

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI PAVAN KUMAR GADALE, JM

ITA No. 307/MUM/2022  
(Assessment Year 2015-16)

Bhupendra Singh Karnawat  
6/1974, 104, Jayshree, Harikrishna  
Comp. Dalgiya Sheri,  
Mahindharapura,  
Surat -395 003  
(Appellant)

Vs.

ACIT,CC-1(3)  
Pratishtha Bhawan, M.K.Road,  
Mumbai-400 020

(Respondent)

PAN No. AIKPK8272C

ITA No. 470/MUM/2022  
(Assessment Year 2015-16)

Sankhala Exports Pvt. Ltd  
5, Navyug Nagar, Teen Batti,  
Walkeshwar Road,  
Mumbai-400 006  
(Appellant)

Vs.

ACIT CC-1(3)  
Pratishtha Bhawan,  
Mumbai-400 020

(Respondent)

PAN No. AAHCS1855M

Assessee by : Shri. Sucheck Anchaliya  
Revenue by : Shri. Chetan M.Kacha, Sr.AR.

Date of hearing: 19.01.2023  
Date of pronouncement : 31.01.2023

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. These are two appeals of two different assessee i.e. shri Bhupendra Singh Karnawat & M/s Sankhala Exports Pvt. Ltd for A.Y. 2015-16 involving similar facts, arguments of the parties are also similar, therefore, both these appeals are decided by this common order.

**ITA No. 307/Mum/2022**  
**A.Y. 2015-16**  
**Bhupendra Singh Karnawat**

02. The appeal in ITA No. 307/Mum/2022 is filed by the assessee Mr. Bhupendra Singh Karnawat against the appellate order passed by the learned Commissioner of Income-tax (Appeals)-47, Mumbai, [ The ld CIT (A)] dated 30<sup>th</sup> December, 2021, wherein the appeal filed by the assessee against the assessment order dated 25<sup>th</sup> November, 2019, passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) by the Asst. Commissioner of Income Tax, Central Circle 1(3), Mumbai (the learned AO) was dismissed.
03. Assessee is aggrieved with that appellate order and has preferred the appeal raising following grounds of appeal:-

*“1. On the facts and circumstances of the case and in law the Ld.CIT(A) erred in not considering that the assumption of jurisdiction by the Ld. Assessing Officer is bad in law as the conditions laid down under the Act for initiating reassessment proceedings u/s. 147 of the Act have not been fulfilled.*

*2. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the addition of alleged commission income arising out of alleged bogus unsecured loans, bogus purchases and bogus sales amounting to ₹ 13,20,771/- on protective basis without appreciating the fact that the same amount has been substantively added in the case of Shri Bhawarlal Jain, thereby making the same addition in the hands of two assesseees leading to double taxation.*

*3. On the facts and circumstances of the case and in law the Ld.CIT(A) erred in confirming addition of ₹ 3,23,94,235/- (being 7.48% of ₹ 43,30,78,008/-), on estimation basis, by treating genuine turnover of the appellant as bogus sales.*

*4. On the facts and circumstances of the case and law the Ld.CIT(A) erred in confirming the addition of alleged bogus unsecured loans, bogus sales and bogus purchases and also*

*confirming the addition of gross profit, on estimation basis, of a percentage of the total turnover, without appreciating the fact that both such additions cannot co exist together.*

*5. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming addition of alleged commission income arising out of alleged bogus unsecured loans, bogus sales and bogus purchases, without appreciating the fact that for the very same assessee for previous assessment years, being A.Y. 2008-09 to A.Y. 2014-15, the Ld.CIT(A) has deleted the protective addition of alleged commission income, thereby not following the principal of consistency.*

*6. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in changing protective addition of commission income on alleged bogus sales to substantive addition on the incorrect presumption that the same was not considered in the order of the Hon'ble ITAT in the case of Shri Bhanwarlal Jain.*

*7. On the facts and in the circumstances of the case and in law, the Ld.CIT (A) erred in changing protective addition to substantive addition without issuing any show cause notice or opportunity of being heard to the appellant, which is in violation of section 251(2) of the Income Tax Act, 1961 and in violation of the principles of natural justice.*

*8. on the facts and in the circumstances of the case and in law, the Ld.CIT (A) erred in confirming the addition made by ld.AO, without providing any opportunity of cross examination, without any corroborative evidence and without providing copy of statements relied upon.”*

04. By this appeal, the learned CIT (A) has confirmed the reopening of the assessment and upheld the action of the learned Assessing Officer in confirming the addition of ₹13,20,771/- of commission on Bogus Accommodation entries provided as conduit of one Mr. Bhanwarlal Jain, an accommodation entry provider, made by the learned Assessing Officer partly

on substantive basis and partly on protective basis and further, confirmation of addition of ₹3,23,94,235/- being 7.48% as gross profit addition of the sale of ₹43,30,78,008/- as bogus sales. The learned CIT (A) has upheld the protective addition as substantive addition in the case of the assessee.

05. The facts of the case are as under:-

- i. The assessee is an individual who filed his return of income on 25<sup>th</sup> September, 2015, declaring total income of ₹58,700/-.
- ii. The case of the assessee was reopened by issue of notice under Section 148 of the Income-tax Act, 1961 (the Act) dated 5<sup>th</sup> September, 2018.
- iii. The reasons for reopening are that search was carried on 3<sup>rd</sup> October, 2003 in case of Bhavarlal Jain Group. Mr. Bhavarlal Jain admitted in his statement under Section 132(4) of the Act on 11<sup>th</sup> October, 2013 that he is engaged in providing accommodation entries to other beneficiaries in the form of bogus loans, sales and import and export, through 70 concerns and operated and managed by him through directors, partners and proprietors who are actually employees of Mr. Bhavarlal Jain. The assessee is one of such persons. Accordingly, the case of the assessee was reopened.
- iv. In response to the notice under Section 148 of the Act, the assessee filed his return of income on 28<sup>th</sup> October, 2018 declaring the same income which was shown in original ROI.
- v. The reasons recorded were supplied to the assessee on 29<sup>th</sup> August, 2019. The assessee objected to reopening of the assessment vide communication dated 3<sup>rd</sup> October, 2019, which were disposed off on 5<sup>th</sup> October, 2019. Further, statutory notices were issued.
- vi. On the basis of the search and information collected therein, a show cause notice issued to the assessee on 16<sup>th</sup> October, 2019. Assessee did not comply with the statutory notices and



therefore, the learned Assessing Officer on the basis of evidences collected and documents seized during the course of search on Bhavarlal Jain found that assessee is a director in the company M/s Rare Gems Pvt. Ltd. and also a proprietor of M/s Nice Diamonds. Accordingly, the bogus sales of ₹43,30,78,008/- resulted into commission income on 0.07% amounting to ₹3,24,808/-. The learned Assessing Officer also granted deduction of 10% for expenses, the bogus purchases and accommodation of bogus unsecured loans were also considered and total commission income was determined at ₹14,67,523/-. After granting deduction of expenditure total undisclosed income of commission earned by the assessee was determined at 13,20,771/-.

- vii. Further, gross profit was also added in the hands of the assessee estimating gross profit percentage of 7.48% and accordingly, ₹3,23,94,235/- was also added.
- viii. Accordingly, against the returned income of ₹58,700/- total income was determined at ₹3,37,73,706/- by assessment order dated 25<sup>th</sup> November, 2019.

- 06. The assessee preferred the appeal, which was disposed off by appellate order dated 30<sup>th</sup> December, 2021. Appellant made detailed written submissions which are reproduced by the learned CIT (A) at appeal order page no.6 . The learned CIT (A) confirmed the reopening of the assessment vide Para no.7 of his order.
- 07. On merits of the case, the learned CIT (A) noted that the learned Assessing Officer has made addition of commission income of accommodation entries on protective basis. The additions on substantive basis has been made in the hands of Mr. Bhavarlal Jain. The learned CIT (A) noted that ITAT vide order dated 6<sup>th</sup> August, 2021 has decided the case of Mr. Bhavarlal Jain, wherein the addition was confirmed in the hands of Mr. Bhavarlal Jain. The decision of the co-ordinate Bench was not accepted by the Revenue and further appeal was preferred. Therefore, estimation was not final.

08. The learned CIT (A) confirmed the estimation made by the learned Assessing Officer with respect to the commission earned on protective basis in the hands of the assessee with respect to the commission income earned on accommodation entries of bogus unsecured loans and bogus purchase. Further, the commission income earned on bogus sales was not part of the order of the co-ordinate Bench and therefore, the estimation of commission income for providing bogus sales amounting to ₹3,24,808/- was confirmed in the hands of the assessee on substantive basis.
09. Further, the gross profit addition of ₹3,23,94,235/- at the rate of 7.8% on sales of ₹43,30,78,008/- was also confirmed. Against this appellate order assessee is in appeal before us.
010. At the time of hearing, the assessee moved an application for adjournment stating that the impugned additions in this appeal are partly protective addition in the hands of the appellant made by the learned Assessing Officer and the substantive addition is made in the hands of another assessee Mr. Bhavarlal Jain. It was stated that appeal of Mr. Bhavarlal Jain is still pending before the learned CIT (A)-47, Mumbai. He submitted that therefore this appeal should be kept in abeyance till the appeal of Mr. Bhavarlal Jain is decided by the learned CIT (A)-47, Mumbai.
011. The learned Departmental Representative also reiterated that the learned CIT (A) has confirmed the addition of commission on accommodation entries of bogus unsecured loan and bogus purchases in the hands of the assessee on protective basis. Further, commission income of bogus sales is confirmed in the hands of the assessee on substantive basis. The addition on substantive basis is pending before the ld CIT (A) in case of Mr Bhanwarlal jain.
012. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact clearly shows that assessee is one of the persons who acted as conduit of Mr. Bhavarlal Jain, this has been clearly mentioned in the assessment order. Thus, it is clear that operations of the assessee be it earning commission on accommodation entries of bogus unsecured loans, bogus purchases or bogus sales is run actually by Mr Bhanwarlal jain. The learned Assessing Officer has made an addition of ₹13,20,771/- in the hands of the assessee on protective basis. In the hands of Mr. Bhavarlal Jain, the addition is made on substantive basis. The learned CIT



(A) has confirmed the commission income on bogus unsecured loan and bogus purchases on protective basis in the hands of the assessee. However, the commission income on bogus sales has been confirmed in the hands of the assessee on substantive basis. With respect to the purchase and sale transactions entered into by the assessee and resulting gross profit thereon is made by the learned Assessing Officer in the hands of the assessee despite categorically noting that assessee is one of the persons, who acted under the instructions of Mr. Bhavarlal Jain. This addition was also confirmed by the learned CIT (A) in the hands of the assessee. On careful reading of the assessment order, it is clear that assessee is one of the persons, who was found to be acting as one of the dummy directors, proprietor on paper of Mr. Bhavarlal Jain group. Therefore, it is apparent that real beneficiary is Mr. Bhavarlal Jain. Both the parties have categorically stated that appeal of Mr. Bhavarlal Jain is pending before learned CIT (A)-47, Mumbai, who is also the appellate authority in the present case of the assessee. Firstly, the appellate authority should have heard and disposed of the appeal together when a substantive addition is made in the hands of one assessee and protective addition is made in the hands of another assessee and appellate authority is same. Secondly, the learned appellate authority cannot confirm the addition on protective basis unless the addition on substantive basis can be decided. Therefore, the learned CIT (A) has pre decided appeal of the assessee when addition is required to be examined simultaneously. Even the confirmation of addition of ₹3,24,808/- in the hands of the assessee on substantive basis is also not correct when the actual owner of such income is not decided. Such decision can only be taken when the appeal of Mr. Bhavarlal Jain is decided. Further, the learned Assessing Officer despite noting a categorical finding in Para no.11.3 that these are the concerns operated by Mr. Bhavarlal Jain through the assessee. Therefore, actually real owner of this profit is also required to be decided. When the concerns of the assessee are found to be operating by Mr. Bhavarlal Jain, there is no justification to make the addition in the hands of the assessee without deciding the chargeability of such income in the hands of Mr. Bahvarlal Jain. The learned CIT (A) may decide this issue along with the appeal of Mr. Bhavarlal Jain by taking appropriate recourse to the provisions of the law.



013. Accordingly, we set aside the ground nos. 2 to 8 of the appeal of the assessee back to the file of the learned CIT (A) with a direction to decide the appeal simultaneously, giving a clear cut finding that who owns the commission income and in fact who is the real beneficiary of the gross profit earned by these entities.
014. Further, with respect to the reopening of the assessment, we find no infirmity in the order of the lower authorities in upholding the action of the learned Assessing Officer. Thus, ground no.1 is dismissed.
015. In the result, the appeal of the assessee is partly allowed for statistical purposes.

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**Sankhala Exports Pvt. Ltd**

016. The facts and circumstances of this case are identical to the facts of the case in ITA No. 307/Mum/2022. In this case, the learned Assessing Officer has passed the assessment order under Section 143 read with section 147 of the Income-tax Act, 1961 (the Act) on 19<sup>th</sup> December, 2019, by making addition of commission income on protective basis of ₹13,83,893/-. The addition on account of gross profit of ₹59,18,120/- and further, unexplained cash credit amounting to ₹4,73,73,337/- against the total income return by the assessee at a loss of ₹10,62,926/-. The learned CIT (A) has confirmed the reopening of the assessment, however, the commission income on bogus unsecured loan and bogus purchases was confirmed in the hands of the assessee on protective basis and commission income on bogus sales of ₹38,804/- on substantive basis. With respect to the gross profit addition of ₹59,18,920/- was also made in the hands of the assessee despite the fact that the assessee is a company being operated by Mr. Bhavarlal Jain. Further, the addition of ₹4,73,73,337/- challenged before him as per ground no.11 of the appeal are not at all disposed off by the learned CIT (A). Therefore, for the reasons given by us in ITA No.307/Mum/2022, we also set aside all the grounds of appeal except the reopening of the assessment back to the file of the learned CIT (A) with similar direction.
017. Accordingly, appeal of the assessee is partly allowed for statistical purposes.



018. In the result, appeals of both the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 31.01.2023.

Sd/-  
(PAVAN KUMAR GADALE)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.01.2023

*Sudip Sarkar, Sr.PS*

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai