

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

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.1627 to 1630/Mum/2023  
(A.Ys. 2008-09 to 2011-12)**

Alka Diamond Industries Ltd., Office No. 626, Panchratna, Opera House, Mumbai – 400 004	Vs.	DCIT, Central Circle 1(1) Room No. 903, 9 <sup>th</sup> Floor, Pratishtha Bhavan (Old CGO Building (Annexe) M.K, Road, Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACA5236D		
Appellant	..	Respondent

Appellant by :	Vimal Punmiya
Respondent by :	S.S. Alam

Date of Hearing	16.08.2023
Date of Pronouncement	24.08.2023

**आदेश / O R D E R**

**Per Bench:**

All these 5 appeals are directed against the common order of Id. CIT(A)-47, Mumbai for the various assessment years. Since, these appeals are based on common issue on identical facts, therefore, for the sake of convenience these appeals are adjudicated together by taking the ITA No. 1629/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to the other appeals wherever it is applicable.

**ITA No. 1629/Mum/2023**

- “1. *The learned Commissioner of Income Tax (Appeal) has erred in not allowing the appellant company'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.*
2. *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 company.*
3. *The learned commissioner of Income Tax (Appeal) has again erred in upholding the view of the learned assessing officer of disallowing Capital Loss and Exchange Difference debited to Profit and Loss account that resulted in a net loss of Rs. 10.33 Crore, treating the business activities as accommodation entry only.*
4. *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 and 2% for Share Application money (Investments) during the captioned year.*
5. *The Learned Commissioner of Income Tax (Appeal) has again erred in upholding the proposition of the learned AD and the treatment of the alleged unaccounted commission income is confirmed on "Protective Basis".*

*The appellant craves to add, amend or alter the grounds of appeal at the time of or before the hearing of appeal.”*

2. Fact in brief is that search and seizure action u/s 132 of the Act was conducted in the case of Shri Praveen Kumar Jain on 01.10.2013. The assessee is a group company of Shri Praveen Kumar Jain. In response to the notice u/s 153A of the Act the assessee filed return of income on 22.01.2015 declaring total income of Rs.487,390/-. A notice u/s 143(2) of the Act was issued on 19.11.2015. The assessee company claimed to be engaged in the business of trading in diamond, investment in shares and money lending. During the course of assessment the assessing officer mentioned that on the basis of evidences found and facts gathered during the course of search action conducted u/s 132(1) of the Act on Shri Praveen Kumar Jain and his associates and related

companies, it was found that Shri Praveen Kumar Jain through the network of a number of companies, including the assessee company was involved in the business of providing accommodation entries of unsecured loans, share capital or issuing bogus bills of purchase and sales. During the course of search action statement of Shri Praveen Kumar Jain and his associates were recorded where they revealed that they were merely dummy director/partners/proprietors of various concern whose effective management and control was in the hand of Shri Praveen Kumar Jain. The assessing officer has arrived at the conclusion that certain persons shown as directors, proprietor merely for namesake but actually these concerns are operated, managed and controlled by Shri Praveen Kumar Jain. This fact was also admitted by these persons in their statement recorded u/s 132(4) of the Act.

4. The assessing officer noticed from the detail filed that assessee has declared a loss of Rs.53,26,416/- on account of exchange difference and that of Rs.980,52,460/- on account of share trading (F & O) and capital gain of Rs.11,06,35,449/- and receipt of dividend of Rs.25,100/- . After considering the fact that transaction recorded by the assessee were bogus transactions the assessing officer has rejected the books results u/s 145(1) of the Act.

5. During the course of assessment proceeding the assessee filed details of transactions of providing accommodation entries by different modes upon which the assessing officer has computed the commission income of the assessee as under:

<i>Sr. No.</i>	<i>Particulars of Entry Provided</i>	<i>Amount (in Rs.)</i>	<i>Rate of Commission</i>	<i>Commission Income</i>
1.	<i>Bogus share application</i>	<i>42,47,60,500</i>	<i>2%</i>	<i>84,95,210</i>
2.	<i>Loans &amp; advances</i>	<i>2,21,0,000</i>	<i>0.20% per month</i>	<i>5,30,400</i>

			<i>(2.4% per year)</i>	
	<i>Total</i>			<i>90,25,610</i>

6. The Assessing officer at para 9 of the assessment order stated that these concerns including assessee were actually operated and controlled by Shri Praveen Kumar Jain as he has admitted in his statement recorded during the course of search action, therefore, the income earned on the turnover has been included as income in the individual case of Shri Praveen Kumar Jain and the same is also assessed on protective basis in the hands of the assessee.

7. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

8. During the course of appellate proceedings before us the ld. Counsel submitted that since the impugned amount of commission income worked out in the case of the assessee has already been taxed in the hands of Shri Praveen Kumar Jain, therefore, the ld. CIT(A) is not justified in sustaining the addition in the hands of the assessee on protective basis. He also referred para 9 of the assessment order wherein the assessing officer has categorically held that impugned addition in the hands of the assessee is made on protective basis. The ld. Counsel also referred the various decision of the coordinate benches of the ITAT Mumbai wherein on identical facts and similar issue the protective addition in the hands of the concerns of the assessee were deleted on the ground that same has already been added on substantial basis in the hands of Shri Praveen Kumar Jain. He referred the following judicial pronouncements :

- i. Casper Enterprises Pvt. Ltd. Vs. Dy. Commissioner of Income Tax Central Circle 1(1) ITA No. 2498/Mum/2019 AY 2008-09
- ii. M/s Atharv Business Pvt. Ltd. Vs. DCIT, CC 1(1) ITA No. 2497/Mum/Mum/2019 AY 2008-09
- iii. Duke Business Pvt. Ltd. Vs. DCIT, CC 1(1) ITA No. 2500/Mum/2019 AY 2008-09
- iv. Sumukh Commercial Pvt. Ltd. Vs. DCIT, CC 1(1) ITA No. 2499/Mum/2019 AY. 2008-09
- v. Olive Overseas Pvt. Ltd. Vs. Dy.CIT CC -1(1) ITA Nos. 1402 to 1407/Mum/2023 AYs. 2008-09 to 2013-14

9. On the other hand, the ld. DR supported the order the lower authorities.

10. Heard both the side and perused the material on record. The assessee is a group company of Shri Praveen Kumar Jain. Shri Praveen Kumar Jain through various concern including the assessee company was involved in providing accommodation entries in the form of unsecured loans, share capital and issuing of bogus bill of purchase and sale. On the basis of statement of various directors and information gathered during the course of search the assessing officer observed that business affairs of all the concerns including the assessee company were managed and controlled by Shri Praveen Kumar Jain. The assessing officer has provided details of 71 such concerns at page no. 43 to 45 of the assessment order which were controlled, managed and operated by Shri Praveen Kumar Jain. In their statement various directors have admitted that they were merely dummy directors in these concerns which were controlled and managed by Shri Praveen Kumar Jain. Therefore, on the basis of statement of Shri Praveen Kumar Jain

and various persons the assessing officer concluded that the amount of purchase, sales, loans/advances and investment etc. reflected in the books of account of the assessee were bogus and not genuine. Therefore, the assessing officer has estimated commission income earned by the assessee from the various transactions of providing accommodation entries to the amount of Rs.90,25,610/- and assessed in the hands of the assessee on protective basis on the ground that same has already been included on substantial basis in the individual case of Shri Praveen Kumar Jain.

11. The ld. Counsel referred the various decision of coordinate benches of the ITAT on similar fact and identical issue in the case of concerns controlled by Shri Praveen Kumar Jain i.e (i) Casper Enterprises Pvt. Ltd. Vs. Dy. Commissioner of Income Tax Central Circle 1(1) (ii) M/s Atharv Business Pvt. Ltd. Vs. DCIT, CC 1(1) (iii) Duke Business Pvt. Ltd. Vs. DCIT, CC 1(1) (iv) Sumukh Commercial Pvt. Ltd. Vs. DCIT, CC 1(1) (v) Olive Overseas Pvt. Ltd. Vs. Dy.CIT CC -1(1) wherein it is held that since the substantive addition has already been upheld by the coordinate bench in the case of Shri Praveen Kumar Jain, therefore, similar addition made on protective basis in the hands of the assessee become unsustainable. The relevant extract of the decision of ITAT, Mumbai in the case of M/s Olive Overseas Pvt. Ltd. Vs. DCIT CC 1(1) is reproduced as under:

*6. We find that vide common impugned order, the learned CIT(A) dismissed the appeals filed by the assessee, inter-alia, in all the assessment years under consideration before us and upheld the addition made by the Assessing Officer on a protective basis in the hands of the assessee.*

*7. From the perusal of the legal paper book filed by the learned AR, we find that the coordinate bench of the Tribunal vide its order dated 19/01/2023 passed in Praveen Kumar Jain v/s DCIT, ITA No. 7191/Mum./2018 and etc., for the assessment years 2008-09 to 2014-*

*15 upheld the addition made on substantive basis in the hands of Mr. Praveen Kumar Jain, by observing as under:-*

*“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 assessee, namely, Shri Pravin Kumar Jain and Shri Pankaj Jain are hereby dismissed.”*

*8. In the present appeals, it is undisputed that the substantive addition has been made in the hands of Mr. Praveen Kumar Jain and the similar addition, on a protective basis, is made in the hands of the assessee. Since the substantive addition has already been upheld by the coordinate bench in the case of Praveen Kumar Jain (supra), therefore the similar addition made on a protective basis in the hands of the assessee becomes unsustainable and therefore is directed to be deleted in all the assessment years under consideration before us. We further direct the Assessing Officer that in case the addition made in the hands of Mr. Praveen Kumar Jain is deleted in further appellate proceedings, then the addition made in the hands of the assessee be revived. With the above limited directions, the impugned additions made in all the assessment years under consideration before us are directed to be deleted.”*

12. We find that the issue raised in the case of the assessee is identical and based on similar fact as in the case referred above. Since common issue on hand being squarely covered by the decision of the coordinate bench as supra therefore, following the principle of consistency we direct the assessing officer to delete the addition made in the case of the assessee on protective basis since the substantive addition has already

been upheld by the coordinate bench in the case of Shri Praveen Kumar Jain. However, we direct the assessing officer that in case the addition made in the hands of Shri Praveen Kumar Jain is deleted in further appellate proceedings then the addition made in the hands of the assessee be revived. Therefore, subject to the above terms the appeal of the assessee is allowed.

13. In the result, the appeal of the assessee is allowed.

**ITA No. 1627/Mum/2023**

14. Since issue involved in this appeal are identical and similar as we have adjudicated supra in this order, therefore, applying the finding of ITA No. 1629/Mum/2023 the ground of appeal of the assessee is allowed subject to the terms that in case the addition made in the hands of Shri Praveen Kumar Jain is deleted in further appellate proceedings, then the addition made in the hands of the assessee be revived.

**ITA No. 1628/Mum/2023**

15. Since issue involved in this appeal are identical and similar as we have adjudicated supra in this order, therefore, applying the finding of ITA No. 1629/Mum/2023 the ground of appeal of the assessee is allowed subject to the terms that in case the addition made in the hands of Shri Praveen Kumar Jain is deleted in further appellate proceedings, then the addition made in the hands of the assessee be revived.

**ITA No. 1630/Mum/2023**

16. Since issue involved in this appeal are identical and similar as we have adjudicated supra in this order, therefore, applying the finding of

ITA No. 1629/Mum/2023 the ground of appeal of the assessee is allowed subject to the terms that in case the addition made in the hands of Shri Praveen Kumar Jain is deleted in further appellate proceedings, then the addition made in the hands of the assessee be revived.

17. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 24.08.2023

Sd/-  
(Aby T Varkey)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 24.08.2023

Rohit: PS

**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 DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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