

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, 'A', CHANDIGARH**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER  
& SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA Nos. 302 to 308/CHD/2017**

Assessment Years : 2007-08 to 2013-14

Mr.Lakhbir Singh, H.No.3226, Sector 23/D, Chandigarh	Vs.	The Dy.Commissioner of Income Tax, Central Circle-2, Chandigarh
PAN No: BIIPS9425A		
Appellant		Respondent

**Hearing through video Conferencing**

निर्धारितीकीओरसे/Assessee by : Sh.Ashwani Kumar, CA  
Sh.Neeraj Arora, CA  
Sh.Aditya Kumar, CA &  
Sh.Bhavesh Jindal, CA

राजस्वकीओरसे/ Revenue by : Smt. C.Chandra Kanta, CIT

सुनवाईकीतारीख/Date of Hearing : 29.07.2021

उदघोषणाकीतारीख/Date of Pronouncement : 04.08.2021

Order

**Per S.S.Godara, JM:**

These assessee's seven appeals, for AYs 2007-08 to 2013-14, arise against the Commissioner of Income Tax (Appeals)-3, Gurgaon's common order dated 30.11.2016 passed in case No. 83 to 89/CIT(A)-3/GGN/2015-16, involving proceedings u/s.153A r.w.s 153B(1)(b) r.w.s.143(3) of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case files perused.

It transpires at the outset that all these assessee's appeals raise identical questions of law and facts. The same are therefore decided together for the sake of convenience and brevity.

2. The assessee's "lead" assessment year AY.2007-08 appeal ITA No. 302/CHD/2017 contains the following substantive grounds:

*"1. That the Ld. CIT(A) was not justified in partly upholding that the appellant had arranged some accommodation entries for M/s Synergy Group amounting to Rs. 72,36,807/- i.e., 11.09% of turnover of Rs.6,52,60,220/- and also a turnover of Rs.97,04,680/- made during the year.*

*2. That the Ld. CIT(A) was not justified to uphold the alleged commission earned @ 3% on providing alleged accommodation entries by the appellant.*

*3. That the Ld. CIT(A) was not justified to uphold the decision of the Ld. Assessing Officer regarding rejection of books of accounts.*

*4. That the Ld. CIT(A) was not justified to estimate the net profit of the appellant @ 6% on turnover declared by the appellant in the books of M/s Inveet Industries as reduced by alleged bogus sales without any basis and particularly when the net profit in earlier years was much less.*

*5. That the appellant craves leave to add, amend or delete any of the grounds of appeal on or before the disposal of the present appeal."*

3. We advert to the assessee's former three substantive grounds qua commission assessment @3% regarding the alleged bogus accommodation entries provided to M/s. Synergy Group as per the incriminating material based/seized in the search in question dt.15-02-2013. He has pleaded the very substantive grievance in AYs.2008-09, 2009-10, 2011-12 and 2012-13 as well involving varying sums. The CIT(A)'s detailed discussion regarding the relevant facts reads as follows:

Ground no. 4 relates to addition of Rs. 22,48,947/- on account of commission on bogus sale.

In the assessment order passed by the AO, the following facts emerge with regard to the addition(s) made on account of commission on bogus sale in AY 2007-08, AY 2008-09, AY 2009-10, AY 2011-12 and AY 2012-13:-

- (a) During the course of search proceedings and also post search enquiries in the appellant's case (part of Synergy group), it was revealed that the appellant was acting as a conduit for arranging accommodation entries for Synergy Group to route back unaccounted money through bogus transactions.

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- (b) It has been stated by the AO that as per the books of accounts and the financial data obtained, appellant has made sales from various existing concerns to M/s Synergy telecommunications (a unit of Moonlight Properties Pvt. Ltd) Mohali for the various years mentioned as under, part of which relates to M/s Ivneet industries, Proprietorship concern of the appellant:-

FY	Total sales	Sales related to Ivneet Industries
FY 2006-07	Rs. 6,52,60,220/-	Rs. 1,85,72,482/-
FY 2007-08	Rs. 2,57,43,801/-	Rs. 2,10,97,709/-
FY 2008-09	Rs. 1,95,96,794/-	Rs. 1,45,96,794/-
FY 2010-11	Rs. 3,01,55,586/-	NIL
FY 2011-12	Rs. 3,96,00,000/-	NIL
	<b>Rs. 18,03,56,401/-</b>	

- (c) The AO has come to the conclusion that the appellant has entered into sham and bogus transactions amounting Rs. 18,03,56,401/- through various parties with M/s Synergy telecommunication (a unit of Moonlight Properties Pvt Ltd.) on the basis of documents seized during the search and post search enquiries made.
- (d) It was held by the AO that post search enquires regarding the payments made by various entities of Synergy Group towards purchases reveal that through layering of various bogus concerns, these payments were ultimately withdrawn in cash by the appellant, Shri Lakhbir Singh or were transferred to bank account of his proprietary concerns.
- (e) During the course of hearing of case on 09.03.2015, the appellants alleged claim that he was not acting as an entry operator for Synergy Group and that various mentioned bogus concerns do not relate to him was duly rebutted by the AO and no further submission by the appellant in his defence.
- (f) Thus, it was held by the AO that the appellant was acting as an entry provider for the Synergy Group and he was operating through various concerns managed by him by making bogus sales and 3% of the total bogus sales worked out by the AO was estimated as commission income of the appellant and accordingly added back as deemed income earned from the business of being an entry operator.



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4. Both the learned representatives next take us to the CIT(A)'s findings under challenge in this "lead" AY.2007-08 as follows:

**42.6 Findings of the Commission:**

*We have considered the observations of the Pr. CIT on the issue as also submissions and arguments advanced by the AR of the applicant. At the outset, the quantum of the bogus sales as alleged by the Department has been disputed by the AR, who has pointed out that Pr. CIT has included the opening balances carried over from the preceding year. The said discrepancy in sales figures as pointed out by the AR appears to be correct.*

*42.6.2 The Pr. CIT has observed that during the course of search and on the basis of post search enquiries it has been revealed that applicant had booked bogus purchases to the tune of Rs. 18,03,56,401/- by arranging accommodation entries from Sh. Lakhbir Singh and his various bogus paper concerns. In this regard department is stated to have conducted post search enquiries from various such concerns namely M/s Harindra Industries, M/s Mittal Enterprises, M/s Ashoka Industries,, M/s A S Enterprises etc. to ascertain whether said concerns had made sales to the applicant as claimed by it. On enquiries it was found that a few of these concerns were non-existent at the given addresses as per sales bills etc or had closed down their business activities long time back. In the case of M/s Dhanjal Enterprises, it was found that though it had conducted business worth crores of rupees but it was not registered with Sales Tax Department. In the case of yet other concern namely M/s Ivneet Industries whose proprietor is stated to be Lakhbir Singh, some documents indicating accommodation entries provided by the said concerns to Synergy Group were impounded. The document impounded from the business premises of M/s Ivneet Industries have been heavily relied upon by the Pr. CIT to arrive at the conclusion that the applicant had made bogus purchases through Sh. Lakhbir Singh who had used various allegedly bogus concern to provide accommodation entry to the applicant to enable it to book bogus purchases in its books of accounts.*

*42.6.3 We further note that the Department has drawn a Flow Chart in respect of few transactions to show as "trails of money". According to the Pr. CIT the transaction was allegedly paid by cheque to the said bogus concerns but final destination of money is to be applicant itself to establish the fact of bogus purchases indulged into by the applicant.'*

*42.6.4 The AR of the applicant has vehemently disputed the above contention of the Department. He has contended that the applicant is engaged in business of manufacturing and erection of Towers utilized by Mobile Service providers. He has further concluded that payment were made to the various suppliers through banking channels and VAT was duly*

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paid on these transactions for which the applicant had claimed credit input while filing Sales Tax Returns. The AR sought to draw our attention to the fact that Department is not raising any doubts in respect of the sales turnover achieved by the applicant. He further argued that once the turnover of the applicant has been accepted by the Department, the purchase of raw material used in the process of manufacture cannot be disputed. Sales would not take place without the product being manufactured/assembled to become a finished product. A product would not emerge without having material inputs. The AR drew attention to the copies of relevant bills raised by the suppliers, copies of Sales Tax Returns filed along with SOF.

42.6.5 It is to be further noted the Department has also failed to establish a direct nexus between Sh. Lakhbir Singh, its various paper concerns and the applicant. In our view, applicant cannot be held liable for the business activities independently conducted by Sh. Lakhbir Singh himself or through his alleged paper concerns.

42.6.6 We have also noted that there are opening balances carried over from the A.Y.2006-07 indicating that the similar purchases were made by the applicant from these parties in the preceding year which appear to have been accepted by the Department in the assessment completed u/s 143(3) of the IT Act.

42.6.7 We further note that the Department had carried out a survey u/s 133A on 07.07.2008 and no incriminating conclusion was drawn regarding the purchases made by the applicant then. Some lateral materials found in 2013 in the premises of third parties may cast doubt for drawing adverse inference to the business event of 6 years ago.

42.6.8 We have also perused the money trail drawn by the Department to suggest that the purchase consideration has finally reached the applicant to conclude that bogus purchases were indeed made by the applicant. In other words, in none of these "money trails" it is conclusively proved that money has finally been received back by the applicant. Least of all the Money trails as given the by the Principal CIT in his rule 9 Report reveal that the ultimate recipient of the money is Sh. Lakhbir Singh or his concerns and not the applicant. Therefore, the money trails drawn by the Department do not, in our view, constitute a conclusive corroboratory evidence to support the Department's case.

42.6.9 In this regard, it is to be noted that the A.O. while framing post search assessment orders u/s 153A of the IT. Act for A.Y. 2007-08 and A.Y. 2008-09 of Sh. Lakhbir Singh has given a clear finding that he is engaged in the business of manufacturing and trading of iron rods. These actions of the A.O. are totally at variance with Department's contention that Sh. Lakhbir Singh is merely an entry provider. There is no material to suggest that Shri Lakhbir Singh has not dabbled in various trading activities and it could be incorrect to assume that every transaction done with the applicant by Lakhbir Singh is a fraud.

42.10 In view of the foregoing detailed discussion, we are of the considered opinion that Department has failed to establish conclusively that the applicant had been



*indulging in bogus purchases with an intent to reduce its profit to deprive the Revenue of its due.*

*42.6.11 However, during the course of hearings several queries were raised for clarification. The applicant could succeed in numerous issues and there are areas where the applicant was not able to fully place proper documents. Thus, the applicant, in order to cover all the issues and in the spirit of settlement, with a view to avoid protracted proceedings and to give quietus to the proceedings, has offered a lump sum amount of additional income, over and above the disclosure made as per the statement of facts, of Rs.2,00,00,000/- (two crore only). This amount is mandatorily to be included in the income for settlement.*

5. It has come on record with the able assistance of both the parties that the learned Income Tax Settlement Commission's findings seal the final outcome of the assessee's instant former grievance. It has *inter alia* since held therein that the assessee has all along been engaged in various trading activities than a mere accommodation entry provider. And that the department could not prove "Synergy" to have been engaged in availing bogus purchase entries from this taxpayer as a conduit through various proprietary concerns. There is further no quarrel that the assessee's total sales trading receipts to M/s. Synergy group read a composite figure of Rs.18.03 crores in these assessment years. And we are now left with the amount in dispute of Rs.2 crores only since the remaining sum of Rs.16.03 crores stands accepted as genuine. Learned CIT-DR is fair enough in not controverting the clinching fact that the Settlement Commission's findings forming the basis of the CIT(A)'s detailed discussion partly upholding the bogus sales/purchase figure of Rs.18.03 crores to the extent of Rs.2 crores only, have attained finality.

Faced with this situation, we conclude that there is no material left for the department to assess the assessee for the remaining amount of Rs.2 crores at least on mere conjunctures and surmises since there is no specific material found or seized during the course of search correlating the alleged bogus element with the corresponding sales/supplies vouchers. We therefore accept the assessee's instant former substantive ground in assessment years AYs.2007-08 to 2009-10 and 2011-12 to 2012-13 (supra) and direct the Assessing Officer to delete the impugned commission income addition. Ordered accordingly.

6. Next comes the latter common issue in all these assessment years regarding rejection of assessee's books of accounts culminating in income element assessment @8% in the Assessing Officer's orders and restricted to 6% in the CIT(A) lower appellate discussion. The Revenue's only argument in light of the CIT(A)'s detailed discussion is that the hon'ble jurisdictional high court has also assessed profit element @12% in resources as well which is much more than in dispute. Learned CIT-DR's next contention is that even Section 44AD also prescribes 8% presumptive rate of taxation and therefore, the assessee has already been granted sufficient relief. We find no merit in Revenue's contentions in entirety for the reason that the assessee's books of accounts declaring with gross profit @3.31% and 1.16% net profit rate of 1.81% and 0.38% in AYs.2005-06 and 2006-07, respectively, have already attained finality. The mere fact that the said

twin assessment years do not involve scrutiny assessment(s); in our considered opinion, would not form the sole substantive reason to assess this taxpayer at a higher profit rate of 6% in issue. We therefore direct the Assessing Officer to reduce the impugned profit element @6% to 1.25% only on estimation basis or that already recorded in books at assessee's behest, whichever is higher, in all these assessment years with a rider that the same shall not be taken as a precedent. Ordered accordingly. The assessee's instant latter substantive ground is partly accepted in foregoing terms. Necessary computation shall follow as per law.

8. All these assessee's appeals are partly allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the Open Court on 04.08.2021

**Sd/-**  
(SMT.ANNAPURNA GUPTA)  
Accountant Member

**Sd/-**  
(S.S. GODARA)  
Judicial Member

**Dated : 04.08.2021**

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar