

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SANDEEP SINGH KARHAIL, JM

**ITA No. 811 & 812/Mum/2018**  
(Assessment Years 2010-11 & 2011-12)

The DCIT  
Central Circle-2(4)  
Old CGO, Annexe Building,  
8<sup>th</sup> Floor, Room no.802,  
M.K. Raod,  
Mumbai-400 020

Vs.

Shri Gajendra Sanghvi  
Gajmangal Beads,  
2<sup>nd</sup> Floor, Bldg no.13/39,  
JM Compound Chandi Gali,  
3<sup>rd</sup> Floor, Bhoiwada,  
Bhuleshwar,  
Mumbai-400 020

**(Appellant)**

**(Respondent)**

**PAN No. CKTPS 7031 Q**

**Assessee by** : None  
**Revenue by** : Shri Shekhar L. Gajbhiye, CIT  
DR

**Date of hearing:** 10.03.2022  
**Date of pronouncement :** 09.06.2022

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA number 811/M/2018 for assessment year 2010 - 11 and ITA number 812/M/2018 for assessment year 2011 - 12 is filed by the Deputy Commissioner Of Income Tax Central Circle (2/4) Mumbai [ the Ld AO] against the order passed by The Commissioner Of Income Tax (Appeals) - 48, Mumbai [ The Id CIT (A) ] dated 30/11/2017 raising following grounds of appeal in Appeal for AY 2011-12 :-

""1. On the facts and circumstances of the case and in law, the Ld Commissioner of Income Tax (Appeal) erred in allowing 10% of expenses incurred towards earning

*commission income received in respect of banking transactions and also in respect of loose papers found during the course of search proceedings.*

2. *On the facts and circumstances of the case and in law, the Ld' Commissioner of Income Tax (Appeal) erred in deleting the addition of undisclosed income amounting to Rs.17,50,458/- as estimated on hawala business of transporting cash from one place to another as per modus operandi as admitted by the assessee; without appreciating the fact that the assessing officer has rightly extrapolated the income of the assessee for the years AY 2007-08 to AY 2012-13 under consideration based on paper found during the course of search at office premise and the locker of the assessee maintained with M/s Gold Sukh Safety Vaults Ltd?*

3. *On the facts and circumstances of the case and in law, the Ld Commissioner of Income Tax (Appeal) erred in ignoring the principal of extrapolation of income as laid down by the Hon'ble Supreme Court in the case of Eusafali 90 ITR 271?*

4. *The Appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-48, Mumbai may be set aside and that of the Assessing Officer restored.*

5. *The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal."*

02. Grounds of appeal for AY 2010-11 are similar.

03. Brief facts of the case shows that assessee is an individual. Search and seizure action u/s 132 of the act was carried out on 8/11/2012 in case of Shri Gajmangal Alias Rajendra M Hirani and assessee. During the course of search, various incriminating documents were found from both the above persons. Locker number 464, which is in

the name of the assessee, also contained incriminating material. Statement u/s 131 of the act was recorded on 8/1/2013 of Mr. Rajendra M Hirani wherein he stated that the premises is given on rent to the assessee who uses it for carrying on his business of imitation jewellery. Therefore, all the documents were pertaining to the assessee. Therefore, the statement u/s 131 of the act was recorded on 4/2/2013 wherein assessee stated that Gaj Mangal is his proprietorship concern in which he carries on the business of imitation jewellery. He stated that he did not have any bank account for his business carried on and all the transactions are carried out in cash. The transactions are written on loose papers. Accordingly, notice u/s 153A of the act was issued to the assessee for assessment year 2011 - 12 on 24/9/2013. Initially, Assessee challenged the notice and raised several objections. On issue of show cause notice, the objections were withdrawn and assessee filed return of income on 27/2/2015.

04. The learned assessing officer found that that from the premises of the assessee various bank accounts of various persons in name of different employees, blank signed chequebooks and seized material was found which shows that assessee is carrying on hawala transactions. The special audit u/s 142 (2A) was also carried out and report was submitted on 20/9/2015.
05. During the course of assessment proceedings, one Mr. Lalit T Jain filed a letter dated 25/2/2015 enclosing a list of 31 bank accounts and claimed that this belongs to him and have already been added in his hands. This is out of total 52 bank accounts seized from locker number 464. Thereafter on the basis of the material seized the learned AO noted that assessee has owned up the seized material in his statement on oath before investigation Wing and during the assessment proceedings and therefore the addition of undisclosed income in the hands of the assessee was made on substantive basis and in case of Mr. Rajendra on protective basis.

06. The AO Year wise computed the total of loans and advances to various parties and total of suspense payments. Based on this he taking a judicious view of the matter held that a commission income at the rate of 0.3% of the aggregate of the debit side of the bank entries is undisclosed commission income earned by the assessee for the year under consideration. Therefore, for assessment year 2011 – 12 he made an addition of ₹ 224,420/- as commission income of the assessee by passing an assessment order dated 20/11/2015. Similarly, for assessment year 2010 – 11 the commission income was computed at ₹ 152,603/- by assessment order dated 20/11/2015.
07. The learned assessing officer further noted that seized materials pertaining to assessment year 2013 – 14 were found and seized which shows that entries in those loose papers are written in abridged form using the quotient of 100 and therefore his business of money transfer on which he is earning commission income of 0.3%. AO noted that, as is a common practice of all operators no books of accounts maintained therefore to work out the commission earned in the year under consideration Year wise turnover has been worked out based on turnover of banking transactions. For assessment year 2013 – 14 a commission income of ₹ 478,336,903/- has been worked out on a date to the total income of the assessee. Therefore on the product are basis applying the ratio of turnover down in the respective year discussed in the assessment order passed for assessment year 2013 – 14 the learned assessing officer also imputed the undisclosed income of ₹ 1,526,038/- for assessment year 2011 – 12 and ₹ 152,603 four assessment year 2010 – 11. Consequently assessment order for assessment year 2011 – 12 computed the total income of the assessee at ₹ 1,902,200/- against the returned income of ₹ 151,750 and ₹ 324,300/- for assessment year 2010 – 11 against the returned income of ₹ 147,500/-.
08. Both these additions were contested before the learned CIT – A who passed an order dated 30/11/2017 upheld the rate applied by the learned assessing officer on commission income of 0.3%. However

during the course of appellate proceedings before the learned CIT – A the assessee raised an additional ground of appeal stating that certain expenditure incurred by the assessee should be allowed u/s 37 one of the act. The learned and CIT held that 10% of the income as to be allowed as an expenses incurred to earn this income. Therefore, he directed the learned assessing officer to allow 10% of the amount of income as admissible expenses to assessee. On the issue of extrapolation of income based on the seized documents found for assessment year 2013 – 14 the learned CIT – A held that business income of the assessee is estimated for assessment year 2007 – 08 to 2012 – 13 purely on the basis of the documents found for assessment year 2013 – 14, therefore in such circumstances, extrapolation cannot be upheld. To stretch the estimation of money to other years, there has to be some basis. Without any single document found in the search for any of the assessment year 2007 – 08 to 2012 – 13, there is no ground for any estimation. Accordingly he deleted the estimated addition on extrapolation of seized documents found for assessment year 2013 – 14 based on which the addition has been made in this year was deleted.

09. The learned assessing officer is aggrieved with the order of the learned CIT – A, has preferred this appeal. The learned assessing officer is aggrieved with two aspects of the order of the learned and CIT – A (1) allowed of expenses to the extent of 10% as business expenditure allowable u/s 37 (1) of the act, (2) deletion of the addition on account of seized documents found for assessment year 2013 – 14 based on which estimated addition is made for both these years.
010. The learned departmental representative vehemently submitted that assessee is engaged in the business of hawala which is opposed to the public policy, prohibited by law and therefore no expenditure incurred by the assessee is allowable as deduction u/s 37 (1) of the act. He submitted that CIT (A) has allowed business expenditure,

which is prohibited by law, and therefore no expenditure is allowable as deduction from income earned through that business.

011. With respect to the deletion of addition on account of seized documents found for assessment year 2013 – 14, he submitted that though there is no evidence found for the relevant assessment years during the course of search but the addition is required to be extrapolated based on the business being carried out by the assessee. He submitted that there is no change in the business carried on by the assessee and therefore the extrapolation made by the learned assessing officer deserves to be upheld.
012. Despite notice to the assessee, none appeared on behalf of the assessee and therefore the appeals are decided on merits in absence of the assessee as per information available on record.
013. We have carefully considered the rival contention and perused the orders of the lower authorities. Undisputedly assessee is engaged in the carrying on of the hawala business which is proved by the statement of the assessee and corroborated by the incriminating evidences found during the course of search from locker number 464 owned by the assessee. It is also the statement of the assessee. According to the provisions of Section 37 (1) of the act, any expenditure incurred by the assessee wholly and exclusively for the purpose of the business should be granted as deduction to the assessee from the income of business. However the explanation 1 provides that any expenditure incurred by the assessee, which is prohibited by law, is not considered as an expenditure incurred by the assessee wholly and exclusively for the purposes of the business and should not be granted as deduction to the assessee from the income of the business. Apparently, Hawala business carried on by the assessee is opposed to the public policy and is prohibited by the law. Expenditure incurred is in furtherance of hawala business. Assessee also did not submit any proof of incurring any expenditure. Income was also not assessed on net basis @ 0.30 %. NO proof of incurring any expenditure is available on record. Therefore, naturally

no expenditure is incurred by assessee. Therefore, the action of the learned CIT – A in granting deduction of 10% of the gross income earned by the assessee is not in conformity with the provisions of Section 37 (1) of the act. Therefore, we reverse the order of the learned CIT – A in allowing deduction at the rate of 10% as expenditure incurred. Accordingly, ground number 1 of the appeal of the learned AO for assessment year 2010 – 11 and 2011 – 12 are allowed.

014. With respect to the second issue in both these appeals is deletion of addition made by the learned CIT – A based on the incriminating material found during the course of search on 8/11/2012. Admittedly, incriminating material found during search were for AY 2013-14 only. As on the date of the search, assessment year 2010 – 11 is a concluded assessment. Therefore, if any addition is required to be made in concluded assessment it has to be based on incriminating material found during the course of search. Admittedly, the seized material pertains to assessment year 2013-14 and not assessment year 2010 – 11. Therefore, in absence of any incriminating material the learned CIT – A has correctly deleted the addition for assessment year 2010 – 11. Further, for assessment year 2011 – 12, no scrutiny assessment was pending. Therefore, it is also a concluded assessment as on the date of search. As no incriminating evidences are pertaining to this assessment year, the learned CIT – A has correctly deleted the addition. Accordingly, ground numbers 2 – 4 of the appeal for both the assessment years are dismissed.

015. In the result, appeals of the learned assessing officer are partly allowed.

Order pronounced in the open court on 09.06.2022.

Sd/-  
(SANDEEP SINGH KARHAIL)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)



Mumbai, Dated: 09.06.2022

*Sudip Sarkar, Sr.PS*

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai