

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 566/MUM/2023 (A.Y. 2010-11)

Manda Dilipkumar Rawal

60/3, Jariwala Building,
Sane Guruji Road, Tardeo,
Mumbai – 400 034

PAN: ADLPR7891Q

..... Appellant

Vs.

Commissioner of Income Tax (A)

National Faceless Appeal Centre,
Delhi

..... Respondent

Appellant by : Shri Priyavrat Gupta
Respondent by : Smt. Mahita Nair

Date of hearing : 27/12/2023
Date of pronouncement : 05/01/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 23.12.2022 u/s. 250 of the Income

Tax Act, 1961 (in short 'the Act') for A.Y. 2010-11. The assessee has raised the following grounds of appeal:-

- 1. That on the facts and circumstances of the case, the order passed by the Commissioner of Income Tax (Appeals) (hereinafter as "CIT (A)") u/s. 250 of the Income Tax Act, 1961 (hereinafter as "the Act") dated 23.12.2022 are bad in law.*
- 2. That on the facts and circumstances of the case, the learned CT(A) erred in confirming the addition of Rs. 52,13,975/- as unexplained income is arbitrary and without application of mind.*
- 3. That on the facts and circumstances of the case, the learned CIT (A) erred in appreciating that appellant entity used for accommodation business for commission income and not as beneficiary. The entire amount credited in bank account could not added only commission income at reasonable rate i.e 0.10% to 0.15% can be added.*
- 4. That the addition made is illegal, unjust and bad in law and based on mere surmises and conjunctures and the same cannot be justified by any material on record and the same are arbitrary and highly excessive.*
- 5. The Appellant craves leave to add alter amend and or vary any of the above grounds of appeal relief claimed at any time before the decision of the appeal.*

2. The brief facts of the case are that assessee filed her return of income on 30.6.2011 declaring total income at Rs.2,24,750/-. Information was received from the DDIT(Inv.); Unit-7(4), Mumbai that a search & seizure action u/s 132 of the I.T. Act was conducted on 05.02.2016 in the case of Shri Vipul Vidur Bhatt and his related entities viz. (i) M/s. Sunrise Asian Ltd. (ii) M/s. Sampada Chemicals Ltd. (iii) M/s. P. Sazi Shipra Textile Ltd (iv) M/s. Shyam Alcohol & Chemicals Ltd. (v) M/s. Shipra Fabrics Pvt. Ltd. Corporation (vi) M / s Victory Sales Pvt. Ltd. (vii) M/s. Lunkad Textiles Pvt. Ltd. (viii) M/s. Eagar Corporation (ix) M/s. Vikrant Marketing (x) M/s. Acute Consultancy Ltd. (xi) M/s. Dolex Commercial Pvt. Ltd. etc. From the

Information it reveals that Shri Vipul Vidur Bhatt has accepted in the statement recorded on 09.02.2016 u/s 132(4) of the I.T. Act that he is an entry operator and all the above mentioned entities are bogus entities, which are used by him for providing various bogus accommodation entries to the various beneficiaries for commission. Further he has also accepted that he is director in these entities/companies and all other directors of these entities are dummy directors appointed by him. He has also accepted that he controls the entire activities and affairs of these entities and these entities were incorporated for providing bogus accommodation entries only. Further, he has also accepted that he has controlled, managed and operated as many as 347 bogus entities, which was operated by him for providing bogus accommodation entries to the various beneficiaries for commission.

3. Vide para 3 of the assessment order, AO produced a list of 41 entities belong to Shri Vipul Bhatt and assessee has transactions with those entities amounting to Rs. 52, 13,975/-. In view of this, a notice u/s. 148 of the Act was issued on 30.3.2017 and in response to this assessee replied vide letter dated 4.5.2017 stating that return filed on 24.4.2017 may be treated as return filed in compliance to section 148 of the Act. Reasons of reopening were supplied to the assessee on 28.8.2017. In the whole matter various notices were issued to the assessee vide dated 28.8.2017, 13.11.2017, 15.11.2017 and the final show cause on 4.12.2017. As per assessment order, assessee never complied and came forward to participate in the proceedings and ultimately, assessment was done on the basis of material available on record alongwith the confessional statement of entry provider, Mr. Vipul Bhatt. Assessment was framed u/s. 144 r.w.s. 147 of the

Act and the whole amount received by the assessee from the entities belongs to Mr. Vipul Bhatt was added back u/s. 68 of the Act to the total income of the assessee amounting to Rs.52,13,975/-. Assessee being aggrieved with this order of AO preferred an appeal before the Ld. CIT (A) who in turn confirmed the order of AO. Assessee being further aggrieved with the order of Ld. CIT (A) passed u/s. 250 preferred this present appeal before us.

4. We have gone through the order of AO passed u/s. 144 r.w.s. 147 of the Act, order of the Ld. CIT (A) passed u/s. 250 of the Act and submissions of the assessee alongwith grounds raised before us. We have gone through the submissions of the assessee before the Ld. CIT (A). The relevant extract of the submissions of the assessee before the Ld. CIT (A) is reproduced herein below as under:

"1. I am enclosing herewith the extract of the copy of the statement of Mr. Vipul Bhatt as Annexure I where in my (Sr.No.223) and other 347 approx parties were named as one which is/are used by him for accommodation business for commission.

The Learned A.O. had erred in adding the Income by treating me as beneficiary whereas it is very much clearly mentioned in the Statement of Mr. Vipul Bhatt (on which the A.O. had relied while making the addition) that he was using my name for accommodation business for commission.

In the aforesaid statement one of the party named Mr. Rajul N Trivedi (Sr. NO 147)CIT (A) - 46 Mumbai had passed orders for 6 years i.e. from A. Y. 2010-11 to A. Y. 2015-16 directing the A.O. to make the addition of commission income @0.2% on the debit transactions only made during the relevant years only and delete the entire addition made u/s 68 as unexplained amount. Copy of the aforesaid order for the relevant A. Y. 2010-11 is enclosed herewith as Annexure II for your reference.

The detail of the Bank Summary for the F.Y. 2009-10 evidencing the transactions made during the year is enclosed herewith as Annexure No III. From the Bank summary it is confirmed that during the F.Y. 2009-10 there is total Receipt transaction is of Rs.

33,79,652/- and Total Payment transaction is of Rs. 33,77,500/- only. Hence addition made by the A.O. for Rs. 52, 13,975/- is totally baseless and A.O. had no proper information for the amount he is adding.

2. Here I would like to bring to your honour's notice that my name is also given by Mr. Vipul Bhatt in the same category as that of Mr. Rajul N. Trivedi i.e., entity used for accommodation business for commission and hence same treatment should be given to my case also."

5. We considered the submissions of the assessee alongwith the list of 347 entities owned, operated, managed by Mr. Vipul Bhatt (as provided in assessment order). We have gone through the statement of Mr. Vipul Bhatt and found the name of the assessee at Sr. No.223 out of the list of 347. The relevant contents of the statement of Mr. Vipul Bhatt pertaining to the assessee are reproduced as under:

223	<i>Mandaben D Raval (PAN: ADLPR 7891Q)</i>	<i>Individual</i>	<i>I am using this entity for providing bogus accommodation entries to the various beneficiaries. I control the entire activities/affairs of Income tax related matter, accounting matter, bank account transactions and share transactions, etc. of Mandaben D Raval. I keep and maintain the books of accounts of Mandaben D Raval. I have used the name of Mandaben D Raval for providing bogus accommodation entries to various beneficiaries.</i>
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5. We observed that the facts of the submissions of the assessee vis-à-vis statement of the entry provider Mr. Vipul Bhatt are matching and apparently, contention of the assessee looks to be correct but as the assessee has not participated in the proceedings before the AO and this is also not emanating from the record that if assessee is a part of entry provider cartel then who is the beneficiary in real terms. It is a right law that income can be added only in hands

of real beneficiary and entry provider can be charged for the amount of entry commission. In view of the above facts, as it is not clear that whom are the beneficiaries in the case of the assessee and what treatment was given to them, we deem it fit to restore the matter back to the file of jurisdictional AO to verify the contentions of the assessee along with the list of real beneficiaries and consequent tax treatment. We are restoring this matter back to the file of AO for a limited purpose only i.e., to verify the stand of the assessee with reference to the real beneficiaries. If assessee is able to provide the list of real beneficiaries with complete details like name, address and PAN then no addition u/s. 68 can be made in the hands of assessee and only a commission income on the total amount involved at the rate what revenue applied in the case of main kingpin Shri Vipul Bhatt. Assessee is directed to co-operate and actively participate in the proceedings before the jurisdictional AO and the AO is directed to give a fresh opportunity to the assessee to substantiate her claims in accordance with law.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 5th day of January, 2024.

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 05/01/2024

Mini, Sr. PS

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,
(Asstt. Registrar)
ITAT, Mumbai