

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “D”,MUMBAI**

**BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER)  
AND  
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

I.T.A. No.1419/Mum/2022	-	A.Y. 2013-14
I.T.A. No.1420/Mum/2022	-	A.Y. 2014-15
I.T.A. No.1421/Mum/2022	-	A.Y. 2015-16
I.T.A. No.1422/Mum/2022	-	A.Y. 2017-18

The Dy.Commissioner of Income Tax, Central Circle-6(4), Mumbai	vs	Dhani Services Limited M-62 & 63, First floor, Connaught Place, New Delhi-110 001 <b>PAN : AAACO0870B</b>
<b>ASSESSEE</b>		<b>RESPONDENT</b>

Present for the Assessee	Shri K Gopal, Om Kandalkar
Present for the Department	Shri Pankaj Mehta, Sr.DR

Date of hearing	25/08/2023
Date of pronouncement	08/09/2023

**ORDER**

**Per Bench:**

These appeals of the revenue are against the common order of CIT(A)-54 Mumbai dated 20/10/2021 for the assessment years 2013-14, 2014-15, 2015-16 & 2017-18.

2. All the appeals are filed before the Tribunal with a delay of 130 days. However the period of delay is covered by the extension of time as granted by the Hon'ble Supreme Court vide order dated 10.01.2022. Accordingly the appeal is considered to be filed on time and taken up for adjudication.

3. The assessee company is engaged in the business of stock and share broker on the national stock exchange of India Ltd. There was a search operation carried out in the case of India Bulls group on 13/07/2016. Consequent to the search, the assessee was issued a notice under section 153A calling the assessee to file the return of income. The assessee declared the same income as in the original return of income in response to the above notice. The assessing officer made an addition under section 69C of the Income Tax Act (in short, 'the Act') on account of unexplained expenditure and unaccounted receipts for the years under consideration as given below:-

<b>Sl.No</b>	<b>Assessment Year</b>	<b>Unexplained Expenditure u/s.69C – In Rs.Lakhs</b>
1	2013-14	10.75
2	2014-15	0.67
3	2015-16	3.15
4	2016-17	34.20
5	2017-18	0.50

4. For AY 2014-15, the assessing officer also added an amount of Rs.10 lakhs as unaccounted receipt. For AY 2011-12 the assessment u/s. 143(3) was completed where the assessing officer made an addition towards disallowance of excess claim of depreciation and disallowance of additional claim of ESOP expenses. These disallowances have also been included while completing the assessment u/s.143 (3) r.w.s.153A for all the years under consideration.

5. Aggrieved the assessee filed an appeals before the CIT(A). The CIT deleted the addition made under section 69C and also the disallowance/additions made during original assessment proceedings. Aggrieved the revenue is an appeal before the Tribunal.

6. The revenue raised grounds of appeal with respect to the following issues which are common for all the assessment years

- (i) Deletion of addition made u/s.69C by the CIT(A)
- (ii) Deletion of disallowance of additional depreciation by the CIT(A)
- (iii) Disallowance of ESOP expenses deleted by the CIT(A)

7. During the course of hearing the Id DR did not present any arguments with regard to the deletion of disallowance of additional depreciation and of ESOP expenses. Therefore the grounds raised in this regard in all the appeals are dismissed as not pressed.

### **Addition under Section 69C**

8. During the course of the assessment proceedings, the AO observed that a search at the premises of Indiabulls group was conducted on 13.07.2016. The entry found from the print out of MS Excel in the data seized from the Laptop of Shri Ashok Sharma reflected name 'ISL/IVL/IBSL/IVSL'. The AO asked the assessee to explain as to why the aforementioned transactions should not be treated as the unaccounted receipt/expenditure of the assessee. The assessee submitted that it had no knowledge of reasons or background of why certain entries in the seized records were listed against 'ISL/IVL/IBSL/IVSL'. However, these entries have been offered to tax by various entities of Indiabulls group in their respective applications dated 03.10.2017 before the Settlement Commission. The assessee

also submitted that the narration of said cash entries and the treatment given to these entries in the Settlement application. However, the AO was of the view that the assessee is not before the Settlement Commission and the expenses were incurred by or on behalf of the assessee. Further, on perusal of the bank statement the AO noted that that the transactions where Bank/Contra, was mentioned were reflected in the bank accounts of the assessee. The AO found contradiction in the submission of the assessee that the expenses made in cash did not pertain to 'ISL/IVL/IBSL/IVSL' because the entries where Bank/Contra, was mentioned pertained to 'ISL/IVL/IBSL/IVSL' and were regular transactions duly accounted for in the books of accounts clearly. The AO was of the view that since the cash withdrawals have been made from the bank accounts of the assessee, it had to be assumed that the cash expenses pertained to the assessee itself. The AO was not satisfied with the explanation given by the assessee, therefore, the AO made additions as per the table given in the earlier part of this order in respect of unexplained expenditure.

9. During the appellate proceedings the assessee submitted that-

*A search at the premises of Indiabulls group was conducted on 13.07.2016 wherein apart from other books off accounts, documents, records etc. that were seized, a Cash Transaction Record (CTR) in the form of a loosely maintained Cash Book in XL format as maintained by Shri Ashok Sharma for the period January, 2009 to the date of search format was seized. This CTR was the summation of similar records maintained by Shri Om Singh in Delhi and Shri Ashish Mehta in Mumbai.*

*1.It is humbly brought to your kind attention that the (CTR) has not been systematically maintained as regular books of accounts for each legal entity but is consolidated cash record of all entities belonging to the Indiabulls group. It will be appreciated that there is no legal entity by the name of Indiabulls group and it is*

*just that employees who were handling those transactions have identified the same towards the group.*

*The Assessee has been given to understand that considering the difficulty in identifying e-titles to whom the transactions entered in the CTR belong. 16 entities of the group who have been the primary entities which have entered into cash transactions, owned up the data and filed applications before the Settlement Commission.*

*It is respectfully submitted that in case of unrecorded cash transactions, the first transaction will invariably be of receipt as there cannot be notional transactions in cash. Either cash is available to be spent or the spending cannot take place. The 16 entities took the said basic thread of source to identify entities to whom the transactions belong. Even after the said exercise of identifying entities, there still remained many receipts which could not be identified to any specific entity. With a view to ensure that no receipt of revenue nature goes untaxed, all unidentifiable revenue receipts were apportioned, on a best effort basis, amongst the 16 applicants who filed the settlement applications. The Assessee submits that the issue, of identification of 16 entities to whom the source transactions relates as also apportionment of unidentifiable revenue receipts amongst the said entities, has been accepted in the settlement proceedings. Therefore, the source of receipt in the CTR has been fully considered in settlement proceedings and no income on source basis recorded in CTR remains untaxed.*

*All entries in the CTR were duly analysed and categorised under few broad heads and entire volume of the CTR was duly offered by 16 Applicants of the Indiabulls group before the Hon'ble Settlement Commission for which the final order under section 245D(4) of the Income Tax Act 1961 has been passed. Thus there remains no entry of the CTR that has not been offered and duly considered by the Hon'ble Settlement Commission as income of the Applicants. As such, there is no rationale to take any adverse cognizance of any transaction in the CTR in the hands of any other entity and the Assessee. There cannot be any case of double taxation in respect of the same entries in the CTR, once in the hand of the Applicant before Settlement Commission and secondly in the hand of the Assessee. At the time when the impugned assessments were framed, the Order of the Hon'ble Settlement Commission was yet to be received and it seems that the AO acted conservatively to err on the side of the Revenue and made the addition. However, now the order u/s. 245D(4) being passed, the Assessee submits that there remains no rationale to sustain the addition in the hands of the Assessee.*

*During the course of assessment proceedings in the case of the Assessee, it was informed by the Assessing Officer that Shri Ashish Mehta, in his statement recorded*

*under section 132(4), stated that the seized material contained details of cash transactions of Indiabulls group which were not recorded in regular books of account. It is understood that CTR is a master data file which contains details of unaccounted cash transactions of Indiabulls group of companies. During the assessment proceedings in case of the Assessee, the entries having the name of Assessee have been tabulated and an adverse inference has been drawn by the Learned Assessing Officer (A.O.) despite due explanation having been provided during the said proceedings.*

*The Assessee has been given to understand that the purpose of recording data was for reporting to management about the source and application of unaccounted cash. However, unlike regular accounting where the account heads would be revenue or capital or other accounting terminology, the accounting and reporting to management was in the format of person who authorised the transaction. It will be appreciated that record keeping and reporting was for limited a purpose of reporting to management. It will be appreciated that the transactions were motivated out of business compulsion and therefore requirement of record keeping and reporting was to ensure that transactions are for stated purpose only. The records do not identify the entity which has incurred the expenditure or was the recipient of receipts.*

- It is humbly submitted that the entries in the CTR reflecting the abbreviation ""ISL/IVL/IBSL/IBVL"" do not specifically pertain to the Assessee, Indiabulls Ventures Ltd. The notations for the legal entity in the CTR are merely indicative in nature and do not relate to IDSL as has been alleged.*
- The Assessee had during the course of assessment proceedings, furnished to the Assessing Officer manner in which the alleged transactions have been dealt with before the Settlement Commission in the hands of 16 applicants.*
- The Assessee submits that the above aforesaid entry on the basis of which addition has been made by the Assessing Officer has been owned up by the 16 applicants before the Settlement Commission and they have considered the data in determination of their incomes. The Assessee submits that Indiabulls group having owned up whole of the source of unaccounted cash, the outgoings get explained automatically.”*

10. The assessee further submitted that the onus is on the assessing officer to prove that the impugned addition has not been accounted in the books of accounts of the assessee. The assessee relied on various judicial pronouncements in this

regard. The CIT(A) after considering the submissions of the assessee deleted the addition by holding that-

*“5.3 The facts recorded in the assessment order and the submissions of the assessee have been carefully considered.*

*The AO has made addition in respect of unexplained expenditure u/s 69C of the Act. The facts and issue involved are identical to the facts and issue involved in the case of M/s **Indiabulls Financial Services Ltd. for A.Y. 2011-12**. M/s **Indiabulls Financial Services Ltd.** is another business concern of the 'Indiabulls' Group. The issue has been discussed at length in **para 5.3.1 to 5.3.7 of the order u/s 250 of the Act dated 20/10/2021 for A.Y. 2011-12 in appeal no. CIT(A) 54/ Mumbai/ 10047/2018-19, in which the appeal on the issue has been allowed**. Thus, following the appellate order u/s 250 in the case of **M/s Indiabulls Financial Services Ltd. for A.Y. 2011-12**, addition of unexplained expenditure of Rs.47,56,000/- u/s 69C made by the AO is deleted.*

*Accordingly, ground nos. 1 of the appeal is allowed.”*

11. Before us Ld. AR submitted that the addition made by the assessing officer under section 69C is already offered as income before the settlement commission in the hands of 16 entities in the India Bulls group. The Ld. AR further submitted that when the impugned amount is already taxed in the hands of the recipient the same cannot once again be added as income in the hands of the assessee. The Ld. AR drew our attention to the statement filed before the settlement commission which the assessing Officer has extracted in the order of assessment and therefore submitted that there is no dispute that the impugned addition is part of the application made before the settlement commission. Accordingly the Ld AR prayed that the addition be deleted.

12. The Ld. DR on the other hand supported the order of the assessing officer. The Ld. DR submitted that the assessing officer in para 7.3 of his order has given a

clear finding that the assessee is not before the settlement commission and that the assessee has not offered a plausible explanation for the expenses incurred in cash. Therefore the Ld. DR submitted that the addition deleted by the CIT(A) is not correct since he has simply relied on the decision of the Hon'ble tribunal in the case of India Bulls Financial Services Private Limited for AY 2011-12 and that the CIT(A) has not given any independent finding with regard to how the addition made by the assessing officer is part of the amount offered before the settlement commission. Accordingly the ld DR submitted that the AO's order should be upheld.

13. We heard the parties and perused the material on record. During the course of search in the India Bulls Group, a Cash Transaction Record (CTR) in the form of loosely maintained cash book in Excel format by an employee. It is submitted by the assessee before the lower authorities that the CTR was the sole record of unaccounted receipts and expenditure by the group. It was also submitted that the transactions in the CTR were analysed and summarised under various heads of receipts on best efforts basis and that before the settlement commission the CTR in its entirety was submitted by the applicants. Therefore it was argued by the Ld. AR that the impugned addition which is part of the same CTR as has been submitted before the settlement commission cannot be added once again in the hands of the assessee since the same would amount to double taxation. The Ld. AR during the course of hearing submitted a copy of the extract from the order of the settlement commission which is reproduced below –

*"11.4.2 In the light of above now we proceed to settle this issue. We are aware instances where expenses upto 80% to 85% have been recognized and accepted in other builders' cases wherein expenses details were not found during search. In our opinion it depends on facts of each case and in a given case, it is to be seen whether profit estimated covers all unaccounted investments and unaccounted expenses*

*found during search. We are aware that the seized record where certain outgoings are clearly for non-business purpose and could be categorized as illegal or non-permissible in law. The Ld. AR was candid enough to admit the existence of such outgoings and requested that profit has to be estimated at reasonable rates. Accordingly, the applicants in order to buy peace, give quietus to the dispute and in the spirit of settlement, have come forward to offer an income of 35% of cash receipt / cash generated as against the offer made in the Settlement Applications @ 10%. Thus, the profit rate of 35% is accepted by the applicants on On-Money working of Rs. 325 Cr and Bogus billing of 1244.94 Cr (Rs. 1244 , 34 Cr+ 59.86 Lacs) calculating at Rs. 531,67, 75,000 / -. This is against the working of profit of Rs.151,91,00,000/- in the applications. Considering the peak amount of loan of Rs. 236. 05 crores, which is also generated out of same receipt, the total income out of cash so generated / receipts of Rs.1519 crs. comes to Rs. 830,90 crs., considering the offer in original petition of Rs.494.53 crores and additional offer made of Rs.405 crores (excluding the on-money on sale of plot of land of Rs.50.27 crores and TP adjustment of Rs.18.36 crores - totaling to Rs.68.63 crores). Thus, the net profit percentage comes to almost 55% of cash so generated/received."*

14. The main ground on which the assessing officer has made the addition under section 69C is that for the transactions mentioned in the CTR the explanation provided is towards expenses are incurred by/on behalf of M/s.ISL/IVL/IBSL/IBVL as mentioned in the narrations given against each of the entries. Therefore the assessing officer held that the same cannot be treated as source of expenses incurred by the assessee. The assessing officer also did not accept the submissions of the assessee for the reason that before ITSC what is explained only from the receipts side of the cash transactions and that the assessee who has incurred the expenses is not before the settlement commission. Further the assessing officer in his order has extracted the various cash withdrawals from the bank account of the assessee as has been recorded in the books of accounts and held that the said withdrawals cannot be the source for the cash expenses for the reason that the narration mentioned therein are not in sync and that the assessee has made contrary statement stating that the entries where "Bank/'Contra' is mentioned

pertain to ISL/IVL/IBSL/IBVL are regular transactions which are duly accounted for in the books of accounts. The relevant findings of the assessing officer is extracted as below –

*“7.4 When the assessee was requested to explain as to why the aforementioned transactions should not be treated as the unaccounted receipt/expenditure of the assessee, it has been submitted that the said entries depicting cash received are duly recorded in the regular books of accounts and the assessee also submitted the copies of the relevant bank accounts depicting the withdrawals/deposit made. On perusal of the submission made by the assessee it can be seen that the transactions where 'Bank'/'Contra' is mentioned have actually been done from the bank accounts of the assessee. Thus, the assessee has made a self contradictory submission by stating that the expenses made in cash do not pertain to ISL/IVL/IBSL/IBVL whereas the entries where "Bank'/'Contra' is mentioned pertain to ISL/IVL/IBSL/IBVL but are regular transactions which are duly accounted for in the books of accounts. Clearly, going by the assessee's own submission, since the cash withdrawals have been made from the bank accounts of the assessee, thus it has to be assumed that even the expenses pertain to the assessee itself. This further point out the inconsistency in the submission of the assessee that the entries made in the cash transaction record are merely indicative in nature and do not relate to the assessee.”*

15. The assessee's contention is that the impugned additions are made by the assessing officer based on the CTR which he has extracted from the application made before the settlement commission along with the nature of expenditure and the assessment year and therefore no addition can be made since the issue is settled. In this regard we notice that the assessee submitted only the statement which is part of the application before the settlement commission by adding the narration mentioning the nature of expense and the year. The assessing officer on the other hand has made the addition basis the application before the settlement commission, but has not given any contrary finding with regard to why the source as explained is not satisfactory. It is also noticed that the assessing officer did not call for any further details from assessee to provide any additional details to substantiate the claim. Further we notice that the CIT(A) has allowed the appeal of

the assessee by relying on the decision in the case of M/s.Indiabulls Financial Services Ltd., which is one of applicants before the settlement commission. However the CIT(A) has not given any finding with regard to the assessee as to how the addition made in assessee's hands gets explained with regard to source from the settlement made by M/s.Indiabulls Financial Services Ltd more so when assessee is not an applicant. Further the assessing officer's finding with regard to bank withdrawals recorded in the books of the assessee has also been not discussed by the CIT(A). In the above extracted order of the settlement commission we notice that the percentage of expenditure claimed by the applicants has been reduced from 90.32% to 65% and accordingly the amount to be settled is arrived at by the settlement commission. From this settlement whether the additions made based on specific list of expenses submitted before the settlement commission in the hands of the assessee is covered or not is not coming out clearly. In view of these discussions we are of the considered view that the issue should go back to the assessing officer for a fresh examination and accordingly remit the issue to the assessing officer to verify whether the source for the additions made in the hands of the assessee is explained through the settlement made before the settlement commission. The assessee is directed to submit the relevant details before the assessing officer and cooperate with the proceedings. This ground of the revenue is allowed for statistical purposes.

16 The addition made by the assessing officer and the CIT(A)'s findings are identical for all assessment years under consideration and therefore the issue is remitted back to the assessing officer for AY 2013-14, 2014-15, 2015-16 & 2017-18 with similar directions.

17. In result the appeal of the assessee for AY 2013-14, 2014-15, 2015-16 & 2017-18 for allowed for statistical purposes.

**Order pronounced in the open court on 08/09/2023**

Sd/-

sd/-

<b>(AMIT SHUKLA)</b>	<b>(MS. PADMAVATHY S.)</b>
<b>JUDICIAL MEMBER</b>	<b>ACCOUNTANT MEMBER</b>

Mumbai, Dt :08<sup>th</sup> September, 2023

Pavanan

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Assessee ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

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