

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 2354/Ahd/2018  
Assessment Year 2014-15**

Shri Ram Hakmaji Purohit, 1 <sup>st</sup> Floor, 2-Akash Vikash Estate, Opp. Sulabha Dairy, Rakhial, Ahmedabad-382321 PAN: AJHPP2970Q (Appellant)	Vs	ITO, Ward-6(1)(1), Ahmedabad (Respondent)
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**Assessee by: Shri S.N. Divatia, A.R.  
Revenue by: Shri Alok Kumar, CIT-D.R.**

Date of hearing : 13-07-2022  
Date of pronouncement : 11-10-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-6, Ahmedabad in Appeal no. CIT(A)-6/183/16-17 vide order dated 16/10/2018 passed for the assessment year 2014-15.

2. The assessee has raised the following Grounds of Appeal:-

*“1.1 The order passed u/s 250 on 16/10/2018 for A.Y.2014-15 by CIT(A)-6, Abad, upholding the additions made by AO aggregating to Rs.9,29,68,189/-, is wholly illegal, unlawful and against the principles of natural justice.*

*1.2 The Ld CIT(A) has grievously erred in law and or on facts in not considering the explanations and submissions produced during the appellate proceedings.*

*2.1 The Id. CIT(A) has grievously erred in law and or on facts in confirming the following additions:*

*a) Unconfirmed sundry creditors Rs.1,56,23,783/-*

*b) Unexplained cash credits Rs.16,92,533/-*

*c) Unexplained cash deposits in bank a/c. Rs.7,56,51,873/-*

*2.2 That in the facts and circumstances of the case as well as in law, the Id. CIT(A) ought not to have made additions in respect of the above said cash credits/sundry creditors/cash deposits when no such activities except cheque discounting for commission income was carried on.*

*3.1 The LD CIT(A) has grievously erred in law and facts in not restricting the additions to the extent of only commission income in*

*view of modus operandi of cheque discounting business explained to him.*

*4.1 Without prejudice to above and in the alternative, the Ld. CIT(A) ought to have restricted the addition to the extent of peak credit in bank accounts as well as allowed the benefit of telescoping the addition sustained.*

*It is therefore prayed that the additions of Rs. 9,29,68,189/- confirmed by CIT(A) should be deleted.”*

3. The brief facts of the case are that the assessee is an individual and derives income by way of manufacturing and trading in SS Patta, pipe, rod etc. as a proprietor of M/s.Kheteshwar Tubes & Pipe Fittings. The assessee filed its return of income for A.Y.2014-15 on 29.11.2014 declaring total income of Rs. 2,65,080/. During the course of assessment proceedings, AO issued show cause notice proposing to treat as unexplained cash credit (a) the sundry creditors of Rs.1,56,23,783/- to the extent unconfirmed (b) unsecured loan of Rs.16,92,533/- received during the year and (c) unexplained cash deposits aggregating to Rs.7,56,51,873/- in three bank accounts held by the assessee. The AO observed that the assessee did not file any confirmations regarding creditors of Rs. 1,56,23,783/-. The AO noted that even PAN and addresses of the creditors in respect of Rs. 1,56,23,783/- were not furnished and accordingly, the AO added Rs. 1,56,23,783/- as unexplained creditors in the hands of the assessee. Regarding unsecured loans of Rs. 16,92,533/-, AO observed that the assessee did not file ledger

confirmations, copy of bank account of the creditors and copy of ITR of the above creditors to establish the identity and creditworthiness of the creditors and genuineness of transactions in respect of above unsecured loans and accordingly, the AO added Rs. 16,92,533/- treating these unsecured loans as unexplained income in the hands of the assessee. The AO further observed that there were cash deposits of Rs. 7,56,51,873/- in three (3) bank accounts of the appellant. The AO noted that there were total deposits of Rs. 10,19,64,223/- in the above bank accounts of the appellant out of which Rs. 7,56,51,873/- were by way of cash deposits. However, the assessee could not explain the source of these cash deposits and the assessee had failed to furnish details and explain the aforesaid cash credits and cash deposits with supporting evidence. Accordingly, the AO added Rs. 7,56,51,873/- treating the cash deposits as unexplained income in the hands of the assessee. Thus, the AO added Rs. 1,56,23,783/-, Rs. 16,92,533/- and Rs. 7,56,51,873/- (totaling to Rs.9,29,68,189/-) on account of unexplained creditors, unsecured loans and cash deposits respectively treating the same as unexplained income in the hands of the assessee u/s 68 of the Act.

4. In appeal before Ld. CIT(Appeals), the assessee submitted that he had furnished all possible details but further details could not be given due to insufficient time allowed and the creditors/depositors were non-cooperative. The assessee further submitted that the AO has failed to consider fully and properly the nature of transactions carried out by the assessee in both the bank accounts. The assessee submitted that he is into the business of cheque discounting and the modus operandi of carrying on transaction in the said bank accounts was to collect funds from third party in cash and deposit the

same in these bank accounts for the purpose of issuance of cheque in name of the party stated by the person giving cash. The assessee submitted that he used to charge commission ranging from Rs.120 to Rs.250 per every Rs.1 lakh of cash and the commission varied depending on various factors. The appellant further submitted that if the bank accounts are examined especially the HDFC bank account it would be noticed that even names of the parties are mentioned to whom such cheques were issued. Accordingly, the entire cash deposits which precede the issuance of cheque cannot be subject matter of addition but the income embedded in such transactions by way of commission could be subjected to tax. In this regard the appellant relied on the decision in the case of Gold star Finvest (P.) Ltd v ITO (33 taxmann.com 129)(Mum), Manoj Aggrawal v DCIT ( 113 JTD 377)(Del), CIT v. President Industries (258 ITR 654), CIT v. Guru Bachhan Singh Juneja (302 ITR 364), ACIT vs. Buniyad Chemicals Ltd., ITA No, 2787/Mum/2015, 7.6.2017 and CIT v. Samir Synthetic Mills (326 ITR 410).

4.1 However, the Ld. CIT(Appeals) dismissed the assessee's appeal with the following observations:

*After considering all facts and circumstances of the case, I am not inclined to agree with the contention of the appellant. It is seen that as submitted by the appellant and as mentioned in the audit report the appellant is in the business of manufacturing of steel products. The appellant has filed audited annual accounts and audit report for A.Y. 2013-14 and bank statements of State Bank of Hyderabad as additional evidence which were admitted. The appellant also filed*

*explanation with regard to transactions of alleged cash credits as additional evidence which was admitted. **From a perusal of the audit report filed as additional evidence it is seen that there is no mention of cheque discounting business undertaken by the appellant.** Further, a perusal of the P & L A/c of the appellant shows that there is no mention of cheque discounting business in the same. No income/expenditure from the cheque discounting business has been included in the P & L A/c. **Also no commission income from the cheque discounting business has been included in the P & L A/c.** Further, the bank balance in balance sheet is shown at Rs. 6837.19. Though the appellant submitted that he was not given adequate opportunity to submit details and documents before the AO due to paucity of time and hence he requested for additional evidence to be admitted, it is seen that despite this request, the only additional evidence that the appellant has submitted are audited annual accounts and audit report for the year under consideration, bank statement of State Bank of Hyderabad and explanation in regard to transactions and alleged cash credits. **Even during appeal proceedings the appellant has not filed any confirmations from either the creditors or in respect of unsecured loans. Also, the appellant did not file any explanation regarding source of cash deposits in the bank. Explanation that all the above transactions pertain to cheque discounting business is too simplistic an explanation which cannot be accepted in the absence of credible evidence. During appeal proceedings the appellant was asked to file details regarding names of parties in respect of whom cash has been deposited and in respect***

**of whom cheques have been issued to other parties. However, no such details were filed. In this scenario it is difficult to accept the contentions of the appellant that all the above amounts pertain to his cheque discounting business and therefore only the income element in the same should be added.** Case laws relied on by the appellant are not applicable as the facts of these cases are different. In all decisions relied on by the appellant it is held that only income element in unaccounted business is to be added. In the present, it is not established and accepted that all the above transactions are in respect of unaccounted business of the appellant. In view of above discussion, additions of Rs. 9,29,68,189/- are upheld. These grounds of appeals are rejected.

5. The assessee is in appeal before us against the aforesaid additions made by Ld. CIT(Appeals). Before us, the counsel for the assessee submitted that both the authorities have failed to appreciate the explanation with regard to the impugned additions which was to the effect that the assessee was engaged in bogus billing business in items of SS Patti etc. in consideration of earning commission income. The counsel for the assessee drew our attention to pages 108-111 of paper book, which is the Affidavit submitted by the assessee during the course of assessment proceedings, explaining the modus operandi of the assessee. The counsel for the assessee submitted that even during the course of assessment proceedings, the statement of the assessee was recorded under section 131, wherein he had confirmed to have been engaged in such business of acting as commission agent. The counsel for the assessee further drew our attention to page 107 of

the paper book and submitted that even during the recovery proceedings, the assessee had confirmed by way of letter dated 26-02-2018 to have been engaged in such business of acting as commission agent. Thus, the counsel for the assessee submitted that the assessee has been taking a consistent position that he should have been assessed on commission income in respect of said business instead of book results shown. The counsel for the assessee relied on the decision of PCIT v. Mihir Agencies Private Limited Tax Corp 77214\_Bom (2019) and PCIT v Alang Securities Private Limited in ITA number 1512/2017 dated 12-06-2020 (Bombay) wherein commission income at the rate of 0.15% has been taken as the taxable income of the assessee in such line of business (and not the entire income has been taxed in the hands of the assessee). In response, the Ld. DR relied upon the observations made by Ld. CIT(Appeals) in the appeal order.

6. We have heard the rival contentions and perused the material on record. In our considered view, in light of the assessee's submission that he has not been given adequate opportunity to prove that he was in fact engaged in the business of earning commission income, and accordingly, Ld. CIT(Appeals) also dismissed assessee's appeal by holding that he is earning commission income and thereby added the entire income in the hands of the assessee on gross basis. In our view, in the instant set of facts, the Assessing Officer/CIT(A) should have afforded opportunity to the assessee to explain the modus operandi in respect of commission income. Accordingly, we are hereby setting aside the case to the file of the assessing officer to firstly ascertain whether in the instant set of facts, the assessee was engaged in the business of earning commission income as submitted before us and also

secondly to verify the actual commission taxable earned by the assessee during the impugned assessment year. Accordingly, the case is being set aside to the file of the AO with the above directions.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 11-10-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 11/10/2022**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद