

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, KOLKATA
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. Nos. 646 to 650/Kol/2023
Assessment Years: 2009-10 to 2013-14

Anand Khandelwal 20, Bhupen Roy Road, Behala S.O., Kolkata-700034. (PAN: AFTP2545L)	Vs.	Income Tax Officer, Ward-28(3), Kolkata.
Appellant		Respondent

Date of Hearing	09.08.2023
Date of Pronouncement	22.09.2023
For the Appellant	Shri A. K. Tulsyan, FCA
For the Respondent	Shri Altaf Hussain, Addl. CIT, Sr. DR

ORDER

Per Shri Rajesh Kumar, AM

All these captioned appeals preferred by the assessee against the separate orders of Ld. CIT(A), Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi dated 25.05.2023 for AYs 2009-10 to 2013-14. Since grounds are common and facts are identical, we dispose of all these appeals by this consolidated order for the sake of convenience.

2. All the appeals filed by the assessee involving common issue. Since common issues are involved in all the appeals, we take appeal in ITA No. 646/Kol/2023 for AY 2009-10 as the lead case to draw the facts of the case. Findings of this will apply mutatis mutandis to the other appeal in ITA Nos. 647 to 650/Kol/2023.

3. The only issue is against the order of Ld. CIT(A) confirming the order of AO wherein the addition of Rs.8,66,000/- has been confirmed as unexplained cash credit u/s. 68 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”).

4. Facts in brief are that the assessee filed the return of income on 26.02.2010 declaring total income at Rs.1,99,000/-. According to the information received from DDIT (Inv.) Unit-2(3)/Kol Sri Anand Kr. Khandelwal deposited cash of Rs.8.66 lakhs during the financial year in his S.B. A/c. with Punjab National Bank and thereafter the same was immediately transferred on the same day or very next day to M/s. Kaushal & Co., M/s. Paramount Traders and M/s. Sumitra Export Pvt. Ltd. and to others accounts. According to the assessee, the said amount represents the payment received from the customer as the

assessee is engaged in the business of sale and purchase of cotton waste. The AO rejected the theory of assessee and came to the conclusion that assessee is engaged in the business of providing accommodation entries to various persons and since the cash deposited was not explained by the assessee and the same was added to the income of the assessee as unexplained cash credit u/s. 68 of the Act vide order dated 28.12.2016 u/s. 147/143(3) of the Act.

5. In the appellate proceeding, Ld. CIT(A) confirmed the order of AO. However, in para 6.1 of the appellate order, ld. CIT(A) recorded the finding that the name of the assessee appeared in the Investigation Report that assessee has deposited cash into his bank account which was transferred to other persons/concerns controlled by Shri Prem Narayan Khandelwal. In para 6.2, ld. CIT(A) noted that assessee submitted before the AO that he is a small trader dealing in trading of cotton waste and does not maintain any books of accounts. Since assessee also could not answer the query raised by the AO during the course of assessment proceedings, therefore, found unjustifiable and made the addition.

6. After hearing the rival contentions and perusing the material available on record, we note that as per the claim of the assessee, he is a small trader dealing in cotton waste and does not maintain any books of accounts. However, as per the finding of the AO, the assessee is an accommodation entry provider. We also note that Ld. CIT(A) has recorded in his finding that assessee has deposited cash of Rs.8.66 lakhs and the same was transferred to various persons/entities controlled by Shri Prem Narayan Khandelwal who is an entry operator. If we accept the first theory that assessee is a trader and the cash deposited represented the cash sale of cotton waste then no addition is required to be made against the assessee. However, the assessee has failed to prove/substantiate the same with cogent evidences and, therefore, the theory of assessee providing accommodation entries cannot be ruled out. If the assessee is providing accommodation entries, then certainly the entire deposit cannot be added in the hands of the assessee. The Ld. AR of the assessee has filed a series of judgment before us namely – (i) Pr. CIT, Central-2, Kolkata Vs. Safeco Projects Pvt. Ltd. ITAT No. 32 of 2019 (Cal) order dated 07.03.2019 and (ii) Pr. CIT Vs. Alag Securities Pvt. Ltd. in ITA No. 1512 of 2017 (Bom.) order dated 12.06.2020 in which a rates of addition on account of providing accommodation entries were sustained at 0.26 and 0.15% respectively. We also observe from the decisions of Coordinate benches wherein the

commission has been added ranging from 0.10% to 0.5% of the total accommodation entries. Some of these decisions are (i) ITO Vs. Shri pradip Kumar Khetan, in ITA No. 385/Kol/2018 order dated 19.06.2019, (ii) Shri Girdhari Lal Goenka Vs. DCIT in ITA No. 70/Kol/2018 order dated 16.03.2020, (iii) DCIT Vs. M/s. Sakshi Trade Link in ITA No. 2275/Kol/2014 order dated 03.11.2017, (iv) DCIT Vs. Shri Mahendra Sethia in IT(SS) A No. 48 to 54/Kol/2016 order dated 01.06.2018, (v) ITO Vs. Kaushik Das in ITA No. 1678 to 1680/Kol/2017 order dated 01.10.2019 and (vi) Shri Ramesh Kumar Jain Vs. ACIT in ITA No. 3512/Mum/2013 order dated 22.04.2015. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to apply a commission rate of 0.5% on account of total amount of accommodation entries. The above observations and finding apply mutatis mutandis to the appeals in ITA Nos. 647 to 650/Kol/2023. Therefore, all the appeals of the assessee are partly allowed.

7. In the result, all the appeals of assessee are partly allowed.

Order is pronounced in the open court on 22nd September, 2023

Sd/-
(Sonjoy Sarma)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 22nd September, 2023

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), NFAC, Delhi
4. CIT, ,
5. DR, ITAT, Kolkata,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata