

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.1869&1870/Mum/2023
(A.Ys. 2011-12 & 2012-13)**

RajendraGokuldas Parekh, 401, NilgiriNeelkanthVihar, SahidBhagat Singh Marg, Ghatkopar East, Mumbai – 400077	Vs.	ITO Ward 27(3)-1 Room No. 422, 4 th Floor, Tower No. 6, Vashi Rly Stn. Complex, Vashi, Navi Mumbai – 400 703
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No:AGNPP1236C		
Appellant	..	Respondent

Appellant by :	Bharat Kanabar
Respondent by :	Ajay Singh

Date of Hearing	11.10.2023
Date of Pronouncement	23.10.2023

आदेश / ORDER

Per Amarjit Singh (AM):

These 2 appeals filed by the assessee are directed against the different order of NFAC pertaining to assessment year 2011-12 and AY. 2012-13. Since, common issue on identical facts are involved in these two appeals, therefore, for the sake of convenience both these appeals are adjudicated together by taking ITA No. 1869/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to the other appeal wherever it is applicable.

ITA No.1869/Mum/2023

Ground No.1

On the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeals) -NFAC, Delhi erred in law in sustaining the addition of Rs.765,553 made by the assessing officer (being 1% of total credit amount in the bank accounts of the appellant not operated by him) without considering the fact that the appellant had not handled the bank operations for which the addition is made and also without considering the reality, the age, background/status, circumstances and the facts of the case of the appellant and ignoring that the appellant was only handler or conduit of his employer Mr. Hitesh G Shah the operator of the accounts.

As such, your appellant pleads that any income, if any, earned from banking transactions not operated by him should not be taxed in the hands of the appellant and should be taxed only to the actual beneficiary.

Ground No. 2

On the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeals) -NFAC, Delhi erred in law by upholding the decision of learned assessing officer in determining 1% as incentive / net profit of total credits in bank accounts for the accounts not operated by him and making addition to income of the appellant by Rs.765,553/- as his income for the year under consideration without reducing salary, commission or income declared by him by whatever name called of Rs.120,000.

Ground No. 3

On the facts and circumstances of the case, the learned Commissioner of Income-tax (Appeals) -NFAC, Delhi erred in law in not allowing any expenditure from the addition wrongly made by the assessing officer for incentive/profit of Rs.765,553 (being 1% of total credit in bank accounts not operated by the appellant but in the name of the appellant), ignoring the fact that no income can be earned without any expenditure.

Your appellant pleads that atleast 90% of incentive estimated shall be allowed as expenditure or deduction to arrive at taxable income.

Your appellant crave leave to add, delete, substitute, withdraw or modify any of the above grounds of appeal before or at the time of hearing.”

2. Fact in brief is that assessing officer has received information from the ADIT (Investigation) Unit 5(3), Mumbai that assessee has credited total amount of Rs.765,55,253/- in the bank account in the name of various proprietorship concerns and assessee had also received contracts of Rs.5,75,000/- from two contract awarding parties as per ITD system. Since, assessee has not filed return of

income, therefore, considering the facts, the case of the assessment was reopened by issuing of notice u/s 148 of the Act on 31.03.2016. On query, the assessee explained that assessee was acting on behalf of his employer Mr. Hitesh G. Shah, without any actual dealing in goods and services. The assessee submitted that he had neither signed any contract nor signed any bills to the parties who had made payments in the bank account for bogus contracts and sales. The assessee claimed to have one saving bank account in his name with Deva Bank Ghatkopar East Branch and all the other bank account were only operated by Shri Hitesh G. Shah. The assessee further submitted that he was employed as a dummy or a benami person by Shri Hitesh G. Shah and the bank account were though open in the name of assessee but were operated by Hitesh G. Shah. The ADIT, Mumbai had provided information about 12 bank accounts opened for proprietary concerns with Dena Bank and ICICI bank branches in Mumbai. After taking into consideration the submission of the assessee the assessing officer observed that all such transactions made through the proprietary concern of the assessee might be controlled by his employer Shri Hitesh G. Shah. However, the assessing Officer was of the view that assessee was acquainted with the business modal of his employer, therefore he made addition of Rs. 765,553/- on estimated basis as 1% of total gross sale of Rs. 765,55,253/- to the total income of the assessee.

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

4. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated supra in this order the assessing officer has held that the employer of the assessee Mr. Hitesh G. Shah was running several proprietary concern through the

connivance of the assessee and all the bank accounts were handled by his employer. However, because of association of the assessee with his employer in the bogus business activity the AO has estimated 1% of the total gross amount to the amount of Rs.76,553/- as incentives in hands of the assessee. During the course of appellate proceedings before us the ld. Counsel contended that assessee has already shown the impugned commission and incentives to the amount of Rs.1,20,000/- received by the assessee from his employer for associating with his employer in his bogus business. Therefore, he submitted that further addition made on estimation basis in the hands of the assessee is not justified. After considering the above facts and findings of the assessing officer we consider it is appropriate to restrict the addition to the extent of .05% of the gross total of Rs. 76,55,523/- since, actually the business was run and controlled by the employer of the assessee and assessee had already shown the commission income received from the employer in the return filed.

5. Therefore, both ground of appeal 1 & 2 are partly allowed.

ITA No .1870/Mum/2023

Ground No. 1 & 2:

6. Since the facts and the issue involved in these grounds are similar to the facts and issue involved in in ground no. 1 & 2 of the appeal vide ITA No. 1869/Mum/2023 as adjudicated supra in this order, therefore, applying the finding of ITA No. 1869/Mum/2022 as mutatis mutandis the similar addition made in the hands of the assessee is restricted to 0.05% of the gross amount. These grounds of appeal of the assessee are also partly allowed.

Ground No. 4:

7. During the course of assessment the AO noticed that there was a cash deposit of Rs.15,05,000/- made in the Kotak Mahindra Bank account and Pratap Cooperative Bank Ltd, during the year the year under consideration for two proprietary concern M/s Skand Industries and Ayushi Enterprises. The assessee explained that all these accounts were controlled and operated by his employer and he was just working as a benami person on the direction of his employer. However, assessing officer stated that since the assessee was also related to the running of these concern but not directly, therefore, he estimated 30% of the such cash deposit to the amount of Rs.4,50,000/- in the hands of the assessee as unexplained cash credit u/s 68 of the Act.

8. The assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

9. Heard both the sides and perused the material on record. The AO accepted that assessee was not directly and fully involved in the running of two proprietary concern and the assessee was just acting as a benami person of his employer and the proprietary concern and bank accounts were controlled by his employer. Therefore, we consider because of association of the assessee in the bogus business activity of his employer addition of 15% of such cash deposit to the extent of Rs.2,25,000/- would be appropriate. Therefore, this ground of appeal of the assessee is partly allowed.

10. In the result, both the appeals of the assessee are partly allowed.
Order pronounced in the open court on 23.10.2023

Sd/-
(KuldipSingh)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai
Date 23.10.2023
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.