

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

**BEFORE SHRI ABY T. VARKEY, JM**

आयकर अपील सं/ I.T.A. No. 617/Mum/2023  
(निर्धारण वर्ष / Assessment Year: 2012-13)

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आयकर अपील सं/ I.T.A. No. 618/Mum/2023  
(निर्धारण वर्ष / Assessment Year: 2013-14)

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आयकर अपील सं/ I.T.A. No. 616/Mum/2023  
(निर्धारण वर्ष / Assessment Year: 2017-18)

Blue Tech Mercantile Pvt. Ltd. 6/10 Vijay Nagar Sangh, Shaikh Misree Road, Antop Hill, Mumbai-400037.	<b>बनाम/</b> Vs.	ITO, Ward-6(1)(4)/AO-NFAC New Delhi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAECB2778H</b>		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by:	Shri Mahesh Saboo
Revenue by:	Shri Dharamvir D Yadav (Sr. DR)

सुनवाई की तारीख / Date of Hearing: 12/07/2023

घोषणा की तारीख /Date of Pronouncement: 20/09/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

These are appeals preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 20.02.2023 for AY. 2012-13, AY. 2013-14 and AY. 2017-18.

2. At the outset, the Ld. AR of the assessee pointed out that, except for variation in figures, the issue permeating in all the three (3) assessment years are the same. With the consent of both the parties, AY 2012-13 is taken as the lead case, result of which shall apply *mutatis mutandis* to the other two (2) AYs 2013-14 & 2017-18.

3. The sole grievance of the assessee relates to the Ld. CIT(A)'s action of confirming the addition made by way of undisclosed



commission income of Rs.2,84,000/- in AY 2012-13 [for AY. 2013-14, Rs.87,000/- & for AY 2017-18, Rs.1,11,600/-].

**4.** Brief facts are that, the assessee is a private limited company which had filed its return of income for AY. 2012-13 on 13.03.2013 declaring total income of Rs.770/-. Based on report of the Investigation Wing, Kolkata, the AO had gathered that the assessee had availed accommodation entries to the tune of Rs.87,00,000/- from M/s Moonlink Dealcomm Pvt Ltd and M/s Lucky Prime Commercial Pvt Ltd which represented income escaping assessment, and for which the assessment of the assessee was reopened u/s 147 of the Income Tax Act 1961 (herein after the Act). Before the AO, the assessee initially contended that it was engaged in the business of trading in shares & investments and that the transactions with M/s Moonlink Dealcomm Pvt Ltd and M/s Lucky Prime Commercial Pvt Ltd represented sale of unlisted shares in the course of such business. The assessee, alternatively contended that, the transactions conducted by it may be considered as accommodation entries/circular-trading/ layering of funds and therefore *suo-moto* offered commission income in the range of 0.5% to 1% of the funds circulated by the company as its income. Since no details were furnished by the assessee in support of its primary and alternate contention, the AO issued notice u/s 142(1) of the Act dated 14.12.2019 requiring the assessee to provide the details of the purported shares purchased & sold by them along with details of investments and bank statements. The AO noted that the assessee only furnished a list of investment, its financial



statements and return of income for AY 2012-13. The assessee did not provide the movement in the investments viz., shares sold and purchased during the year nor did the assessee submit its bank statement. In absence of any such details, the AO was constrained to draw inference based on the material available with him. The AO noted that the assessee was unable to provide any evidence/details to substantiate the transactions involving sale of shares to M/s Moonlink Dealcomm Pvt Ltd and M/s Lucky Prime Commercial Pvt Ltd. According to AO, the financials of the assessee suggested that though the assessee claimed to be in business of trading in shares but neither did it hold any substantial assets nor did it ever create any wealth from such activity. Instead, the AO noted that, the assessee would report gross income in the range of Rs.10,000/- to Rs.20,000/- and net profit in the range of Rs.766/- to Rs.366/-. Having regard to these features of the assessee coupled with the information received from Investigation Wing and assessee's *suo moto* submission stating that it was providing accommodation entries/circular trading of funds, for which it offered commission income as well, the AO concluded that the assessee is not engaged in business of share trading of unlisted shares but it is involved in providing accommodation entries to the ultimate beneficiaries. The AO thus held that all the transactions conducted by the assessee during the year by way of share transactions were nothing but accommodation entries provided to ultimate beneficiaries by way of circular trading. From the limited information/details available with him, the AO inferred that the assessee had sold shares to the tune of



Rs.87,00,000/- to the two entities named in the report of Investigation Wing and adjusting the same from the opening & closing value of investments, it was noted that the assessee had purchased shares of Rs.1,97,00,000/- during the year. The AO accordingly estimated and assessed commission income at the rate of 1% of the total inward and outward remittances i.e. Rs.2,84,00,000/- [Rs.87,00,000 + Rs.1,97,00,000] by way of commission income earned by the assessee by providing accommodation entries to the beneficiaries. Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the action of the AO. Now, the assessee is in appeal before this Tribunal.

5. The Ld. AR has filed a written synopsis in which he has primarily reiterated the submissions which were put forth before the lower authorities. The Ld. AR in his written note has submitted that, evidences were furnished in support of sale and purchase of shares and despite the same the AO had treated the assessee to be engaged in circular trading and treated 1% of total debit and credit entries in the bank statement as income of the assessee. It has been submitted that the AO ought to have enquired into the source of funds utilized to acquire the shares during the year and that the manner in which he computed the sums involved in circular trading, which action of AO according to him, was not correct. The Ld. AR, at the time of hearing however did not seriously pursue the aforesaid line of submissions. Rather he argued that, as per the report of the DGIT(Inv), Kolkata, the



tainted sums were only to the extent of Rs.87 lacs and that all other receipts/payments were not tainted and therefore he urged that addition on account of commission income, if any, ought to be restricted to the same.

6. Per contra, the Ld. DR supported the order of the lower authorities. He submitted that the averment of the Ld. AR that necessary evidences in support of purchase & sale of shares were furnished before the AO was incorrect in as much as the assessment order clearly showed that no details/evidences were filed in relation thereto. He further submitted that even the bank statement was not filed before the lower authorities or this Tribunal. The Ld. DR argued that the AO never accepted the transaction of purchase & sale of shares rather the AO had categorically observed that all the transactions in the so-called shares conducted by the assessee were in nature of accommodation entries. He further contended that, the assessee had never brought on record the details of all debit & credit entries during the year so as to ascertain the correct quantum of accommodation entries provided by the company and thus urged that the addition on account of commission income as estimated by the AO did not call for any interference.

7. I have heard both the parties. It is noted that the assessment of the assessee for AY 2012-13 was reopened as the AO was in receipt of information that the assessee was in receipt of accommodation



entries to the tune of Rs.87 lacs from two companies controlled by Shri Rajesh Bhutoria (i) M/s. Moonlink Dealcomm Pvt. Ltd. of Rs.85,00,000/- and (ii) M/s. Lucky Prime Commercial Pvt. Ltd. of Rs.2,00,000/- (total of Rs.87,00,000/-). Before the AO, the assessee is noted to have admitted to having conducted transactions with these two entities but it had made only general assertions regarding the nature of transactions and that these transactions were regular business dealings forming part of books of accounts. The Ld. AR was unable to controvert the findings recorded by the AO at Para 5.3 of the assessment order wherein he had observed that neither the details of purchase/sale of shares were submitted nor copies of bank statements were provided by the assessee. It is also noted that, no details/documents in support were furnished by the assessee in relation to the sale of shares *inter alia* including the details the scrips sold, date of transaction, price at which shares were acquired, consideration at which shares were sold, manner of valuation, share purchase bill, sale invoice, bank statement etc. Even now, the assessee has not been able to furnish any of the aforementioned details or documentary evidences in support of the purported transactions with the two entities. Accordingly the submission of the Ld. AR that complete details were furnished before the AO is found to be untenable without there being any iota of evidence to support the same. Even the assertion made by the Ld. AR that the AO had accepted the transactions as purchase & sale of shares is found to be incorrect in light of the categorical finding recorded by the AO at Para 5.5 of the order viz., *From the*



*above it is crystal clear that the assessee company is not in the business of share trading of unlisted shares but is indulged only in providing accommodation entries to ultimate beneficiaries.* The Ld. AR has been unable to dislodge these findings of the AO and therefore the same stands affirmed. I therefore in principle uphold the order of the lower authorities treating the assessee to be an accommodation entry provider engaged in assisting in circular trading/ layering of funds for the ultimate beneficiaries.

**8.** Moreover, I find that it was the assessee who had voluntarily stated before the AO that if the monies transacted through the two (2) entities are held to be tainted, then the company may be regarded as entity involved in providing accommodation entries thereby suggesting that it was not the beneficiary of the unexplained sum of Rs.87 Lakhs but it was an *aide* who was facilitating the same and therefore only commission income could be inferred in relation thereto. If that be so, then as a natural corollary all the transactions conducted by the assessee during the year through its bank account has to be treated as accommodation entries facilitated by them. The assessee cannot blow hot and cold at the same time and assert that the sum to the extent of Rs.87,00,000/- identified by the Investigating authorities be treated as tainted and the rest of the transactions be accepted at its face value to be sacrosanct. Since assessee failed to produce any material to prove the genuineness of un-secured loan (*other than entries in financials*), I am unable to subscribe to the contention



of the assessee that it had received genuine unsecured loans out of which investments were made/purchased and therefore these transactions should be overlooked. Having held that the assessee was never engaged in business of trading in shares but providing accommodation entries in guise of the same, I am of the view that all the alleged purchase & sale transactions conducted by the assessee was rightly regarded as accommodation entries by the AO.

**9.** Now on the issue of estimation of commission income, I find prima facie merit in the plea of the Ld. AR that in the facts of the case, both inward and outward remittances may not be considered as accommodation entries provided to ultimate beneficiaries which yielded commission income. Rather, the payments made/cheques issued by the assessee company would represent the accommodation entries provided by it and that the inward remittances represents the funds layered by the assessee to provide such accommodation entries. Hence, in the facts and circumstances of the case as seen from records, in my considered view, the commission income was required to be estimated only with reference to the aggregate of the debit entries found in the bank statement of the assessee and that the credit entries ought not be considered. Having said so, I also find force in the Ld. DR's contention that such an exercise would remain academic in absence of the bank statement of the assessee. Hence, in the fitness of the matters, the limited issue regarding quantification of commission income is set aside back to the file of the AO with



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direction to the assessee to produce/furnish its bank statement for verification and quantification of debit entries for estimation of commission income. The AO shall allow sufficient opportunity and time to the assessee in this regard. In case the commission income estimated comes to a figure higher than the sum originally added or the assessee fails to provide or furnish the bank statement, then the commission income as originally estimated by the AO would stand confirmed. Needless to say, under no circumstances, the AO would enhance the income as originally assessed by him.

**10.** With the above directions, the appeal for AY 2012-13 stands partly allowed for statistical purposes.

**11.** Since except variation in figures, the facts and circumstances in the lead case under consideration, being ITA No. 617/Mum/2023, for A.Y. 2012-13 is identical to the other AYs 2013-14 & 2017-18 in ITA Nos. 618/Mum/2023 & 616/Mum/2023 respectively, my decision in the case of ITA No. 617/Mum/2023, for A.Y. 2012-13 of the assessee's appeal shall apply *mutatis mutandis* to the assessee's appeals in ITA No. 618 & 616/Mum/2023. Hence, these two appeals for AYs 2013-14 & 2017-18 also stands partly allowed for statistical purposes.

Order pronounced in the open court on 20/09/2023.

Sd/-  
(**ABY T. VARKEY**)  
**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 20/09/2023.  
*Vijay Pal Singh, (Sr. PS)*



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**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**