

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.403/SRT/2019

(निर्धारणवर्ष / Assessment Years: (2010-11)

(Virtual Court Hearing)

Pujan Kiritlal Shah, 21, Annant Darshan Society, Nr. Agam Mandir, Gopipura, Surat-395001.	Vs.	The ITO, Ward-2(2)(3), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AXXPS1613D		
(Assessee)		(Respondent)

Assessee by: Shri Mehul Shah, CA

Revenue by: Ms Anupama Singla, Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 28/03/2022

घोषणाकीतारीख/Date of Pronouncement: 25/05/2022

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to the Assessment Year (AY) 2010-11, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-1, Surat [in short “the ld. CIT(A)”] in Appeal No. CIT(A), Surat-1/10369/2017-18 dated 08.07.2019, which in turn arises out of an order passed by the Assessing Officer u/s143(3) r.w.s. 147 of the Income Tax Act, 1961 [hereinafter referred to as the “Act”], dated 12.12.2017.

2. Grounds of appeal raised by the assessee are as follows:

“1. On the facts and circumstances of the case as well as law on the subject, the learned assessing officer has erred in confirming the action of re-opening assessment u/s 147 by issuing notice u/s 148 of the I.T. Act, 1961.

2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in partly confirming the action of Assessing Officer by sustaining the addition of Rs.1,48,818/- out of total addition of Rs.8,28,638/- on account of commission income from cheque discounting by estimating the commission @ 0.10% of the transaction value as against 0.07% shown by assessee.

3. It is therefore prayed that assessment framed u/s 143(3) r.w.s. 147 of the Act may kindly be quashed and/or addition made by assessing officer may please be deleted.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of appeals.”

3. Succinct facts are that assessee before us is an individual and has filed his return of income for assessment year 2010-11 on 27.09.2010, declaring total income of Rs.80,470/-. The case was re-opened after recording the reasons. A notice u/s 148 was issued to the assessee on 22.03.2017 which was duly served upon assessee 23.03.2017. In response to the above, the assessee has stated that return of income originally filed may be treated as return of income filed in response to above notice. Thereafter, notice under section 143(2) of the I.T. Act was issued on 15.09.2017. Subsequently, a notice under section 142(1) of the Income Tax Act alongwith questionnaire was issued to the assessee on 01.11.2017. In response to these notices, assessee attended the office of assessing officer from time to time filed the details called for. During the year under consideration, the assessee is engaged in the business of cheque discounting on commission basis. The case is re-opened on the basis of enquiry report received from the DDIT (Inv.)-III, Surat that the assessee was engaged in the business of cheque discounting/passing. The assessing officer issued show cause notice to the assessee to explain the transaction.

4. In response to the notice issued by the Assessing Officer, the assessee submitted the details regarding various bank accounts as follows:

PUJAN K SHAH A.Y. 2009-10

BANK DETAILS				
Sr. no.	Name of Bank and branch	Turnover	Net commission after bank charges	Bank charges
1	DCBbank	18,467,525	13,112	
2	ICICI Bank (sc-shah corporation)	17,445,230	12,386	
3	ICICI bank (st-shah trading)	13,522,222	9,601	
4	IDBI Bank	83,240,555	59,101	59
6	Prime bank	77,613,122	54,975	2,058
8	Sarwodaya bank	100,773,108	71,549	56,963
9	SCB bank (sc-shah corporation)	49,975,017	35,482	
10	SCB bank (sc-shah corporation)	42,261,436	30,006	
11	SCB bank (pks-Pujan k shah)	17,510,161	12,432	555
12	UBI bank (PC-pujan corporation)	1,404,775	997	389
13	UBI bank (PC-pujan corporation)	1,331,284	945	389
14	UBI bank (sc-shah corporation)	1,478,747	1,050	
15	UBI bank (st-shah trading)	1,472,540	1,046	
16	Yes bank (PC-pujan corporation)	193,335	137	112
17	Yes bank (PC-pujan corporation)	145,637	103	112
18	Yes bank(sc-shah corporation)	166,644	118	90
19	Yes bank (st-shah trading)	138,262	98	90
		427,139,599	303,139	60,817
	Net amount 242,322			

The assessee submitted before the AO that he has received commission @ 0.07% in the cheque discounting business. Therefore, addition may be made @ 0.07%. However, Assessing Officer rejected the contention of the assessee and noted that in this line of business for the each instrument of discounting, the average credit period is 2 to 3 days and accordingly, the rate of commission amount is considered at the rate @ 0.25% on the transaction value instead of 0.1% shown by the assessee. Accordingly, the commission worked out by the AO was to the tune of Rs.10,70,960/- on the total transaction value of Rs.42,83,83,880/- as shown by the assessee. Accordingly, the difference of the actual commission income was worked out above of Rs.10,70,960/- and the commission income as shown by the assessee of Rs.2,42,322/- (Rs.10,70,960/- Less Rs.2,42,322/-) i.e. Rs.8,28,638/-

was added to the commission income from cheque discounting business of the assessee during the year under consideration.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has restricted the commission @ 0.10% instead of 0.25% observing as follows:

“[3] During the assessment u/s.143(3) r.w.s. 148, the Ld.AO has accepted the business/modus operandi of the assessee, but only disagreed with quantum of income shown, and in lieu of income shown by assessee, the Ld. AO estimated it at 0.25% on total deposits.

From the above it is clear that the Investigation Wing, the Ld. AO & the assessee are in agreement regarding the business of the assessee. No question is raised by Investigation Wing or Ld. AO regarding the source of credits/deposits appearing in bank accounts of the assessee. The only doubt & dispute is regarding the quantum commission earned from this business. As already discussed the assessee has shown 0.08% & 0.06%, whereas the Ld. AO has estimated at 0.25%.

8.3 To justify his case, the AR furnished assessment order, and orders of Id. CIT(A) & Hon'ble ITAT in other cases engaged in cheque discounting business. Few of the orders and income estimated/accepted are as under:

<i>Authority</i>	<i>Case name</i>	<i>%</i>
<i>ITAT, Ahmedabad</i>	<i>Sanjay R. Shah – 88 Taxman.Com 809</i>	<i>0.10%</i>
<i>CIT(A)</i>	<i>Dipak Vithal Das Suchak CAS-2/983/2017-18- dated 15-03/2018</i>	<i>0.05%</i>
<i>ITO, Ward-1(3)(6)</i>	<i>Bhavnaben Shah – A.Y.2011-12 – dated 14-12-2018</i>	<i>0.10%</i>
<i>ITO, Ward-1(3)(4)</i>	<i>Dipak V Suchak A.Y.2009-10 – dated 25-11-2016</i>	<i>0.05%</i>

In addition to above the AR furnished more assessment orders where in the estimation is made at 0.05%. There appears to be a consensus among the Id. AOs that commission income in this business is reasonably at 0.05% of total deposits in bank. The Ld. CIT(A) also has followed the same. However, the Hon'ble Jurisdictional ITAT, Ahmedabad has estimated it at 0.10% which overrides the estimation of the AOs & Ld.CIT(A). In view of the same the commission income is estimated at 0.10% in the two A.Yrs. of instant assessee. The same work out to addition of Rs.38,225/- in AY.2009-10 and Rs.1,84,818/- in A.Y.2010-11. The grounds are decided partly in favour of the assessee.”

6. We have gone through the above conclusion reached by Id CIT(A). We note that Id CIT(A), by following the decision of Jurisdictional ITAT, Ahmedabad has estimated commission income @ 0.10% instead of commission income estimated by assessing officer @ 0.25%, hence, we do not find any infirmity in

the order of Id CIT(A), therefore, we confirm and approve the findings of Id CIT(A) and dismiss the appeal of the assessee.

7. Before parting, we would like to state that assessee has also challenged the validity of reopening of assessment under section 147 of the Act. We have gone through the reasons recorded by the assessing officer and observed that reasons were recorded by the assessing officer as per the provisions of section 147 of the Act. We note that credible information was received by the AO from the Investigation Wing, DDIT(Inv.)-III, Surat, and we note that there existed new information with the AO from the credible sources, and also he had applied his mind. The Hon'ble Gujarat High Court in the recent judgment has held that reopening on the basis of the information of the Investigation Wing is valid. In the case of Peass Industrial Engineers Pvt. Ltd 73 taxmann.com 185(2016) (Gujarat) it was held whether at the instance of same material of another wing, whether reopening is permissible or not. While dealing with said issue this Court has examined the said aspect and has come to the conclusion that reopening is permissible. Therefore, we dismiss the ground No.1 and 3 raised by the assessee.

8. In the result, appeal of the assessee is dismissed.

Order is pronounced on 25/05/2022 by placing result on notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूत /Surat / दिनांक/ Date: 25/05/2022

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat