

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

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 949/MUM/2018 (A.Y. 2014-15)

Ms. Isha Vijay Udani A/11, Aditya Apartment Old Nagardas Road Andheri (E), Mumbai - 400059 PAN: ACBPU4746L	v.	CIT(Appeals)-36 707B, C-10 Pratyakshkar Bhavan Bandra Kurla Complex Bandra (E), Mumbai – 400051
(Appellant)		(Respondent)

Assessee by	:	Shri Mukesh Choksy
Department by	:	Shri R.N. D'Souza
Date of Hearing	:	21.07.2022
Date of Pronouncement	:	23.08.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals)-36, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 28.12.2017 for the A.Y.2014-15.

2. Brief facts of the case are, Assessee filed her return of income on 28.11.2014 declaring total income of ₹.NIL. Subsequently, revised return

of income was filed on 07.04.2015 declaring total income of ₹.Nil. The return was processed u/s. 143(1) of Income-tax Act, 1961 (in short "Act"). The case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of the Act were issued and served on the assessee along with detailed questionnaire. This case was selected for limited scrutiny under CASS for the reasons of large cash deposits in savings bank account. In response Ld. AR of the assessee submitted the relevant information as called for.

3. Assessee has earned income from salary and from other sources. Assessing Officer observed that as per the details submitted by the assessee, she has deposited in her savings account in Indian Bank, Mandvi Branch to the extent of ₹.2,35,79,000/-. Assessee in her statement recorded u/s. 131 of the Act on 05.12.2016 stated that her father Shri Vijay Udaykumar Udani (PAN: AALPU9479J) was handling the operations of the above account and that she was not aware of the details of source of such cash deposits. Subsequently, statement on oath of her father Shri Vijay Udaykumar Udani was recorded u/s. 131 of the Act on 23.12.2016. In his statement Shri Vijay Udaykumar Udani stated that he has given

RTGS entry from his daughters bank accounts in lieu of cash received from one Shri Mohammed in favour of the following entities: -

<u>Sr. No</u>	<u>Name of the Beneficiary/Cash Provider</u>	<u>Bank details</u>
1.	Aduriz Expor	Axis Bank, Fort Branch Current A/c. No. 91302003286
2.	Perfect Exim	Axis Bak, Fort Branch Current A/c. No. 91302003287
3.	ACE Enterprises	Axis Bak, Fort Branch Current A/c. No. 91302003266
4.	Hira Enterprises	Allahabad Bank, Barsal Branch Current A/c. No. 50184688367
5.	Nirma Enterprise	Axis Bank, Fort Branch Current A/c. No. 913020003899
6.	Asian Impex	Axis Bank, Fort Branch C.A/c. No. 913020050461537

4. Assessing Officer after considering the statements of assessee and her father observed that these statements can only be established after detailed enquiry into the alleged transactions in respect of the above mentioned entities/beneficiaries. Assessee and her father has not provided any information relating to the identity, whereabouts of the above entities nor any confirmations regarding these transactions. Accordingly, Assessing Officer proceeded to make the addition to the income of the assessee to the extent of cash deposits made in the savings bank account of the assessee u/s. 68 of the Act.

5. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and before the Ld.CIT(A) assessee filed detailed submissions, for the sake of clarity it is reproduced below: -

"The appellant respectfully submits the following grounds of appeal for your honor's kind consideration which may be considered without prejudice to each other for the sake of natural justice.

1. *The appellant had filed the return of income declaring the gross total income of Rs.1,99,286 for the AY 2014-15. The statement of total income and acknowledgement of the return filed is enclosed herewith (Page no. 5 6).*

2. *The case was selected for limited scrutiny under CASS for the reason "Cash deposits in savings bank accounts is more than turnover"*

3. *During the course of assessment proceedings it was found that there was total cash deposits of Rs. 2,35,79,000/- in Indian Bank, Mandvi Branch in account no. 973277250.*

4. *This cash was received from one Mr. Mohammed and transferred to the various parties as per his instructions.*

5. *The appellant had confessed the said transactions to be accommodation entries with firm belief and impression that about 0.15% to 0.25% of the deposits will be considered as income by way of accommodation entries.*

6. *The Ld. AO has grossly erred in considering the entire amount of cash deposit of Rs. 2,35,79,000/- as income u/s. 68 without considering the fact that immediately on deposit of cash there is transfer to the beneficiaries account the same amount and balance in bank account is just minimum.*

7. *In Gold Star Finvest Pvt. Ltd. Vs. ITO, ITAT Mumbai Bench (page no. 7-8 it was held that:*

Once the assessee was held-to-be a broker and dealing in shares and securities of investment, the deposits made in his bank account could not be called to be his investment. A broker undertook the sales and purchase

of shares on behalf of its clients and he was concerned to a particular percentage of commission on value of transactions. Assessee had explained the accommodation entries with its customers and in lieu of that, he earned particular percentage of commission. It has become amply clear that in these type of activities brokers are only concerned with their commission on the value of the transactions. The assessee has also made out a case that the customers do not come directly to it and they come through a sub-broker who also charges a particular share of commission. In such a case, the theory of AO to treat the entire deposit as unexplained cash credits cannot be accepted in light of Assessment Order in the case of beneficiaries and also in the light of the fact that assessee is only concerned with the commission earned on providing accommodation entries. Since the assessee himself had offered the percentage of commission at 0.15% which was more than the percentage of commission considered to be reasonable by the Tribunal in the cases of ITO v. Palresha Ltd. CO. [IT Appeal No. 1640(Bom.) of 1982] and Kiran Ltd Co. V. ITO [IT Appeal No. 3604 (Bom.) of 1983] (page No 9-14) the same should be accepted. Accordingly, the commission declared by the assessee is accepted and the order of the Commissioner (Appeals) in this regard is set aside”

8. Thus, on the basis of the above mentioned facts, circumstances and evidences it is proved beyond any doubt that the addition made by the AO on account is unfair and ought to be deleted in toto for the sake of natural justice and the appellant shall remain grateful forever for such kind justice.”

6. Ld.CIT(A) after considering the submissions of the assessee, he rejected the contention of the assessee on engaging herself or her father in giving accommodation entries, only commission should be included as income of the assessee. Ld.CIT(A) by relying on the decision of Sudhir

Kumar Sharma (HUF) v. CIT [(2014) 46 taxmann.com 340] proceeded to sustain the addition made by the Assessing Officer with the following observations: -

"4.4 There was a clear lack of much needed evidence on the part of the appellant. The appellant has not been able to satisfy any of the conditions required by the provisions of section 68 of the IT Act 1961 as she has not been able to establish the identity of the creditor nor obtain a confirmation of the transaction from such creditor nor produce such persons before the IT authorities to validate its claim of the genuineness of the transaction. The credit worthiness of such invisible persons cannot be relied upon. In such an eventuality, additions made under section 68 of the Act is completely justified. Consequently, addition of Rs.2,35,79,000/- on account of unexplained credit u/s 68 of the Act, is sustained Thus, ground of appeal no.1 is Dismissed."

7. Aggrieved assessee is in appeal before us raising following grounds in her appeal: -

"1. On the facts and circumstances of the case the learned. Commissioner of Income 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 the all the transactions are done by the father of the Assessee and she has not done any transactions. The same transactions are offered for income by the father of the assessee and were taken into consideration while computing the income of the father of the Assessee. This income has been already added in the hand of the Assessee's father, therefore it should be deleted.

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 hardly 23 years old and she cannot do transactions of such magnitude. She is totally unaware of the transactions made by

her father and she has given the statement on oath to the assessing u/s 131 that she is not knowing the business activities done by her father Shri Vijay Udani and her father has also given statement u/s 131 that the bank account of Miss. Isha 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. 234A and 234B of the Act.

6. The appellant craves leave of Your Honour to add to, alter, amend and/ or delete all or any of the foregoing grounds of appeal."

8. At the time of hearing Ld. AR of the assessee submitted that assessee is only 23 years old and a student. She is not engaged in any activities stated above. However, she has submitted on oath before tax authorities that her father handling the operation of the same account which was in her name. Even her father on oath submitted before the tax authorities that he is in the business of providing accommodation entries for commission. Further, he brought to our notice that some common transactions are added in both the accounts of the assessee as well in her father's account. Ld. AR submitted that, her father Shri Vijay Udaykumar Udani case is pending before CIT(A). Ld. AR of the assessee submitted a chart with details of bank deposits and internal transfers in assessee's savings bank account and her father account were highlighted and submitted before us. He submitted that these details are not additional evidences and only extract of the same information submitted before tax authorities.

9. On the other hand, Ld. DR relied on the orders of the lower authorities and he also reiterated that assessee and her father has not disclosed the identity of the beneficiaries and it was not demonstrated that assessee is into the business of providing accommodation entries. However, he fairly accepted that there may be certain transactions between the father and daughter, if required this issue may be remitted back to the file of the Ld.CIT(A).

10. Considered the rival submissions and material placed on record, we observe that assessee is a student and aged about 23 years. As per the statements recorded by the assessee and her father it indicates that Shri Vijay Udaykumar Udani (father of the assessee) has operated the savings account which is in the name of the assessee and it was claimed that Shri Vijay Udaykumar Udani was providing accommodation entries. From the submissions and material placed on record it clearly indicates that the accounts were operated only by Shri Vijay Udaykumar Udani. Since the appeal in the case of the assessee's father i.e. Shri Vijay Udaykumar Udani is pending with CIT(A) and in order to and for overall justice, we are inclined to remit this issue back to the file of the Ld.CIT(A) to adjudicate on the issue of nature of transactions and verify the

transactions in bank accounts of Shri Vijay Udaykumar Udani as well as the bank account in the name of the assessee i.e. Ms. Isha Vijay Udani. If there is any cross transactions or contra transactions those transactions should be eliminated. We direct the tax authorities to club this appeal with the appeal of Shri Vijay Udaykumar Udani and adjudicate the same together. After verification of these transactions the addition may be made as per law, after giving proper opportunity of being heard to Shri Vijay Udaykumar Udani.

11. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 23rd August, 2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai / Dated 23.08.2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum