

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 4250/MUM/2018
Assessment Year: 2008-09**

M/s Shivan Giri Steel Limited,
M/s VSS & Associates Chartered
Accountants, 306, Dalamal
Chambers, New Marine Lines,
Mumbai-400020.

PAN No. AAICS 8440 H

Appellant

Vs.

The Income Tax Officer,
Ward-13(2)(3),
Aayakar Bhavan,
Mumbai.

Respondent

Assessee by : Mr. Parag Jha & Prateek Jha
Revenue by : Mr. Ashok Kumar Kardam, CIT-DR

Date of Hearing : 26/10/2022
Date of pronouncement : 31/10/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 28.02.2018 passed by the Ld. Commissioner of Income-tax (Appeals)-21, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2008-09, raising following grounds:



1. *On facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance of purchase of traded goods made from hawala dealer of Rs.7,86,95,000/-*
2. *On facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition us.69 of Rs.63,96,11,995/- in respect of entire credit entries disclosed in appellant's bank accounts;*
3. *On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of bogus purchase of Rs.7,86,95,000/- and unexplained cash credit of Rs.63,96,11,995/- on ignoring the fact that the appellant had been declared, by Sales Tax department, as a mere accommodation entry provider issuing only false bills and is not engaged in any genuine business activities;*
4. *The Ld. CIT(A), before confirming the addition of Rs.6396.11 lacs, failed to appreciate that the deposits made in regular bank accounts represents the sale consideration and accounted receipts disclosed in audited balance sheet of Rs.7708.18 Lacs;*
5. *The Ld. CIT(A) ought to have restricted the addition to the extent of real income earned by the appellant of Rs.7,70,820/- @ 0.10% of turnover of Rs.7708.18 Lacs.*
6. *The Ld. CIT(A) failed to appreciate that once books of accounts are rejected w/s.145(3), then the total income is to be determined only on estimation basis, thus huge addition/ disallowance made in assessment is erroneous;*

2. Briefly stated, facts of the case are that the assessee was engaged in the business of trading in steel products. For the year under consideration, no regular return of income was filed by the



assessee. Subsequently, the case of the assessee was reopened by way of issue of notice u/s 148 of the Act. The Investigation Wing of the Income-tax Department, Mumbai recorded a statement of Shri Kumar Pal Shah proprietor of M/s Rahul Traders u/s 131 of the Act. In the statement Shri Kumar Pal Shah admitted of providing accommodation entries to various persons by way of issue of bogus sale bills including the assessee. The Investigation Wing found sales bills amounting to ₹7,86,95,000/- pertained to the assessee, in financial year 2007-08 corresponding to the assessment year under consideration. In view of the information, assessment in the case of the assessee has been reopened. In response to the notice issued u/s 148 of the Income-tax Act, 1961 (in short 'the Act') dated 19.03.2015 and consequent statutory notices issued, part compliance was only made on behalf of the assessee. The assessee filed return of income on the last day of the completion of the assessment i.e. 29.03.2016. No information sought by the Assessing



Officer was filed by the assessee and therefore he completed the assessment on 29.03.2016 after making disallowance for bogus purchases amounting to ₹7,86,95,000/- and unexplained credit entries in bank accounts amounting to ₹69,61,11,995/-. On further appeal, the Ld. CIT(A) upheld both the additions rejecting the claim of the assessee to consider, it as an accommodation entry provider and estimate the commission income for the same.

3. Aggrieved, the assessee is in appeal before the ITAT (in short 'the Tribunal') by way of raising grounds as reproduced above.

4. In the grounds raised, the assessee is mainly aggrieved with the addition of ₹69,61,11,995/- in respect of the credit entries appearing in bank accounts and disallowance of bogus purchases of ₹7,86,95,000/-. In Ground No. 3, the assessee is seeking to consider it as an accommodation entry provider. However, the Ground No. 4, the assessee is seeking to consider the credit entries as representing



sales of the assessee. Both the ground appears to be contradictory each other. In Ground No. 5, assessee is seeking application of rate of 0.1 per cent on the turnover of ₹7708.18 lacks. In ground No. 6, the assessee is seeking for estimation of income for commission.

5. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. The Assessing Officer has made two disallowance/additions. Firstly, he has disallowed purchase of ₹7,86,95,000/- u/s 69C of the Act as unexplained expenditure. The contention of the Assessing Officer is that assessee was asked to produce the corresponding purchase bills and parties for verification. However, no such compliance has been made by the assessee. Further, no delivery challans, transport bills etc. in respect of purchases were filed by the assessee and therefore, merely the claim that payments were made by cheque, was not enough to prove the purchase expenses particularly in the



light of the statement of proprietor of M/s Rahul Traders. The Ld. CIT(A) upheld the disallowance observing as under :

“9. I have considered the facts of the case and submissions made by the appellant. It is seen from the assessment order that the assessing officer received information with regard to the purchase transactions of the assessee with Shri Kumar Pal Shah, Proprietor of M/s Rahul Traders. It is mentioned that this party was involved in providing accommodation bills to various entities. In the statement recorded u/s 131, Shri Kumar Pal Shah, Proprietor of M/s Rahul Traders had admitted to have provided accommodation entries to various persons. The assessee appeared to have transacted with M/s Rahul Traders during F.Y. 2007-08 to the tune of Rs. 7,86,95,000/-. The assessing officer has also mentioned that the assessee, during the course of assessment proceedings had not provided full particulars with respect to the supplier M/s Rahul Traders. The assessing officer has further mentioned that the purchases may not have been made from the declared party but from elsewhere. The probable modus operandi of the assessee has also been discussed in the assessment order in Para No. 5, 6, 7 and 8 and concluded that the entire purchases of Rs 7,86,95,000/- or not genuine and accordingly the same were added to the income of the assessee as they could not be proved. On the other hand, the assessee contended that the addition of the entire purchase was not justified, as the same would lead to a case of taxing entire sales without allowing the deductions of corresponding purchase. The assessee has also submitted that it's case may be considered by applying 0.5% on purchase of R\$ 7,86,95,000/- which would have been earned by the assessee in trading activity.



I have carefully considered the facts on record. It is worth mentioning here that the assessee has neither furnished so called bogus bills of purchases and bogus sales either during the assessment proceedings or even during the appellate proceedings by the assessee or the authorized representatives till date. Main issue in such matters is not only the actual income earned by the assessee but also the evasion of income by the actual supplier and receivers of goods and services and their identity to enable the revenue authority to bring to tax the real evaders of tax in the tax net and it is in this regard that the persons like assessee play a major role by posing as intermediaries helping tax evaders escape the tax net and this process is continuing even in appellate proceedings where the assessee is engaging CAs after CAs to fight the case by submitting through its CAs that the company is a hawala giver and its income should be assessed on the basis of estimated percentage basis, but refuses to furnish details and documents relating to the purchases and sales shown by it in its books and for which credits and debits are reflected in its two bank accounts with OBC and J&K Bank, Mumbai. Even during the course of appellate proceedings, the assessee has not produced any _purchase bills, delivery. challans, transport bills etc. except furnishing the two bank account copies as mentioned above. In the absence of basic information the contentions of the assessee cannot be accepted. Further, the non-furnishing of the basic details clearly indicate that the assessee and its directors are deliberately and knowingly holding back vital information relating to names and addresses of purchasers and sales and assisting tax evaders in the process and it is a deliberate act on the part of the assessee to withhold and suppress information at the behest of hawala entry takers for purchase and sales even when the same is available with it. That is the main reason the appellant has given lengthy arguments and furnished judicial decisions but



has not furnished details of purchases and sales which form the crux of the information. Not furnishing the details of purchases and sales viz copies of bills, delivery challans and transport receipts which constitute the basic details to consider the contentions of the appellant. Mere payments made through account payee cheques could not be conclusive proof in these type of cases where genuineness of the transactions itself is not proved. In view of the above, the AO's action of adding the entire purchases is upheld. Therefore, the assessee's ground of appeal No. 1 is rejected."

5.1 Before us, also no such evidence to support the claim of the purchases has been filed. Before us, the assessee has relied on the following decisions :

1. DCIT v. M/s Chaitali Sales Agency Pvt. Ltd. (ITA Nos. 4908 & 4910/M/2016 :

5. We have heard the rival submissions and perused the material before us. We find that the assessee had not co-operated with AO during the assessment proceedings, that it was providing accommodation entries, that the AO estimated commission income of the assessee at 4% of the total deposits, that the FAA reduced the commission income and estimated the same at 0.15% of the aggregate of value of accommodation entries. In our opinion, the estimate made by AO was on higher side and had no basis. We would like to refer to the case of Gold Star Invest P. Ltd. (Supra), wherein under identical circumstances the Tribunal had estimated the commission income of the assessee @ 0.15 % of the aggregate value of the bogus bills/accommodation entries.



We are reproducing para 12 of the order of the Tribunal in the case of Gold Star Finvest Pvt. Ltd. and it reads as under:-

"12. Having, carefully examined the various orders in the case of different assesseees' it has become amply clear that in these types of activities, brokers are only concerned with their c ommission on the value of transactions. Now the question comes what would be the reasonable percentage to the commission on the total turnover? The assessee has also made out a case that the customer s do not come directly to him and they come through a sub- broker who also charges a particular share of commission. In all th e judgments what has been stated is that an average percentage of co mmission is between 0.15% to 0.25%. In the case of Palresha & C o. and Kiran & Co (surpa), the Tribunal has considered reasonablen ess of percentage of commission to be earned on turnover w as at 0.1%. The assessee himself has offered the percentage of commission at 0.15%, which is more than the percentage of commiss ion considered to be reasonable by the Tribunal in the case of Palresha & Co and Kiran & Co (supra) in similar type of tran sactions. The theory of Assessing Officer to treat the entire dep osit as unexplained cash credits, cannot be accepted in the light of as sessment orders 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. We, therefore, of the view t hat since the assessee itself has declared the commission on turnover at 0.15% which is more than the percentage considered to be reasonable by the Tribunal in the case of Palresha & Co and Kiran & Co (supra), the same should be accepted. We, accordingly, accep t the commission declared by the assessee and set aside t he order of the CIT (A) in this regard."

Respectfully following the above we are of the opinion that order passed by FAA does not suffer from any legal or factual infirmity, therefore,



confirming the same we decide the effective Ground of appeal, raised by the assessee, against the AO.”

2. Shri Ramesh Kumar Jain v. ACIT (ITA Nos. 3512 & 3513/M/2013 & 3518, 3517, 3516, 3515, 3514/M/2013):

17. The next common issue that arises in AY 2006-07 to 2010-11 relates to the estimation of commission income on providing accommodation bills. We earlier noticed that the assessee had declared the commission income @ 0.20% in the statement taken from him. However, in the letter filed before the assessing officer, the commission income was declared @ 0.25%. However, the assessing officer has estimated the commission income by adopting the rate of 1.50%. A perusal of the assessment orders would show that the assessing officer has not brought on record any material or basis which enabled him to adopt the rate of 1.50%. The AO has also not examined the beneficiaries of the accommodation bills to ascertain the rate of commission. Further, the assessee has submitted that the commission income earned was shared by him and two others. The said fact was also not considered by the assessing officer.

3. PCIT v. Alag Securities Pvt. Ltd. [2020] 425 ITR 658 (Bom):

20. We are in agreement with the view taken by the Tribunal. In a case of this nature Section 68 of the Act would not be attracted. Section 68 would come into play when any sum is found credited in the books of the assessee and the assessee offers no explanation about the nature and source thereof or the explanation offered by the assessee is not in the opinion of the Assessing Officer satisfactory. In such a situation the sum so credited may be charged to income tax as the income of the assessee of the relevant previous year. But that is not the position here. It has been the consistent stand of the assessee which has been accepted by the First Appellate Authority and



affirmed by the Tribunal that the business of the assessee centered around customers / beneficiaries making deposits in cash amounts and in lieu thereof taking cheques from the assessee for amounts slightly lesser than the quantum of deposits, the difference representing the commission realized by the assessee. The cash amounts deposited by the customers i.e., the beneficiaries had been accounted for in the assessment orders of these beneficiaries. Therefore, question of adding such cash credits to the income of the assessee, more so when the assessee was only concerned with the commission earned on providing accommodation entries does not arise.

21. Coming to the percentage of commission, Tribunal had already held 0.1% commission in similar type of transactions to be a reasonable percentage of commission. Therefore Tribunal accepted the percentage of commission at 0.15% disclosed by the assessee itself. This finding is a plausible one and it cannot be said that the rate of commission was arrived at in an arbitrary manner. The same does not suffer from any error or infirmity to warrant interference, that too, under Section 260-A of the Act.”

5.2 Relying on the above decision, the Ld. Counsel of the assessee submitted that rate of the commission should be estimated to 0.1 per cent of the total sales. However, we find that in these cases, there was no dispute on the issue whether those parties were engaged in issuing accommodation entries and only dispute was on the rate of commission. But in the case, the assessee has failed to discharge his onus of establishing the fact of accommodation entry



provider. The assessee has not provided a single evidence in support of its claim of either activity of trading in steel or claim of activity of accommodation entry provider and therefore, cases relied upon by the assessee are distinguishable. We further find that assessee, on one side is claiming to treat itself as accommodation entry provider but on the other side in support of justification of credit entries in bank submitting that those were by way of sales transactions. Both these stands of the assessee are contradictory to each other. In absence of any documentary evidence to support the contention, we do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly we uphold the same.

5.3 The second addition is in respect of credit appearing in bank accounts maintained by the assessee with OBC Bank, Mumbai & J&K Branch. In absence of any explanation, the Assessing Officer held the same as undisclosed money appearing in the bank account and made addition u/s 69 of the Act. Before the Ld. CIT(A) also the



assessee failed to explain the credit along with evidence i.e. respect sales transactions. Therefore, the Ld. CIT(A) after a detailed analysis upheld the addition of ₹63,96,11,995/- observing as under:

“11. Decision on ground No.2:

I have considered the facts of the case and submissions made by the appellant. With respect to the addition of Rs. 63, 96, 11,995 the Assessing Officer in the assessment order mentioned that the verification of bank accounts submitted by the appellant revealed that there were credit entries of Rs. 71.8 crores in the financial year 2007-08. The appellant did not explain the credit entries, therefore, the Assessing officer made an addition of Rs.63,96,11,995 as undisclosed sums us 69 of the IT. Act, 1961. It is seen from the record that the Assessee's CAs have furnished a copy of audited annual accounts showing purchases of Rs.77,08,20,357/- and sales of Rs.77,08,18,422/- showing loss of Rs. 1,935/- duly audited by M/s. V L Thakur & Co. Mumbai. However, copies of tax audit report u/s. 44AB of I.T. Act, 1961 are not filed thereby indicating that tax accounts were not tax audited u/s. 44AB. Be that as it may, when the CAs M/s.V L Thakur & Co. have audited the annual accounts under the Companies Act 1956, they must have seen bills and vouchers for the purchase and sales and the expenses before preparing and auditing the accounts and affixing their signatures. Nevertheless, the assessee as well as its CAs are coming up one legal argument after another, however they are reluctant to furnish basic details and documents regarding purchase and sales for verification and substantiating their main contention that ' assessee was a hawala entry giver' to prove its own case. It is surprising that assessee has filed copies of



two bank accounts for perusal, however, has refused to file details of purchases and sales for which the payments were made and received through banking channels or otherwise by creating a facade of payment through banking channel. Perusal of bank account of the assessee with OBC, Mumbai reveals that assessee used to regularly receive funds by cheques and instructions and assessee used to withdraw funds in cash and/or utilize funds for transferring to some other accounts with the same bank branch or a different bank branch. There are debits in the bank account for withdrawal in cash by way of cash transaction tax and this proves the point that the funds were withdrawn by way of cash and returned to some one who either remitted funds by cheque and/or for payments in cash to suppliers as per the understanding with various parties. Moreover, these transactions have been carried out on regular basis every day. Similar is the position with the entries appearing in J & K Bank, Mumbai bank account. There are credits in the bank account on daily basis in lakhs of rupees and the description reads as " by instruction number-outward clearing and by RTGS and there are debits reading as 'self and/or by RTGS and/or 'transfer' indicating mode of payment or withdrawal of funds. Names of Rahul Traders, Arihant Traders and KRC Trading appear frequently in J & K Bank account and there are several withdrawals of cash from the bank account for which cash withdrawal tax was also paid.

It appears from the discussion made in earlier paragraph that there are credits in the two bank accounts from time to time by 'transfer entries', 'clearing entries' and by instructions' and by RTGS, however, the assessee has failed to provide names, addresses and identities of the persons who either transferred funds by RTGS and or by instructions and/or by depositing cheques and hence assessee has failed to discharge its onus to



prove the identity of the persons who credited such amounts to the assessee's account with the bank and hence invocation of provisions of section 69 of the IT. Act, 1961 is fully justified and hence the addition of Rs.63,96,11,005/- made u/s. 69 is upheld. The assessee has tried to shield itself under the umbrella of judicial decisions by saying that 'it was a hawala giver' and hence its income should be estimated on a certain percentage basis, but it has refused to furnish basic details and documents to find out the facts of the case. In nutshell, addition of Rs. 63,96, 11,995/- made by the AO is upheld. In short, assessee's appeal on this ground of appeal of number 2 is rejected."

5.4 We find that despite being specifically asked by the Assessing Officer for providing sale bills to support its contentions of source of credit entries appearing in the bank account, the assessee squarely failed in discharging its onus. The Ld. CIT(A) also relied on the decision of the Tribunal in the case of Hassan Ali Khan dated 11.03.2016. In absence of discharge of its onus by the assessee for explaining source of credit in bank account, the action of the Ld. CIT(A) on the issue-in-dispute is justified and accordingly we uphold the same. All the grounds of appeal of the assessee are accordingly dismissed.



6. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court in 31/10/2022.

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;

Dated: 31/10/2022

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