

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER) AND  
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 4634/MUM/2018  
Assessment Year: 2014-15**

M/s Sarvesh Mercantile Pvt. Ltd.,  
2<sup>nd</sup> floor, Johari Mansion, 259,  
Kalbadevi Road,  
Mumbai-400 002.

**PAN No. AAICS 1651 C**

**Appellant**

**Vs.**

Dy. CIT Central Circle-2(4),  
Mumbai.

**Respondent**

**ITA No. 7163/MUM/2019  
Assessment Year: 2013-14**

**&**

**ITA No. 7162/MUM/2019  
Assessment Year: 2015-16**

Sarvesh Mercantile Pvt. Ltd.,  
2<sup>nd</sup> floor, Johari Mansion, 259,  
Kalbadevi Road, Kalbadevi,  
Mumbai-400 002.

**PAN No. AAICS 1651 C**

**Appellant**

**Vs.**

DCIT CC-2(1),  
9<sup>th</sup> floor, New Pratiksha Bhavan,  
M.K. Road,  
Mumbai-400020.

**Respondent**

Assessee by : None  
Revenue by : Mrs. Neelam Shukla, CIT-DR

Date of Hearing : 15/06/2022  
Date of pronouncement : 27/07/2022



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These three appeals by the assessee are directed against three separate orders dated 26/08/2019, 20/06/2018 and 26/08/2019 passed by the Ld. Commissioner of Income-tax(Appeals)-48, Mumbai [in short 'the Ld. CIT(A)'] for assessment years 2013-14, 2014-15 and 2015-16 respectively. As common grounds permeating from the same set of the facts have been raised in these appeals, therefore, these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts. Despite notifying neither anyone appeared nor any adjournment application was filed on behalf of the assessee. On earlier occasions i.e. 24.01.2022, 21.02.2022 & 19.05.2022 also none attended and matter was adjourned on written request filed. Further, on 24.05.2022, the Authorized Representative of the assessee was present and on whose request, the matter was posted



on 13.06.2022. On 13.06.2022 also none attended, and therefore, the matter was adjourned to 15.06.2022. But still no compliance was made. In the circumstances, we were of the opinion that the assessee is not interested in prosecuting the appeal. Thus same was heard *ex-parte* qua the assessee, after hearing arguments of the Ld. DR and taking into consideration written submission of the assessee available on record.

**ITA No. 7163/MUM/2019**  
**Assessment Year: 2013-14**

2. We first take the appeal of the assessee for AY 2013-14. The grounds raised in assessment year 2013-14 are reproduced as under:

1. *The Ld. CIT(A) erred in upholding the addition made by Ld. AO estimating business income at ₹68,94,265/- rejecting the books of account.*
2. *The Ld. CIT(A) erred in upholding the addition made by the Ld. AO of ₹235,00,000/- as cash credit u/s 68 of the Act.*
3. *The Ld. CIT(A) erred in not allowing set off of losses to be carried forward.*



3. Briefly stated facts of the case are that the assessee filed return of income for the year under consideration on 27/09/2013 declaring Nil income, claiming loss of current year of ₹10,57,574/- for carry forward.

3.1 In the case of the assessee a survey action under section 133A of the Income Tax Act, 1961 (in short 'the Act') was carried out by the Investigation Wing of the Income-tax Department Mumbai on 19.03.2015 alongwith search action at the premises of the 'Luxora' group. During the course of the survey, statement of the director of the company 'Sh Kirtikumar Tarachand Doshi' was recorded and he was asked to furnish details of all purchase and sales transactions with 'Mirah Dekor P. Ltd.' and other 'Mirah Group' entities. He admitted that all the transactions with 'M/s Mirah Group' were without taking or giving any physical delivery of goods or services. He further stated that such accommodation entries were also provided to M/s Mirah Group, through other concerns



controlled and operated by him such as M/s Symcom, M/s Ecospace etc. During survey action, the director Sh. Kiritkumar Tarachand Doshi was also asked regarding unsecured loans from certain entries recorded in the books of accounts of the assessee company.

3.2 Based on the information received of survey action from the Investigation Wing, Mumbai, the Assessing Officer reopened the assessment after recording reasons to believe that income escaped assessment. In the assessment completed under section 147 of the Act on 20/12/2017, the Assessing Officer made two additions. Firstly, the addition was made for earning commission income of ₹68,94,265/- from providing accommodation entries, which was estimated at the rate of the 5% on sales recorded in books of accounts of ₹13,78,85,318/-. Secondly, the addition was made in respect of loans recorded in books of accounts from four parties namely, M/s Karishma diamonds private limited (₹25,00,000/-); M/s Parshwnath Gems P. Ltd. (₹35,00,000/-) Marine Gems P Ltd



(₹1,50,00,000/-) M/s Keshria Diamonds P. Ltd. (₹25,00,000/-), holding the same as unexplained cash credit in terms of section 68 of the Act. Before the Ld. CIT(A), the assessee did not press ground challenging reopening of the assessment and therefore same was dismissed by the Ld. CIT(A). But on merit of the addition also, the Ld. CIT(A) dismissed the grounds of the assessee. Aggrieved, the assessee is in appeal before the Tribunal raising the ground as reproduced above.

4. Ground No. 1 of the appeal relates to rejection of books of accounts and addition of ₹68,94,265/- to the gross profit.

5. The Assessing Officer observed that assessee failed to produce bills vouchers etc. for verification. He further noted that the Director Sh Kirtikumar Tarachand Doshi stated during survey proceedings that purchase and sale transaction with M/s Mirah décor Group were without physical delivery and in the nature of accommodation entry transactions. In view of those facts, the Assessing Officer



rejected the books of accounts and estimated addition at the rate of the 5% on sales of ₹13,78,85,318/- which was worked out to ₹68,94,265/-. The Ld. CIT(A) upheld the addition holding that profit embedded in bogus transactions in the form of brokerage/commission was over and above the normal profit declared by the assessee.

6. Before us in written submission filed, the Ld. counsel of the assessee has submitted that during the year there was no transaction with 'Mirah Group' including M/s Mirah décor Private Limited and therefore lower authorities are not justified in rejecting books of accounts merely on the reason that said books of accounts were not produced before the Assessing Officer. Accordingly, he submitted that the assessee may be provided one more opportunity to produce books of accounts for verifying that there was no transaction with M/s Mirah Group and issue in dispute might be restored to the file of the Ld. Assessing Officer.



6.1 Without prejudice to the objection to the rejection of books of account, he further submitted that in assessment year 2014-15, the assessment order of which was framed earlier to the present assessment order, the addition for brokerage/commission was made at the rate of two percent of the sales, whereas in the present assessment year addition has been made at the rate of 5%, which is arbitrary and without reference to past records. He further submitted that assessee has already shown a gross profit of ₹1,47,12,015/-, which is in excess of 5% and therefore making further addition estimating gross profit rate of 5%, amounts to double taxation and hence also the addition need to be deleted.

7. The Ld. DR on the other hand submitted that in the absence of books of accounts, bills and vouchers and other documents to support the book results, the lower authorities are justified in sustaining the addition.



8. We have heard submission of the Ld. DR on the issue-in-dispute and perused the relevant material on record including written submission on behalf of the assessee. The books of accounts of the assessee have been rejected mainly in absence of books of accounts, bills vouchers etc. produced before the Assessing Officer and on the allegation of accommodation entry transactions carried out with M/s Mirah Décor group entities. Before us, the assessee has submitted that during the year under consideration there was no transaction with M/s Mirah Group entities. This fact of vital importance, has not been verified by the Assessing Officer in absence of books of accounts and bills and vouchers etc. produced by the assessee. Now before us, in written submissions, the assessee has expressed willingness to produce books of accounts, bills vouchers etc. for verification by the Assessing Officer. In view of the facts and circumstances above and in the interest of the substantial justice, we feel it appropriate to restore the issue-in-dispute to the



file of the Assessing Officer for deciding afresh. The ground No. one of the appeal is accordingly allowed for statistical purposes.

9. The ground No. 2 of the appeal relates to addition of ₹2,35,00,000/- in respect of loans, which have been held as cash credit under section 68 of the Act.

10. The Assessing Officer observed loans received of ₹25,00,000/- from M/s Karishma diamonds private limited (in short "Karishma"), ₹35,00,000/- from M/s Parasnath Gems private limited (in short "Paraswnath"), ₹1,50,00,000/- from M/s Marine Gems Private Limited (in short Marine) and ₹25,00,000/- from M/s Keshria Diamonds Private Limited (in short "Keshriya"). He also noted that during survey proceedings, the director of the assessee company, Sh Kirtikumar Doshi was asked to justify the nature and source of those loan transactions but the assessee failed to substantiate and provide any details of the directors of those companies or any other contact of those persons. Sh Kirtikumar stated that he did not remember



either the name of the directors or contact person from whom the loans were received and he was also not aware about the business activity of those parties from whom loans were received. In view of the above observations, the Assessing Officer issued notice under section 133(6) to the parties. In response, the parties filed replies affirming the giving of loans to the assessee, however, the Assessing Officer was not satisfied with the creditworthiness of those parties.

10.1 The Ld. Assessing Officer in respect of the loans from M/s Karishma Diamonds Private Limited and M/s Paraswnath Gems Private Limited, has referred to the statement of Sh Gautam Bhanwarlal Jain, wherein he in his statement recorded under section 131 of the Act stated that these two entities i.e. M/s Karishma & M/s Parasnath were controlled and operated by him and the entries recorded in their books of accounts are all bogus entries and no business activity was carried by those two entities. Regarding loan from M/s Marine, the Assessing Officer has referred to the



statement of the director 'Sh Pramod Kumar Ranka', wherein he admitted that the entity 'M/s Marine' was controlled and operated by him and used for providing accommodation entries. In respect of loan from 'M/s Kesharia', the Assessing Officer referred to statement of director Sh Vijay Narendra Kothari, wherein he also admitted that entity was controlled and operated by him and was used for providing accommodation entry.

10.2 In view of above statements, the Assessing Officer was of the view that directors and the persons who controlled the companies, have admitted the fact that no real activity was conducted by those companies and they were in the business of providing accommodation entries only. The Assessing Officer also observed that director of the assessee also admitted that no real activity was carried out by the assessee company and all prices of goods were decided as per the convenience of the other party with whom the assessee was transacted.



10.3 The Assessing Officer noted that during survey action also the Director of assessee-company failed to provide any details about those companies except the statement that loans were received by cheque and interest at the rate of 11% was paid. The Assessing Officer relied on the decision of the Hon'ble Supreme Court in the case of **Kachwala Gems P. Ltd. Vs JCIT (2006) 206 CTR 585(SC)** wherein it is held that payment by account payee cheque is not sufficient to establish the genuineness of the purchases. He further referred to of the decision of the Hon'ble High Court in the case of **CIT Vs Prashant (p) (1994) 121CTR 20 (Cal.)** wherein it is held that even payment by account payee cheque is not sacrosanct and it would not make otherwise nongenuine transactions as genuine.

10.4 In view of above observations, the Ld. Assessing Officer held that assessee failed to establish (i) identity of the loan provider (ii) creditworthiness of loan providers and (iii) genuineness of the



transactions, and therefore he held those loans as unexplained cash credit in terms of section 68 of the Act.

11. Before the Ld. CIT(A) the assessee submitted that additions were made relying on the third-party statement and no reasonable opportunity was given to the assessee to produce necessary documents. The assessee filed affidavits of the director of Paraswanath and Karishma, however same were not admitted by the Ld. CIT(A) in terms of Rule 46A of Income Tax Rules, 1962. The Ld. CIT(A) rejected the retraction statements given by the directors of Paraswnath and Karishma. The assessee also filed copies of information, bank statement and acknowledgement of Income-tax return in respect of the parties to support its onus under section 68 of the Act.

11.1 Ld. CIT(A) however was of the view that assessee failed to satisfactorily explain the nature and source of the credit in his books



of accounts and therefore sustained the addition made by the Assessing Officer.

12. We have heard submission of the Ld. DR and perused the relevant material on record including written submission of the assessee. As per rule 46A of the Income-tax Rules, 1962, in following circumstances, additional evidence produced by the assessee could be admitted:

- a. where the Assessing Officer has refused to admit the evidences
- b. where the assessee was prevented by the sufficient cause from producing the evidences which were called upon by the Assessing Officer
- c. where the assessee was prevented by the sufficient cause from producing the evidence which are relevant to the ground of the appeal



- d. where Assessing Officer has passed the order without giving sufficient opportunity to the assessee to adduce evidences relevant to the ground of the appeal

13. From the written submissions filed by the assessee before us, we have noticed that the assessee filed a letter before the Ld. CIT(A) wherein the assessee had requested for filing additional evidences, because those evidences could not be filed before the Assessing Officer. The letter of the assessee filed before the Ld. CIT(A) on 07/08/2019 is available on page 18 of the paperbook. The relevant part of the said letter is reproduced as under:

*“In connection with the above assessment year, the appellant has filed an appeal as well as made submission before your Honour. Documents mentioned in page no. 24 to 39 and page no. 56 to 123 are being produced afresh which were not furnished during the course of assessment proceedings. The assessing officer called for the information in the month of September, 2017 pertaining to the purchases and sales as well as confirmation in relation to unsecured loans appearing in the balance sheet. Since the details could not be collated earlier, the appellant could gather them only in the month of December, 2017. Due to complexities involved in gathering*



*information from the lenders who were already busy with their assessment proceedings, the appellant could not lay his hands for the information at earlier instance. However, when the papers were ready for submission and the appellant approached the Assessing Officer, the appellant was informed that the assessment is framed and the submissions will not be entertained. In view of these facts clause (a) and clause (d). In the interest of natural justice, we earnestly request your Honour kindly to admit the additional evidence and oblige. We have already furnished two sets of submission which enables your Goodselfs to forward the same to the Assessing Officer for remand report. We undertake to appear before the Assessing Officer for producing all the necessary details if any called by him. Hope your Honour will please do the needful and admit the case for adjudication and oblige.”*

13.1 We find that in the case of M/s Sunrise Associate in ITA No. 244 & 245/Mum/2022 for AY 2013-14 & 2014-15, the Co-ordinate Bench, in view of retraction of statement by Sh. Gautam Bhanwarlal Jain, has restored the matter of addition u/s 68 of the Act, back to the Assessing Officer for re-examination.

14. The Ld. DR could not controvert that there was limited time frame in which the assessee was asked to provide the information and before the assessee could file the said information, the



assessment order was passed on 22/12/2017. In our opinion, the assessee fulfils the circumstances under Rule 46A(1)(d) i.e. no sufficient opportunity, therefore additional evidences are eligible for admission. Since in respect of the ground No. 1 of the appeal, we have already restored the issue-in-dispute to the file of the Assessing Officer and therefore, for avoiding multiplicity of simultaneous proceedings, instead of restoring the matter to the file of Ld. CIT(A), we feel it appropriate to restore the issue also to the file of the Assessing Officer for deciding afresh after verification of the additional evidences and examination of the parties, which will be produced by the assessee. The ground of the appeal of the assessee is accordingly allowed for statistical purposes.

15. Ground No. 3 of the appeals is in respect of not allowing set off of the carry forward losses against the income determined after making additions. Since we have already restored both the issue of additions to the file of the Assessing Officer and therefore set off of



the issue of the carry forward losses will arise after deciding the issue afresh by the Assessing Officer, and therefore at present this issue is only of academic nature and therefore we are dismissing, the ground No. 3 of the appeal as infructuous.

**ITA No. 4634/MUM/2018**  
**Assessment Year: 2014-15**

16. The grounds raised by the assessee for assessment year 2014-15 are reproduced as under:

- 1.The Ld. Commissioner of Income Tax (Appeals) erred in not considering the submissions made in relation to retraction of statements recorded in the case of Mr. Pramod Kumar Ranka and Mr. Cautam Jain which has a bearing on deciding the income or otherwise in the hands of the appellant.*
- 2.The Ld. Commissioner of Income Tax (Appeals) erred in upholding the addition of Rs. 1.00.00.000/- under section 68 of the Income Tax Act.*
- 3.The Ld. Commissioner of Income Tax (Appeals) erred in upholding the additions of Rs. 36,63,718/- as brokerage income in addition to the income already offered by the appellant at about 5.12% as gross profit.*
- 4.The Ld. Commissioner of Income Tax (Appeals) erred in upholding the additions of interest expenses of Rs. 16,78,356/-*



*5. The Ld. Commissioner of Income Tax (Appeals) erred in upholding the additions of interest expenses of Rs. 6,07,472/-.*

17. Now we take up Ground No. 3 of the assessee for assessment year 2014-15 for adjudication.

18. The brief facts qua, the issue-in-dispute are that the Assessing Officer in view of fact of issuing accommodation entry bills to M/s Mirah Group during the year under consideration, the Assessing Officer rejected books of accounts of the assessee and assessed commission/brokerage @ 2% on the sales of ₹18,31,85,888/- recorded in books of accounts. The addition for brokerage was worked out to ₹36,63,718/-. The Ld. CIT(A) upheld the estimation of the brokerage income on the test of human probability and circumstantial evidences following decision of the Hon'ble Supreme Court in the case of **Meenaxi Mills Ltd. 63 ITR 609 and McDowell & Co. 154 ITR 148**. Before us, in the written submission filed, the Ld. Counsel of the assessee submitted that assessee has also declared gross profit of ₹1,21,56,097/- from the business activity



recorded in the books of accounts at the gross profit rate of 5.12%. According to his submission, when the assessee has also declared gross profit @ 5% on the business activity recorded in books of account which the Assessing Officer has treated as activity of providing accommodation entry and therefore, the Assessing Officer is not justified in making separate addition for commission/brokerage @ 2% in addition to income already declared by the assessee from said business activity.

19. On the other hand, the Ld. DR relied on the order of the lower authorities.

20. We have heard submission of the Ld. DR and perused the relevant material on record including the order of the lower authorities. It is undisputed that the assessee has declared gross profit @ 5.12% on the transactions recorded in the books of account. The Ld. Assessing Officer has treated those very transactions related to M/s M/s Mirah Group as transaction of



providing accommodation entry without any real business but has not excluded the income offered by the assessee from said transactions of business. The Assessing Officer has separately made addition @ 2% on the very same transaction on which the Assessing Officer has declared gross profit rate of 5.12%. In our opinion, a separate addition for the brokerage or commission is not required in the facts of the case. The commission or brokerage @ 2% can be considered as generated from accommodation entry transactions, which subsumes in the gross profit @ 5.12% already declared by the assessee. The only difference is of characterization of the source of the income which according to the Assessing Officer is from the issuing accommodation entry bills whereas according to the assessee profit has been earned from business activity recorded in books of account. Thus lower authorities are not justified in making addition over and above the income @ 5.12% offered by the assessee from business transaction. In view of the above discussion,



we set aside the order of the lower authorities on the issue-in-dispute that allow the ground raised by the assessee.

21. Ground No. 1, 2, 4 and 5 relates to loans received by the assessee during the year under consideration and interest in respect of loans received during the year/interest in respect of loan in earlier years. In Ground No. 2, the addition of ₹1.00 crores received as loan from M/s Marine Gems P Ltd. has been added as unexplained cash credit in terms of section 68 of the Act. In ground No. 3, the interest, in respect of loans received from M/s Marine Gems P Ltd amounting to ₹16,78,356/- has been disputed. In ground No. 5, interest of ₹6,07,472/- credited in respect of loans received from M/s Parshwnath Gems P. Ltd. and Karishma Diamonds Private Limited has been added by the Assessing Officer u/s 68 of the Act which have been disputed by the assessee.

22. We find that the issue-in-dispute of treating loan received from parties namely M/s M/s Marine Gems P Ltd, M/s Parshwnath Gems



P. Ltd., Karishma Diamonds Private Limited has already been restored to the file of the Assessing Officer for deciding afresh in assessment year 2014-15. Therefore, accordingly, following our finding in assessment year 2013-14, these grounds No. 1, 2, 4 & 5 of the appeal of the assessee are also restored to the file of the Assessing Officer for deciding afresh following our direction in assessment year 2013-14. These grounds of appeal are accordingly allowed for statistical purposes.

**ITA No. 7162/MUM/2019**  
**Assessment Year: 2015-16**

23. Now we take up the appeal of the assessee for assessment year 2015-16. The ground No. 1 relates to rejection of books of accounts and making of estimated of addition of ₹79,51,707/- in the year under consideration. The Assessing Officer has estimated income from brokerage for issuing accommodation entry bills @ 5% of the total sales. In written submission, the Ld. Counsel of the assessee has submitted that during the year gross profit rate declared is of



6.97%, which is much higher than the brokerage/commission income estimated by the Assessing Officer i.e. 5%. The identical issue has already been decided by us in assessment year 2014-15, therefore, following our finding in assessment year 2014-15, the addition for brokerage/commission on accommodation entry bills on the basis of transactions for which the assessee has already reported gross profit @ 6.97%, we hold that brokerage/commission income is subsumed in gross profit declared by the assessee and therefore no separate addition for commission/brokerage is required. The ground No. 1 raised by the assessee is allowed.

24. The ground No. 2 of the appeal relates to addition of ₹17,18,44,093/- in terms of section 68 of the Act treating the loans as unexplained cash credit. The issue in dispute in the year under consideration is identical to the issue of the cash credit in assessment year 2013-14 and therefore, following our finding in assessment year 2013-14, the ground No. 2 of the appeal of the



assessee is also allowed for statistical purposes with the direction to the Assessing Officer for deciding afresh following our direction in assessment year 2013-14.

25. In the result, the three appeals filed by the assessee are allowed partly for statistical purposes.

**Order pronounced in the Court on 27/07/2022.**

Sd/-

**(ABY T VARKEY)  
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;

Dated: 27/07/2022

Rahul Sharma, Sr. P.S.

**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.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**