

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No.795/Ind/2018**  
**Assessment Year: 2014-15**

|                          |   |                                 |
|--------------------------|---|---------------------------------|
| ACIT Central-1<br>Bhopal | <b><u>बनाम/</u></b><br>Vs.                  | Shri Narendra Gupta,<br>Gwalior |
| (Appellant / Revenue)    |   | (Respondent / Assessee)         |
| <b>PAN: AFQPG 8055 A</b> |   |                                 |
| Revenue by               | Shri P.K. Mitra, CIT-DR                     |                                 |
| Respondent by            | Shri Ashish Goyal & Shri N.D.<br>Patwa, ARs |                                 |
| Date of Hearing          | 08.09.2022                                  |                                 |
| Date of Pronouncement    | 01.12.2022                                  |                                 |

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 04.07.2018 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal [**“Ld. CIT(A)”**], which in turn arises out of assessment-order dated 30.03.2016 passed by learned DCIT (Central)-1, Bhopal [**“Ld. AO”**] u/s 143(3) of Income-tax Act, 1961 [**“the Act”**] for Assessment-Year [**“AY”**] 2014-15, the revenue has filed this appeal on following grounds:

- “(1) *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 8,25,03,772/-made by AO on account of unexplained Hawala Transactions.*

(2) *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 16,91,736/- made by AO on account of estimated commission earned from Hawala Business.”*

2. Heard the learned Representatives of both sides and perused the case-records consisting of orders of lower authorities; a Written-Submission and Paper-Book filed by Ld. AR.

3. The assessee is an individual who is tagged as part of “Tanya Jewellers Group” of Gwalior. A search u/s 132 was conducted upon the group including the assessee on 19.02.2014 wherein several incriminating documents were found and seized which divulged that the assessee was engaged courier/transfer of money from one place/person to another place/person which was termed by revenue-authorities as “Hawala business”. The present assessment-year 2014-15 with which are concerned in this appeal was assessed u/s 143(3) wherein the total income of Rs. 3,23,50,410/- declared by assessee in the return was assessed at Rs. 11,65,45,918/- after making twin-additions, namely (i) addition of Rs. 8,25,03,772/- on account of unexplained hawala transactions, and (ii) addition of Rs. 16,91,736/- on account of commission income from hawala business. Aggrieved by such assessment, the assessee filed appeal to Ld. CIT(A) whereupon the Ld. CIT(A) granted substantial relief to assessee. Now, being aggrieved by order of Ld. CIT(A), the revenue has come in appeal before us.

4. During hearing before us, it was observed that both of the grounds raised in the appeal-memo and narrated in the beginning, are so inter-linked that their combined adjudication would be more smooth and lucid. Hence, in the subsequent discussions, we would dispose of both grounds analogously with appropriate discussions as required.

5. The assessment history of assessee can be well-summarized in a very simple words and arithmetic. During search-proceeding, a document marked “LPS-1/2” was seized which contained details of daily transactions

(of 19/02/2014) such as names of persons in coded forms,; serial numbers of currency notes; code word “P”; figures omitting zeros (for example – 3,00,000/- was written as 3,000/00) which indicated that the assessee was engaged in hawala business. Further, certain mobile phones were also seized whose messages / whatsapp messages were retrieved/decoded which contained details like names/mobile numbers of senders/receivers, serial numbers of currency notes, amount of money transacted in code words like “Kg”, “@”, “P”, “Peti”, etc. and in some cases the full amounts itself or in lacs or after omitting zeros. The assessee too admitted in the statements recorded during search-proceeding that he was carrying out the activity of sending/receiving money for his clients (hawala). The assessee also used the network of other hawala operators located in different cities to receive/deliver cash. On the basis of these evidences, the revenue-authorities found that a total of 79 persons had made hawala-transactions through the assessee for a total quantum of Rs. 15,29,93,132/- during the period 22.01.2014 to 19.02.2014 i.e. approximately in 1 month. Based on their mobile numbers, their names and addresses were obtained using the departmental database and taking help of mobile service providers and summons were issued u/s 131. Out of 79 persons, 36 confirmed to have done transactions of Rs. 7,04,89,360/-, remaining 43 persons who had done rest of the transactions of Rs. 8,25,03,772/- did not turn up or denied to have done transactions. Ld. AO also observed that the assessee had been receiving a commission of Rs. 100/- to Rs. 200/- per lac for effecting those hawala transactions. Thus, the Ld. AO made addition in two tranches, viz. (i) Unexplained transactions of Rs. 8,25,03,772/- i.e. the transactions where the persons had not turned up / denied to have made transactions, Ld. AO made a full addition of Rs. 8,25,03,772/- (ii) Explained transactions of Rs. 7,04,89,360/- i.e. the transactions where the persons had appeared and admitted to have made transactions, Ld. AO made an addition of Rs. 16,91,744/- by applying a commission-rate of Rs. 200/- per lac on 7,04,89,360/- which results in estimated commission-income of Rs. 1,40,978/- for 1 month and extrapolating the same for 12 months arrived at

Rs. 16,91,744/-. Accordingly, the additions of Rs. 8,25,03,772/- and Rs. 16,91,744/- were made rejecting all submissions made by assessee during assessment-proceeding.

6. During first-appeal, the assessee made a detailed submission which the Ld. CIT(A) has noted in Para No. 5 of his order. After due consideration of the same, Ld. CIT(A) granted part-relief to the assessee by observing and holding as under:

**Page No. 23 to 32 of the order of Ld. CIT(A)**

*"I have given my thoughtful consideration to the facts and findings of the AO inter alia material brought on record. At the outset there is no denying of the fact that on retrieval of data/information from the mobiles(hand-sets) used by the appellant for "hawala business", department got the information about total transaction done during the period of approx ONE MONTH (between 22.01.2014 to 19.02.2014) having total value of Rs 15,29,93,132/-. Out of this, Id AO has accepted that in respect of "hawala transactions" done for 36 persons having value of Rs 7,04,89,360/-,the assessee received commission income @ Rs 200 per lakh worked out to Rs 1,40,978/- for one month and derived total commission income from entire year at Rs.16,91,744/- (Rs140978 X12 months). Ld AR has vehemently challenged the arbitrary approach of the Id AR mainly on three counts:*

*(a) Ld AO erred in used the data selectively in arbitrary manner by 'pick and choose method' which is not permissible as per law;*

*(b) The assessee has discharged his onus and provided all the necessary details about the rest of 43 persons for whom 'hawala transaction' was done;*

*(c) Ld AO erred in adding the entire amount in the hands of the assessee as income whereas only commission income should have been added.*

*(a) Pick and choose method is not permissible:-*

*This is an admitted fact that data/information relating to 79 persons was retrieved from mobile phones about hawala transaction done by the assessee (during one month) amounting to Rs. 15,29,93,132/-. In post search enquiries, 36 persons (wrongly mentioned in assessment order as 35) have admitted that they entered into transaction worth Rs. 7,04,89,360/- through the assessee. The names of such persons to whom summons were issued and who have admitted are given in para 17 of show cause notice dated 17.03.2016. About other remaining 43 persons, the details of transactions done by them through assessee is written in identical manner and evidence in the form of 'Whatsapp' messages containing similar type of data/information. Ld AO. has also*

not denied that transactions having value of Rs. 8,25,03,772/- [related to 43 persons] are dissimilar or different in any manner to the transactions admitted by 36 persons worth Rs. 7,04,89,360/-. It is also not the case that Ld AO was not having information/details about name and address of such 43 persons. In fact, Ld. AO has in para 10 of assessment order has unequivocally admitted as under:-

"10 As discussed above during the search and seizure action, a total of 11 mobiles were seized. Out of these total of 11 mobiles, 3 mobiles were not functional. The data was retrieved in respect of 8 mobiles. Further analysis of this data showed that 79 different persons / concerns have made Hawala transactions through the assessee. The total amount sent through Hawala route in these transactions is Rs. 15,29,93,132/-. Based on the mobile numbers of senders and recipients, names and addresses of the persons were obtained using departmental data bases as well as taking help of mobile service providers. These persons were examined on oath. During their statements, a total of 35 persons admitted that they have sent money totalling to Rs. 7,04,89,360/- using the Hawala channel of the assessee. Rest of the persons either did not appear in response to the summons or denied sending any money using the Hawala channel of the assessee. Therefore, the source of this amount of Rs. 8,25,03,772/- remains unexplained.

10.1 Since, the seized documents show that this amount was sent by the assessee and no explanation about the source of such amount was available, therefore, vide show cause notice dated 17.3.2016, the assessee was required to show cause as to why this amount of Rs. 8,25,03,772/- (inadvertently mentioned as Rs. 7,91,44,187/-) not be added to its total income.

10.2 Vide reply dated 21.03.2016 the assessee has submitted in this regard as under:

"....That as stated by me all the transactions as found from my Mobile is related to my courier services. I have provided courier services to the businessman for their business transactions. All the 79 persons are genuine and identifiable. That as informed by you 36 persons appeared before the Investigation wing and their statement was also recorded wherein and all the persons have accepted the transactions. That out of the remaining persons i.e 43 persons I have provide the complete postal address, mobile No and PAN to you. As I got the information that investigation wing has also properly served the notices to them. Though it is self proven fact that I am doing courier business for business man so all the transaction found in the mobile are belongs to them and I have earned the commission income on the transaction performed through me. Hence, no separate addition on account of this is again justifiable. The addition as propose to my income on the basis of these noting is not acceptable. I want to state that I have made the surrendered amount of Rs. 98,09,930/- and in respect of the amount surrendered during the course of search action I want to state that the surrendered amount of Rs. 98,09,930/- relates to the excess cash found during the course of search, the surrender of income was made on the basis of assets as found i.e. on

application basis and not on source of income basis. 50 this surrender amount setoff of this amount of Rs. 98,09,330/- should be given if any unwanted addition made by you in addition to return income. Further we have shown the additional income on account of advance of Rs. 2,21,00,000/- in the income tax return of the A. Y 2014-15 and have paid the tax on the same. This income has also been generated from by different business which includes Mobile 5M5 transaction, commission income, and other income. 50 further it is requested that setoff of this amount of Rs. 2,21,00,000/- should be given if any unwanted addition made by you in addition to return income .....

10.3 The explanation of the assessee has been considered. However, I am afraid that the same is not acceptable for the following reasons.

- i) The assessee has basically tried to explain that he has provided services for Hawala transactions to these persons and therefore, what can be taxed in his hands is merely the commission income and not the whole amount. However, he has not provided any evidence about providing services for Hawala transactions to these persons.
- ii) Although the assessee has claimed to provide postal address, mobile number and PAN, however, no admission from these persons about their using the Hawala network of the assessee has been submitted. The assessee has neither submitted any affidavit from these persons, nor has he even produced them for examination before the Assessing Officer. The details provided by the assessee at the fag end of the assessee do not serve any purpose as no meaningful enquiry can be carried out by the Assessing officer on the basis of those details.

10.4 Therefore, it is evident that the assessee has sent money amounting to Rs. 8,25,03,772/- through the Hawala channel. It is also established and held that the assessee has not been able to satisfactorily explain the source of such funds. Therefore, it is established and held that these sums belong to the assessee and the same are liable to be added to his total income for A. Y. 2014-15. Therefore, addition of Rs. 8,25,03,772/- is hereby made to the total income of the assessee for A.Y. 2014-15. Penalty proceedings u/s 271AAB are also initiated for furnishing inaccurate particulars / concealing the particulars of his income.

10.5 Although the assessee has requested for setoff of income of Rs. 2,21,00,000/- against the additions made by the Assessing officer, however, the request of the assessee is not acceptable for the simple reason that the additions have been made on the issue of undisclosed investments made through Hawala channel; the assessee has not been able to correlate the surrendered income with such undisclosed investments."

In other words, Ld. AO. was having the information about such other persons, he has identified them and issued summons u/s 131 to record their statements on oath. Only because they did not appear in response to summons or denied sending money using hawala transactions, the assessee cannot be held responsible for their denial. It is settled law that any evidence (here in this case digital evidence) has to be seen as a 'whole' in its entirety and any authority is not permitted to 'pick and

*chose' the same piece of evidence and give a totally different interpretation. Ld AO has accepted the 'modus operendi' adopted by the assessee for sending/receiving the money from one city to other city in lieu of commission income. When half of such transactions have been accepted that money so transferred belonged to 'other persons' whose name were found in whatsapp messages with mobile numbers, then it is totally arbitrary, unjustified and illegal to treat to other half of such similar transactions differently and held that money was belonging to the assessee. Hon'ble Gujarat High Court in the case of CIT vis Tirupati Construction Co (2015) 55 Taxmann.com 308 (Guj) wherein it was held that while appreciating a document (in this case a diary), it is required to be considered in its entirety and it cannot be considered in part. It is also important to note that assessee has provided the necessary details viz the names, Mobile No, PAN and address of such 43 persons with whom 'hawala transaction' of Rs. 8,25,03,772/- was done vide letter dated 21.03.2016. Thus, the assessee has satisfactorily discharged his onus and Id A.O. was not justified in 'shifting the onus back' on appellant and that too on flimsy ground. Obviously, it is not the onus of the appellant to explain the 'source' of third person and there can be no method by which he can obtain such information. Ld. AO has the powers and wherewithal's to enforce the compliance from such 43 errant persons but in no circumstance, assessee cannot be held guilty for such default. It is well known fact that due to fear of department or to avoid tax liability those persons must have chosen the easy way to altogether deny they transaction. For their denial or default, the appellant cannot be made to suffer the tax liability. Hon'ble Bombay High Court in the case of CIT Vs. M Shah, Prop. Shreni & Trading co. (1973) 90 ITR 396 (Born) has held that if the parties had received the summons but did not appear, the assessee could not be blamed.*

*Another aspect highlighted by the appellant that the above amount of Rs. 8,25,03,772/- does not represent the income of the appellant. Ld. AO has made the huge addition Simply on the basis of certain entries found in WhatsApp message retrieved from mobile phones seized from his premises. At the outset, Ld. AO has never alleged that nature of transaction involving huge amount of Rs. 8,25,03,772/- is anyway different than the other transaction involving 36 persons amounting to Rs. 7,04,89,360/- then law does not permit the AO to adopt totally different approach and making addition for entire amount rather adding only commission income. Onus is on the department to prove that amount which is being added is assessee's income. Interestingly, even after search & seizure operation, department could not find the assets/investments having worth of such huge amount to justify the rationality of this addition. I find a considerable force in the argument of the Id. AR that if the appellant has earned such huge income then it would have been found during search in some or other form. Appellant has also contended that the Ld. AO neither provided the copies of the statements of the persons who have not appeared or denied about such transaction nor any opportunity of cross-examination was also provided to him. It is settled law that in absence of cross-examination, any addition made behind the back of the assessee is not sustainable as held in the case of Prakash Chand Nahta v/s CIT (2008) 301 ITR 134 (MP)*

that as the AO has not summoned R inspite of his request made u/s 131 of the Act, the evidence of R could not have been used against the assessee in the affording a reasonable opportunity of being heard by summoning the said witness the assessment order was vitiated. Similarly, Hon'ble Supreme Court in the case of Andman Timber Industries v /s CCE (SC) civil Appeal No. 4228 of 2006 dated 02.09.2015 has held that failure of give the assessee the right to cross-examine witnesses whose statements are relied upon results in breach of principles of natural justice. It is a serious flaw which renders the order a nullity. Nevertheless, the AO has failed to discharge his onus of proving that actually Rs. 8,25,03,772/- represents the income of the assessee.

(b) The assessee has discharged his onus:-

It is evident from the letter dated 21.03.2016 that appellant has provided complete/relevant details of name and address of persons with from the courier/hawala business was done by the assessee. Ld A.O. has reproduced the reply of the appellant in the assessment order (para 10.2 pg 10). I have summoned the case records and files containing statements/summons issued to those 43 persons by the Investigation Wing. Thus, it is proved beyond doubt that the identity of persons was proved by the assessee to whom the DDIT(Inv) also issued summons as well. In some cases, they have even explained the transactions (recorded in coded form) giving all the details. It seems that rather going after those persons, the officer misdirected himself and erred in treating the impugned amount as income of the appellant which is neither justified on facts nor in law. Ld A.R. has also contended that AO has made addition u/s 68 of the Act. However, it is seen that Id AO has not invoked this provision anywhere in the assessment order. Nevertheless, despite the fact that provision of sec 68 have not been invoked. Even otherwise, the appellant has established the identity of these persons but in true sense provisions of sec 68 is not applicable in absence of books of accounts. Ld AO has simply made the addition on the basis of suspicion. On the other side, Id AO has utterly failed to bring any evidence or material on record to establish that impugned amount of Rs. 8,25,03,772/- belongs to the assessee and it represents his income. He has simply placed reliance on the fact that since concerned parties have denied or did not own up the transactions, it has to be presumed to be the income of the assessee. This is patently wrong and unjustified approach on the part of the Id A.O. because he has made such huge addition simply on presumption and assumption without bringing any positive evidence on record. Ld AR has placed reliance on the decision of CIT Vs. Ram Narain Goel 224 ITR 180 (P & H) that suspicion however strong cannot take the place of evidence. Honble P & H High Court in the case of CIT v /s Faquir Chaman lal 262 ITR 295 (P & H) has held that it is well settled proposition that the presumption however strong cannot substitute evidence. Similar were the findings of Hon'ble Calcutta High Court in the case of CIT Vs. Emerald commercial ltd & Anr 250 ITR 539 (cal).

(C) Ld AO erred in adding the entire amount:

Another aspect on which Id AR has strongly contended that entire amount of Rs. 8,25,03,772/- represents his business turnover on which at best his commission income should have been estimated. This is settled law that only income/profit margin embedded in turnover can be added. In the present case, there is no doubt that the impugned amount of Rs. 8,25,03,772/- represents the turnover of his hawala business and not the 'income' as presumed by Id AO. The Hon'ble M.P. High Court (jurisdictional High Court) in the case of CIT v/s Balchand Ajit Kumar 263 ITR 610 M.P has held that the total sale cannot be regarded as the profit of the assessee. In the case of Manmohan Sadani vis CIT 304 ITR 52 M.P. the Hon'ble jurisdictional High Court has held that total sales cannot be regarded as profit of the assessee, on the contrary it is a net profit rate which has to be adopted in such case. Similar views have been expressed by Hon'ble Gujarat HC in the case of CIT V/s President Industries 158 CTR 0372 (Guj) wherein it was held that entire sales could not be added as income of the assessee but addition could be made only to the extent of estimated profits embedded in sales for which net profit rate was adopted. This proposition finds support in the following case laws:-

- CIT vis Samir Synthetics Mill 326 ITR 410 (Guj);
- CIT vis gurbachan Singh J Juneja 302 ITR 63 (Guj);
- R R Carrying Corporation vis ACit 126 TTJ 240 (CTK);
- Cit vis Bholanath Poly Fab Pvt Ltd 355 ITR 290 (Guj);
- Sarawati Oil Traders vis CIT 231 CTR (Chhattisgarh) 165;

I find considerable force in this argument and facts of record also support this proposition that in this case Ld AO erred in adding the entire amount of impugned transactions instead of adding commission income which the assessee could legitimately command from these clients for the services rendered by him. It is seen that Id A.O. has estimated the commission income @ Rs. 200 per one lakh rupees transferred by the appellant. By this way, the commission income which ought to have been worked out by AO should be Rs. 3,05,986/- per month (Rs. 200 for Rs. 15,29,93,132/-) instead of Rs. 1,40,978/- per month estimated by AO in the assessment order. Since the above commission income was for just ONE MONTH's period, commission income for the whole year comes to Rs. 36,71,832/- (Rs. 3,05,986 X 12 months). It is seen that Id AO has already made addition of Rs. 16,91,744/- towards commission income earned on transactions worth Rs. 7,04,89,360/- (admitted by 36 persons), further addition need to be made/sustained works out to Rs. 19,80,088/- towards commission income earned in respect of transactions of Rs. 8,25,03,772/-.

### **Conclusion:-**

In view of the facts and circumstances of this case and considering the evidence in totality, I reach to unescapable conclusion that on the entire hawala transaction, the appellant has earned commission income of Rs. 36,71,832/- which need to be taxed as his commission income from 'hawala business' and Id AO was not justified in adding the entire amount of Rs. 8,25,03,772/- in respect of 43 persons who, though identified by the appellant either failed to attend before him or denied to

*have any transaction. Ld. AO committed an error of interpreting the 'same evidence' in two different manner without having any corroborative evidence to support his presumption. In my view, on the other hand, appellant has successfully and satisfactorily discharged his onus by identifying the concerned persons who have carried out hawala transactions with him and whose mobile numbers were ascertained from data/information retrieved from mobiles seized from the possession of the appellant to AO should have interpreted the evidence/information harmoniously and in totality instead of admitting 'Pick and Choose' method which is not permissible under the provisions of law. In view of the above, I hereby order the AO to estimate only commission income @ Rs. 200 per lakh which works out to Rs. 1,65,007/- for one month on the transactions of Rs. 8,25,03,772/- i.e. 19,80,088/- for entire year (Rs. 1,65,007 X 12 months) which is sustained and appellant will get a relief of Rs. 8,05,23,676/- (Rs. 8,25,03,764 - Rs. 19,80,088). Thu, Ground of appeal 2, 3 & 4 are partly allowed."*

7. Before us, the learned Representatives of both sides made their respective contentions for / against the additions. While Ld. DR vehemently supported the assessment-order, Ld. AR relied heavily upon the appeal-order passed by Ld. CIT(A). The pleadings made by learned Representative are on the same lines as made before lower authorities.

8. We have considered rival submissions of both sides and also perused the material held on record. Regarding first tranche of addition on account of "unexplained-transactions" of Rs. 8,25,03,772/-, the crux of assessee's submission is that those transactions are *at par* with the "explained-transactions" of Rs. 7,04,89,360/- in every respect and there is no difference whatsoever. *Firstly*, the revenue-authorities have loudly and unambiguously identified, found and understood (in Para No. 8.1 to 8.4 of the assessment-order) the nature of activity done by assessee which is just a courier/transfer of money for earning a commission of Rs. 100/- to Rs. 200/- per lac. This activity remains same in all transactions. *Secondly*, all transactions have been retrieved/decoded from the same set of evidences, namely the same mobile phones. *Thirdly*, the details of all transactions as retrieved/decoded, such as names/mobile numbers of senders/receivers, serial numbers of currency notes, amount of money transacted in code words like "Kg", "@", "P", "Peti", etc. and in some cases the full amounts itself or in lacs or after omitting zeros, were exactly identical. *Fourthly*, the

assessee had provided complete postal addresses, phone numbers and PANs of the persons of all transactions which is clearly evident from Para No. 10.2 and 10.3 of the assessment-order. However, the only difference is such that out of 79 transactions, the persons of 43 transactions did not turn up and persons of 36 transactions only responded. Ld. AR pointed out that though the Ld. AO has made a casual remark that the persons of 43 transactions either did not turn up or denied transactions, but their statements are neither mentioned in the assessment-order nor provided to the assessee. Ld. AR pleaded that even if it is believed that summons were issued by revenue to those 43 persons, it may be a case that the persons did not turn up, but certainly it cannot be a case that they denied having made transactions. We find weightage in the submission of Ld. AR since the revenue has not brought on record any statements of those persons. That brings us to observe that the two tranches of transactions are quite identical in all respect except the responsive/non-responsive attitude of the persons concerned on behalf of whom the moneys were transferred/couriered by the assessee. Moreover it is highly probable that those persons have actually availed services of assessee for courier/transfer of money but when it comes to enquiry by income-tax department, they did not respond to avoid hassles of tax authorities. Be that as it may, the activity of assessee in all transactions is clearly manifest from the details of transactions retrieved/decoded from the mobile phones seized during search-proceeding, which is one single activity i.e. courier/transfer of money on behalf of clients with an objective to earn commission. Therefore, there is no reason to distinguish the two categories of transactions merely on the basis of responsive/non-responsive attitude of those persons. We feel that the taxation-authorities must assess the income of assessee in a proper and judicious manner so as to charge a proper amount of tax, neither a penny less nor a penny more. We also observe that there is no evidence on record brought by revenue, despite search-proceeding, that the impugned “unexplained transactions” of 43 persons were different in any manner or structure than the “explained transactions” of 36 persons. We observe that

the various reasons cited in the beginning of this paragraph clearly reveal that all transactions were *at par*. Being so, we do not find any merit in the claim of revenue that the so-called “unexplained transactions” should be accorded a different treatment than the “explained transactions”. We observe that the Ld. CIT(A) has given a careful thought to the facts of case and validly held that the assessee must have earned only commission of Rs. 36,71,832/- on all transactions of Rs. 15,29,93,132/-. Having said so, Ld. CIT(A) was justified in applying a commission-rate of Rs. 200/- per lac on 8,25,03,772/- which results in estimated commission-income of Rs. 1,65,007/- for 1 month and extrapolating the same for 12 months arriving at commission of Rs. 19,80,088/- for the whole year. Finally, Ld. CIT(A) has rightly ordered the Ld. AO to assess commission-income of Rs. 19,80,088/- and thereby granted a relief of Rs. 8,05,23,676/- (Rs. 8,25,03,764/- minus Rs. 19,80,088/-) to the assessee. We do not find any infirmity in the action of Ld. CIT(A) and the same is hereby upheld. Therefore, Revenue’s Ground No. 1 is devoid of merit.

9. Regarding second tranche of addition of Rs. 16,91,736/- on account of “explained-transactions” of Rs. 7,04,89,360/-, we observe that the Ld. CIT(A) has in fact upheld the addition made by Ld. AO, not deleted the addition as claimed by revenue in Ground No. 2. This is very much clear from following paragraphs of the order of Ld. CIT(A):

**Page No. 31 of the order of Ld. CIT(A)”**

*“6.1 ..... It is seen that Ld. AO has estimated the commission income @ Rs. 200/- per one lakh rupees transferred by the appellant. By this way, the commission income which ought to have been worked out by AO should be Rs. 3,05,986/- per month (Rs. 200 for Rs. 15,29,93,132/-) instead of Rs. 1,40,978/- per month estimated by AO in the assessment-order. Since the above commission income was for just ONE MONTH’s period, commission income for the whole year comes to Rs. 36,71,832/- (Rs. 3,05,986/- X 12 months). It is seen that Ld. AO has already made addition of Rs. 16,91,744/- towards commission income earned on transactions worth Rs. 7,04,89,360/- (admitted by 36 persons), further addition need to be made /*

*sustained works out to Rs. 19,80,088/- towards commission income earned in respect of transactions of Rs. 8,25,03,772/-."*

**Page No. 35 of the order of Ld. CIT(A)"**

*".....However, as discussed in para 6.1 that commission income need to be estimated based on commission earned for one month on the total transaction of Rs. 15,29,93,132/- @ Rs. 200 per lakh and then income to be estimated for entire year i.e. Rs. 3,05,986/- X 12 months = Rs. 36,71,832/-. In view of this contention of the appellant that estimation of commission income should be restricted to one month only (for which evidence / data were found) is not found tenable, hence rejected."*

Thus, it is very clear that the Ground No. 2 raised by revenue is already held by Ld. CIT(A) in favour of revenue and Ld. CIT(A) has not given any relief as understood by revenue. At this stage, for the sake of completeness, we would like to add that on study of Para No. 6.3 of the order of Ld. CIT(A), we find that the Ld. CIT(A) has allowed telescoping benefit of the whole addition of Rs. 36,71,872/- (which of course includes the alleged addition of Rs. 16,91,744/-) against the cash balance of Rs. 98,09,930/- seized during search and surrendered by assessee but that ground is neither raised before us nor pleaded/argued during the course of hearing. Therefore, we are not called upon to adjudicate the same. Thus, Revenue's Ground No. 2 is also devoid of merit.

10. In view of above discussions and for the reasons stated above, both of the Grounds raised by Revenue are liable to be dismissed and we order accordingly.

**11. Resultantly, this appeal of revenue is dismissed.**

*Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 01/12/2022.*

Sd/-

(T.R. Senthil Kumar)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 01.12.2022

Patel/Sr. PS

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*

|    |  |         |
|----|--|---------|
| 1. | Date of taking dictation   | 9.11.22 |
| 2. | Date of typing & draft order placed before the Dictating Member                      | 9.11.22 |
| 3. | Date on which the approved draft comes to the Sr. P.S./P.S.                          | 9.11.22 |
| 4. | Date on which the fair order is placed before the Dictating Member for pronouncement |         |
| 5. | Date on which the file goes to the Bench Clerk                                       |         |
| 6. | Date on which the file goes to the Head Clerk  |         |
| 7. | Date on which the file goes to the Assistant Registrar for signature on the order    |         |
| 8. | Date of dispatch of the Order  |         |