

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.948/Mum./2018

(Assessment Year : 2014-15)

Neeta Vijay Udani
A/11, Aditya Apartment
Old Nagardas Road
Andheri (E), Mumbai 400 059
PAN – AAGPU2389C

..... Appellant

v/s

Income Tax Officer
Ward-24(3)(1), Mumbai

.....Respondent

Assessee by : Shri Mukesh M. Choksi, C.A.

Revenue by : Shri C.T. Mathews, Sr. A.R.

Date of Hearing – 08/06/2022

Date of Order – 04/08/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/12/2017, passed under section 250 of the Income Tax Act, 1961 ("the Act") by learned Commissioner of Income Tax (Appeals)-36, Mumbai, ["*learned CIT(A)*"], for the assessment year 2014-15.

2. In this appeal, the assessee has raised following grounds:

"1. On the facts and circumstances of the case the learned Commissioner Tax (Appeals) has erred in confirming the order of Assessing Officer.

2. The learned Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the order of Assessing Officer without complying with the principles of natural justice.

3. The learned Commissioner of Income Tax (Appeals) has erred in law and in facts by not considering the facts that all the transactions are done by the husband of the Assessee and she has not done any transactions. The same transactions are offered for income by the husband of assessee and were taken into consideration while computing the income of the husband of the Assessee. Therefore it should be deleted from the income of the Assessee.

4. The learned Income Tax Officer and Commissioner of Income Tax (Appeals) has erred in law and in facts by ignoring the facts that Assessee is totally unaware of the transactions made by her husband and she has given the statement on oath to the Assessing Officer u/s 131 that she is not knowing the business activities done by her husband Shri Vijay Udani and her husband has also given statement u/s 131 of the income tax act that the bank account of Neeta Udani was operated by him.

5. The learned Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the act of Assessing Officer of levying interest u/s. 234B and 234C of the Act."

3. The only grievance of the assessee in present appeal is against addition of Rs. 2,97,35,000 made under section 68 of the Act.

4. The brief facts of the case, as emanating from the record, are: The assessee is an individual and claims to be earning income from commission business and other sources. For the year under consideration, assessee filed her return of income on 02/01/2015 declaring total income of Rs 1,99,560. During the course of assessment proceedings, it was observed that assessee has deposited cash of Rs. 2,97,35,000 in her saving bank accounts maintained with Indian Bank and ICICI Bank. The assessee was asked to explain the source of such cash deposits in her saving bank accounts. In assessee's statement recorded on oath under section 131 of the Act, it was

stated that her husband Shri Vijay Udaykumar Udani was handling the operation of these accounts and she was not aware of the details and source of such cash deposits. Thereafter, the statement on oath of assessee's husband was also recorded under section 131 of the Act. In his statement, assessee's husband submitted that he has given RTGS entry from his wife's bank accounts in lieu of cash received from one Shri Mohammed in favour of various entities. In absence of identity and whereabouts of the entities/beneficiaries as well as confirmation regarding these transactions, the Assessing Officer, vide order dated 28/12/2016 passed under section 143(3) of the Act, made addition of Rs. 2,97,35,000 by treating the said amount as unexplained cash credits under section 68 of the Act.

5. In appeal before the learned CIT(A), assessee submitted that the said transactions to be accommodation entries wherein the commission of 0.15% to 0.25% was allegedly earned by the assessee. The learned CIT(A) vide impugned order dated 28/12/2017 dismissed the appeal filed by the assessee. Being aggrieved, assessee is in appeal before us.

6. During the course of hearing, learned Authorised Representative (*learned AR*) by placing reliance upon various decisions submitted that in case of similar accommodation entry providers percentage of commission on net profit at 0.15% was considered as the income and expenditure to the extent of 50% was allowed.

7. On the other hand, learned Departmental Representative (*'learned DR'*) vehemently relied upon the orders passed by the lower authorities.

8. We have considered the rival submissions and perused the material available on record. In the present case, assessee has failed to prove the source of the cash deposits in her bank account. The assessee mainly submitted that account was not operated by her and her husband was handling operation of the bank accounts and therefore she is not aware of the details and source of such cash deposits. The assessee has also failed to produce any of the creditor or provide details regarding their identity and whereabouts. The assessee has also not produced any confirmation regarding the alleged cash transaction. From the perusal of bank statements, it is also evident that there are various back-to-back transactions in cash and withdrawal of the equivalent amount through cheque. In these bank accounts, apart from these transactions, there are no other major transactions. The assessee for the first time, before the learned CIT(A), has raised the plea that it is an accommodation entry provider and earns commission of 0.15% to 0.25%. The assessee has also provided a copy of assessment order passed in the case of husband wherein, inter-alia, receipt of cash has been alleged from Shri Mohammed. Further, the husband of the assessee has also claim himself to be an accommodation entry provider and accepted to have earned brokerage at 0.15% per transaction. In respect of accommodation entry, in husband's case, Assessing Officer had considered 4% of the deposit as unexplained cash credit under section 68 of the Act.

During the course of hearing, learned AR relied upon decisions of coordinate bench of Tribunal in Mihir Agencies Private Limited vs DCIT, ITA Nos. 6435 to 6441/Mum/2012 and Gold Star Finvest Private Limited vs DCIT, ITA No. 6114 to 6120/Mum/2012, wherein the coordinate bench of the Tribunal, following decisions rendered in the cases of group concerns, accepted commission at the rate of 0.15% in case of taxpayer involved in providing accommodation entries. The learned AR further relied upon the decision of Hon'ble jurisdictional High Court in PCIT vs Alag Securities Private Limited, ITA No. 1512 of 2017, judgement dated 12/06/2020, wherein the Hon'ble High Court, after noting that the cash amounts deposited by the customers had been accounted for in the assessment orders of these customers, upheld consideration of 0.15% of the commission as income of the taxpayer.

9. In the present case, the assessee could neither produce any of the beneficiaries nor could produce any confirmation letter in support of the transaction. It has not been disputed that the assessee's husband is also an accommodation entry provider. The Revenue could not bring anything on record to deny the statement of the assessee that her bank accounts were operated by her husband. Learned DR, vide written submissions dated 08.06.2022, made following submissions:

"During the course of hearing, it was also brought to your kind notice about letter dated 17.05.2022, 19.05.2022 and letter of the Jt. CIT, Central Circle-1(3), Mumbai, which was submitted, wherein a detailed note covering Benami Act is provided for treating such habitual defaulters, who are misleading the department and may kindly be incorporated in the order, which will send the right signals to such habitual defaulters like Shri Mukesh Choksi, who was representing this case. Furthermore, a cursory look of the records also show

that penal provisions u/s. 269SS and 269T is squarely applicable on these cash deposits / loans of Rs. 2,97,35,000/-, wherein penalties u/s. 271E and 271D is attracted as the AO appears to have not looked into these provisions Furthermore the assessee's husband in his affidavit dated 14/05/2019 has also stated that he is providing accommodation transaction and operating as a service provider which is raised after 3 years of passing the order."

10. From the perusal of the aforesaid written submissions, we find that reference is made to letters dated 17.05.2022 and 19.05.2022, which refers to the facts in case of some other assessee. Further, the learned DR, vide aforesaid written submission, also submitted that penalty under section 271E and 271D is leviable in present case. However, it is pertinent to note that the Assessing Officer has not initiated penalty under aforesaid provisions and rather penalty has been initiated under section 271(1)(c) r.w.s. 274 of the Act in the present case. Even if penalty under any other provisions is leviable then it is for the Revenue to take necessary action as per law and no such direction can be issued in the present case, which is a quantum appeal against the order passed by the learned CIT(A). Therefore, considering the nature and frequency of transactions in the assessee's bank account, we are of the considered view that assessee is nothing but an accommodation entry provider. Now, as regards the commission earned in providing such accommodation entry, assessee has claimed that she has earned commission at 0.15% to 0.25% on providing such entries. It is pertinent to note that in the aforesaid decisions, the Hon'ble Court and coordinate bench of Tribunal considered the facts of the case, which are in context not similar to the present case. As in the case cited supra before the Hon'ble jurisdictional High Court, the cash deposits were already accounted for in the assessment orders

of the beneficiaries. Further, as noted above, coordinate bench of the Tribunal has followed the judicial precedents in group concern's case. Though, it can be accepted that in case of accommodation entry provider only commission can be considered as the taxable income, however, the rate of commission considered justifiable in other cases cannot be readily accepted in the present case, particularly when the assessee neither could prove the identity of the person from where the cash has been received nor could provide whereabouts of the beneficiaries to whom the money was transferred through cheque/RTGS. As noted above, in proceedings before the learned CIT(A), the assessee agreed that it has earned commission of 0.15% to 0.25%. In absence of any material in support of such claim and in view of aforesaid findings, we deem it appropriate to direct the Assessing Officer to consider 0.25% as net profit rate/commission from the alleged accommodation entry transaction and to compute the taxable income accordingly.

11. Further, during the course of hearing, learned AR has also prayed that expenditure to an extent of 50% be allowed by placing reliance on the aforesaid decisions rendered by coordinate bench of the Tribunal. However, in the present case, it is evident that the assessee nowhere provided the details of expenditure incurred for earning the commission income from accommodation entry transaction. It is only now in the appellate proceedings before us, claim has been made to allow expenditure to an extent of 50%, without filing any supporting details, by placing reliance on decisions rendered in case of some other assessee. Thus, in view of the above, we do

not agree with the submissions of the assessee in this regard. Thus, as a result, grounds No. 1 – 4 raised in assessee's appeal are partly allowed.

12. Ground No. 5 raised in assessee's appeal is pertaining to levy of interest under section 234B and 234C of the Act, which is consequential in nature. Accordingly, ground No. 5 raised in assessee's appeal is allowed for statistical purpose.

13. In addition to the grounds raised in this appeal, the assessee in one of its paper book has also annexed application seeking admission of additional ground of appeal. The additional ground of appeal raised therein, reads as under:

"The learned AO and CIT(A) erred in law and in facts by not considering the facts that the all the transactions are done by the husband of the assessee and she has not done any transactions. The same transactions are offered for income by the husband of the assessee and were taken into consideration while computing the income of the husband of the assessee. Therefore it should be deleted from the income of the assessee."

14. During the hearing before us, no submission was made for admission of this additional ground of appeal. Further, we find no evidence on record to show that same money has been taxed in the case of husband. Accordingly, the additional ground of appeal filed by the assessee is dismissed.

15. In the result, appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 04/08/2022

Sd/-
S. RIFAUR RAHMAN
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 04/08/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai