

आयकर अपीलीय अधिकरण  
मुंबई पीठ "बी "  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अमरजीत सिंह, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं. 374/मुं/2022(नि.व.2008-09)  
ITA NO. 374/MUM/2022(A.Y.2008-09)  
आअसं. 375/मुं/2022(नि.व.2009-10)  
ITA NO. 375/MUM/2022(A.Y.2009-10)

Basant Dharmichand Jain,  
F-316, Bussa Apartment,  
S.V.Road, Near By Khira Department,  
Santacruz (West), Mumbai 400 054.  
PAN: AAVPJ-2045-F

: अपीलार्थी/ **Appellant**

**बनाम** /Vs.

Dy. CIT-Central Circle-1(3),  
905, 9<sup>th</sup> Floor, Pratishtha Bhavan,  
Old CGO Bldg. Annex,  
M.K.Road, Mumbai 400 020

: प्रत्यर्थी/ Respondent

**Appellant by** : Shri Himanshu Gandhi

**Respondent by** : Dr.Mahesh Akhade

सुनवाई की तारीख/  
**Date of Hearing** : 23/05/2022

घोषणा की तारीख /  
**Date of Pronouncement** : 23/05/2022

**आदेश/ ORDER**

**PER VIKAS AWASTHY, JM:**

These two appeals by the assessee are directed against the order of Commissioner of Income Tax(Appeals)-47, Mumbai [in short 'the CIT(A)'] dated 11/01/2021, common for the assessment years 2008-09 and 2009-10.

2. Shri Himanshu Gandhi appearing on behalf of the assessee submitted at the outset that the solitary issue in the present appeals is the addition on account of undisclosed commission income on protective basis. In the assessment year 2008-09 the addition of Rs.8,06,990/- has been made and in assessment year 2009-10 the addition of Rs.1,12,379/- has been made on protective basis. Substantive addition has been made in the hands of Bhanwarlal Jain Group. The Id.Authorized Representative of the assessee submitted that the Tribunal in the case of Bhanwarlal Jain has confirmed the addition. The CIT(A) has confirmed the addition in the hands of assessee just to kept the issue alive. The Id.Authorized Representative of the assessee referred to the order of CIT(A) Para 10.1.1 and 10.2.2. The Id.Authorized Representative of the assessee submitted that once the substantive addition in the hands of Bhanwarlal Jain Group has been confirmed by the Tribunal, protective addition in the hands of assessee be deleted.

3. Per contra, Dr.Mahesh Akhade representing the Department vehemently defended the impugned order, common for the assessment years 2008-09 and 2009-10. The Id.Departmental Representative submitted that though Tribunal has upheld the addition on account of commission in the hands of Bhanwarlal Jain Group but the Tribunal has substantially reduced the rate of commission. The Department has not accepted the order of Tribunal in restricting the percentage of commission and is further filing appeal before the Hon'ble Bombay High Court. The CIT(A) has rightly restricted the addition to the extent of difference between the addition confirmed by the Tribunal and percentage of commission applied by the Assessing Officer. The Id.Departmental Representative fairly admitted that in the case of Bhanwarlal

Jain Group in principle the Tribunal has confirmed the addition on account of commission but the dispute is only with regard to the rate of commission.

4. Both sides heard, orders of authorities below examined. The solitary issue raised in both these appeals is on account of commission for providing accommodation entries. The addition has been made in the hands of assessee on protective basis, whereas, substantive addition has been made in the case of Bhanwarlal Jain Group. The Tribunal has confirmed the addition on account of commission on providing accommodation entries in the case of Bhanwarlal Jain Group. The rate of commission confirmed by the Tribunal in the case of Bhanwarlal Jain Group is tabulated herein under:

No.	Nature of Transaction	Estimation by Tribunal in the case of Bhanwarlal M. Jain
1.	Import transaction by Shri Bhanwarilal M. Jain on behalf of others	@ 0.2%
2.	Accommodation entries of Bogus purchases	@ 0.05% instead of 0.075%
3.	Bogus unsecured loan	@ 1% instead of 2.40%
4.	Commission of Local purchases	Nil against 0.02%
5.	Expenses Allowed	@ 25%

Substantive addition confirmed in the hands of Bhanwarlal Jain Group would ipso facto make protective addition unsustainable. Merely for the reason that the rate of commission determined by the Tribunal at lower rate is not acceptable to Revenue would not give the Revenue key for protracted litigation in the case of assessee wherein the additions were made only on protective basis. A perusal of the impugned order clearly shows that the intention of the Revenue is to keep the issue alive, although on merits the additions in the hands of assessee does not survive. Thus, in view of the facts

mentioned above, we find merit in the appeal of assessee for the respective assessment years, hence, the same are allowed.

5. In the result, impugned order is set-aside and appeal by the assessee for assessment year 2008-09 and 2009-10 are allowed.

Order pronounced in the open Court on Monday the 23<sup>rd</sup> day of May, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 23/05/2022

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**