

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. Nos. 690 to 694/Ahd/2023
(Assessment Years: 2015-16 to 2017-18)

Kaushik Pravinchandra Gohel, Plot No. 2, Shriji Kutir, Gautam Park, Jail Road, Bhavnagar-364001	Vs.	The Jurisdictional Assessing Officer, Ward-1(2), Bhavnagar
[PAN No. AHIPG4147P]		
(Appellant)	..	(Respondent)

Appellant by :	Shri B. R. Popat, A.R.
Respondent by :	Shri H. Phani Raju, CIT DR

Date of Hearing	19.03.2024
Date of Pronouncement	17.04.2024

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

These appeals have been filed by the same Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi vide orders dated 25.07.2023 passed for A.Ys. 2015-16, 2016-17 & 2017-18. Since common facts and issues for consideration are involved for the impugned years under consideration, all appeals are taken up together.

2. The assessee has raised the grounds of appeal:-

ITA No. 690/Ahd/2023 (A.Y. 2015-16)

“1. The learned CIT(A) erred in law and on facts in dismissing the appeal ex-parte, which is, after having regard to the relevant facts of the case, clearly violative of the principles of natural justice, thus unconstitutional in nature, apart also from being contrary to the provisions of the Act, as interpreted by judiciaries at various levels.

2. *The learned CIT(A) erred in law and on facts in confirming the action of the AO in invoking the provisions of section 147 of the Act.*

3. *The learned CIT(A) erred in law as well as on facts in confirming the action of the AO in not complying with the ratio of various binding judgments in their true letter and spirit, thus clearly violating even the constitutional provisions.*

4. *The learned CIT(A) erred in law and on facts in confirming the action of the AO in making addition of Rs.28,67,73,656/- (consisting of a sum of Rs.6,86,57,800/- as unexplained cash credit and the balance sum of Rs.21,81,15,856/- as unexplained investment, as originally mentioned in the body of the reassessment order) to the returned income by invoking the provisions of section 69 / 69A read with section 115BBE of the Act.”*

We shall take A.Y. 2015-16 as the lead assessment year and our observation for this year shall apply to other assessment years as well.

3. The brief facts of the case are that the assessee had filed return of income of Rs. 2,80,860/- for A.Y. 2015-16. As per information available with the Department, the assessee had deposited cash aggregating to Rs. 6,86,57,800/- and other credits amounting to Rs. 21,81,15,856/- during Assessment Year 2015-16 in his account with Renukamata Multi State Co-operative Urban Credit Society Ltd. (Renuka Mata Society), which inter alia was doing the business of banking and other finances. Accordingly, in order to examine the source of cash deposits and other credit entries, the Assessing Officer reopened the case by issuing notice under Section 148 of the Act on 30.03.2021. The Assessing Officer issued various show-cause notices, however, the same were not complied with by the assessee. Accordingly, since the assessee did not cause appearance despite issuance of several notices of hearing, the Assessing Officer completed the assessment ex-parte under Section 144 of the Act by making addition of cash deposits / credits in the account totaling to Rs. 28,70,54,516/-, under Section 69A and 69 of the Act, in absence of any details or explanation given by the assessee.

4. The assessee filed appeal before Ld. CIT(A) against the additions made by the Assessing Officer. Before the Ld. CIT(A), the assessee challenged issuance of notice under Section 148 of the Act, however, the Ld. CIT(A) was of the considered view that in the instant case, firstly, the assessee has not brought on record any cogent material to suggest that notices under Section 143(2) / 142(1) were not issued within stipulated time. Secondly, the Ld. CIT(A) held that the notices were issued after taking due approval from competent authority, well within time, prior to reopening the assessment of the assessee and accordingly, the Assessing Officer had taken all legal steps before initiating action in terms of Sections 147 / 148 of the Act. Accordingly, the Ld. CIT(A) dismissed the challenge of the assessee with respect to issuance of notice under Section 148 of the Act.

5. Before us, vide Ground Nos. 2 & 3, the assessee has challenged the action of the Assessing Officer in invoking the provision of Section 147 of the Act. On the basis of facts placed on record, we observe that the assessee has not disputed that all the necessary approvals / legal steps for initiating proceedings under Sections 147 / 148 of the Act were duly taken by the Assessing Officer prior to initiation of reassessment proceedings. Secondly, on facts which are on record before us, the assessee had not filed its return of income for the impugned assessment year. However, from the information available on record, the Assessing Officer came to know that there were cash deposits / other credits in the bank account held by the assessee with Renuka Mata amounting to Rs. 28.70 crores approximately during the impugned year under consideration. However, despite such substantial deposits / credits in the bank account of the assessee, the assessee had not filed any return of income for the impugned assessment year. Accordingly, looking into the instant facts,

we are of the considered view that there is no infirmity in the order of Ld. CIT(A) while holding that it is a fit case for reopening the assessment of the assessee under Sections 147 / 148 of the Act, looking into the assessee's set of facts.

6. In the result, Ground Nos. 2 & 3 of the assessee's appeal is dismissed.

Ground No.4:- CIT(A) erred in confirming additions of Rs. 28,67,73,656/-

7. The brief facts in relation to this ground of appeal are that the assessee is an individual and had filed return of income of Rs. 2,80,860/- for the impugned assessment year. On the basis of information received by the Assessing Officer, the Assessing Officer observed that the assessee had made unaccounted cash deposits / credits of Rs. 28,67,73,656/- in his bank account with Renukamata Society. The assessee has not offered the above income of Rs. 28,67,73,656/- for the purpose of income tax. The Assessing Officer initiated proceedings under Section 147 of the Act and issued several notices of hearing to the assessee. However, the assessee did not respond to any of the notices issued by the Assessing Officer. Accordingly, in absence of any information / explanation by the assessee with respect to total deposits amounting to Rs. 28.70 crores in his bank account held with Renukamata Society, the Assessing Officer added the above amount as income of the assessee under Section 69A and 69 of the Act.

8. In appeal, the Ld. CIT(A) confirmed the additions with the following observations:-

“7.9 That a bare perusal of the aforesaid deeming sections therein reveals that an addition under the said statutory provision can be made where the assessee is found to be the owner of a bank account in which the credits were recorded outside the

regular books of account maintained for any previous year. Thus, the very sine qua non for making of an addition under Section 69A pre supposes a credit of the aforesaid amount in the 'bank account' held for the previous year. This is the settled position of law that a statutory provision has to be strictly construed and interpreted as per its plain literal interpretation, and no word howsoever meaningful it may so appear can be allowed to be read into a statutory provision in the garb of giving effect to the underlying intent of the legislature. The only submission made by the appellant is that his account was misused by certain persons/employees of Bhavnagar Branch of Renukamata Multi State Urban Co-operative Credit Society Ltd. However, the quantum of cash deposits and other credits in the account of assessee would clearly show that the assessee willingly and knowingly participated in managing his account. The assessee is making only self-serving statements without any cogent evidence and is completely silent as to what prevented him to approach the legal authorities and file an official complaint of fraud against the so-called persons who misused his account. Not even an FIR seems to have been filed by the assessee in this regard. The assessee is also making an argument that the transactions in his account clearly left behind verifiable trails for facilitating the identities of the real beneficiaries and the AO ought to have identified the beneficiaries. The conception of assessee appears to be misplaced in the sense that the onus is on the assessee to furnish acceptable explanation for the credits in his account and not on the AO to prove otherwise.

*7.10 Having considered entire facts of the case, and the case laws cited above, it is apparent that the appellant has completely failed to offer any explanation either before the AO during assessment proceedings or before me during appellate proceedings, despite affording sufficient number of opportunities and hence, I find no infirmity in the order of AO. Accordingly, the addition made of **Rs. 28,70,54,51 6/-** is confirmed. Accordingly, this ground of appeal is **dismissed.**”*

9. The assessee is in appeal before us against the aforesaid additions confirmed by Ld. CIT(A) in the hands of the assessee. Before us, the Counsel for the assessee submitted that the assessee is a person of little means and is only a name lender in the entire scheme of things. The Counsel for the assessee submitted that the assessee allowed the Renukamata Society to open the bank account in the name of the assessee, since the assessee was approached by the Manager of Bhavnagar Branch of Renumata Society Bank, who had told the assessee that if the assessee allowed the Renukamata Society to open / operate a bank account in the name of the assessee with Renukamata Society, this would entitle the assessee to avail financial assistance in the form of loans for future as and when the same is required and applied for. Further,

the assessee was assured that the assessee would also be suitably compensated for such assistance provided to the Renukamata Bank. Accordingly, it was on the basis of these assurances that the assessee kept on signing blank forms, cheques, other documents, papers etc. which were produced before him from time to time. Accordingly, the Counsel for the assessee submitted that though the assessee allowed the Renukamata Bank to open and operate bank account in his name, the assessee has not deposited any money in the bank accounts maintained with Renukamata Society and neither has the assessee withdrawn any amount from these banks. Further, the Counsel for the assessee submitted that the assessee also did not have any knowledge as to what type of transactions were being carried out through these bank accounts, from time to time. Further, the Counsel for the assessee submitted that whenever there were any changes in the incumbent Manager of Renukamata in the Bhavnagar Branch, the assessee was generally called and asked to open a new bank account. The Counsel for the assessee submitted that the assessee was given to understand that since the incumbent Branch Manager is required to fulfill its target of opening new bank accounts, this exercise of opening new bank account in the name of the assessee was required to be carried out. Accordingly, in order to maintain cordial relations with the new Branch Managers, the assessee used to sign whatever documents / papers etc. which were being produced before him in this regard. In all these cases the assessee used to sign blank cheque books and deliver the same to the incumbent Branch Manager as directed. Accordingly, the Counsel for the assessee submitted that though apparently benami and accommodation transactions were carried out by utilizing the above referred accounts open in the name of the assessee, the assessee neither deposited any money in the said accounts and neither did the assessee withdraw any money from the said account. Accordingly, it was

grossly incorrect on part of the Assessing Officer and Ld. CIT(A) to hold that the entire amount of bank deposits / credit made in the bank accounts for the impugned assessment years could be added in the hands of the assessee. This is especially in light of the fact that the assessee was not the real beneficiary of the amounts which were being deposited and later withdrawn in the bank accounts held by the assessee with Renukamata Society Bank Ltd. In support of the above arguments, the Counsel for the assessee filed before us order passed by ITAT Mumbai Bench in the case of **Renukamat Multi State Cooperative Urban Credit Society Ltd. vs. ACIT (in ITA Nos. 4001 & 4002/Mum/2019)**, from which it is evident that Renukamata Society Bank has been regularly and for past several years engaged in the business of providing accommodation entries, by opening bank accounts in the names of people with meagre income, by luring them into opening bank accounts with Renukamata Society. Accordingly, it was submitted that the assessee was only a name lender and he was not the real beneficiary of such income. Further the Counsel for the assessee placed reliance on the case of **Chintan Niketan Bhandari vs. DCIT (in IT(SS)A Nos. 495 to 500 & 1604/Ahd/2019)** in support of the contention that only a reasonable percentage, if any, should be added in the hands of the assessee and the entire amount cannot be added as the income of the assessee.

10. Further, the Counsel for the assessee drew our attention to Page 11 of the Paper Book and submitted that even the list of beneficiaries to these accommodation entries is within the knowledge of the Department and accordingly, it would be wholly erroneous to tax the entire income in the hands of the assessee, when it is known to the Department, that the assessee is only a name lender and the real beneficiaries of such transactions are other people,

who are behind the entire racket, by using the name of various innocent people, including the assessee.

11. During the course of arguments, we had requested the Department to furnish a copy of the Investigation Report, on the basis of which the reassessment proceedings were initiated against the assessee so as to facilitate the Bench in adjudicating the issue, which is before the Bench for its consideration. Accordingly, the Department vide letter dated 15.03.2024, submitted before us the information regarding the report of the Investigation Wing and other related documents.

12. On going through the contents of the report of the Investigation Wing made available to us, we observe that on the basis of search carried out at the premises of Renukamata Society, the Department had observed that the Renukamata Society had opened and was operating several bank accounts, which had been opened in the name of various depositors, many of which were merely name lenders. As per the Investigation Report, most of the depositors were non-filers of Income Tax Returns. Further, as per Investigation Report, the Department had observed that most of such account holders are person of low means and their financial profiling does not correspond to the high volume of cash deposits in their accounts with the Renukamata Society. Further, as per the report, the Department observed that during Financial Year 2012-13, Renukamata Society had made total deposits in the bank account amounting to Rs.45,055 crores. The Department observed that on analysis of cash deposits and withdrawals, it is seen that the society is operating on the basis of typical Angadia Model, without maintaining proper documentation regarding identity of persons depositing and withdrawing the cash. The Department observed that the cash deposits made in these accounts are subsequently transferred to

bank accounts of shell entities. The funds are subsequently being remitted abroad by these shell entities for prima facie bogus imports etc. Accordingly, even as per the report of the Investigation Wing, Renukamata Society had roped in various individuals of meagre means to open bank accounts in their names and thereafter, such bank accounts were operated by other persons / real beneficiaries for carrying out various activities viz. remittance of money abroad with falsified documents, payment of custom duty, purchase of bullion etc. Accordingly, even as per the report of the Investigation Wing with the Department, it is evident that the assessee is not the real beneficiary of such banking transactions done in it's bank account. It would be useful to reproduce the relevant extracts of report dated 12.03.2021 for ready reference:-

*“A search & Seizure action u/s 132 of the IT Act, 1961 was carried out in case of the assessee M/s. **Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. (in short Society/SRMSCS) (PAN: AADAS7782D)** on 26.05.2017 and subsequently the case was centralized with this charge. During the search, it was found that the huge money was deposited in the bank accounts maintained in the society and during the course of assessment proceedings the society could not explain the source for the same.*

The main allegations against the society leading to search action are as under:

- i. The society has allowed huge cash deposits in the account of its account holders whose creditworthiness is doubtful.*
- ii. Pre-search, post search and assessment stage inquiry in respect of account holders, in whose accounts substantial cash deposits were made, most were either untraceable or person of very no/low means.*

Modus Operandi found during the Search & Assessment proceedings:

As per the enquiries conducted by the Investigation Wing and by this office, the modus operandi is that various accounts were opened in the co-operative society. Huge cash deposits were made at home branch of the customer of SRMUCS as well as other branches (remote) branches of SRMUCS. Credits into the account-holders' of SRMUCS were made by following modes:

- (a) Cash deposit made at home branch of customers' accounts maintained with SRMUCS.*

(b) *Cash deposit made at other than home branch of customers' accounts maintained with SRMUCS (Remote).*

(c) *By transfer from other customers of SRMUCS.*

(d) *By transfer from customer of SRMUCS/ other parties having accounts at Public/ Private sector banks.*

The amounts so credited were withdrawn by the depositors through following modes:

(a) *Cash withdrawn from home branch of customers' accounts maintained with SRMUCS.*

(b) *Cash withdrawn from other than home branches of customers' accounts maintained with SRMUCS (Remote),*

(c) *Cash withdrawal by other customers of SRMUCS.*

(d.) *On transfer to customers of SRMUCS/ other parties having accounts at Public/ Private sector banks online/ RTGS/ NEFT , which were later transferred to other accounts or withdrawn as cash.*

(iii) *Money so transferred were used for following purposes:*

(a) *Remitting money abroad with improper/falsified documentation in the garb of imports.*

(b) *Payment of customs duty.*

(c) *Purchase of the bullion or other purchases.*

(d) *Transfer to other parties online/ RTGS/ NEFT*

(e) *Withdrawn by the beneficiaries.*

3. *On physical verification of some of these members/account holders, it was seen that many of the entities / account holders were not found on their address. Notices u/s 133(6) and summons u/s 131 were issued to top 200 cases, but most of the notices returned unserved. Even cases where notices were served, compliances were made in only 3 ca.ses and they too could not prove their credit-worthiness. No one appeared to depose for recording of statements. Their credit-worthiness could not be established from the records where in some cases ITR were filed. In many cases, the accounts were operated under the knowledge of the account holders on payment of commission. By and large these credits in the accounts of the account-holders were unexplained within the meaning of the section 68/ 69 of the IT Act, 1961.In many cases, the depositors may be mere name-lenders.*

4. ***Details of your assessee:***

Details as provided in the enclosed excel sheet contains Name (surname first) and PAN of the assessee along with their account numbers of account held by them in the Society. Financial Year-wise credits have been provided in lakh rupees. It may kindly be noted that majority of the deposits are in cash only.

5. *As per the ITBA based PAN query, the PAN jurisdiction of the assessee lies with your charge and accordingly the information is shared with a request to make further investigation to verify the credit-worthiness in the above-mentioned account along with source of credit entries and to take necessary remedial action at your end. Provisions under Prohibition of Benami Property Transactions Act, 1988 may also be kept in mind while taking suitable action.*

6. *While taking remedial actions, kindly take note of following points:*

(i) *Most of the depositors are Non-filers.*

(ii) *Even in cases where ITRs are filed, these amounts of deposits are not reflected in the ITRs.”*

13. Further, it would also be useful to reproduce the relevant extracts of another report dated 13.10.2017, which would throw useful light in respect of the issue under consideration before us:-

“6. *The finds of the search action so far are being listed down as under:*

a) *Shri Renukamata Multi State Cooperative Urban Credit Society Limited has huge cash deposits made in the accounts of its customers in last five years. Prima facie, most of the cash deposit is unaccounted and is in the names of the individuals of small or shell companies/entities. The cash so accepted is then deposited by the employees of the Society in the various bank accounts of society (list annexed), and then transferred out as RTGS/NEFT in accordance with rho instructions of the customers, who bring the cash to the society. In the statement of branch manager of Ahmadabad of the society, he has mentioned few accounts which are being operated on behalf of the employer of account holder.*

b) *The society has also issued Demand Drafts to various walk-in customers in their branches by splitting the cash received to below Rs. 50,000/- in each instance and without taking any KYC details on record. The investigation carried so far shows that Demand Drafts of substantial amount have been issued by the society, after splitting the amount in such a way that each Demand Draft value is less than Rs.50,000/-.*

c) *From the analysis of cash deposits and withdrawals, it is seen that substantial amounts of withdrawals made are against deposits made in cash at different branches of the society without proper documentation of identity of persons*

depositing and withdrawing the cash. Therefore, society is working on the basis of typical Angadia model without maintaining proper documentation.

d) During the post search investigation, it is seen that cash deposits made in the accounts holders of Mumbai branch is subsequently transferred to the bank accounts of shell entities. The funds are subsequently being remitted abroad by these shell entities, for prima facie bogus imports. From the investigations done here, it is seen that the account holders, in whose account cash deposits of more than Rs. 10 Crore was made and which was subsequently transferred via RTGS/NBFT to the shell entities, are either persons of low means who simply lent their identity details (id proof, signature) to unknown persons or are not traceable. The investigations with respect to shell entities revealed that proprietors of these entities have also lent their identities and are not into any genuine business activity. These bank accounts were operated by persons whose identity is yet not established. The details of these shell entities along with amount transferred from the society are being tabulated as under:

Name of entity	Amount transferred from accounts with Mumbai branch of society
Azure Enterprise Prop. Neeraj Rajkumar Singh	139.63 Cr.
Fine Touch Impex Prop. Dhannanjay Nikam	73.6 Cr.
Iconic Enterprises Prop. Siddharth Keshav Gaikwad	54.2 Cr.
Seabird Enterprises Prop. Vinayak Ranjan Thakre	53.52 Cr.
Zillion Enterprises Prop. Shaikh Mukaram Iqbal	16.27 Cr.
Om Enterprises Prop. Ravi Ashok Prajapati	9.7 Cr.
Grafik Traders Prop. Saniket C. Nanavare	4.16 Cr.
Sai Impex Prop. Harkut Harinarayan Dhanjay	9.38 Cr.
Jolly Collections Prop. N. N. Raut	5.18 Cr.
Nishica Impex Pvt. Ltd.	15.2 Cr.
Globus Corporation Prop. Harkut Harinarayan Dhanjay	3.12 Cr.
Irfan Trading Company Prop. Irfan Shaikh	2.54 Cr.
R C International Prop. Chetan Vinod Thakkar	6.33 Cr.
Riya Enterprises Prop. Nitin Pradeep Gaurav	1.85 Cr.

e) At Ahmadabad branches of society, specific instances of non-proper maintenance of account opening forms and KYC documents are found. It is also seen that society has accepted cash of amount Rs. 85 lacs in demonetized currency after 08.11.2016 at the Ahmadabad branch at the instruction of Yogesh Bhalerao. Also, Dashrathbhai C Khant, Assistant Branch Manager at Bapunagar branch, Ahmadabad has given the details of benami accounts being operated from the branch (please refer the reply to Q. 31 in statement of Dashrathbhai C. Khant).

f) Dashrathbhai C. Khant, Assistant Branch Manager at Bapunagar branch, Ahmedabad has given the details of benami accounts being operated from the

branch. He has also stated that he is aware of these benami accounts because on few occasions when cash is not available in the branch account holders of such accounts tell him to talk to their employers with respect to cash transactions. The details of such benami accounts are provided by him in reply to Question No 31 in his statement.”

14. It would be further useful to reproduce the relevant extracts of the ITAT decision of **Ranukamat Multi State Cooperative Urban Credit Society Ltd. in ITA Nos. 4001 & 4002/ Mum/2019**, wherein the ITAT made the following impugned observations regarding the modus operandi of Renukamata Society:-

“47. Be that as it may, the contents of the report shows that the Ld. DDIT(I&CI) had observed that these account holders were depositing large sums of cash on different dates in the accounts held by them with the assessee society, which was in turn being routed to different firms by way of RTGS who were the ultimate beneficiaries of these deposits and had failed to disclose the same in their respective tax returns. The Ld. DDIT(I&CI) observed that by taking advantage of the absence of reporting liabilities, these societies were being used as a conduit for money laundering. It is therefore noted that, it was not the case of the DDIT(I&CI) that these cash deposits belonged to the assessee or represented its unaccounted monies. Rather, according to the DDIT(I&CI), certain individuals were using the accounts held by members in the assessee society to route their unaccounted monies and the beneficiaries in relation thereto is also noted to have been identified by the DDIT(I&CI). In fact, one of the ten persons viz., Mr. R.A. Shah from whom enquiries were made had admitted that he had not disclosed his account in his tax return and accordingly revised his return of income and paid taxes thereon. On these facts, we are unable to countenance the action of Ld. CIT(A) seeking to justify the additions by way of unexplained monies being made u/s 68 of the Act in the hands of the assessee society, based on this spot verification report which does not incriminate the assessee qua the cash deposits made by these depositors qua these relevant AYs in these appeals.

48. It is further noted that, the Ld. DDIT(I&CI) was of the view that the assessee was flouting the norms of prudent financial irregularities by accepting such high value cash deposits without first verifying the source of funds and creditworthiness of the account holders. To this, the Ld. AR submitted that these observations were their own subjective inferences of the DDIT(I&CI) and were not based on any tangible material or cogent evidence against the assessee. The Ld. AR explained that, the assessee being a cooperative credit society was providing banking & credit facilities to its members. In terms of the Multi State Cooperative Societies Act, 2002 read with Part V of the Banking Regulation Act, 1949, the assessee society was only required to obtain the relevant KYC details of the members at the time of opening of their accounts and like other banks / banking institutions, they were not statutorily empowered to enquire into their source of funds or their creditworthiness whenever they deposited funds in their respective accounts held with the assessee society. He

pointed out that, unlike banks which could flag suspicious transactions in their suspicious transaction report or cash transaction report which they were required to statutorily file with the concerned departments, the assessee society was unable to do so in the absence of any corresponding provision in law. It is noted by us that this absence of statutory reporting obligation/liabilities were also taken note of by the DDIT(I&CI) in their report. The Ld. AR thus submitted that, the absence of statutory reporting liabilities cannot be held against the assessee so as to suggest that the assessee was facilitating such high value cash deposits. To substantiate the bonafides of the assessee society, the Ld. AR showed that the assessee had suo moto written several petitions to the Financial Intelligence Unit (FIU-IND) much prior to the date of search on 09.02.2016 viz., between July 2014 to June 2016 wherein they had time and again requested them to register them with FIU-IND so that they could share the details & information of their members with the concerned Department. He showed us that, it was only vide Circular dated 08-01-2018 that the multi-state cooperative societies were brought within the purview of PMLA Act, 2002 and all multi-state cooperative societies were required to register themselves with the Department. Before us, the Revenue was unable to bring any material on record to controvert the aforesaid submissions of the assessee society.

49. On the overall conspectus of the facts, as discussed in the foregoing, we thus hold that the reasoning given by the Ld. CIT(A) viz., existence of incriminating material & statements against the assessee society, to justify the validity of the additions made in the unabated assessments framed u/s 153A/143(3) of the Act for AY 2010-11 was untenable both on facts and in law.”

15. Accordingly, on going through the above report by the Investigation Wing and the order passed by ITAT, Mumbai Bench in the case of Renukamat Multi State Cooperative Union Credit Society Ltd. (supra), we are of the considered view that the assessee was not the real beneficiary of substantial cash deposits / credits which were made in his bank account held with Renukamata Society. From the above facts placed on record, it is observed that these bank accounts were being operated in the name of the assessee by the real beneficiaries / depositors, in collusion with Renukamata Society and the assessee, cannot be saddled with the ownership of the entire income deposited / credited in his bank account with Renukamata Society.

16. This brings to the next question as to what could be the reasonable amount which could be held to be taxable in the hands of the assessee, for

allowing the Renukamata Society / real beneficiaries to operate the bank accounts, held in the name of the assessee. In the case of **Geetaben Dineshchandra Gupta v. ITO 129 taxmann.com 346 (Gujarat)**, the Gujarat High Court made the following observations:

*“Thus, considering the totality of facts and the circumstances of the instant case vis-a-vis considering the settled legal position, it appears that there is direct nexus/live link between the material coming to the notice of the Assessing Officer and that for formation of his belief that there has been escapement of the income of the assessee from assessment in the year under consideration because of his failure to disclose fully and truly all material facts as from the inquiry/investigation by the Investigation Wing, some tangible material was found to substantiate the fact that the assessee was the provider of accommodation entries and that, **the income from commission, ranging from 0.5 per cent to 1 per cent was not disclosed in return and thereby, the income chargeable to tax had escaped assessment for the year under consideration.** As emerges from the record, the petitioner has filed Rol for the assessment year 2012-13 disclosing income of Rs. 1.42,694 despite showing a huge turnover of Rs. 24,10,82,501 in the audited books of account. Further, a detailed investigation is carried out by the Investigation Wing and the outcome of the same prima facie substantiates the case of the department. Thus, formation of belief by the Assessing Officer that the income chargeable to tax has escaped assessment, based upon material derived during inquiry/investigation, appears to be justified. Thus, the petition failed and dismissed.”*

17. In the case of **PCIT v. Alag Securities (P.) Ltd 117 taxmann.com 292 (Bombay)**, the High Court held that 0.15% rate of commission offered to tax by the assessee was a reasonable rate in facts of the assessee’s case.

18. In the case of **Manoj Kumar Jain v. DCIT ITA No. 554/Del/2017**, the Delhi ITAT held that commission **of 0.5% to be reasonable** considering the facts of the case. While passing the order, the ITAT observed as under:

“3. The moot issue involves assessment of cash deposits found in the bank account of the assessee of Rs.7.37 Crs. and commission earned at the rate of 3% on the said amount of Rs.7.37 Crs. to the tune of Rs.22.12 lacs. The assessee has been alleged to be an entry operator providing bills of purchase & sales without any actual business transactions.

4. The amount of Rs.7.37 Crs. has been added on protective basis and information regarding the beneficiaries was passed on to the Assessing Officer having jurisdiction over the beneficiaries for substantive assessment. The commission of Rs.22.12 lacs has been added on substantive basis.

5. The Co-ordinate Bench of ITAT in ITA No.3561/Del/2015 vide order dated 22.05.2020 has adjudicated on both the issues. The addition being protective in nature has been deleted by the order of the Tribunal. **The commission charged @3% has been brought down to 0.5%.**

6. Since, the issues stands squarely covered by the earlier order of the Tribunal in the absence of any material change and the facts of the case except the amount involved, we hereby hold as under:

a) The addition made on protective basis is directed to be deleted

b) **The commission to be charged @0.5%”**

19. In the case of **Chintan Niketan Bhandari v. DCIT IT(SS)A Nos. 495, 496, 497, 498, 499, 500 & 1604/Ahd/2019**, the jurisdictional Ahmedabad ITAT vide order dated 29-11-2022 held that since the assessee failed to provide complete details regarding the commission income, the commission income may be computed @ 0.25% in the hands of the assessee. While passing the order, the ITAT made the following observations:

“8.2 Now coming to the instant facts, we observe that the assessee has been running several concerns in the name of himself and in the name of other persons who are engaged in the activities of taking cheques and cash and deposited the same in their bank accounts. The assessee’s contention is that he is merely acted as a commission agent and hence only the commission amount should be subject to tax in its hands. However, the Department has observed that the assessee could not produce that complete details of beneficiaries with their names, complete addresses, PAN and other details of transactions. In the instant case, there are approximately more than 7000 beneficiaries and only in the case of 116 beneficiaries, the PAN has been identified. For 2752 entries, PAN has not been identified. For balance entries, only part details are available. **If the assessee is submitting that he is liable to be taxed only on the commission income so earned, then the onus is on the assessee to provide the basis as to how such commission income has been arrived at and list of beneficiaries and other details so that whether the correct amount of “commission income” has been offered to tax may be verified by the Department.** The Department cannot be expected to find out the details of all beneficiaries itself and cannot accept whatever income or expenses are offered/claimed by the assessee, without the assessee providing any methodology of arriving at the same along-with supporting evidence viz. details of beneficiaries, details of middlemen, basis of arriving at commission etc. In the instant facts, the assessee has submitted that he was operating through middlemen and does not know the name of

*beneficiaries in most of cases. However, most times, even the middlemen could not be contacted by the Department, since notices could not be served upon them as they were not available. **Accordingly, in absence of details forthcoming from the assessee, a reasonable percentage may be arrived at, in the instant facts to arrive at the “commission” income earned by the assessee. In our view, looking into the totality of facts, it would be reasonable to take 0.25% of total deposits in the bank accounts owned/ operated by the assessee (₹ 295,56,30,168 for assessment year 2017-18), as commission income of the assessee for the assessment year under consideration.***

20. In the case of **Lucky Bajoria v. ITO in ITA No. 345 /Ahd/2021**, the ITAT Ahmedabad while holding that rate of 0.25% would be a reasonable rate, made the following observations:

*“7.4 Now coming to the instant facts, we observe that the assessee has submitted that it has earned commission income, however, no details regarding the commission income earned by the assessee was furnished to the Department during the course of assessment or appellate proceedings. As held in the judicial precedents highlighted above, if the assessee is submitting that he is liable to be taxed only on the commission income so earned, then the onus is on the assessee to provide the basis as to how such commission income has been arrived at and also to provide list of beneficiaries and other details so that whether the correct amount of “commission income” has been offered to tax may be verified by the Department. However, the assessee has not maintained any books of accounts, has not maintained cash book and bank book, he has not submitted any details of parties from whom the commission income has been earned, the assessee has not given any supporting documents to corroborate the correct rate at which commission income may be computed and the assessee has also not provided details/ list of parties who have made deposits to the tune of ₹ 158 crores in the bank accounts held by the assessee. The assessee has not come up with any details to substantiate its stand that the commission income may be restricted to 0.1% to 0.15%. **Accordingly, looking into the instant facts, in the interests of justice, it would be reasonable to restrict the net commission income @0.25% of the total deposits in the bank account held by the assessee. In the result, ground number 1 of the assessee’s appeal is partly allowed.**”*

21. Accordingly, in the interest of the justice, looking into the instant facts it is held that 0.25% of the deposits / credits made in the bank accounts held by the assessee with Renukamata Society would be the income of the assessee, so as to serve the ends of justice.

22. Since, similar facts and issues for consideration are under consideration in ITA No. 692/Ahd/2023 & 694/Ahd/2023 for A.Y. 2016-17 & 2017-18, our observations for A.Y. 2015-16 would apply to other years as well.

23. In the result, Ground No. 4 of the assessee's appeal is partly allowed.

24. Now we shall deal with ITA No. 691/Ahd/2023 and 693/Ahd/2023 in which the Department has levied penalty under Section 271(1)(b) of the Act on account of non-appearance by the assessee in response to notices issued under Section 142(1) of the Act.

25. Before us, the contention of the assessee was that the assessee is an individual, who is hailing from poor strata of the society and he is earning very small amount of income for the impugned years under consideration. The assessee is illiterate and is not aware about the intricacies of law. The assessee was approached by Manager of Bhavnagar Branch of Renukamata Society, with an offer to open bank account in the name of the assessee, which would be operated by third parties. The Counsel for the assessee submitted that the Branch Manager had told the assessee that he was not required to make any deposits in such bank accounts and opening of such bank account would also entitle the assessee to avail financial assistance in the form of loan for bank as well. Accordingly, the assessee allowed the Renukamata Society to open and operate bank accounts in it's name i.e. in the name of the assessee and the assessee used to regularly sign blank forms, cheques, other documents, papers etc. which were produced before him from time to time. Subsequently, the assessee received notices from the Tax Department and he approached the person concerned of Renukamata Society and the tax professional suggested by him. The said tax professional assured the assessee that it is only a routine matter, which would be taken care of by him. The assessee was also advised that he had to visit income tax office and sign the statement which will be submitted by such tax professional on his behalf. Being a person without any formal education, the assessee took his advice in good faith and accordingly,

complied with the directions given by such tax professional. However, it was only later that the assessee realized that such tax professional was only interested in protecting the interest of Renukamata Society / real beneficiaries of deposits / withdrawals made from the bank accounts held by the assessee in Renukamata Society and when huge additions were made in the hands of the assessee for the impugned assessment years he realized the scheme of things. Accordingly, the Counsel for the assessee submitted that in the whole scheme of things, the assessee was only a name lender and the entire operation was being carried out by Renukamata Society along with real beneficiaries and the assessee could not cause appearance, since he was acting solely on the advice of the tax professional engaged by Renukamata Society, who had assured the assessee that he would be taking care of the entire proceedings. It was only subsequently when the assessee was saddled with huge tax additions and tax demands that he came to know that such tax professional was only interested in protecting the interest of Renukamata Society / real beneficiaries and the assessee had been saddled / implicated with huge tax demand in respect of income which did not belong to the assessee. Accordingly, the Counsel for the assessee submitted that for the impugned assessment years under consideration before us, looking into the entire scheme of things, any non-compliance / non-appearance in response to notices issued by the Assessing Officer was not with any mala fide intention and the assessee was not responsible for the non-compliance to the notices issued in respect to the aforesaid tax proceedings.

26. Looking into the instant facts and the totality of circumstances, we are of the considered view that it is a fit case for non-levy of penalty under Section 271(1)(b) of the Act looking into the instant facts, since the assessee had been assured by the Renukamata Society that it's tax professional would be taking

care of the entire tax proceedings. Accordingly, looking into the instant facts, the assessee had a reasonable cause for not responding / making due compliance in response to notices issued by the Department from time to time. Accordingly, looking into the instant facts, we are of the considered view that it is a fit case for deleting levy of penalty under Section 271(1)(b) of the Act.

27. In the result, the appeal of the assessee is allowed with respect to levy of penalty under Section 271(1)(b) of the Act for A.Y. 2015-16 and 2016-17.

28. In the combined result, the appeals of the assessee in ITA Nos. 690, 692 & 694/Ahd/ 2023 for the A.Ys. 2015-16, 2016-17 & 2017-18 are partly allowed and the appeals of the assessee in ITA Nos. 691 & 693/Ahd/2023 for A.Y. 2015-16 & 2016-17 are allowed.

This Order pronounced in Open Court on	17/04/2024
---	-------------------

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 17/04/2024

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad