

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

**BEFORE KAVITHA RAJAGOPAL, JM AND
SHRI OMKARESHWAR CHIDARA, AM**

ITA Nos.3052 & 3053/Mum/2023
(Assessment Years: 2012-13 & 2010-11)

ITO-19(2)(2) Room No. 503, 5 th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400 012	Vs.	Kanubhai Purshotam Raval 60/3, 79, Jariwala Building, Arther Road, Tulsiwadi, Tardeo, Mumbai-400 034
PAN/GIR No.ADKPR 1651 B		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Shri Biswanath Das-CIT DR/ Shri P.D. Chougule
Date of Hearing	:	01.05.2024
Date of Pronouncement	:	10.05.2024

ORDER

Per Kavitha Rajagopal, J M:

The captioned appeals have been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2012-13.

2. The learned Departmental Representative ('ld.DR' for short) for the Revenue filed a submission that the assessee was not available in the address given by him in his return of income filed for the A.Y. 2020-21 and that the notice was again sent to the email address of the assessee and in spite of that the assessee has not represented before the Bench on the date of the hearing. As there was no representation on behalf of the assessee, we hereby dispose of this appeal by hearing the learned Departmental Representative ('ld.DR' for short) and on perusal of the materials available on record.

3. The Revenue has challenged the order of the ld. CIT(A) on the ground of deleting the addition amounting to Rs.30,38,44,381/- on account of bogus accommodation entry

made by the Id. Assessing Officer ('A.O.' for short) and also restricting the same to 2% of the debit entries only in the assessee's accounts. The department has also raised the ground that the Id. CIT(A) has erred in admitting the additional evidences without seeking for a remand report from the Id. A.O. as per Rule 46A of the Act.

4. Briefly stated the assessee is an individual and had filed his return of income dated 30.03.2013, declaring total income at Rs.3,26,360/- and the same was processed u/s. 143(1) of the Act. The assessee's case was then reopened u/s. 147 of the Act vide notice u/s. 148 of the Act dated 12.03.2019 based on the information received from the DDIT (Investigation) that pursuant to the search and seizure action u/s. 132 of the Act, conducted in the case of Shri Vipul Vidhur Bhatt and his related entities who had admitted to operating around 347 bogus entities for the purpose of providing bogus accommodation entries to various beneficiaries for commission.

5. The Id. Assessing Officer ('A.O.' for short) observed that the assessee was one of the beneficiary to such accommodation entries received from the entities of Shri Vipul Vidhur Bhatt. It is also stated that similar assessment has been done in the assessee's case for A.Ys. 2010-11 and 2011-12 based on such information received. The assessee's case was then reopened for the reasons specified. The Id. A.O. observed that the assessee has entered into the transaction with 26 entities which are amongst the list of the bogus entities operated by Shri Vipul Vidhur Bhatt. It is observed that the assessee in response to the notice u/s. 148 of the Act filed his return of income dated 08.08.2019, declaring total income same as the returned income. The assessee had not complied with the notice u/s.142(1) of the Act and had also failed to furnish any documentary evidences or details

in support of his contention. The Id.AO proceeded to pass the assessment order u/s.144 of the Act on best judgment assessment and thereby determining the total income at Rs.30,48,38,191/- after making an addition of the alleged bogus transaction amounting to Rs.30,38,44,381/-.

6. Aggrieved the assessee was in appeal before the Id. CIT(A) who vide order dated 01.07.2023 deleted the impugned addition for the reason that the assessee was only an entry operator earning commission on such bogus transaction and not the beneficiary. The Id. CIT(A) restricted the addition to 2% on the amount of debit entries reflected in the bank account of the assessee during the year under consideration, holding the same to be the commission income of the assessee.

7. Aggrieved, the Revenue is in appeal before us.

8. Having heard the submissions of the Id. DR and on perusal of the materials available on record, it is observed that the assessee has been non compliant during the assessment proceeding, the reason for which the Id. A.O. proceeded to pass the assessment u/s. 144 of the Act. It is also observed that the Id. A.O. in the assessment order has specified that the statement of Shri Vipul Vidhur Bhatt recorded on 09.02.2016 u/.132(4) of the Act admitted of providing bogus accommodation entries through various bogus entities and the list of 347 entities managed by Shri Vipul Vidhur Bhatt was also specified in the same. The assessee has been one of the beneficiaries of such accommodation entries provided by 26 entities run by the said group. The Id. CIT(A), on the other hand, relied on the submission of the assessee dated 11.01.2023 where the assessee has specified that Shri Vipul Vidhur Bhatt was merely using the assessee's name

for providing accommodation entries for commission and that the closing balance as on 31.03.2010 in the assessee's account was Rs.6,67,450/- which included the opening balance, the impugned amount received and paid during the year under consideration along with both debit and credit balances. The assessee has contended that the Id. A.O. had only incomplete information and there was no bifurcation as to the opening balance amount, received and amount paid during the year. The Id. A.O. had merely added the commission on total closing balance. The assessee had relied on the Id. CIT(A)'s order in the case of one Shri Rajul N Trivedi for A.Ys. 2010-11 to 2015-16 where only 0.2% on the debit transaction was to be added as commission income and had deleted the addition made u/s. 68 of the Act on unexplained amount and has also specified that in another assessee's case, by name Jay Vidya M. Bhatt for A.Y. 2011-12 only 1% on the debit transaction was added as commission income. The assessee contended that as per the statement of Shri Vipul Vidhur Bhatt, the above mentioned persons are on same line with that the of the assessee for providing accommodation entries for commission. The assessee has also relied on the decision of the co-ordinate bench in the case of another assessee's were 0.13% was added as the commission income and yet another decision which held that only during the relevant accounting year where the entries were first made in the accounts of the sundry creditors has to be considered. The assessee then relied on the decision of Hon'ble Jurisdictional High Court in the case of *PCIT vs. Alang Securities Pvt. Ltd.* (in ITA No. 1512 of 2017 vide order dated 12.06.2020) on the percentage of the commission. The assessee had then stated that as per the statement of Shri Vipul Vidhur Bhatt he was only providing accommodation entries for commission and was not the beneficiary of such transactions.

9. The Id. CIT(A) observed that Shri Vipul Vidhur Bhatt in his statement had specified the assessee's name in Sr. No. 64 of M/s. Shreeji Enterprises and in Sr. No. 232 M/s. Shreeji Enterprises, proprietary firm was controlled by the assessee and the income tax relating matter, accounting matter, bank account transactions and share transactions, etc. were looked after by the assessee for the purpose of providing accommodation entries to beneficiaries. The Id. CIT(A) in the case of Mr. Rajul N. Trivdei and Mr. Jayvidya M. Bhatt had held that the assessee in those cases should be considered as an accommodation entry provider operating for commission and not as the beneficiaries. The Id. CIT(A) has merely relied on the submission of the assessee and the various case law cited by the assessee in support of his contention has concluded that the assessee was also providing only accommodation entry and was not the beneficiary. The Id. CIT(A) has also stated that the assessee is a conduit for accommodation entry and has only earned commission income on cheque discount. The Id. CIT(A) has also specified that the assessee has not furnished any details as to the rate of commission charged by him and relied on the decision of the Tribunal in the case of *Lalit Kumar M Shamna vs. DCIT* (in ITA Nos. 1974 & 1975/Mum/2017 for A.Ys. 2008-09 and 2009-10) and has held the commission to be @ 1% on the total debit entries as per the bank accounts of the assessee, thereby deleting the addition made u/s. 68 of the Act on the credit entries as 'unexplained income' and had also relied on the decision of the co-ordinate bench in the case of *Shri Vijen Jhaveri vs. ITO* (in ITA No.740/Adh/2013). The Id. CIT(A) on the basis of the said decision held the commission is paid only at the time of debit entries and not for credit entries and added the commission income @ 2% on the amount of debit entries as per the books of accounts of the assessee.

10. From the above factual matrix, it is observed that the assessee has been non compliant before the Id. A.O. and even before the first appellate authority other than the written submission made the assessee has not furnished any details or documentary evidence to substantiate the fact that the assessee is merely a conduit for providing accommodation entry and is not the beneficiary of such accommodation entries provided through various entities operated by Shri Vipul Vidhur Bhatt. Since the assessee has not provided any details during the assessment proceeding, the Id. A.O. had added the entire transaction reflected in the books of accounts of the assessee. We do not find any fault in the action of the A.O. for the reason that the primary onus of proving the impugned transactions are casted upon the assessee as per the provision of section 68 of the Act and in this case the assessee has not proved the identity, creditworthiness of the parties and the genuineness of the transaction. The Id. A.O. has rightly added the entire amount reflected in the books of accounts of the assessee. The Id. CIT(A) in the impugned order has also stated that the assessee has not furnished any details or documents to show what was the commission income received by the assessee, which establishes the fact that the assessee has also failed to discharge the onus. Pertinent it is to mention that even before us the assessee has not appeared and filed any documentary evidence in support of his contention. The Id. CIT(A) has merely relied on the cases of other assessee's where only commission income was added on accommodation entries which according to us is not justifiable in the present case, as it is the assessee who has to establish the fact that he is merely an accommodation entry provider and not the beneficiary by supporting documentary evidences. The legislature has enacted the provision in such a way that it is the assessee who has to *prima facie* prove the contentions raised by the Department to the

satisfaction of the Id. A.O. In the absence of such evidences, merely harping upon the written submission of the assessee by the Id. CIT(A) is not commendable in our view. We do not find any additional evidences being filed before the first appellate authority and even otherwise remand report was sought for by the Id. CIT(A). There is no iota of doubt that the impugned transaction is merely a bogus transaction in which case the burden is on the assessee to show who are the beneficiaries out of the said transactions and what was the commission that has been charged by the assessee for the said transactions and how such commission was paid to the assessee. In the absence of these facts, we find no justification in the order of the Id. CIT(A) in deleting the addition and restricting it to 2% of the commission on the debit transaction. We, therefore, set aside the order of the Id. CIT(A) and upheld the order of the Id. AO.

11. In the result, the appeal filed by the Revenue is allowed.

Order pronounced in the open court on 10.05.2024.

Sd/-

(Omkareshwar Chidara)
Accountant Member

Mumbai; Dated : 10.05.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai