

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 6392/Mum/2016

(Assessment Year 2011-12)

Satish Mandowara
74 G Mangal Karni, Siddarth
Nagar, Goregaon (W)
Mumbai-400 062

Vs.

ACIT
Cen Circle 39
Mumbai

(Appellant)

(Respondent)

PAN No. ACWPM 3495 P

Assessee by : Shri Mukesh Choksi, Authorised
Representative
Revenue by : Shri Hoshang B. Irani, DR

Date of hearing: 06.07.2022

Date of pronouncement : 06.07.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by assessee against the order passed by The Commissioner Of Income Tax (Appeals) – 54, Mumbai dated 15/7/2016 for assessment year 2011 – 12 wherein the appeal filed by the assessee against the order passed by The Assistant Commissioner Of Income Tax Central Circle – 39, Mumbai (Learned Assessing Officer) u/s 143 (3) of the Income Tax Act [The ACT] was dismissed.

02. The assessee has raised following grounds of appeal:-

- i. on the facts and in the circumstances of the case and in law the learned CIT (A) erred in holding that the assessing officer was justified*

- in treating the source of cash deposit of Rs 285,15,800/- appearing in the bank accounts opened in the name of the appellant could not be explained*
- ii. *on the facts and in the circumstances of the case and in law the learned CIT – A order in confirming the addition of ₹ 28,515,800/- in respect of the alleged unexplained cash credits appearing in the bank accounts opened in the name of the appellant without appreciating that the appellant had fully discharge the onus cast upon him*
- iii. *on the facts and in the circumstances of the case and in law the learned CIT – A order in upholding the action of the assessing Officer ignoring withdrawals made from the relevant bank accounts Under consideration*
- iv. *on the facts and in the circumstances of the case and in law the learned CIT – A order in holding that the assessing officer was justified in treating the cash deposit of ₹ 28,515,800/- appearing in the bank accounts opened in the name of the appellant as unexplained cash credit bringing the same to the tax in the hands of the appellant ignoring that none of the cases cited by the AO hold good in appellant's case*
- v. *on the facts and in the circumstances of the case and in law the learned CIT – A erred in upholding the action of the assessing officer ignoring antecedents of the appellant*

vi. on the facts and in the circumstances of the case and in law the learned CIT – A erred in upholding the action of the assessing officer ignoring that after considering the submission of the appellant before him no adverse inference was drawn by him and he has made addition Under the guise of protecting the interest of the revenue.

03. Brief facts of the case shows that the assessee is an individual. He filed his return of income on 1/11/2011 declaring a total income of ₹ 164,710/-. AIR information is available regarding cash deposit to the tune of ₹ 4,524,500/- and deposit in cash in current account maintained with the Indusind bank. Therefore the learned assessing officer issued notice u/s 133 (6) to the banks and bank accounts were obtained. The AO found that in axis bank account number 2432 assessee has deposited cash of ₹ 4,524,500/- in Indusind bank account number 28 – CD4144050 cash deposit of ₹ 1,020,000/- and in another bank account with the same bank with the number 48 – CD4144050 of ₹ 2,29,71,300/-. Thus, the total cash deposit of ₹ 28,550,800/- was deposited and assessee was asked to explain the source of the cash deposit.
04. Assessee submitted that he was employed with Alliance Intermediaries Networks Private Limited and these bank accounts were utilized by the director of the said company, and the transactions were taken place without his knowledge. He further stated that he was paying a

small commission for signing certain documents as and when required by him.

05. The learned assessing officer after considering the explanation of the assessee held that assessee has failed to satisfactorily explain the credits appearing in his bank accounts and therefore invoked the provisions of Section 68 of the income tax act and made the addition of the entire amount of ₹ 28,515,800 in the hands of the assessee. The assessment order was passed u/s 143 (3) of the income tax act by determining total income of the assessee at Rs 2,86,80,510/-.
06. Aggrieved, assessee preferred an appeal before the learned CIT - A, who dismissed the appeal of the assessee. Therefore, assessee is in appeal before us.
07. Assessee has filed an application for admission of additional grounds of appeal as Under:-

Additional grounds of appeal

- i. The learned assessing officer and CIT (A) has erred in law and on facts by considering all the cash deposits as income. The assessee has earned only 0.15% income on bank deposits after deducting the transfer to sister concerns*
- ii. the learned assessing officer and CIT (A) has erred in law and on facts by not allowing 50% expenses against the income earned 0.15% of bank deposits*

- iii. *the appellant craves leave to add to, alter, amend and/or delete in all the foregoing grounds of appeal*
- iv. *the assessee was asked to provide the names of the beneficiaries which were already procured by the Department from the bank in form number 26AS and on the basis the income is assessed of the beneficiaries and the assessee does not possess the names of the beneficiaries and in this line of business it is not possible to collect the names of the beneficiaries*

08. The learned authorized representative at the time of hearing submitted a paper containing 42 pages wherein he has relied upon the several judgments of the coordinate benches as well as of the honourable Bombay High Court. He submitted that the assessee is engaged in the business of providing accommodation entries and therefore assessee should be assessed at the nominal income of 0.15% of the banking turnover after deducting transfer entries to the sister concern and against this income the 50% of expenses should be allowed.
09. The learned departmental representative vehemently submitted that assessee has failed to give any source of income or even the name of the beneficiaries with respect to the cash deposited in the bank accounts and therefore the learned assessing officer has correctly treated it as income of the assessee u/s 68 of the income tax act. He

submitted that the learned CIT – A also confirmed the same. He relied on the orders of the lower authorities.

010. We have carefully considered the rival contention and perused the orders of the lower authorities. According to the assessing officer the assessee is engaged in the business of trader in financial instruments as mentioned at serial number 10 of the caption of the income tax assessment order. Otherwise, we do not find what nature of activities the assessee has carried on. Assessee has filed return of income declaring an income of ₹ 164,710/-. There are deposits in cash in three different bank accounts of the assessee amounting in all to ₹ 28,515,800/- for which the assessee failed to give any explanation before the assessing officer. He merely stated that he is working with one company, this bank account was utilized by the director of the said company, and the transactions have taken place without his knowledge. He further stated that his employer was being a small commission for signing certain documents as and when required by him. He did not name the person who was operating those bank accounts and what amount of commission was paid to him. The assessee could not show any further evidences with respect to who withdrew the cash from these bank accounts as well as who deposited cash in those bank accounts. When the matter reached before the learned CIT – A, it was held that assessee has not denied that the above referred three bank accounts belong to him and has also not disputed that the amount of cash deposited in those bank accounts. With respect to the credit in those

bank accounts, assessee has not produced any evidence but has merely stated that assessee is an accommodation entry provider. Assessee has not provided any evidence that while the beneficiaries of those accommodation entries, therefore in absence of any such details, the learned CIT – A confirmed the addition. On appeal before us, the assessee has merely stated that he is an accommodation entry provider and therefore his issue squarely covered by the decision of the honourable Bombay High Court in case of principal Commissioner of income tax – 14 versus Alag securities private limited in ITA number 1512 of 2017 dated 12 June 2020. We have carefully considered the decision of the honourable Bombay High Court however we find that the facts are distinguishable as in those cases the honourable Bombay High Court upheld the order of the coordinate bench wherein the commission income on accommodation entry provided by the assessee was determined at 0.15%, for the reason that the tribunal held so, deleting the entire addition of deposits as unexplained cash credit for the simple reason that in the case of beneficiaries also the assessment orders were framed. Assessee has before us is not produced any details with respect to the beneficiaries, in fact before the lower authorities he said that it is not possible for him to submit the details of the beneficiary therefore the decision of the honourable Bombay High Court does not apply to the facts of the case. With respect to the decision of the honourable Bombay High Court in case of principal Commissioner of income tax versus Mihir agencies private limited dated 25th of March 2019 in ITA

number 54 of 2017 relied by the learned AR does not help the case of the assessee. The facts of that case clearly shows that assessee were shown to have been engaged in providing accommodation entries and only question was with respect to what is the rate of commission for providing such services. In the present case, assessee has failed to show that he is an accommodation entry provider and further was the beneficiaries. Moreover this is not the case where only in the commission income is required to be determined in the hence of the assessee. The facts in the case of Principal Commissioner of Income Tax vs. Gold Star Finvest Private Limited in ITA no. 1729 of 2016 of honourable Bombay High Court dated 1st April 2019 is also similarly distinguishable. Several decisions of the coordinate bench cited before us also do not merit any consideration as the facts in those cases are distinguishable. The startling distinguishable feature in the present case is that assessee has not denied that the cash is deposited in three bank accounts standing in his name. Assessee has also not given the name of the directors of his employer company who were operating his account. He has also not disclosed what is the amount of commission that has been paid to the assessee. Assessee has also failed to show that to whom he has issued these accommodation entries and who are the beneficiaries. Unless the beneficiaries are identified, assessee cannot be held to be an accommodation entry provider. Identical issue arose before the honourable Delhi High Court in case of CIT versus DK Garg 84 taxmann.com 257 wherein the honourable High Court denied even the taxability of sums

deposited in the bank account of the assessee of peak credit for the reason that assessee did not name/identified the beneficiaries. In view of above facts we do not find any infirmity in the orders of the lower authorities in taxing the cash deposit of Rs 2,85,15,800/- deposited in three bank accounts of the assessee as assessee has failed to explain the source of such credit. Therefore, we uphold the orders of the lower authority in taxing the above sum u/s 68 of the income tax act. Accordingly, we dismiss ground number 1 – 6 of the appeal.

011. In view of our above on finding wherein we have upheld the taxation of the whole sum credited in the bank account of the assessee in cash without explaining the source, the issue of estimation of any commission income, unless the assessee identifies the beneficiary with respect to each transaction, as well as deduction of grant of any expenditure, does not arise. In view of this, the additional grounds raised by the assessee do not merit any consideration.

012. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 06.07.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 06.07.2022

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