

THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 5183/Mum/2019 (Assessment Year 2008-09)  
I.T.A. No. 5184/Mum/2019 (Assessment Year 2009-10)  
I.T.A. No. 5185/Mum/2019 (Assessment Year 2010-11)  
I.T.A. No. 5186/Mum/2019 (Assessment Year 2011-12)  
I.T.A. No. 5187/Mum/2019 (Assessment Year 2012-13)  
I.T.A. No. 5188/Mum/2019 (Assessment Year 2013-14)  
I.T.A. No. 5189/Mum/2019 (Assessment Year 2014-15)

Shri Dinesh Choudhary A-304, Mew Ostwal Onyx Jesal Park, Bhayander East, Thane, Maharashtra Pincode 400 092.  PAN : AKFPC3048P (Appellant)	Vs.	DCIT, CC-1(1) Room No. 903 9 <sup>th</sup> Floor Pratishtha Bhavan Old CGO Building M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Prakash Jhunjhunwala
Department by	Shri Anoop
Date of Hearing	18.05.2021
Date of Pronouncement	09.06.2021

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the assessee against a common order of learned CIT(A) for the concerned assessment years. Since the issues are common and connected and the appeals have been heard together these are being consolidated and disposed off by this common order.

2. Since common grounds are raised for the sake of reference we are referring to the grounds of appeal for assessment year 2008-09 :-

The appellant has preferred an appeal against the order dated 30.04.2019 passed by Id. CIT (A) u/s. 250 of The Income Tax Act, in pursuance of appeal filed against assessment order dated 26.03.2016 passed u/s. 153A r.w.s. 143 (3) of the Income Tax Act, Following are the grounds of appeal without prejudice to one another –

- I. The learned Commissioner of Income Tax (Appeal) has erred in adding genuine unsecured loan taken amounting to Rs. 21,10,000/- as unexplained income and added in the income of the appellant without appreciating the submission/documentary evidences provided by the appellant.
  - II. The learned Commissioner of Income Tax (Appeal) has erred in impugned addition Rs. 2,00,000/- alleged as Commission income of the appellant without considering the submission/evidences provided by the appellant.
  - III. The appellant craves to add, amend or alter the grounds of appeal at the time of or before the hearing of appeal.
3. Brief facts of the case are that assessee is a proprietor of M/s. Ply Plaza and is engaged in trading of ply. The assessment was framed pursuant to search and seizure action in the case of Praveen Jain group. In the assessment order assessing officer noted that assessee was in receipt of unsecured loan as accommodation entry from the concerns belonging to the Praveen Jain group company amounting to Rs. 21.10 lakhs. The assessing officer elaborately referred to the search action in the case of Praveen Jain group. He rejected the assessee's contention that assessee has supplied the necessary evidence in support of the loan taken on the ground that it has been accepted in the Praveen Jain group of company, that these are accommodation entries.
  4. Furthermore the assessing officer also noted that assessee was engaging into accommodation entry transaction with Praveen Jain group. Hence he estimated a commission of Rs. 2 lakhs on the basis of the claim that assessee was engaging into accommodation entry business.
  5. Upon assessee's appeal learned CIT(A) confirmed the order of assessing officer. He also referred to the search and seizure action in the case of Praveen Jain group of companies.
  6. Against the above order assessee is in appeal before us.
  7. We have heard both the parties and perused the records. At the outset learned counsel of the assessee submitted that he is not pressing the addition on account of commission on bogus accommodation entry. Thereafter learned

counsel of the assessee submitted that the addition on account of unsecured loan is not sustainable on the touchstone of honourable Bombay High Court decision in the case of PCIT Vs. Alag Securities Pvt. Ltd. (117 taxman.com 292). He submitted that in this case it was held that once it is accepted that assessee is engaging into accommodation entry business only the commission in the said business is to be added in the hands of the assessee. He claimed that once assessing officer added commission on account of bogus entry operation the addition of unsecured loan on account of bogus accommodation entry is not sustainable. Hence, learned counsel of the assessee submitted that on the touchstone of aforesaid Bombay High Court decision the addition on account of unsecured loan is not sustainable.

8. Per contra learned departmental representative relied upon the orders of authorities. We have heard both the parties and perused the records. We note that assessing officer has given the finding that assessee is engaging into bogus accommodation entry business in collaboration with Praveen Jain group. Hence he has added commission to the income of the assessee. Once assessee has been accepted as engaged into giving bogus accommodation entries and commission on that count has been added further addition of bogus unsecured loan is not sustainable on the touchstone of honourable Bombay High Court decision in the case of Alag Securities Pvt. Ltd. (supra). In this case honourable Bombay High Court has held that (head note only)

“Section 68 of the Income-tax Act, 1961-Cash credits (Accommodation entries) - Assessment year 2003-04 - Assessee was engaged in providing accommodation entries to its customers - It received cash amount from customers/beneficiaries and issued them cheques of slightly lower amount after charging its commission - In course of assessment, Assessing Officer brought entire amount of cash received from customers to tax in assessee's hands - Tribunal, however, held that only amount of commission received by assessee from its customers was liable to be added to assessee's taxable income - Whether, on facts, since cash amount deposited by customers/beneficiaries had been accounted for in assessment orders of those beneficiaries, question of adding such cash credits to income of assessee did not arise particularly when assessee was only concerned with commission earned on providing accommodation entries to its customers -

Held, yes -Whether, therefore, impugned order passed by Tribunal did not require any interference - Held, yes [Para 20] [In favour of assessee]”

9. Accordingly once the Revenue accepts the assessee is engaging into commission business on account of accommodation entries and addition is done for brokerage/commission of such business, the addition on account of accommodation entry unsecured loan is not sustainable on the basis of aforesaid Bombay High Court decision. Apart from the above we note that in the addition on account of unsecured loan the assessing officer has not made any independent inquiry of his own. He has cut and paste search action in Praveen Jain group only. In these circumstances without any independent enquiry by the assessing officer the addition is not sustainable on this count also.

10. Accordingly in the background of aforesaid discussion and precedent we set aside the order of the authorities below and delete the addition of unsecured loan. Our aforesaid adjudication on account of unsecured loan applies mutatis mutandis to ITA No. 5186/Mum/2019 & 5187/Mum/2019 for A.Y. 2011-12 & 2012-13, wherein identical facts are there and identical issue of addition of unsecured loan is there.

11. As the assessee has not contested the addition on account of commission on bogus accommodation entry made by the assessing officer, we reject the aforesaid ground raised by the assessee as not pressed in the appeals.

12. For A.Y. 2014-15 one more ground relating to addition on account of unexplained jewellery found in search amounting to Rs. 1,28,510/- is raised. The addition was made by the Assessing Officer and confirmed by learned CIT(A) that assessee could not explain the source thereof.

13. Before us also no such explanation of the source was submitted. Hence, this issue raised is rejected.

14. Accordingly assessee's appeal in ITA Nos. 5183/Mum/2019, 5186/Mum/2019 & 5187/Mum/2019 are partly allowed and other appeals are dismissed by not pressed.

Pronounced in the open court on 9.6.2021.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 09/06/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS