

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI G. S. PANNU, PRESIDENT &
SHRI AMIT SHUKLA, JM**

आयकरअपीलसं./ I.T.A. No. 18/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2009-10)

Lalit Kumar M Sharma, Room No. 308, 3 rd floor, 237-Prabhu Building, S. G. Marg, Mahalaxmi, Mumbai-400 011	बनाम/ Vs.	DCIT Cen. Cir.-6(1), Air India Building, Mumbai-400 021
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAIPS5358P		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Written Submission
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Mehul Jain, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	01.06.2022
घोषणाकीतारीख / Date of Pronouncement	:	24.06.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the impugned order dated 30.10.2018 passed by Ld. CIT(A)-54, Mumbai for the quantum of assessment passed u/s 144 r.w.s. 147 of the Act. The assessee has raised following grounds:-

1. Appellant was involved in the business of cheque and Draft discounting and rate of commission prevailing in market is ranging between 0.05% to 0.10%. Further the order passed by learned assessing officer and CIT(Appeal) as rate of commission 100% and 1% respectively.

2. Further it has already been decided by Honourable ITAT and High Court in number of cases having similar facts and accepted discounting Rate from 0.10% to 0.30%.

3. We enclosed herewith copy of case based on similar facts decided by the Bombay high Court in case Mohanlal Patel V/s dy.CIT accepting discounting rate @ 0.22% .

4. Appellant hereby requesting honorable ITAT to accept his appeal and give a chance to explain his side.

2. The facts in brief are that, assessee has filed its return of income of Rs. 1,31,420/- which was processed u/s 143(1). The assessment was completed u/s 144 r.w.s. 147 of the Act determining the total income of Rs. 40,73,380/-. Based on calculation of the assessment and information received from DIT(Inv.) Unit-2(1), Mumbai, the following reasons were recorded:-

“In this case the information has been received from DDIT (Inv) Unit -2(1) on 28.03.2016 that Shri Mohd. Shabi Ansari (PAN: AKUPA2223R) and its associates. The said information revealed that Shri Mohd Shafi Ansari has opened 18 different bank accounts

at Union bank of India, Null Bazar Branch, Mumbai. The perusal of transactions appearing in their accounts revealed that they are engaged in transfer of huge funds from one account to another and also the transaction pattern shows that there at huge deposits in cheque which were either immediately withdrawn in cash or transferred by way of cheque.

The details of bank accounts of the assessee and the total credit entries appearing in the said account during the F.Y. 2008-09 pertaining to A.Y. 2009-10 is as under.

<i>Sr No</i>	<i>Name of the account Holder</i>	<i>Account No</i>	<i>Total value of credit transactions appearing in F Y 2007-08</i>
1	Shri Lalit M. Sharma	31980101003843 8	17,04,02,549/-

In view of the above fact, I have reason to believe that certain income amounting to Rs. 19,88,48,049/- chargeable to tax has escaped assessment for A. Y. 2009-10. The transferring of huge amount of funds from one account to other accounts entries Indicate that the assessee entered into transaction for the aforesaid amount which were not genuine."

3. Accordingly, notice u/s 148 was issued on 29.03.16. From the perusal of assessment order, it appears that neither the notice u/s 148 nor notice u/s 1421(1) were served to the assessee on the address. The AO noted that notice u/s 133(6) was issued to Union

Bank of India wherein assessee has a saving bank account along with the current address of assessee. In response to the same, the bank statement from 01.04.2008 to 31.03.09 was provided by the bank to the AO. As per the information, AO noted that assessee was in practice of transferring of huge funds from one account to another and there are huge deposits in cash which were immediately withdrawn in cash or transferred by way of cheque. The assessee was one of associate Shri Mohd. Shafi Ansari who was having 18 different bank accounts in UBI, Null Bazar Branch, Mumbai. AO noted that there was credit transaction of Rs. 17,04,02,549/- in the bank account. Therefore, in absence of compliance, Ld. AO added the entire amount u/s 68 of the Act.

4. Ld. CIT (A) based on the assessment order for earlier AY 2008-9 and 2009-10 wherein cheque discounting was accepted and has estimated the income @ 2% of the credit by the AO and for the same assessment year, he observed that the AO has deviated from his earlier stand wherein he has estimated 2% as income of the entire credit in the bank accounts. Ld. CIT(A) has estimated commission @ 1% after observing and holding as under:-

5.3 The submissions of the Ld. Counsel along with the assessment orders for the AYs. 2009-10 and 2008-09 have been considered. It is seen that the assessee, Lalit M Sharma is an employee of Shri Lalit T Jain, who has admitted that Shri Lalit M Sharma is one of his 13 employees whose bank accounts have been used by him for providing cheque discounting facilities. The assessee had a bank account with account no. 319801010038438 in the Union Bank of India. One of the associates of Shri Lalit T Jain is Mohd. Shabi Ansari, the information with regard to whom has been received by the Ld.AO which led to the reopening of the assessment. The assessee was operating the above referred bank account, ie. 319801010038438 in the Union Bank of India alongwith four other bank accounts in the following names:

(i) M/s. Jagdish Agency

(ii) M/s. G G Agency

(iii) M/s. Sunder Textile

(iv) M/s. S G Agency

In this case, assessment order u/s.144 r.w.s. 147 has been passed on 27.01.2016. In the said order, the Ld. AO has discussed the transactions in the name of M/s. Jagdish Agency, M/s. G G Agency, M/s. Sunder Textile and M/s. S G Agency. He had also made a reference to the above referred account no. 319801010038438, however, when it came to the addition, the Ld.AO has taken the credits in the above referred four accounts which was to the tune of Rs.19,70,97,800/- and has estimated the

assessee's accounts at 2% of the same. The addition made by the Ld.AO on this account is Rs.39,41,956/-. The Ld. AO has omitted to add the credit entries from the account no. 319801010038438. Subsequently, on receipt of information from the DDIT(Inv.), the Ld.AO re-opened the assessment and made addition of the entire credits in the account no. 319801010038438 which were to the tune of Rs. 17,04,02,549/-. This is a deviation from the earlier decision wherein the assessee's business of cheque discounting was accepted and the income was estimated at 2% of the credits. The same principle was followed while completing the order for AY. 2009-10 where the Ld.AO has estimated the income of the assessee at 2% of the credits appearing in the above referred four names. Similarly, while completing the assessment for AY 2008-09, the Ld. AO has estimated the income of the assessee at 2% of the credits found in the names of the above referred four persons and also that of the account no. 319801010038438. The Ld.AO for reasons best known to him has deviated from the accepted principle followed in the earlier assessment and made an addition of the entire credits in the account no. 319801010038438. While it has been accepted by the Department that the assessee was an employee of Shri Lalit T Jain who was carrying out the cheque discounting business using various bank accounts which also included the account operated in the name of the assessee, there is no reason for the Ld.AO to deviate from the already accepted stand and make an addition of the entire credits found in the bank account.

5.4 The assessee has approached the CIT (A) against the addition of 2% made for AY. 2008-09 and assessment made for 2009-10 vide order dated 27.01.2016. The LD.CIT(A) has in his wisdom decided that the rate of commission of such cheque discounting transactions will be at 1% and confirmed the addition @ 1% and gave relief to the balance disallowance for both the years. The facts being identical, I do not see any reason to differ from my predecessor CIT(A). The assessee has argued that commission in such cheque discounting business is around 0.05 to 0.1% but no substantive evidence has been furnished by the assessee. Similarly, the Ld.AO had also estimated the commission at 2% without any substantive reason. Therefore, I feel that the ends of justice would be met if the commission is estimated at 1% of the transactions which would be Rs.17,04,025/-. The assessee gets relief for the balance amount. It is seen from the assessment order that the Ld.AO has mentioned the credit entries in the bank accounts as Rs. 17,04,02,549/- in the table which is a part of the reasons recorded. However, below the table he writes "In view of the above fact, I have reason to believe that certain income amounting to Rs. 19,88,48,049/- chargeable to tax has escaped assessment for A.Y. 2009-10." At para 4.4 of the assessment order, he mentions that sum of Rs. 17,04,02,549/- is added u/s.68 of the IT Act but in the table of computation, the amount of Rs. 17,04,05,549/- has been added. The Ld.AO is directed to verify and adopt the correct figure and restrict the disallowance to 1% of

the credit entries in the bank account no. 319801010038438. This ground of appeal is Partly Allowed.

5. In the written submission filed by the assessee, it has been contended that assessee used to charge commission @0.02% from cheque discounting and not @ 2%. Here entire deposits have been added which cannot be sustained. Ld. DR pointed out that, similar ground is covered by the decision of Tribunal in assessee's own case for AY 2008-09 and 2009-10 wherein assessee's appeal on exactly similar facts was dismissed and 1% of the commission income has been confirmed.

6. On perusal of material placed on record and the findings given in the impugned order, we find that in this case, original assessment has been passed u/s 144/147, wherein AO has estimated the assessee's income @ 2% of the credit bearing in 4 accounts along with assessee account, as mentioned above in para 5.3 of CIT (A)'s order. Now again, the assessment has been reopened on the ground that there was certain other accounts which was open in connivance with one Shri Md. Shafi Ansari who has opened 18 different bank accounts at UBI for cheque discounting where

there was huge deposits in cheques. Not only in AY 2008-09 but in the original around of assessment proceedings, AO had estimated the income @ 2% of the credit. On similar nature of transaction which came to the knowledge of the department, the entire credit has been added instead of applying the same principle. We find that the Tribunal for AY 2008-09 has confirmed 1% of commission which was estimated by Ld. CIT(A) and dismissed the appeal after observing as under:-

8. We have heard both parties, perused the material available on record and gone through the orders of the authorities below. Admittedly, the assessee did not appear and filed details before the AO to contest his arguments that in this line of business commission ranges from 0.02% to 0.01%. It is also an admitted fact that although the assessee has cited two judgments of Tribunal to argue that the Tribunal has estimated commission income at 0.10% to 0.22%, but failed to make out a case of facts Pari Materia in its case to that of the facts considered by the Tribunal in other two cases. No doubt, the lower authorities have also failed to give cogent reasons for adopting commission rate of 1 to 2% in this line of business. Although, the external information gathered during the course of assessment proceedings is relevant to decide the case in hand, but what is more relevant is facts of the present case in hand to arrive a particular conclusion. In this case, although the

assessee claims to have earned 0.02% to 0.10% commission on cheque discounting business, but when the Bench has asked specific question whether assessee can prove its arguments with necessary evidences, the Ld. AR of the assessee fairly accepted that he cannot prove exact rate of commission earned from the business. At the same time, although the AO has estimated 2% commission, but such estimation was not based on any evidence or comparable cases of similar business. In this case, facts are unique because the assessee was involved in cheque discounting business as part of Hawala operations, therefore, facts of the case cannot be considered with facts of the case where cheque discounting business has been done under normal course of business, hence, it is difficult to accept the arguments of the assessee that the case laws considered by the ITAT is squarely applicable to the facts of the present case. Having said so, let us examine whether the rate of commission adopted by the Ld. CIT(A) in estimating income from cheque discounting business is reasonable having regard to the facts of the present case. In this case, it is an admitted fact that the assessee has failed to file any kind of evidences to justify its arguments of rate of commission of 0.02% to 0.10%. Therefore, considering overall facts and circumstances of this case and also facts brought out by the AO that prevailing rate of commission in this kind of business is at 1 to 2%, we are of the considered view that there is no error in the findings recorded by the Ld. CIT(A) while estimating 1% commission on total cheque discounting

business. Hence, we are inclined to uphold the order of the Ld. CIT(A) and dismissed the appeal filed by the assessee.

7. Since the Tribunal has already estimated the income @ 1% on entire deposits on similar set of credit entries in the bank account, therefore, we do not find any reason to deviate from the finding of the Tribunal in assessee's own case and uphold the order of Ld. CIT (A) in estimating the income @ 1% and consequently, the grounds raised by the assessee are dismissed.

8. In the result, the appeal filed by the assessee stands **dismissed.**

Orders pronounced in the open court on 24th June, 2002.

Sd/-

(G. S. Pannu)

President

मुंबई Mumbai; दिनांक Dated : 24/06/2022

Sr.PS. Dhananjay

Sd/-

(Amit Shukla)

Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**