

**IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC" BENCH, SURAT
BEFORE DR. A. L. SAINI, AM**

आयकर अपील सं./ITA Nos.543 to 547/SRT/2023

(निर्धारण वर्ष / Assessment Years: (2011-12 to 2015-16)

(Physical Court Hearing)

Kamal Jayantilal Zaveri B-104, Krishna Park Apartment, Opp. Nutan Row House, Palanpur, Jakatnaka, Surat- 395009	Vs.	Income Tax Officer, Ward 1(3)(7) Surat, Aaykar Bhavan, Majura Gate, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAPZ 5662 K		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	Shri P.M. Jagasheth, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख/Date of Hearing	26/12/2023
घोषणा की तारीख/Date of Pronouncement	29/12/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned five appeals filed by the assessee, pertaining to Assessment Years (AYs) 2011-12 to 2015-16 (assessment year-wise), all are directed against the separate orders passed by the Ld. Commissioner of Income Tax (Appeals)-4, Surat [in short, "Ld. CIT(A)"], which in turn arise out of separate assessment orders passed by the Income Tax Officer Ward-1(3)(7), Surat, under section 143(3) r.w.s 147 of the Income Tax Act, 1961.

2. Since the issue involved in all these appeals are common and identical except variance of amount, therefore these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The facts as well as grounds of appeal

narrated in assessee's appeal in ITA No. No.543/SRT/2023, for assessment year 2011-12, are taken into consideration for deciding these appeals *en masse*.

3. The grounds of appeal raised by the assessee in "*lead*" case in ITA No.543/SRT/2023 for A.Y. 2011-12 are as follows:

"1. On the facts and in the circumstances of the case as well as in law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Office in re-opening the assessment u/s 147 of the Act and issuing notice u/s 148 of the Income Tax Act.

2. On the facts and in the circumstances of the case as well as in law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.10,06,251/- on account of alleged estimation of commission income.

3. On the facts and in the circumstances of the case as well as in law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in making addition of Rs.2,47,004/- on account of difference in interest income between interest as per Form 26AS details and interest income shown in ROI treated as alleged undisclosed interest income from alleged accommodation loan entries of loans to various parties.

4. It is therefore prayed that the above addition may please be deleted as learned members of the Tribunal may deem it proper.

5. Assessee craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal."

4. Learned Counsel for the assessee did not argue Ground No.1, regarding re-opening of assessment u/s 147/148 of the Act. Therefore, Ground No.1 raised by the assessee is dismissed as not pressed/ not argued. Similarly, Ground No.1 raised by assessee in other appeals, (ITA No.544-547/SRT/2023) are also dismissed, as not pressed.

5. Ground No.2 raised by the assessee relates to addition of Rs.10,06,251/- on account of alleged estimation of commission income.

6. Succinctly, the factual panorama of the case is that assessee before us is an Individual and filed his return of income on 17.03.2012, declaring total income at Rs.2,02,100/-. The assessee was subjected to survey u/s 133A of the Act which was carried in the premises of the assessee on 24.03.2015. As per the information with the Investigation Wing, Ahmedabad, the assessee was the entry provider through his Proprietary Concerns, M/s Radhika Enterprise and M/s Rishit Corporation. During the course of survey, it was found that the assessee was providing bogus bills of purchase / sales and accommodation loan entries on commission basis. As the assessee was not maintaining regular books of accounts, the inventory of bank accounts was prepared as found in the premises which included the bank accounts of the assessee, his prop. Concerns, his family members, relatives and some non-descript persons. In his statement u/s 131 of the Act, the assessee, in reply to Q.No.3 and 5, confessed that he is engaged in providing all types of bogus / fabricated, sale bills, purchase bills, job work bills and the accommodation loan entries. The assessee also explained the modus operandi of his work which involves receiving account payee cheques in the name of various concerns. The cheques when realised would be transferred into another concern the amount will be returned to the parties after deducting commission of 0.5%. The assessee has also given the list of 44 concerns// entries through which the assessee operated his business of providing accommodation entries. Out of these 44 concerns, 32 concerns were his prop. concerns and balance of 12 concerns were the prop. concerns of other discrete persons. The list of these 44 entities / concerns has been reproduced by the assessing officer on page 3 and 4 of the assessment order. In reply to Q No.16 in the statement, the assessee had stated that his business of providing accommodation entries was being carried on by him for last 3 to 4 years and had provided total bogus bills of approximately Rs.200 Crores. The assessee filed the

declaration on Rs.100 stamp papers on 08.05.2015 before the Investigation Wing giving details of the modus operandi followed by him in his business. Based on the above facts, the assessing officer quantified after giving opportunity of being heard to the assessee, the total amount of bogus sales / expenses entries given by the assessee during the impugned AY at Rs.93,608/- and the bogus loans of Rs.1,53,00,000/- which has been accepted by the assessee before the assessing officer. The assessing officer further made addition to the bogus bills' entries provided of Rs.23,61,69,278/- on the basis of the impounded material found during the course of survey as per Annexure A-1 of the impounded material. Accordingly, the assessing officer worked out the total accommodation entries provided by the assessee at Rs.25,15,62,886/- (Rs.93,608 [+] Rs.1,53,00,000/- [+] Rs.23,61,278/-). On the said amount, the assessing officer worked out the commission earned by the assessee of Rs.12,57,814/-. (0.5% of Rs.25,15,62,895/-). The assessing officer further made addition of Rs.2,47,004/- towards income not disclosed in the return on the basis of 26AS statement of the assessee. The assessing officer further made addition of Rs.88,870/- towards estimation from investment and profit from commodity transaction income not disclosed in the return on the basis of 26AS statement of the assessee. Thus, the total addition made by the assessing officer to the returned income of the assessee was Rs.15,93,688/- (Rs.12,57,814/- [+] Rs.2,47,004/- [+] Rs.88,870/-).

7. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld.CIT(A), who has dismissed the appeal of assessee on account of technical grounds of re-opening of assessment u/s 147 of the Act. However, on merit, ld CIT(A) allowed the appeal of the assessee partly observing as follows:

“7. Ground No2. Is relating to the addition of Rs.12,57,814/- which is brought to tax by the AO being the commission on bogus entries provided @ 0.5% on total entries provided of Rs.25,15,62,886/-. The appellant does not have grievance with reference to taxing of 0.5% as the gross commission earned on providing of accommodation entries. The grievance is about not allowing any expenses incurred by the appellant for providing these entries which involved some other 3rd parties and also towards certain other administrative expenses in maintaining the establishment. The AR also submitted that the appellant in his statement during the course of survey in reply to Q.No.7 has stated that out of the commission income earned, he had to pay Rs.5,000/- to Rs.6,000/- per month for operating the accounts of other 3rd persons. In reply to Q.No.8, the appellant as also stated that parties approached him through some agents and for which he needed to pay the commission. I find merit in the contention of the appellant that he has to incur certain expenditure in carrying out the business of providing accommodation entries.

7.1 In providing the services as entry provider, the appellant must have incurred an expenditure towards administrative cost and personal cost for which 20% of the gross commission is allowed as expenditure on the facts of appellant's case as held by the Hon'ble ITAT, Surat Bench in the case of Rajendra Kumar Jain IT(SS)A 294 to 299/SRT/2017 where in the expenses of 25% of estimated income was allowed as expenditure. Accordingly, the net commission income earned by the appellant is computed as under:

0.5% of the total purchases / sales / loans turnover as per the AO of Rs.25,15,62,886/-	12,57,814/-
Less: Estimated expenditure @ 20% of gross commission	2,51,563/-
Net income chargeable to tax	10,06,251

7.2 The AO has made an addition of Rs.12,57,814/-. The addition to the tune of Rs.10,06,251/- as tabulated above is sustained and the appellant gets relief of Rs.2,51,563/-. Ground No.2 is partly allowed.”

8. Aggrieved by the order of Ld. CIT(A), the assessee is in further appeal before this Tribunal.

9. Shri P.M. Jagasheth, Learned Counsel for the assessee, in respect of ground No.2, argued in brief stating that Assessing Officer made addition @ 0.5% of the total purchases/sales/loans of Rs.25,15,62,886/- to the tune of Rs.12,57,814/- (0.50% of Rs.25,15,62,886/-), however, on appeal, by the assessee, the ld CIT(A) allowed deduction on account of estimated expenditure @ 20% of gross commission at Rs.2,51,563/- (20% of

Rs.12,57,814). Since the Id CIT(A) has allowed deduction on account of estimated expenditure @ 20% of the gross commission, the said deduction should be @ 50% of the gross commission, considering the nature of the business of the assessee.

10. Shri P.M. Jagasheth, Learned Counsel for the assessee, in respect of ground No.3, pleaded that addition of Rs.2,47,004/- on account of difference in interest income between interest as per Form 26AS and interest income shown in the Return of Income, treated as alleged undisclosed interest income from alleged accommodation loan entries of loans to various parties, which is not acceptable. Since the alleged accommodation loan was treated as bogus and assessing officer made estimation addition, hence addition of Rs.2,47,004/- on account of difference in interest income, is tantamount to double addition, hence the same may be deleted.

11. On the other hand, Id DR from the Revenue, (in respect of ground No.2) submitted that deduction on account of estimated expenditure @ 20% of gross commission, should not be increased to 50%, as the estimated expenditure @ 20% of gross commission, is sufficient to cover the expenditure incurred by the assessee to earn commission.

12. In respect of ground No.3, Id DR stated that addition of Rs.2,47,004/- on account of difference in interest income between interest as per Form 26AS and interest income shown in the Return of Income, should be sustained in the hands of the assessee, as it is not tantamount to double addition.

13. I have heard both the sides and gone through the relevant material on record. I note that, (vide table, para No.11.7 of the assessment order) assessee has not been given set off against the amount mentioned in column 'F' in the table, for the amount mentioned in column 'D' and 'E' respectively and Assessing Officer has computed the balance irreconcilable amount, which is wrong. Therefore, assessee is entitled to claim enhanced estimated expenditure from 20% to 50%. Hence, I find merit in the submissions of the Id Counsel to the effect that deduction on account of estimated expenditure @ 20% of the gross commission, should be increased to @ 50% of the gross commission. Therefore, I direct the assessing officer to allow estimated expenditure @ 50% of the gross commission. Therefore, ground No.2 raised by the assessee is allowed partly.

14. Since I have adjudicated the issue in ground No.2 by taking lead case in ITA No. No.543/SRT/2023, for assessment year 2011-12, accordingly, my observations made in ITA No. No.543/SRT/2023, for assessment year 2011-12, shall apply *mutatis mutandis* to the other appeals of Assessee namely, in ITA Nos.544, 545,546 and 547/SRT/ 2023, (in respect of ground No.2) also.

15. Coming to ground No.3, I find merit in the propositions canvassed by Id Counsel of the assessee that addition of Rs.2,47,004/- on account of difference in interest income between interest as per Form 26AS and interest income shown in the Return of Income, treated as alleged undisclosed interest income from alleged accommodation loan entries of loans to various parties, which is not acceptable. Since the alleged accommodation loan was treated as bogus and assessing officer made

estimation addition, hence addition of Rs.2,47,004/- on account of difference in interest income, is tantamount to double addition, hence the same is hereby deleted.

16. In the result, ground No.3 raised by the assessee is allowed.

17. Since I have adjudicated the issue in ground No.3 by taking lead case in ITA No. No.543/SRT/2023, for assessment year 2011-12, accordingly, my observations made in ITA No. No.543/SRT/2023, for assessment year 2011-12, shall apply *mutatis mutandis* to the other appeals of Assessee namely, in ITA Nos.544, 545,546 and 547/SRT/ 2023, (in respect of ground No.3) also.

18. In the combined result, assessee`s appeals (ITA No. No.543, 544, 545,546 and 547/SRT/ 2023, are partly allowed in above terms.

A copy of the instant common order be placed in the respective case file(s).

Order is pronounced in the open court on 29/12/2023.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत / Surat दिनांक/ Date: 29/12/2023

DKP (Sr. PS Outsourcing)

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat