

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

**BEFORE SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)
AND SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)**

**ITA No. 4714/MUM/2018
Assessment Year: 2013-14**

&

**ITA No. 5463/MUM/2018
Assessment Year: 2014-15**

&

**ITA No. 4715/MUM/2018
Assessment Year: 2015-16**

Devshibhai P. Dungrani,
601, 6th floor, Everest
Cleopatra, Park Road, Vile
Parle (East),
Mumbai-400057.

**PAN No. AAIPD 7191 D
Appellant**

Dy. Commissioner of Income
Tax, Central Circle-3(4),
Vs. Aayakar Bhavan, Maharshi
Karve Road,
Mumbai-400020.

Respondent

Assessee by : Mr. M. Subramanian, AR
Revenue by : Ms.R.M. Madhvi, CIT-DR

Date of Hearing : 21/04/2022
Date of pronouncement : 06/06/2022

ORDER

PER BENCH

These are the appeals filed by the assessee against the separate orders of Ld. Commissioner of Income Tax (Appeals)-51, Mumbai [in short 'the Ld. CIT(A)'], Mumbai

passed order u/s 143(3) r.w.s. 153A and 250 of the Income Tax Act, 1961 (in short 'the Act'). Since the issues in these appeals are common and identical, hence are clubbed, heard and consolidated order is passed.

For the sake of convenience, we shall take up appeal in ITA No.4714/Mum/2018, for A.Y 2013-14 as a lead case and facts narrated. The assessee has raised following grounds of appeal:

- 1. The Ld. AO erred in assessing the total income of the Appellant at R.54,36,560/- as against the returned total income of Rs.24,26,810/- without appreciating the factual position and ignoring the written submissions and explanations of the Appellant. Full facts of the case have been given in the Statement of Facts.*
- 2. On the facts and circumstances of the case, the Ld AO erred in making an addition of Rs.13,89,750/- (at the rate of 6% on the amount of sale value of the shares of Rs.2,31,62,500/-) as attributable to the alleged commission payment on the sale value of the shares of First Financial Services Ltd. merely on the surmises and presumptions that the Appellant must have incurred some commission expenses on the said accommodation entries, which was not accounted for in the books of accounts. Full facts of the case have been given in the Statement of Facts.*

3. *The Ld AO and the H'ble CIT (A) further erred in presuming that the Appellant must have incurred some commissions' expenses on the accommodation entries for the LTCG and that such expenditure was meted out from unaccounted income generated from the business of the Appellant. Full facts of the case have been given in the Statement of Facts.*
4. *The Hon'ble CIT (A) erred in confirming the addition of Rs.12,90,050/- @6% of the Long Term Capital Gains of Rs.2,15,42,500/-, as attributable to the alleged commission payment on the sale value of the shares of First Financial Services Ltd. merely on the surmises and presumptions that the Appellant must have incurred some commission expenses on the said accommodation entries, which was not accounted for in the books of accounts. Full facts of the case have been given in the Statement of Facts.*

2. The brief facts of the case are that the assessee is engaged in the business and derives income from capital gains and income from other sources. There was a survey conducted on M/s Radford Global Ltd. and M/s First Financial Services Ltd. and its related concerns on 09.04.2015, where these companies were engaged in providing entry of bogus long term capital gains. The assessee was covered under search action and notice u/s 153A of the Act was issued. In compliance to notice, the assessee has filed return of income declaring a total income

of Rs.24,26,810/- and subsequently notice was issued u/s 143(2) of the Act. The Assessing Officer found that the Assessee has disclosed the long term capital gains on sale of shares and claimed exempt referred at Para 2 to Para 14 of the order. The Assessing Officer observed that the shares transactions are not genuine and made the addition and dealt at Para 15 of the order read as under :

“15. The submission of the assessee is considered and found to be acceptable to the extent of Rs.2,15,42,500/-, claimed exempt U/s 10(38) of the Act which was declared under IDS 2016, as income for the AY 2009-10. The assessee has made a written undertaking, Which is part of his submission dated 05.12.2016 and has also submitted copy of Form 1 of IDS, 2016 along with its annexure and counter foils of taxes paid under IDS 2016. The assessee has declared an amount of Rs.10,53,56,000/- under the IDS 2016, for AY 2009-10, on 30.09.2016, out of which an amount to the extent of Rs. 2,15,45,000/- was declared as cash income later introduced as LTCG in AY 2013-14 (the year under consideration) as per Annexure to Form 1. The amount of Rs. 2,15,45,000/- consists of Rs. 2,15,42,500/- claimed as exempt u/s 10(38) and Rs. 2,500/- claimed as handling expenses. The nexus between the income declared of Rs.

2,15,45,000/- under IDS, 2016 with the transaction of the assessment year under consideration is explained by the assessee as utilized and later introduced in the books of accounts as cash in the form of Long Term Capital Gain, which was claimed as exempt u/s 10(38) of the Act for the year under consideration. The assessee contended that out of the total sale consideration received of Rs.2,31,62,500/-, an amount of Rs. 16,20,000/- was paid by cheque and duly reflected in his books of accounts. The assessee further contended that the amount of Rs. 16,20,000/- was received back during the year under consideration, hence is not taxable being return of his own capital investment. This contention of the assessee is not acceptable in view of the fact that the assessee traded in the shares of M/s First Financial Services Ltd., a penny stock company, which has been proved as an accommodation entry provider. Therefore the amount of Rs. 16,20,000/- received during the year under consideration by the assessee is his unaccounted money, and the same is added to the total income of the assessee u/s 68 of the I.T. Act, 1961. Penalty u/s 271(1)c) of the Act is hereby initiated for furnishing inaccurate particulars of income leading to concealment of income.”

3. Similarly, the Assessing Officer estimated the commission expenses as the assessee must have incurred expenses considering the facts of accommodation entries on bogus long term capital gains(@6%of Rs.2.31,62,500/-) which worked out to Rs.13,89,750/- and assessed total income of Rs.54,36,560/- and passed the order u/s 143(3) r.w.s. 153A of the Act dated 31.03.2017.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the Assessing Officer and the fact that the assessee has opted and made declaration under IDS 2016 on the first issue with respect to addition of long term capital gains. The Ld. CIT(A) has considered the submissions of the assessee and observed at page 3 Para 5 to 5.2 read as under:

“5. Ground Nos. 1 to 3 of the appeal are related addition of Rs.16,20,000/- related to the purchases of 81,000 shares of First Financial Services Ltd. and further addition of Rs. 13,80,750/- being the unaccounted commission estimated @8% for obtaining the accommodation entry. It is observed that a search action was carried out in the case of Radford Global Group which revealed that through the various concerns controlled by them, this group is solely engaged in the business of providing accommodation entries for speculation profits / loss, Short / Long

Term capital gain/loss, Share application money etc. The search action revealed that accommodation entries of Long term capital gains were provided by Radford Global Group to various beneficiaries in the penny stocks of M/s First Financial Services Ltd, M/s Global Infratech and Finance Ltd., etc. The assessee group which was one of the beneficiaries of accommodation entries provided by M/s Radford Global Group of Long term capital gains was also covered simultaneously in the said search action. In the assessment proceedings the AO observed that for the relevant year under consideration, the assessee has purchased 2,00,000 shares of First Financial Services Ltd by way of preferential allotment on 08.12.2011 @20 per share for a consideration of Rs 40,00,000/- and out of this, 81,000 were sold within 13 days of demat for a consideration of Rs 2,31,62,500/- thereby claiming LTCG of Rs. 2,15,42,500/-(Rs.2,31,62,500 - cost of 81000 shares i.e. Rs.16,20,000/-). The AO after relying upon the various statements recorded of the assessee, Gopalbhai Dungrani (assessee's brother) etc in course of the search action, statement of Shri Naresh Garg, one of the beneficiaries of LTCG provided in the scrip of First Financial Services Ltd., order of SEBI with a finding that the shares of M/s First Financial Services Ltd were manipulated and rigged for providing accommodation entry of LTCG etc. proceeded to hold that the assessee has availed accommodation entry of LTCG in the scrip of First Financial Services Ltd.

Accordingly a show cause notice was issued to the assessee. In response, the assessee submitted that it has made a declaration of Rs. 10,53,56,000/- under IDS 2016. Out of the disclosure, an amount of Rs. 2,15,42,500/- was declared as cash income which was later on introduced by way of accommodation entries of LTCG for the relevant year. In principle, the A broadly accepted the claim of the assessee that the source of the LTCG claimed for the relevant year is from the declaration of cash income made by the assessee under IDS 2018, However, the AD did not agree with the claim of the assessee that even the purchases of Rs. 16,20,000/- can be said to be from the cash available at the disposal of the assessee on account of the declaration of cash income under IDS 2010. Accordingly, the AO proceeded to make an addition of the said amount of Rs.18,20,000/- related to the purchases of 91000 shares of First Financial Services Ltd Moreover, the AO also added an amount of Rs.13,89,750/- being the unaccounted commission estimated @ 6% for obtaining the accommodation entry of LTCC.

5.2 In the appellate proceedings, the assessee reiterated that the source of the accommodation entry of LTCG of Rs.2,15,42,500/- was the declaration of cash income made by him under IDS 2016. It was further submitted that the initial investment of Rs.16,20,000/- for 81000 shares was made by way

of a cheque which was duly accounted in the regular books and therefore the addition made by the AO u/s 68 is incorrect. The submissions of the assessee made during the appellate proceedings are reproduced hereunder for ready reference:-

- 1. "Out of the income declared under the IDS-2016 of Rs. 10,53,56,000/-, income to the extent of Rs. 2,15,42,500/- was claimed as set off against the gross sale proceeds of Rs. 2,31,62,500/- of the Shares and an amount of Rs. 2,500/- was explained towards the misc. expenditure related to the transactions of sale of the shares in AY 2013-14. The differential amount to the extent of Rs. 16,20,000/- was not offered to tax in AY 2013-14 as it represented the cost of purchase earlier paid by cheque at the time of acquisition of these shares and accounted for in the books of account which was received back at the time of sale of the said shares.*

- 2. In the assessment completed u/s 153A/143(3) of the Act dated 31//03/2017, the AO has held that the Appellant had obtained the accommodation entry from purchase and sale of the Pennv stock of M/s First Financial Services Ltd. However after allowing the set off of the income declared under IDS-2016 to the extent of*

Rs. 2,15,42,500/- the AO has made an addition of Rs. 16,20,000/- as unaccounted money in respect of the part amount credited to the bank account towards sale proceeds of the shares of First Financial services Pvt. Ltd of Rs. 2,31,62,500/-. The AO has not accepted the explanation of the Appellant that this amount was earlier paid by cheque at the time of acquisition of these shares and was duly accounted for and reflected in the books of accounts. The same was not taxable being return of the Appellant's own capital invested at the time of acquisition of the shares. Thus, AO's action in adding the amount of Rs. 16,20,000/- is contrary to the facts prevailing in the Appellant's case and is factually incorrect. The AO has not assigned any other reasons as to why the Appellant's explanation was either incorrect or not acceptable when the Appellant's has filed the evidence of the actual payment thereof and had also explained the sources of the payment thereof.

- 3. The supporting documents being share application, acknowledgement, bank statement of the Appellant wherein the payment of share application money is reflected as well as share certificate in respect of the acquisition of shares of First Financial Services Ltd are enclosed herewith. (Refer to Sr. No. 1 to 4 Page No. 1 to 6*

of Paper Book). These documents supports the fact that the Appellant had made the initial investment of Rs. 16,20,000/. for acquisition of these shares and same was received back on sale of the said shares.

- 4. Thus, the Le AO has erred in making an addition of Re. 16,20,000/- as unaccounted money on incorrect footings and without appreciating the fact in correct perspective that this amount was already paid by cheque by the Appellant at the time of acquisition of the shares, was duly accounted for in the books of accounts and was received back at the time of sale of the said shares of Ms First Financial services Ltd.*
- 5. On the basis of the tacks staled above, your Appellant's most numbly prays that the addition made by the AO of Rs. 16,20,000/- be deleted.”*

5. The CIT(A) considering the facts, submissions and declaration in IDS 2016 has granted relief to the assessee on the addition u/sec 68 of the Act. Whereas on the third ground of appeal in respect of addition of estimated commission expenses, the CIT(A) has considered the fact that the assessee must have incurred the expenses and observed at page 5 Para 5.3 of the order and restricted the addition u/s 69C of to Rs.12,90,050/- and partly allowed the appeal.

6. Aggrieved by the CIT(A) order, the assessee filed an appeal before the Honble Tribunal. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in sustaining addition u/s 69C of the Act Rs.12,90,050/- on the presumption that the assessee would have incurred commission expenses @6% on accommodation entries and there is nothing on record to show that the assessee has incurred such expenses and supported with the written submissions and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the Ld. CIT(A) and filed written submissions.

7. We have heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld.AR that the Ld. CIT(A) has erred in confirming the estimated unaccounted commission expenses @ 6% of (long term capital gains) though the assessee has not incurred such expenditure and the addition U/sec69C of the Act has been made and sustained on the basis of assumption and presumptions. Whereas the Ld.DR supported the action of the A.O. and the Ld. CIT(A) and submitted that the assessee must have incurred such expenditure in obtaining accommodation entries. We find that the assessee has admitted excessive cash declared in the IDS 2016 scheme utilized for the accommodating entry of long term capital gains and such entries cannot be transacted without

being commission expenses incurred/paid. On perusal of the facts and the material information, we find the submissions of the Ld.AR that the assessee has not incurred any expenditure cannot be accepted. The assessee has routed through accommodation entry providers who work on the commission basis and the assessee is a beneficiary. The Assessing Officer has estimated commission @ 6% of LTCG without any comparable case or basis on which the accommodation entry was provided to the assessee. We find that the Assessing Officer has not drawn satisfaction with any comparable case or the rationale / methodology/ bench mark to consider @6%. We considered the nature of transactions of indulging in the activity of obtaining accommodation entries by the assessee and the action of the Assessing Officer in estimating commission expenses without any basis/ methodology. Therefore to meet the ends of justice, we restrict the addition to the extent @ 2% as against @ 6%. Further, we make it clear that this rate @2% is applicable to assessee for this year and subsequent two assessee years only. Accordingly, we modify the order of the Ld.CIT(A) sustaining addition @ 2% and direct the Assessing Officer to recalculate the expenses and partly allow the grounds of appeal.

**ITA.No.5463/Mum/2018.A.Y.2014-15.&
ITA.No.4715/MUM/2018 AY 2015-16.**

8. As the facts and circumstances in these appeals are identical to ITA No.4714/Mum/2018 for A.Y.2013-14, the decision rendered in above paragraphs would apply mutatis mutandis for these appeals also. Accordingly, the grounds of appeal in these appeals are partly allowed.

9. In the result, the three appeals filed by the assessee are partly allowed.

Order pronounced in the open Court on 06/06/2022.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai;

Dated: 06/06/2022

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

| | | Date | Initials | |
|-----|---|------------|----------|-----------|
| | Original dictation pad is enclosed at the end of file | | | |
| 1. | Draft dictated on: Computer | 23.05.2022 | | Sr. PS/PS |
| 2. | Draft placed before author: | 31.05.2022 | | Sr. PS/PS |
| 3. | Draft proposed & placed before the second member: | | | JM/AM |
| 4. | Draft discussed/approved by Second Member: | | | JM/AM |
| 5. | Approved Draft comes to the Sr. PS/PS: | | | Sr. PS/PS |
| 6. | Order pronounced on: | | | Sr. PS/PS |
| 7. | File sent to the Bench Clerk: | | | |
| 8. | Date on which file goes to the Head Clerk: | | | Sr. PS/PS |
| 9. | Date on which file goes to AR | | | |
| 10. | Date of dispatch of Order: | | | |