

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

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)
AND
SHRI RIFAUR RAHMAN (ACCOUNTANT MEMBER)**

I.T.A No.7191/Mum/2018 - 2008-09
I.T.A No.7192 /Mum/2018- 2009-10
I.T.A No.7193/Mum/2018 - 2010-11
I.T.A No.7194 /Mum/2018- 2011-12
I.T.A No.7195/Mum/2018 - 2012-13
I.T.A No.7196/Mum/2018 - 2013-14
I.T.A No.7197/Mum/2018 - 2014-15

Praveen Kumar Jain Flat No.504, Pawan Indraprastha Building Satya Nagar, Borivali West Mumbai-400 092 PAN : AADPJ5102D	vs	Dy. Commissioner of Income- tax Central Circle 1(1), Room No.903,9th Floor, Pratishta Bhavan (Old CGO Building(Annexe) M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

I.T.A No .4977/Mum/2019 - 2008-09
I.T.A No. 4978/Mum/2019 - 2009-10
I.T.A No. 4079/Mum/2019 - 2012-13
I.T.A No. 4981/Mum/2019 - 2013-14
I.T.A No. 4980/Mum/2018 - 2014-15

Pankaj Jain Flat No.504, Pawan Indraprastha Building Satya Nagar, Borivali West Mumbai-400 092 PAN : AADPJ5102D	vs	Dy. Commissioner of Income- tax Central Circle 1(1), Room No.903,9th Floor, Pratishta Bhavan (Old CGO Building(Annexe) M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

AND

I.T.A No.2498/Mum/2019 - 2008-09

Casper Enterprises Pvt Ltd Office No.211, Balaji Arcade Premises, Near Sejal Glass, S.V. Road, Kandivli (West) Mumbai-400 067 PAN : AAACO7955M	vs	Dy. Commissioner of Income- tax Central Circle 1(1), Room No.903,9th Floor, Pratishta Bhavan (Old CGO Building(Annexe) M.K. Road, Mumbai-400 020
APPELLANT		RESPONDENT

Assessees represented by	None
Department represented by	Shri K.C. Salvamani, CIT DR

Date of hearing	19/01/2023
Date of pronouncement	19/01/2023

ORDER**PER : KULDIP SINGH : JM**

Aforesaid appeals pertaining to assessment years 2008-09 to 2014-15 bearing common questions of law and facts and having identical issues, are being taken up for disposal by way of composite order to avoid repetition of discussion.

2. Appellants, Shri Pravin Kumar Jain and Shri Pankaj Jain and Casper Enterprises Pvt Ltd (hereinafter referred to as 'the assessee'), by filing present appeals sought to set aside the impugned common order dated 28/09/2018 passed by Ld.Commissioner of Income-tax (Appeals)-47, Mumbai [hereinafter referred to as 'Ld.CIT(A)] by raising identically

worded grounds except the difference in amount of addition (for A.Y. 2008-09 to 2014-15 (for the sake of brevity Grounds of ITA No.7191/Mum/2018 for A.Y. 2008-09 are taken) on the grounds interalia that –

“The appellant has preferred an appeal against the order dated 28.09.2018 passed by Id. CIT (A) u/s. 250 of The Income Tax Act, in pursuance of appeal filed against assessment order dated 17.03.2016 passed u/s. 153A r.w.s. 143 (3) of the Income Tax Act, Following are the grounds of appeal without prejudice to one another -

*I. The learned Commissioner of income Tax (Appeal) has erred in not allowing the assessee's appeal for disapproving the learned Assessing officer's view of rejecting the **Books of Accounts and Income** of appellant by invoking the provision of section 145 (3) of the income tax Act, 196.*

II. The learned Commissioner of Income Tax (Appeal) has again erred in upholding the action of learned assessing officer of treating all the business activities as accommodation entry without appreciating the submission / documentary evidence provided to prove the genuineness of all the transaction of Income, Expenses, Business Losses, Capital Gain / Loss, purchase, sales, loans and advances and Investments etc submitted by appellant.

III. Against Addition of Rs. 18.14 Crores

*The Learned Commissioner of Income Tax (Appeal) has again erred in upholding the addition made by the learned Dy. Commissioner of Income Tax by **estimating addition** at the rate of alleged commission income at 0.20% p.m. for Loans & Advances (**Amounting Rs. 8,07,62,118/-**), 2% for Share Application money (Investments) (**Amounting Rs. 7,57,35,620/-**), 10 paise for ^Purchase and Sales (Trading Activities) (**Amounting Rs. 1,29,29,924/- and Rs. 1,18,40,900/-**) and 0.25% of Other Transaction alleged to be executed through other brokers (**Amounting Rs 1,69,625/-**) during the captioned year.*

*IV. The Learned Commissioner of Income Tax (Appeal) has again severely erred in allowing the Dy. Commissioner of Income Tax by treating the unsecured loan transactions amounting to Rs. 47.39 Crores entered by different entities / companies with **Spanco Group** as unexplained income of the appellant.*

V. The learned Commissioner of Income Tax (Appeal) has again erred in upholding the view of the learned assessing officer of disallowing of Deduction claimed under section 80C amounting to Rs. 100000/-.”

3. Briefly stated facts necessary for consideration and adjudication of the issues at hand are: On the basis of search and seizure operation conducted under section 132 of the Act by DDIT(Inv)-Unit-III(2), Mumbai on 01/10/2013 at the premises of assessee, Shri Pravin Kumar Jain – 504, Pawan, Indraprastha Building, Satya Nagar, Borivili, Mumbai as well as his residential premises, a notices under section 153A were issued to the assessee, in response thereto they filed return of income under section 153A declaring total income of Rs. 12,96,430/- in case of Shri Pravin Kumar Jain and Rs.73,20,790/- in case of Shri Pankaj Jain. In case of Casper Enterprises Pvt Ltd, assessee filed return of income under section 153A declaring total income of Rs. 25,44,101/-. The notices under section 143(2) and 142(1) alongwith questionnaire were issued and served upon the assessee, who were duly represented by their Chartered Accountant, who have furnished requisite details. Assessee claimed to have derived income from business, capital gain and other sources. During the assessment proceedings, Assessing Officer noticed that assessee were directors, partners and proprietors of various group concerns, 15 in number, which are actually dummy or namesake. During investigation it has come out that various group concerns are run and operated by the assessee. Confessional statement of assessee, Shri Pravin Kumar Jain was recorded which was duly corroborated with facts collected during investigation. It has also come on record that assessee has provided accommodation entries for long term capital gain, share application, accommodation entries for bogus sales and purchases and accommodation entries

facilitated from bogus long term capital gain scheme in penny stock. Assessing Officer on the basis of assessment proceedings reached the conclusion that it is proved on record that credit appearing in the hands of the dummy companies being run by the assessee are nothing but accommodation entry in the guise of unsecured loans which are run, operated and controlled by the assesseees for conducting the business of providing accommodation entries. These loans have been added in the case of respective companies on protective basis. However, these credits are hereby added in the case of assessee, Shri Pravin Kumar Jain on substantive basis under section 68 of the Act to the tune of Rs.47,39,00,000/-, Rs.14,72,345,508/-, Rs. 20,07,76,729/-, Rs. 20,07,76,729/- , Rs.19,27,29,268/-, Rs.20,00,43,935/-, Rs.20,07,77,502/- & Rs.6,68,51,893/- for A.Ys. 2008-09 to 2014-15 respectively and in case of Pankaj Jain Rs.3,00,000/-, 1,61,460/-, Rs.8,10,000/-, 13,50,000/- and Rs.14,90,000/- for A.Ys 2008-09 & 2009-10 & 2012-13 to 2014-15, respectively being the commission income and thereby framed the assessment under section 153A read with section 143(3) of the Act.

4. However, in case of Casper Enterprises Pvt Ltd, Assessing Officer made substantive addition of Rs.12,39,00,000/- in case of Shri Pravin Kumar Jain and made same addition in the hands of Casper Enterprises Pvt Ltd on protective basis. Assessing Officer also made addition of Rs.99,56,650/- as Income from other sources being commission on bogus

share application, loans and advances, purchase and sale @2%, 0.20% pm, 20 paise per Rs.100/- and 20 paise per Rs.100/- respectively.

5. Aforesaid appeals by Shri Pravin Kumar Jain and Shri Pankaj Jain were instituted way back on 14/12/2018 and appeal by Casper Enterprises Pvt Ltd of Pravin Kumar Jain group was instituted on 22/04/2019. Assessee by putting in appearance on numerous dates, through Shri Rajiv Khandelwal, CA, Pujan Mehta, CA, Neel Khandelwal, CA, Ms. Priyanka Rasal and Sanjitha Gurav, kept on seeking adjournments on the one pretext or the other. On 05/05/2022 none appeared on behalf of the assessee. Thereafter notice was given to him. Again today, on 19th January, 2023, none appeared on behalf of the assessee. The Bench is satisfied that the assessee do not want to prosecute the present appeals and they have nothing to say qua the appeals filed by them. So the Bench has decided to dispose of these appeals on the basis of material available on record with the assistance of the Ld.DR for the Revenue.

6. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing all the appeals filed by the assessee by way of common order. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee have come up before the Tribunal by way of challenging impugned common order passed by Ld.CIT(A).

7. We have heard the Ld.DR for the Revenue, perused the order passed by learned lower authorities and material available on record in the light of law applicable thereto.

7. Undisputedly, Assessing Officer has rejected the books of account filed by the assessee under section 145 of the Act, which are under challenge before the Tribunal. It is also not in dispute that Assessing Officer has estimated the addition @0.20% p.m. for loans and advances on account of the commission income, @2% for share application money, 20 ps. for purchase and sales (trading activity) and 0.25% of other transactions alleged to have been executed through other brokers. It is also not in dispute that the Assessing Officer reached the conclusion that entire unsecured loan transactions amounting to Rs.47.39 crores entered by different entities / companies with Spanco group as unexplained income of the assessee. It is also not in dispute that the Assessing Officer also disallowed deduction claimed under section 80C amounting to Rs.1,00,000/-.

8. We have also perused the impugned order passed by Ld.CIT(A). From the search and seizure operation conducted by the Investigation Wing of the Revenue Department and assessment proceedings carried out by the Assessing Officer it is proved on record that the assessee were directors / partners of 15 companies from 1992 to 2011 as detailed on pages 18, 19 & 20 of the impugned order.

9. It is also proved from the statements of Shri Nilesh Parmar, Shri Jitendra Tater, S. Ramesh Soni, Shri Dinesh Chaudhary, Shri Pankaj Jain, Shri Uttam Hinger, and Shri Manish Jain recorded under section 131 / 132 of the Act that they all are the dummy persons, who were getting meagre salary for lending their names to the concerns being run by the assessee. During the search and seizure operations, parallel books of account and other incriminating material were found from M/s Mahalaxmi Mills and paper mart owned by the assessee, to which assessee has admitted that all such items seized from the premises at M/s Mahalaxmi Mills and paper mart recorded in the Panchanama dated 03/10/2013 belonged to him.

10. Under section 132(4) of the Act, statement of Shri Pravin Kumar Jain was recorded wherein he has categorically admitted that the entire business of accommodation entries is through him and Pankaj Jain and companies under their control, which are either owned by him or directly or indirectly controlled are paper companies with no real business transaction. His statement is extracted below for ready perusal:-

“Q.65 Please give the list of all employees and other close associates who help you in carrying out your day to day activities.

Ans. Sir, I do my business activities with the help of my staff members. My staff members include the following people:

1. Sh. Manish Jain looks after the accounts
2. Sh. Sanath Upadhyaya looks after the accounts.
3. Sh. Nilesh Parmar also looked after accounts but he quit the job about a year ago.
4. Sh. Abhinandan Jain alias Monu looks after the banking transactions.
5. Sh. Sushil Jain looks after banking transactions.
6. Sh. Rashabh Babel looks after banking transactions.
7. Sh. Uttam Hinger looks after the income tax returns.

8. Sh. Prabhakar is a delivery boy.
9. Sh. Shantaram is a delivery boy.
10. Sh. Digambar is a delivery boy.
11. Sh. Arjun is a delivery boy.

I have also appointed some close associates as Directors in my companies. Sh Manish Jain, Sh Abhinandan Jain, Sh Rishabh Babel, Sh Sanath, Sh Nilesh, Sh Sushil Jain, Sh Jitendra Tater, Sh Virendra Abani and Sh Pankaj Jain are directors in some of my companies.

Q.114. I am showing you statement of Sh. Pankaj Kumar Jain, Director in Sumukh Commercials Pvt Ltd, recorded on oath u/s 132(4) of the Income Tax Act, 1961 during search proceedings u/s 132 at C/512, Ostwal Onyx, Jwalpek, Bhayander, Thane on 03.10.2013. Please go through it.

Ans. Sir, I have gone through the statement of Sh. Pankaj Kumar Jain recorded on oath u/s 132(4) on 03.10.2013.

Q.115 In his statement, Sh. Pankaj Jain has clearly stated that he is just a namesake director in various companies run by you. He has not performed any function in those in the capacity of director and his function is restricted to RTGS and cash transfers. Further he has pointed out that there is no genuine business activity being carried out in those companies. Please comment on the same.

Ans. Sir, I fully agree with the statement of Sh. Pankaj Jain. He was namesake director and all companies in which Pankaj is Director are controlled by me.

Q.116 I am showing you statement of Shri Nilesh Parmar, your employee, recorded on oath u/s 131 of the Income Tax Act, 1961 during enquiry at 343, 4th Floor, Scindia House, Ballard Pier, Mumbai on 02.10.2013. Please go through it.

Ans. Sir, I have gone through the statement of Shri Nilesh Parmar recorded on oath u/s 131 on 02.10.2013.

Q.117 I am showing you statement of Shri Nilesh Parmar recorded on oath on 02.10.2013 wherein reply to Q.15 to 20 he has stated that regarding concerns owned by you, there is no godown, vault or warehouse where stock is maintained. He has never seen any physical movement of stock in any of the concerns mentioned. He has never seen any customer come to the office of Praveen Jain for negotiating the price of goods / material. That there is no employee working in any of the concerns mentioned and that no genuine business activity is carried out in any of the said concerns. Also, the concerns are merely engaged in providing accommodation entries of sale, purchase and bogus loans and advances to various parties.

Please comment on the same.

Ans. Sir, I agree with the statement of Shri Nilesh Parmar. We are just in the business of providing accommodation entries. Hence, there is no need to maintain goods, godown, vault or warehouse.

Q.63 Please give the complete list of all the companies in which either you or your close associates/family members are directors along with the complete list of companies under your control.

Sir, I am a Director in the following companies:

1. Anchal Properties Pvt Ltd
2. Easy Mercantile Pvt Ltd
3. Nakshatra Business Pvt Ltd
4. Olive Overseas Pvt Ltd
5. Picadily Overseas Pvt Ltd
6. PIM Trading (I) Pvt Ltd
7. Raghunandab Reyons Ltd
8. Riddhi Siddhi Multitude Pvt Ltd
9. Sanjivani Enviro Protection Ltd
10. SBI Training India Pvt Ltd
11. Sumith Commercial Pvt Ltd
12. Spine Infotech Pvt Ltd
13. Angel Softlang Pvt Ltd

With the following companies and other entities, I am not formally associated but, these are managed and controlled by me:

Sr.No. Name of Company

1. Aalla Diamond Industries Limited
2. Ansh Merchandise Pvt Ltd
3. Atharv Business Pvt Ltd
4. Bhagyashree Gems Pvt Ltd
5. Casper Enterprise Pvt Ltd
6. Duke Business Pvt Ltd
7. Flak Trading Co Pvt Ltd
8. Jahanavi Gems Pvt Ltd
9. Javde India Impex Ltd
10. Josh Trading Pvt Ltd
11. Kush Hindustan Entertainment Ltd
12. Pragati Gems Pvt Ltd
13. Spurti Computech Pvt Ltd
14. Tanika Commodities Pvt Ltd
15. Trangular Infocom Pvt Ltd
16. Vanguard Jewels Ltd
17. Viraj Mercantile Pvt Ltd
18. Yaswh V Jewels Ltd

19. Anan Diamonds
20. Arihant Corporation
21. Ganesh Trading Co
22. Jasoda Exports
23. Kailash International
24. KLI Diamond
25. Kunal Gems
26. Kush International
27. Mahalxmi Corporation
28. Mahalxmi Trading Co
29. Minal Corporation
30. Mohit International
31. Natasha Enterprises
32. Paras Gems
33. Pratik Impex
34. R S Enterprises
35. Raj Export
36. Ryan International
37. Seven Star Gems
38. Suraj Gems
39. Taj Impex

11. From the aforesaid statement of the assessee recorded during search and seizure operation duly corroborated have come on record that the assessee has employed Shri Manish Sanat Upadhyaya and others. To look after the tax matters, employed Avijit Ranka and Sushil Jain to look after banking transactions whereas Shri Dinesh Choudhary was a dummy director in various concerns operated by him. Assessee Shri Pankaj Jain is also a namesake director in various companies. There are 52 concerns, which are operated by the assessee out of which assessee, Shri Pravin Kumar Jain is a director in 13 of them and the remaining concerns are shown in the name of dummy directors, partners and proprietors, whose effective control and management was under the control of assessee. It has also proved on record that from the statement of employees

recorded during search by Investigation Wing that no genuine business was being carried out by the group concerns in question.

12. The Ld.DR for the Revenue minutely explained the modus operandi of entire operation / activities carried out by assessee through his dummy / paper companies, who have been providing accommodation entries by charging commission / brokerage. It has also been proved on record that actual promoters of diamond (both rough and polished) have imported the diamonds in the name of such diamond companies being operated by the assessee. The real importers also have not recorded the actual purchases of diamond purchases from the dummy company of the assessee in its books of account. The Ld.CIT(A) on the basis of material brought before him and argument addressed by the assessee has reached the conclusion qua the existence of these dummy companies being operated by the assessee by returning following findings:-

"27.7 To sum up, the persons shown as directors, partners and proprietors of various group concerns of the appellant are actually dummy or name sake. The evidences gathered during the course of search and post search operation prove that the various group concerns are run and operated only by the Appellant. The dummy nature of the directors, partners and proprietors of various group concerns of the appellant is proved from the factual position summarized hereunder:-

- > These persons look after petty miscellaneous office work like depositing cheques in banks, handing over parcels to clients, making data entry etc. for the Appellant.*
- > These people don't have genuine knowledge of business either of the so called diamond trading business or of the entry operation activity.*
- > These persons receive meagre salary, which is mostly paid in cash.*
- > Living Standard-of these dummy directors, partners and proprietors is quite ordinary and is not commensurate with the financial activity carried on by the concern in which they are directors / partners / proprietors.*
- > All of them file individual returns, which reflect meagre total income.*
- > PAN and other identification proof of the dummy or name sake directors, partners and proprietors have been found at one place.*
- > Blank cheque books signed by the dummy directors/ partners/ proprietors have been found at one of the premises. This clearly indicates that these persons don't have any control over the bank accounts of the dummy concerns.*

> Blank old stamp papers in the names of the concerns in which these employees, brokers and cash handlers have been shown as directors, partners and proprietors were also found.

The books of accounts of these concerns in which these employees, brokers and cash handlers have been shown as directors, partners and proprietors were maintained in the same register and on one computer.

Confessional Statement of the Appellant

28.0 The factual position narrated above had been duly corroborated by the confessional statement of the Appellant recorded during the course of the search operation. The relevant extracts of the statement of the Appellant recorded u/s 13.2(4) of the Act, on 01/10/2013 is reproduced, as under:-

'Q.66 Please give, the list of the complete gamut of activities carried out by you In association with your family members and other close associates,

Ans. Sir I am basically in the business of giving accommodation entries which are routed through the companies .under my control. All the companies either owned by me or directly/indirectly under my control are paper companies with no real business transactions. In most of the cases various brokers who operate in the field of providing accommodation entries approach me when they want a certain type of accommodation entry like bogus unsecured loan, bogus LTCG etc..”

14. All the aforesaid reasons are factually and legally tenable to reject the books of account set up by the assessee during the assessment proceedings and the Ld.CIT(A) has passed a valid order confirming rejection of the books of account.

15. From the investigation conducted by Investigation Wing of the Income-tax Department and assessment proceedings, it is proved on record that assessee being into the business of providing accommodation entries for unsecured loan, share application money, long term capital gain, for bogus sales and purchases, for entries of turnover trading and accommodation entries for facilitating exempt income from bogus LTCG in penny stock by floating paper companies and by charging commissions, which is nothing but a fraud on the state exchequer, in other words, it is an illegal business of money laundering. Assessee was also into providing

accommodation entry in the form of circular transactions by securing bogus purchase bills of various nature like capital goods, trading raw materials, etc., then convert the same into cheque and RTCG from one dummy concern to the main beneficiary or in the sister concern in the form of share application money.

16. Assessing Officer as well as Ld.CIT(A), after duly thrashing the issue factually as well as legally estimated the commission income having earned by assessee during the years under consideration on different transactions for loans and advances for share application money for purchase and sales, etc.

17. It is also brought to the notice of the Bench by the Ld.DR for the Revenue that in hundreds of cases, Shri Pravin Kumar Jain has provided accommodation entry for unsecured loans, bogus share application money, etc. without carrying out any real business, but operating through dummy / paper companies. So in these circumstances, we are of the considered view that the Assessing Officer as well as Ld.CIT(A) have rightly quantified the unaccounted commission earned by the assessee during the year under consideration from 54 companies which is nothing but a huge network of unlawful business to evade the tax for companies operating through them and by the assessee themselves also. Rather, they are in to money laundering.

18. In view of what has been discussed above, we are of the considered view that Assessing Officer as well as Ld.CIT(A) have passed / confirmed legally valid orders to which assessee has failed to controvert by

putting in appearance. Assessee has challenged the impugned order passed by Ld.CIT(A) on generic grounds which he has failed to prove by putting in appearance, by producing any evidence and by assisting the Bench despite availing numerous opportunities. Consequently, we find no illegality or perversity in the impugned order passed by Ld.CIT(A), hence, aforesaid appeals filed by both the assesseees, namely, Shri Pravin Kumar Jain and Shri Pankaj Jain are hereby dismissed.

19. Since addition of Rs.12,39,00,000/- in hands of Casper Enterprises Pvt Ltd is on protective basis, the substantive addition having already made in the hands of Shri Pravin Kumar Jain, the addition of Rs.99,56,560/- in case of Casper Enterprises Pvt Ltd is confirmed.

20. In the result, appeals in the case of Shri Pravin Kumar Jain and Shri Pankaj Jain are dismissed and appeal in the case of Casper Enterprises Pvt Ltd is partly allowed.

Order pronounced in the open court on 19/01/2022

Sd/-

(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai, Dt : 19th January, 2023

Pavanan

sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

Asstt. Registrar / Senior Private Secretary, **ITAT, Mumbai**