

आयकर अपीलिय अधिकरण  
मुंबई पीठ "ए", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " A", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आअसं. 2437/मुं/2021 (नि.व. 2011-12)  
ITA NO.2437/MUM/2021(A.Y.2011-12)  
आअसं. 2436/मुं/2021 (नि. व. 2012-13)  
ITA NO.2436/MUM/2021(A.Y.2012-13)

Shri Amish Modi,  
B-404, Jyoti Tower, S.V.Road,  
Kandivali (West), Mumbai – 400 067  
PAN: AFXPM-2914-F

..... अपीलार्थी/ Appellant

बनाम Vs.

Dy.Commissioner of Income Tax  
Central Circle – (2)(1), Mumbai  
Pratishtha Bhavan, M.K.Road,  
Mumbai – 400 021

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ravikant Pathak  
प्रतिवादी द्वारा/ Respondent by : Shri Milind Chavan ,Sr.AR  
सुनवाई की तिथि/ Date of hearing : 20/12/2023  
घोषणा की तिथि/ Date of pronouncement : 21/12/2023

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

The appeals by the assessee for Assessment Years 2011-12 and 2012-13 are dated against the order of Commissioner of Income Tax (Appeals)-48, Mumbai [ in short 'the CIT(A)'], dated 09/11/2021 common for Assessment Years 2011-12 and 2012-13.

2. Shri Ravikant Pathak appearing on behalf of the assessee submitted at the outset that in both the appeals the assessee has raised identical grounds of

appeal assailing validity of reopening of assessment u/s. 148 of the Income Tax Act, 1961 [in short 'the Act'] and confirming addition made u/s. 68 of the Act. He submitted that the assessee is not pressing ground No.1 of appeal challenging validity of reopening of the assessment u/s. 148 of the Act. He further submitted that in appeal for both the Assessment Years the reason for making addition is identical, hence, the submissions made in respect of appeal for Assessment Year 2011-12 would equally hold good for Assessment Year 2012-13.

3. The Id.Authorized Representative of the assessee submitted that, admittedly the assessee is a facilitator for providing bogus entries. The assessment for Assessment Year 2011-12 was reopened on the basis of information that the assessee has total credit of Rs.1,40,00,155/- including cash deposits of Rs.17,48,000/- in his Axis Bank A/c. No.909020038907472 and total credit of Rs.42,70,675/- including cash deposits of Rs.4,12,000/- in bank A/c. No.909010040814600. The Assessing Officer made addition of entire credits in aforesaid bank accounts i.e. Rs.1,82,70,830/- u/s. 68 of the Act. The assessee filed appeal against the assessment order dated 27/11/2018 passed u/s. 143(3) r.w.s. 147 of the Act. The CIT(A) upheld the addition in toto and dismissed the appeal of assessee. The Id.Authorized Representative of the assessee submitted that on identical set of facts in ITA No.3060/Mum/2022 for Assessment Year 2015-16, the Tribunal upheld the order of CIT(A) in treating the assessee as facilitator of accommodation entries, the Tribunal further held that the addition of entire credits in the bank account cannot be made, it is only the element of commission charged by the assessee for providing bogus entries that are liable to be taxed. The Tribunal

upheld the rate of commission at 3% as determined by the CIT(A) in Assessment Year 2015-16. The Id.Authorized Representative of the assessee submitted that since the facts in the impugned assessment year are identical the addition be restricted to 3% of donations credited in the bank account.

4. Per contra, Shri Milind Chavan representing the Department vehemently defended the impugned order and prayed for sustaining the entire addition. However, the Id. Departmental Representative fairly admitted that the facts in the impugned assessment year and the modus operandi for providing bogus entries are similar to the one as referred to in the order of Tribunal for Assessment Year 2015-16(supra).

5. We have heard the rival submissions and have examined orders of authorities below. The assessee / appellant in ground No.1 of appeal has assailed validity of reopening of assessment. The Id.Authorized Representative of the assessee stated at Bar that he is not pressing ground No.1. In view of the statement made by the Id.Authorized Representative of the assessee ground No.1 of appeal is dismissed as not pressed.

6. The assessee has admitted that he is a facilitator for providing bogus entries through the channel of Navjeevan Charitable Trust against commission. The assessee is having two bank accounts with Axis Bank i.e. Current Account No.90902003807472 in the name of Modi Trading Company. The said bank account had total credits of Rs.1,40,00,155/-. The assessee had another Saving Bank A/c. No.909010040814600 having total credits of Rs.42,70,675/-. The Assessing Officer made addition of the entire deposits in the aforesaid bank accounts on the ground that the assessee has not

furnished any evidence to support the source of these deposits. Thus, an addition of Rs.1,82,70,830/- was made by the Assessing Officer u/s. 68 of the Act. The CIT(A) upheld entire said addition. We find that in assessee's case in ITA No.3060/Mum/2022 (supra), the Tribunal upheld the findings of CIT(A) in restricting the addition to 3%. In Assessment Year 2015-16 the Assessing Officer had made addition of the entire credits in the bank accounts of the assessee for similar reason. In First Appellate proceedings, the CIT(A) came to the conclusion that assessee is a facilitator and charges commission for providing bogus entries. The CIT(A) after examining the documents on record observed that assessee is charging 3% commission for providing bogus entries, accordingly the CIT(A) restricted the addition to 3%. Both Revenue and assessee carried the issue in appeal before the Tribunal. The Co-ordinate Bench vide common order dated 25/05/2023 dismissed the appeal of Revenue in ITA No.3243/Mum/2022. The assessee in its appeal in ITA No.3060/Mum/2022 prayed for restricting the addition to 0.25%. The Tribunal upheld the findings of CIT(A) and confirmed the addition of 3%. For the sake of ready reference relevant extract of the findings of Tribunal is reproduced herein below:

*“18. However, we are of the considered view that when it is proved on record that as per entries recorded in the bank account of the assessee maintained with Jammu & Kashmir Bank and Axis Bank the assessee retained 3% which fact is also admitted by trustee of M/s. Navjeevan Charitable Trust there is no question of accepting the contention of the assessee that commission should be reduced to 0.25%. Moreover, the assessee failed to prove on record that it has retained only 0.25% and transferred the remaining amount to other persons. There is not an iota of this fact on record. It is nowhere case of the assessee that he has paid the balance amount in cash or otherwise to the other three persons involved in the business of providing accommodation entries.*

*19. In these circumstances we are unable to agree with the contentions raised by the Ld. D.R. for the Revenue that the addition @ 100% of Rs.4,20,93,787/- be made and*

*at the same time we are also unable to agree with the contentions raised by the assessee that addition on account of commission qua accommodation entries on the amount of Rs.4,20,93,787/- be reduced from 3% to 0.25%. The Ld. CIT(A) has passed a well reasoned order based on the facts proved on record, so finding no illegality or perversity in the impugned order passed by the Ld. CIT(A) there is no reason to interfere into the impugned findings returned by the Ld. CIT(A). So ground No.3 of assessee's appeal is hereby dismissed and at the same time grounds No.1 & 2 of Revenue's appeal are also dismissed."*

In light of the facts of case and the decision of Co-ordinate Bench, ground NO.2 of appeal is partly allowed.

7. Both sides are unanimous in stating that similar are the facts in Assessment Year 2012-13. Except for the difference in the amounts credited in the bank accounts of the assessee, the modus operandi for providing bogus entries remain the same.

8. There being no change in facts in the impugned assessment years, we see no reason to take a different view, hence, both the appeals of assessee are partly allowed in the terms aforesaid.

9. In the result, both appeals of the assessee are partly allowed.

Order pronounced in the open court on Thursday the 21st day of December, 2023.

Sd/-

(AMARJIT SINGH )

लेखाकार सदस्य / ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/ Dated 21/12/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar) ITAT, Mumbai