My children are studying in St. Francis School at Nalasopara. The fees for both the children for the full academic year is Rs. 15,000/- each..

Q.11 What are your annual savings?

Ans. As stated earlier I do not earn much and I hardly have any savings.

Q.12 Please give details of the immovable properties owned by you or your family members

Ans. The other properties owned by me and my family members are as under:

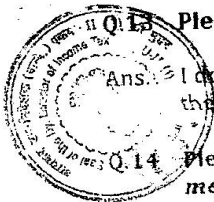
S. No.	Address of the Property	Amount and Year of Purchase	In the Name of	Remarks
1.	A / 304, Roop Apartment, Panchai Nagar, Opp. St. Francis School, Patankar Park Road, Nallasopara (W), Taluka Vasai, Dist : Thane	Rs. 4 Lacs	Parvin Patel	Purchased in the year 2006 by obtaining loan from Bassen Catholic Bank
2.	Harshidpura, Ladol, Taluka Vijapur, Dist : Mehsana, Gujarat.	Ancestral Property	Ancestral House	

Q.13 Please furnish the particulars of investments made out of your savings.

Ans. I do not have any savings since my salary is very minimal and hardly able to meet the household expenses.

Q.14 Please provide particulars of movable assets owned by you and any other member of your family.

Ans. I do not have any moveable assets.



W1
8/11/12

8/11/12

8/11/12

Parvin Patel

8/11/12

Q.15 Please furnish particulars in respect of annual savings and particulars of investments made out of that by each member of the family.

Ans. As stated earlier my salary is Rs. 3,000/- only and I am hardly able to meet my household expenses.

Q.16 Please furnish details with respect of PAN and designation of the Assessing Officer of yourself and other members of family. If you are filing Income-tax return, mention when you filed the return of income for the first time.

Ans. My income is below taxable limit and hence I do not file any return of income. I also do not have any permanent account number.

Q.17 Please give details of the bank accounts / deposits held in your name and each member of your family.

Ans. The details of bank accounts / deposits held in my name is as under:

Sr. No.	Name	Bank and Branch	Type of Account	Account No.
1	Parvin Patel	Axib Bank, Nalasopara Br.	Savings	4540100002837

My wife is a housewife and does not have any bank account.

Q18. Please state your relationship with M/s. Ashokkumar Mohanlal Patel Ni Co and from when are you employed with this concern?

Ans: I am the employee of M/s. Ashokkumar Mohanlal Patel Ni Co and have been working with this concern since two years. Before joining this firm I was working for a Transport Company. Since the company shut down, I joined this concern.

Q19. Please state from how many cities do you operate?

Ans: We do not have any branch. We only operate from Mumbai.

Q20. Please give the nature of business activity carried out by M/s. Ashokkumar Mohanlal Patel Ni Co?

Ans: M/s. Ashokkumar Mohanlal Patel Ni Co is in the business of angadia / Courier service. The main activity is transferring the money from one place to another. Since we do not have any branch we transfer the money through different angadia service located in an around Mumbai.

Q21. Please give the nature of work done by you?

Ans: I arrive at this office located at 142F, 1st Floor, Room No. 32, Lalbaba Bui Bhuleshwar Mumbai at about 11.30 A.M. from my residence at Nalasopara

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8/11/12
W-2
ATRA
8/11/12

Sanjay Kumar
8/11/12

Pravin

W-1
8/11/12

Q27. Please give the details of the number of employees working in M/s. Ashokkumar Mohanlal Patel Ni Co?

Ans: There are around 5 to 6 employees working in this concern. The names of the employees are as follows :

S.No	Name of the employee	Mobile No.
1	Ashokkumar Mohanlal Patel (Owner)	9323155157
2	Kamlesh Patel (Manager / Cashier)	9323041630
3	Sashi (Manager / Cashier)	9324840301
4	Myself (Pravin Patel)	9320622010
5	Dinesh	9324834795
6	Lalabhai	9322919903

Q28. Please state whether Mr. Ashokkumar Mohanlal Patel (Owner) comes to this premises?

Ans: Mr. Ashokkumar Mohanlal Patel occasionally comes to Mumbai. He resides at Ahmedabad. I am not aware of his residential address.

Q29. Please state who is the main person who takes care of the business in the absence of Mr. Ashokkumar Mohanlal Patel?

Ans: The main person who takes care of the business in the absence of Mr. Ashokkumar Mohanlal Patel is Mr. Kamlesh Patel and Mr. Sashi.

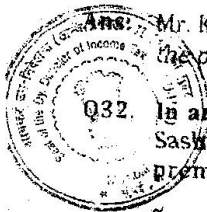
Q30. Please state whether M/s. Patel Ashokkumar Mohanlal Ni Co has any locker?

Ans: As stated earlier, I am only a staff and work like a peon. I am not aware of whether any locker is standing in the name of M/s. Patel Ashokkumar Mohanlal Ni Co. Mr. Kamlesh Patel / Mr. Sashi might be aware of the same because they are the main person who handle all the operation of the transfer / receipt of money.

Q31. Please give the address and contact number of Mr. Kamlesh Patel and Mr. Sashi?

Ans: Mr. Kamlesh Patel and Mr. Sashi stay at this premises only. I have already given the phone number of Mr. Kamlesh Patel and Mr. Sashi.

Q32. In answer to question no. 28 you have stated that Kamlesh Patel and Mr. Sashi stay at this premises only. Then how come they are not present at the premises and where are they at present?



Pravin Kumar
8/11/12

W,
[Signature]

[Signature]
012/11/12

Pravin Patel
Page 6 of 7

8/11/12

Ans: I am not aware where they have gone. I had contacted Mr. Sashi as per your instruction and he was not answering my call. Later on, when I tried to contact his mobile was switched off. Even Mr. Kamlesh's Patel mobile is switched off. I am not aware where they are.

Q.33 Please state where are the books of accounts relating to business of M/s. Ashokkumar Mohanlal Patel Ni Co are kept.

Ans: I am not aware of the same.

Q.34 Please confirm that the following documents have been impounded from your premises?

Annexure A - 1 - One Laptop - Benq Joybook Lite U 101B

Ans: Yes. I confirm that the above documents have been impounded from this premises.

Q.35. Do you want to state anything else?

Ans: No.

Whatever stated above is correct and true to the best of my knowledge and belief. The above statement has been given without any force, fear and coercion and the same has been given in sound state of mind. I have read the statement, understood its contents and confirm that it has been correctly recorded. I also confirm that the statement has been read out to me and then explained to me in Hindi.

(Santosh Karnani)
ADIT, Unit-II(1), Mumbai
संतोष करनाणी / SANTOSH KARNANI
अवकाश उप-निदेशक (अच), एकक-II (1) & II (2), मुंबई
Deputy Director of Income Tax (Inv.)
Unit-II (1) & II (2), Mumbai



Pravin B Patel
(Pravin B Patel)
Deponent 8/11/2012

[Signature]
8/11/12

[Signature]
8/11/2012

Santosh Karnani
8/11/12

2.4. If the statement of the assessee tendered on 05/02/2013 (which is not retracted) is analyzed in reply to question no.14, it has been specifically tendered by him that he was involved in Hawala activities engaged in transferring cash of different parties on commission basis,

which is Rs.3 per Rs.1,000/- as commission. In reply question no.3 with respect to modus operandi of the activity, he tendered that the parties comes to him for getting the cash transferred and a note of Rs.10 is given to this person at the location, where the cash is to be delivered. The person of the concerned parties, goes to the destination along with Rs.10 note and after verifying the number of the note, the cash is delivered to the parties. Therefore, the contention of the assessee that the present appellant is only involved in transferring his own cash is factually incorrect. So far as, the statement of Shri Pravin Kumar Babulal Patel, (employee of the assessee) is concerned, in reply to question no.18, he has specifically stated that he is employee of the assessee and in reply to question no.20, he tendered that the assessee is in the business of angadia involved in transferring the money from one place to another through different angadias. Reply to question no.21 and 26 of the statement, fortifies the claim of the Revenue. It is noteworthy that both these statements were never retracted by the assessee as well the employee of the assessee. Furthermore, the assessee is not

having any license of doing the activity of transferring of cash and even on a question from the Bench whether the statement tendered by them was ever retracted, the ld. counsel for the assessee specifically said that the statements were never retracted. Even during argument, the ld. counsel for the assessee relied upon the statement tendered by the assessee as well as of the employee of the assessee (both these statements are available on record in the paper-book filed by the assessee itself).

2.5. Another argument advanced by the ld. counsel for the assessee is that the ld. Assessing Officer erred in taking gross commission income of the assessee but did not allow the expenses incurred for earning such commission income and further disallowance of rent expenses. The Ld. counsel for the assessee advanced identical arguments, whereas, the Ld. DR contended that since the assessee was doing illegal activity, such expenses cannot be allowed.

2.6. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record,

assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, the commission income and claimed expenses are summarized hereunder:-

A.Y.	Gross Commission income shown (in Rs.)	Expenses claimed (in Rs.)	Net Income offered to tax (in Rs.)
2007-08	NIL	NIL	NIL
2008-09	5,26,811	3,14,682	2,12,129
2009-10	6,35,667	3,34,202	3,01,465
2010-11	7,70,786	3,70,023	4,00,763
2011-12	9,43,438	4,25,735	5,18,003
2012-13	8,58,226	4,58,484	3,99,742
2013-14	8,64,322	4,61,658	4,02,664

The aforesaid expenses, claimed by the assessee, were rejected by the ld. Assessing Officer. A search and seizure operation under section 132 of the Act was carried out on 08/11/2012 and simultaneously identical action was taken in the case of M/s Gold Sukh Safety Vaults Ltd., which is engaged in providing lockers on rent. The Ld. Assessing Officer observed that survey action 133A was carried out earlier on 13/09/2010, wherein, cash amounting to Rs.7,50,000/- were found from the premises of the assessee, consequently, the survey was converted into search under section 132 of the Act and thus the aforementioned cash was seized. The grounds of appeal are

similar except different figures of each years, hence, a common order is passed. In the statement recorded on 05/02/2013, the assessee stated that he was earning average annual income of Rs.7 lakhs from the Hawala business for the last six years and further he agreed with the statement of Shri Pravin Patel. This is admitted fact that in the business of Hawala trading normally no record is maintained and the money transfer business was discovered/unearthed during search proceedings. The claimed expenses by the assessee are unverifiable, therefore, we find no infirmity in the impugned order with respect to disallowance of expenses. Even otherwise, the assessee cannot be extended the benefit of unlawful business and consequently the unlawful expenses.

2.7. So far as, the argument of the Ld. counsel for the assessee that as per the provisions of section 30 of the Act, the benefit of rent and as per section 37, the benefit of any expenditure, laid out or expended wholly and exclusively for the purpose of business has to be allowed. However, we are not agreeing with this proposition of the ld. counsel for the assessee, because as per explanation-1 to section 37,

for removal of doubts, it has been categorically declared that ‘any expenditure’ incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purposes of business or profession and no deduction or allowance shall be made in respect of such expenditure. The ratio laid down in *Haji Aiza & Abdul Shakoor Bros. vs CIT* (1961) 41 ITR 350 (Supreme Court), *CIT vs Mathura Prasad H. P. Deoria* (1965) 55 ITR 476 (All.), *Sadi Ram Ganga Prasad vs CIT* 172 ITR 129(ALL) (penalty for breach of law), *Rohit Pulp & Paper Mills ltd.* (215 ITR 919, 922) (Bom.), *Orient Trading Company Ltd. vs CIT* 202 ITR 481, 491 (Guj.), *Agra Leatheries Ltd. vs CIT* (200 ITR 792)(All.), *CIT vs Jayaram Metal Industres* 286 ITR 403 (409) (Karn.), *CIT vs Mamta Enterprises* 266 ITR 356 (Karn.) supports our view. The crux of the ratio in the aforesaid cases is that any penalty/deduction/expenditure claimed in violation of legal business/infraction of law is not an allowable deduction. Even otherwise, the word “any expenditure” used in section 37 denotes legal expenditure laid out or expended wholly and exclusively for the purposes of business or profession,

which has been further clarified in Explanation-1 to section 37 inserted by Finance No.2 Act 1998 (with retrospective effect from 01/04/1962) and further the explanation has been numbered as Explanation-1 by the Finance (No.2) Act 2014. Thus, considering the totality of facts and the provision of the Act, we find no infirmity in the conclusion of the Ld. Commissioner of Income Tax (Appeal), resultantly, the appeals of the assessee are dismissed.

Finally, the appeals of the assessee are dismissed.

This order was pronounced in the open court in the presence of the ld. representatives from both sides at the conclusion of the hearing on 04/09/2018.

Sd/-

(Rajesh Kumar)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 19/09/2018

Shekhar, P.S./नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**