IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

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

I.T.A. Nos. 1594 to 1597/Ahd/2019
(Assessment Years: 2010-11, 2011-12 & 2012-13)

Jet Air Agencies Pvt. Ltd., 29B, Rabindra Sarani, 3rd Floor, Room No. 10E, Kolkata-700073	Vs.	Income Tax Officer, Ward Central Circle-2(3), Ahmedabad
[PAN No.AAACJ7798P]		
(**Appellant**)	..	(**Respondent**)

I.T.A. No. 685/Ahd/2023
(Assessment Year: 2012-13)

Jet Air Agencies Pvt. Ltd., 29B, Rabindra Sarani, 3rd Floor, Room No. 10E, Kolkata-700073	Vs.	Assistant Commissioner of Income Tax, Central Circle-2(3),Ahmedabad
[PAN No.AAACJ7798P]		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri Ram Awatar Dhoot, A.R.
Respondent by :	Shri Santosh Kumar, Sr. DR

Date of Hearing	01.04.2024
Date of Pronouncement	31.05.2024

O R D E R

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)-12, (in short "Ld. CIT(A)"), Ahmedabad vide separate orders dated 20.09.2019 & 11.08.2023 passed for A.Ys. 2010-11 to 2012-13. 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. 1594/Ahd/2019 (A.Y. 2010-11)

"1. That the reopening of Assessment was bad in law.

2. That the learned Commissioner of Income Tax (Appeal) has proceeded on erroneous belief and misconception of Saw in considering a Commission Income of Rs. 747610/-.

3. The amount of profit of Rs. 74761140/- is related to the A.Y. 2011-12 and not related to the A.Y 2010-11 in any way. So the A.O. has wrongly taken the value of Rs. 74761140/- for the A.Y 2010-11.

4. That the action of learned Commissioner of Income Tax (Appeal) to consider unaccounted Commission income from Trades Made For Clients is not sustainable as the Commissioner of Income Tax (Appeal) failed to provide the account no where such amount has been deposited. He also could not produce any material based upon which such assumption is possible. His statement does not bear the name Affluence Commodities Pvt. Ltd. and Priyank Commodities Pvt. Ltd. Moreover 1% commission having been received is purely based on guess work which is neither confirmed by the party nor accepted by the assessee. That the Assistant commissioner of IT erred in calculating commission @ 1% of turnover without any basis as contract note purely shows commission @ 0.004%, (Recipient). Even Mr. Ram Awatar Dhoot was also not allowed to be cross examined.

5. That the action of Commissioner of Income Tax (Appeal) to consider unaccounted income of Rs. 7500000/- as unexplained income is not sustainable as the Assessment has been completed in undue haste. The amount has been said to be received from Raj Laxmi Ornaments & Stone and Krishna Infotech, which is false. Assessee did not received any amount from these entities hence no addition could be made.

6. That the action of Commissioner of Income Tax (Appeal) to consider unaccounted income of Rs. 700000/- as unexplained income is not sustainable as the assessee has not received any amount from M/s Superior International (India), Ms Ganpati Traders, Anurag Trade Agency, Rupa Trading Company and AAR JAA International (India). No details could be provided that which amounts are considered as income. No opportunity for cross examination could be provided and no statement recorded from these parties could be provided. Source of source need not to be proved- it is a well settled law. Hence addition on this account is bad in law.

7. That on the facts and in circumstances of the case the Assistant Commissioner of income tax is unjustified in making addition of Rs. 8947609/-.

8. That the learned Commissioner of Income Tax (Appeal) erred on facts and in law in charging interest of Rs. 2457704/- u/s 234B & 234D & 244A the appellant wholly denied the payment of such liability in consequences of addition.

9. That the Commissioner of Income Tax (Appeal) erred on facts and in law in initiating issue of notice u/ 274 of the Act to initiate penalty proceeding u/s 271(1)C of the Act in respect of addition & disallowance made.

10. That the appellant craves leave to add, alter, adduce, or amend any grounds of appeal on or before or in course of hearing."

Challenge to reopening of assessment under Section 147 of the Act.

3. While discussing the assessee's challenge to reopening of assessment under Section 147 of the Act, we shall look at the reasons for reopening of assessment for A.Y. 2010-11 as well as for A.Y. 2011-12.

4. Before us, the Counsel for the assessee drew our attention to reasons for reopening of assessment for A.Y. 2010-11 and submitted that one of the reasons for reopening the assessment was that the assessee company has provided accommodation entries / contrived losses to Affluence Commodities Pvt. Ltd. and as result thereof, huge losses amounting to Rs. 90,00,00,000/- were provided to M/s. Affluence Commodities for which the assessee has earned unaccounted commission income amounting to Rs. 90,00,000/-. However, in the final assessment order, no addition on this count was made by the Assessing Officer. Accordingly, the reopening of assessment in the case of the assessee is bad in law and hence, liable to be dropped.

5. On going through the contents of the reasons for reopening of the assessment under Section 147 of the Act for A.Y. 2010-11, we observe that the case of the assessee was reopened on the basis of Investigation Report received from the Investigation Unit at Calcutta, wherein it was found that the assessee was engaged in booking of contrived commodity losses for

some parties in connivance with brokers / other members by misutilising the NMCE platform. The details of various parties to whom contrived losses was given by the assessee was tabulated in the reasons for reopening of assessment. Further, in the reasons for reopening the assessment, it was also categorically noted that during the course of survey proceedings in the case of the assessee, the main person of the assessee company Shri Ram Awater Dhoot has categorically accepted that his company had provided bogus accommodation entries to beneficiaries in lieu of which the assessee had received additional commission income. In the final assessment order additions were also made in respect of bogus loss accommodation entries provided to these entities. Further, in the reasons for reopening, the Ld. AO also observed that the assessee received sums of Rs. 75,00,000/- and Rs. 7,00,000/- through layered transactions involving several bank accounts and the source of the above deposits remained unexplained in the hands of the assessee. In the assessment order passed under Section 147 of the Act, additions with respect to the aforesaid deposits were also made by the AO, which were later also confirmed by the Ld. CIT(A), with a detailed discussion in the appellate order.

6. Therefore, looking into the instant facts, in respect of the reasons for which the case of the assessee was reopened under Section 147 of the Act, additions have been made by the AO, which were subsequently confirmed by the Ld. CIT(A) after detailed analysis of the assessee's set of facts, we are of the considered view that the AO has not erred in facts and in law in initiating proceedings under Section 147 of the Act in the assessee's set of facts.

Now, it would also be pertinent to refer to the "reasons" for reopening assessment for A.Y. 2011-12

7. On analysis of the contents of the reasons for reopening the assessment in the case of the assessee for A.Y. 2011-12, we observe that the reassessment was initiated on account of information received from the ITO (Investigation), Calcutta as per which the assessee had brought unaccounted money into it's books of accounts through several layers. In the reasons for reopening the assessment, the Assessing Officer has given a detailed and categorical account of how the assessee was engaged in various suspicious transactions with various parties as per the information received from the Investigation Wing at Calcutta as well as from Investigation Wing at Raipur. The Assessing Officer observed that during the impugned year under consideration, the assessee had declared NIL income. However, the assessee had received substantial amount through various layers from bank accounts held with other parties. The Assessing Officer gave a detailed account of various parties from whom the assessee had received cash in his bank account in the reasons for reopening, and the entire modus operandi and the precise manner in which the assessee received money in his bank account by engaging in suspicious activities through various parties was elaborated. In the reasons for reopening, the Assessing Officer has also observed that as per statement recorded during the course of survey, Shri Ram Awtar Dhoot, the main Director of the assessee company has admitted that the assessee is providing bogus accommodation loss entry to beneficiaries which was done by some of his employees. Further, the Director of the assessee company Shri Ram Awatar Dhoot also admitted that brokerage of 0.0004% was charged by the assessee for providing

accommodation losses to various entities. The AO also observed that all this information was not available with the AO at the time of passing of original assessment order and it was only subsequently that this information was received from Investigation Wing situated at Calcutta and at Raipur. Further, the AO was also recorded that even though the assessee had produced books of accounts, annual report audited, Profit & Loss Account and balance sheet etc., the requisite material facts for the purpose of reopening of assessment were embedded in such a manner that the material evidence could not be discovered by the AO even with due diligence. Accordingly, in view of the detailed modus operandi which was highlighted in the reasons for reopening of the case by the AO, we are of the considered view that the AO had sufficient reasons to believe that the assessee was engaged in providing bogus losses to various parties, for which he admittedly charged brokerage of 0.0004% (as admitted by Shri Ram Awatar Dhoot, the principal Director of the assessee company) and further, the Assessing Officer has also given a detailed account of various layers / bank accounts of various parties through whom certain unaccounted money was received by the assessee in his bank account. Accordingly, looking into the instant facts, we are of the considered view that the AO had substantial material in his possession to come to the conclusion that there was escapement of income during the years under consideration, on account of deliberate suppression of facts by the assessee and the Ld. AO also after due diligence could not have unearthed this suppression of income from the books furnished by the assessee during the course of original assessment proceedings.

8. It is a well settled law that for the purpose of reopening the assessment only a prima facie belief that income has escaped assessment is required at the time of initiation of reassessment proceedings. In the case of **Priya Blue Industries (P.) Ltd. 138 taxmann.com 69 (SC),** the Hon'ble SC dismissed the SLP filed against High Court ruling that where Assessing Officer had reason to believe that income chargeable to tax had escaped assessment as assessee was beneficiary of accommodation entries and basis for formation of such belief were several inquiries and investigation by Investigation Wing that there had been escapement of income of assessee from assessment because of his failure to disclose fully and truly all material facts, reopening of assessment was justified.

9. In the case of **Ultratech Transmission (P.) Ltd. 151 taxmann.com 20 (Ahmedabad - Trib.),** the Ahmedabad ITAT held that where Assessing Officer reopened assessment of assessee based on a prima facie belief that assessee had raised bogus bills to evade taxes and no actual work was done by sub-contractors as claimed by assessee, since AO was not required to establish escapement of income while recording reasons for reopening, notice issued under Section 147 was valid. The ITAT made the following observations while passing the order:

> *"We have perused the reasons for issuance of notice under Section 148 of the Act and we observe that from the material before him, the AO formed a "belief" that the assessee had incurred bogus sub-contracting expenses. In our view, the AO has given detailed reasonings on the basis of which he formed the belief that in the instant set of facts, the AO was of the view / had reason to believe that the assessee has created bogus sub-contracting expenses and thus income had escaped assessment. It is a well settled principle of law that that while recording the reasons, the AO need not establish the escapement of income. The belief at that time is only prima-facie and not conclusive. In the case of* ***Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC)****, the Hon'ble Supreme Court observed that the Court has only to see whether*

there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. On the scope of re-opening u/s 147 of the Act observed as under:

> *"We have only to see whether there was prima-facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."*

10. In the case of **Kottex Industries (P.) Ltd. v. Asstt. CIT [2021] 129 taxmann.com 151/282 Taxman 432/437 ITR 211 (Guj.)**, the Gujarat High Court held that at the time of recording the reason for satisfaction of Assessing Officer, there should be prima- facie some material on the basis of which, the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. It will be open to the assessee to prove that the assumption of fact made in the notice was erroneous at the time of assessment proceedings.

11. In the case of **Backbone Projects Ltd. 131 taxmann.com 80 (Gujarat)** the Jurisdictional High Court held that where AO issued a reopening notice against assessee on ground that an information was received from Investigation wing that assessee was a beneficiary of accommodation entries in respect of bogus sales and thereafter notice under Section 133(6) issued by AO to assessee was not responded by it, since AO had received tangible material from investigation wing and upon due satisfaction, he formed an opinion that assessee had received

accommodation entries and amount concerning these transactions had escaped assessment, impugned reopening notice was justified.

12. Hence, looking into the assessee's set of facts and judicial precedents highlighted above, in our view, the assessee's challenge to reopening of reassessment is liable to be dismissed.

On Merits (A.Y. 2010-11)

13. The additions have been made by the AO on primarily two counts for the impugned year under consideration. Firstly, the AO observed that during the year under consideration, the assessee was engaged in providing contrived losses to various parties on sale of certain illiquid commodities on the NMCE platform, for which the assessee was charging certain brokerage commission. Secondly, the assessee through a maze / layer of bank accounts of various third parties received certain amounts in his bank account, which was treated by the AO as unaccounted income of the assessee. We shall first elaborate the facts for A.Y. 2010-11 and to understand the modus operandi of the assessee and the facts for this year shall apply to the other years as well, since the AO has made similar additions for A.Ys. 2010-11, 2011-12 and 2012-13. The assessee is a company and is a broker on the NMCE platform, Ahmedabad and is engaged in the business of earning commodity brokerage. The assessee filed it's original tax return for A.Y. 2010-11 declaring total income of Rs. 71,731/-. A search under Section 132 of the Act was conducted on Ahmedabad Commodity Traders Group on 18.12.2014 and the assessee was also covered in a survey under Section 133A of the Act and from the records, it is seen that during the year under consideration, the assessee had

provided contrived losses to several entities by providing bogus losses on NMCE platform and the assessee had not disclosed the additional / unaccounted income by way of commission for providing contrived losses (in addition to regular brokerage on the trading volume) in it's return of income. During the course of assessment, the AO observed that Shri Ram Awatar Dhoot, the Director and main person of the assessee company i.e. Jet Air Agencies Pvt. Ltd. had categorically accepted having provided accommodation loss entry, but as per the assessee it had earned commission @ 0.0004% on total turnover. The AO observed that the various entities viz. M/s. Priyank Commodities Pvt. Ltd. and others were found to have been made commodity transactions through the assessee on NMCE platform and shown huge losses and the transactions were in illiquid commodities, by way of intra-day trades (trades executed in less than a minute of placing of order and transactions also secured on the same day) and in the last quarter of the Financial Year for booking losses, whereas the entity M/s. Priyank Commodities had earned profits on other commodity exchanges. In view of the above facts, the transactions and consequential losses provided by the assessee on the NMCE platform was held by the AO to be bogus commodity trade losses in lieu of getting extra commission (in addition to regular brokerage) in cash and that the assessee did not provide complete account of the unaccounted brokerage and accordingly, the AO made addition of Rs.7,47,610/- (being 1% commission on contrived loss of Rs. 7,47,61,140/-) and added the same to the total income on account of unaccounted commission. In addition to the above, the AO received information from Investigation Wing, Calcutta that huge amounts were deposited in the bank accounts of M/s. Raj Laxmi Ornaments and M/s.

Krishna Infotech and all the amounts were transferred to the bank accounts held by various other parties and finally the amounts so deposited reached to the bank account of the assessee after layering of funds in 2 to 8 bank accounts. The aggregate of such amounts was Rs. 75,00,000/- which was treated as unexplained cash credit in the hands of the assessee and added to his total income in absence of any explanation by the assessee. Similarly, the AO received information from Investigation Wing, Calcutta that cash was deposited in the bank accounts of various parties like M/s. Superior International (India), M/s. Roopa Trading Company and others and these amounts were transferred to the account of M/s. Vatika Merchants Pvt. Ltd. and others and finally reached the bank account of the assessee after layering of funds in 2 to 4 bank accounts and the aggregate of such amounts was Rs. 7,00,000/- was treated as unexplained cash credit in the hands of the assessee, being beneficiary and this amount was added to the total income of the assessee. Thus, the assessment for A.Y. 2010-11 was completed determining total income of Rs. 90,19,341/- with additions of Rs. 7,47,610/- being unaccounted brokerage income @ 1% of contrived losses booked by the assessee for various client using the NMCE platform and the balance amounts of Rs. 75,00,000/- and Rs. 7,00,000/- were the amounts received by the assessee in his bank account through various layers as described in the assessment order. The AO also passed assessment order for various years i.e. A.Y. 2011-12 and A.Y. 2012-13, in which similar additions were made. The details of additions have been tabulated below for ready reference:-

Particulars	***A.Y. 2010-11 order dated 28/12/2017***	***A.Y. 2011-12 order dated 28/12/2017***	***A.Y. 2011-12 order dated 31/12/2018***	***A.Y. 2012-13 order dated 28/12/2017***
Returned income	*Rs. 71,731/-*	*NIL*		*NIL*
Unaccounted commission from clients through NMCE platform	*Rs.7,47,610/-*	*Rs. 2,85,573/-*	*Rs. 3,41,134/-*	*Rs. 3,43,545/-*
Addition on unaccounted credits	*Rs. 75,00,000/-*	*Rs. 96,77,000/-*	--	--
Addition on unaccounted credits	*Rs. 7,00,000/-*	*Rs. 1,50,00,000/-*	--	--
Assessed Total Income	*Rs. 90,19,341/-*	*Rs. 2,49,62,573/-*	*Rs. 2,53,03,707/-*	*Rs. 3,43,545/-*

14. Before the Ld. CIT(A), the first contention of the Counsel for the assessee was that the presumption of the AO that 1% commission was earned by the assessee on contrived loses of Rs. 7.47 crores was totally baseless. The assessee submitted that whatever commission has been received by the assessee is already reflected in the books of accounts of the assessee. Further, the above brokerage commission cannot be added in the hands of the assessee without allowing the assessee an opportunity of cross-examination of the parties on the basis of whom the additions have been made by the AO. Regarding the balance cash credits of Rs. 75,00,000/- and Rs. 7,00,000/-, the assessee submitted that all the payments received were immediately paid to NMCE, Ahmedabad and none of the receipts was income of the assessee. However, the Ld. CIT(A) dismissed the appeal of the assessee by observing that so far as the bogus loss of Rs. 7.47 crores booked by M/s. Priyank Commodities Pvt. Ltd. is concerned, as per Shri Ram Awatar Dhoot, the Director and main person of the assessee group had categorically admitted of the assessee having provided accommodation loss entry for earning brokerage income. The contention of the assessee in this

case was that the opportunity of cross-examination of Shri Dhoot was not provided to it. However, Ld. CIT(A) observed that Shri Dhoot was not a third party, but was the principal person and the Director of the assessee itself and was engaged in providing bogus losses to various parties by using the NCME platform. On the argument of the assessee that there was no evidence against the assessee that it was a beneficiary of such unaccounted commission, the Ld. CIT(A) observed that on the basis of survey proceedings and statements of various parties / brokers recorded during search/survey and post search and survey proceedings on the Ahmedabad Commodity Group, it was observed that many concerns including M/s. Priyank Commodities Pvt. Ltd., M/s. Affluence Commodity and others had made commodity transactions through the assessee on NMCE platform and had booked huge losses constantly. These transactions were found to have been made in illiquid commodities, within small time gap and during the last quarter of the Financial Year and the clients of the assessee booked losses through intra-day trades, whereas the clients had earned profits in other commodities exchanges. Booking of huge losses in the last quarter of the year through the assessee by using the NMCE platform has been consistent pattern. The statement recorded during search proceedings of various parties / brokers which revealed that these parties had booked contrived losses through active connivance of some brokers like M/s Jet Agencies Pvt. Ltd. and subversion of screen based trading platform like NMCE. It is also matter of record and in public domain that penalties have been imposed by NMCE on such brokers involved including the appellant, M/s. Jet Agencies Pvt. Ltd. due to various irregularities found by the FMC.

15. Accordingly, Ld. CIT(A) dismissed the appeal of the assessee with the following observations:-

> *"6.1.4 As a result of search and surveys it was established that*
>
> *i. The transactions made on NMCE platform were not executed as per regular / prescribed business practices,*
>
> *ii. To execute synchronized transactions, these parties / clients had dealt in illiquid commodities only and the deals were matched within a minute of placing of the order and that all transactions were squared off within the same day.*
>
> *iii. Most of these transactions were executed in the last quarter of the year to book the loss and thereby to avoid paying taxes on the profits accrued so far.*
> *iv. The clients had incurred consistent losses in all the transactions through some brokers like M/s Jet Agencies Pvt. Ltd on screen based trading platform like NMCE.*
>
> *v. Price discovery was not shared and rigged by the brokers. These were restricted to syndicate transactions*
>
> *vi. The clients were dealing in specific series code and only few brokers were mutually trading,*
>
> *vii. The trades / transactions were executed with selective counter party brokers only,*
>
> *viii. As per FMCs report dated OS/12/2012 members of NMCE were found to be involved in creating artificial world and indulging in suspected evasion of Income Tax and there was complete regulatory failure and misuse of NMCE platform.*
>
> *ix. One of the parties Shri Narendra Singh Thakkar had accepted in his statement u/s 131(1) that he had booked losses through these brokers and had admitted additional income.*
>
> *x. Some other brokers had also admitted to have received extra commission in lieu of providing artificial losses to the clients in NMCE platform.*
>
> *xi. NMCE had suspended some brokers - M/s Prime Commodities, M/s Aryan Commodities Pvt. Ltd. and M/s Star Commodities and some of the members had surrendered their membership cards after detection of*

irregularities in the FMC. These brokers were penalized by the NMCE for non-genuine trade practice.

xii. During the course of survey proceedings in the case of the appellant M/s Jet Airways Pvt. Ltd., Shri Ram Awatar Dhoot the main person of the appellant had category accepted that in providing accommodation loss entry commission @ 0.004% of turnover and not on the commodity loss accommodation was received from the beneficiary.

6.1.5 It may also be worthwhile to bring to attention the fact of scam in commodity trading in the transactions by the parties and brokers of NSEL which ultimately defaulted and led to series of events after investigation by FMC. It was findings of the FMC that trades under taken on NSEL platform were not as per existing regulation and were against the law (Forwarding Contract Regulation Act 1952) and that various members and brokers had entered into transactions fraudulently and had helped various beneficiaries to book profits and losses to suit the requirements of those beneficiaries. The appellant having misused and allowed its clients to misuse the NMCE platform, having abetted in booking the losses by/for the clients by such illegal/irregular transactions cannot plead defense of mere documents and books. The circumstances have to prevail over the apparent documentations.

6.1.6 In view of these clear cut findings by the FMC, by the NMCE and by the Investigation Wing of the Income Tax Department in Ahmedabad and in Kolkata and undisputed involvement of the appellant in indulging in unfair practices, I find no merit in the academic arguments by the appellant and no basis to interfere in the addition made by the AO by adopting rate of commission of 1%. The addition of Rs.7,74,610/- is ***confirmed. The related ground is rejected.***

6.2 As to the addition of Rs. 75,00,000/- *on account of the amounts deposited in the bank accounts of the appellant which were ultimately found to be cash deposits in the accounts of M/s Raj Laxmi Ornaments and Stones and M/s Krishna Infotech which reached the appellant after 2 to 8 layers of transactions. The AO treated the amount to be unexplained cash credit in the hands of the appellant and made the addition.*

6.2.1 It is contended by the appellant that it received the sum of Rs.75,00,000/- from M/s Vatika Merchant Pvt. Ltd., M/s Sutanuti Distributors Pvt. Ltd. and M/s Matribhumi Commerce Pvt. Ltd. against the payment of losses suffered by M/s Vatika Merchant Pvt. Ltd., M/s Sutanuti Distributors Pvt. Ltd. and M/s Matribhumi Commerce Pvt. Ltd., that all the payments received were immediately paid to NMCE Ahmedabad, that none of the receipt was income of the assessee. It is argued by the appellant that no incriminating material was brought on record by A.O to prove that the sums belonged to the assessee. However it is the case of the AO that all the cash deposits in the bank accounts of various concerns ultimately reached the appellant and thus the appellant was the ultimate beneficiary of the cash deposits in the accounts few layers down.

6.2.2 In this regard I am of the firm view that the explanations of the appellant cannot be accepted at their face value because the fraudulent and non- genuine transactions undertaken by the appellant for the benefit of its clients have to be given due weightage and the transactions shown in the books cannot be taken to be real and true. Further, in view of the findings of the investigations carried out by the FMC, the NMCE and the Investigation Wing of IT Department at Ahmedabad and Kolkata, the affairs of the appellant have to be weighed on preponderance of probability and the over whelming circumstantial evidences going beyond the apparent facts as per the system generated documents. Under the circumstances I find no merit in the academic argument by the appellant and no basis to interfere in the addition made by the AO by treating the cash deposits in the bank accounts of other parties to be the income of the appellant. The appellant is the beneficiary of the deposits in its accounts. The addition of Rs.75,00,000/- is ***confirmed. The related ground is rejected****.*

6.3 ***As to the addition of Rs.7,00,000/-*** *it is seen that as per the AO the appellant was also beneficiary to the extent of Rs.7,00,000/- out of the cash deposited in the bank account of M/s Superior International (India) because the cash deposited in the bank accounts of M/s Superior International (India), M/s. Ganpati Traders, M/s. Anurag Trade Agency, M/s Roopa Trading Company and M/s AAR JAA International (India) reached to the bank account of the appellant after 2-4 layering and the amount was treated as unexplained cash credit in the hands of the appellant. This issue is similar to the issue related to addition of Rs. 75,00,000/- and following the decision related to the said issue in preceding paragraph, the addition of Rs. 7,00,000/- also is* ***confirmed. The related ground is rejected.***

7. The appeal for A.Y. 2010-11 is dismissed."

16. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) dismissing the appeal of the assessee.

17. Before us, the Counsel for the assessee reiterated the submissions which were also made before lower authorities which are to the effect that the assessee has earned 0.0004% brokerage which was charged by the assessee on the total turnover of the commodity sold, and the same is already reflected in the brokerage income of the assessee for A.Y. 2010-11. Further, regarding the other credits coming into the bank accounts of the assessee, through a layered series of transactions, the Counsel for the assessee submitted that the opportunity of cross-examination has not been

given to the assessee to cross-examine the parties from whom the cash has been deposited. Accordingly, the Counsel for the assessee submitted that the entire addition is made in the hands of the assessee only on the basis of presumptions / assumptions and therefore, the same is liable to be deleted.

18. In response, the Ld. D.R. placed reliance on the observations made by the Ld. AO and CIT(A) in their respective orders. The Ld. D.R. submitted that after detailed investigation, it has been conclusively discovered that the assessee has been engaged in fraudulent transactions of providing bogus losses to various parties in lieu of brokerage income, which are not recorded in the books of accounts and nor offered for taxation. The Ld. D.R. submitted that the assessee has been misusing the NCME platform for carrying out certain intra-day transactions with a view to providing bogus losses in illiquid commodities on the NMCE exchange in lieu of unaccounted brokerage income. The Ld. D.R. pointed out that the AO and CIT(A) have also noted that the parties have booked huge losses even in the preceding years, wherein such losses are booked in the last quarter of the year, with the help of these brokers on the NMCE platform. The assessee has been following a modus operandi wherein most of the trades were executed in less than a minute of placing the order. These transactions were secured on the same date. The client of the assessee had incurred consistent losses in almost every transactions and the same trend is observed in all clients, in which the assessee is dealing with. Even Shri Ram Awatar Dhoot, the Director of the assessee company has admitted that the assessee has been engaged in providing bogus loss accommodation entries to Affluence Commodities Pvt. Ltd. Therefore, looking at the totality of

circumstances, the assessee has been engaged in providing false accommodation entries to various of it's clients by systematic misuse of the NMCE platform on which it has earned unaccounted brokerage income, which has not been offered to tax. Accordingly, the entire income, both brokerage as well as credits in the bank accounts through a layer of bank transactions are liable to be added as unexplained income of the assessee.

19. We have heard the rival contentions and perused the material on record.

20. Firstly, we shall deal with taxability of unaccounted brokerage income earned by the assessee by providing bogus losses to it's clients. The contention of the assessee has been that the brokerage earned by the assessee is on the turnover of it's clients and not a percentage of the losses booked by the client on sale of illiquid commodities on the NMCE exchange. However, the Counsel for the assessee has submitted that these additions are also not sustainable on the account of the fact that opportunity of cross-examination was not provided to the assessee. However, looking into the facts of the instant case and the entire gamut of transactions which has been unearthed by the Investigation Wing and further, in light of the observations made by the Ld. AO and the Ld. CIT(A) in their respective orders we are of the considered view that the Ld. CIT(A) has not erred in adding the unaccounted brokerage income in the hands of the assessee. On going through the instant facts, we are of the considered view that the assessee has not earned brokerage income as a percentage of the turnover, but looking into the instant facts, and the admission by Shri Ram Awatar Dhoot, the main person of the assessee of having provided accommodation

loss entry, looking into the entire modus operandi carried out by the assessee firm by misuse of the NMCE platform on a systematic basis to provide bogus losses, the fact that the various brokers were also penalized by NMCE for non-genuine trade practices, we are of the considered view that Ld. CIT(A) has correctly observed that assessee has earned unaccounted brokerage income as a percentage of the bogus loss accommodation entry provided by the assessee to it's clients.

21. The next question for consideration, therefore, would be whether the AO / CIT(A) have correctly held that 1% of such bogus accommodation entry losses should be treated as unaccounted brokerage income of the assessee or whether a lesser percentage should be arrived at, looking into the mistake facts.

22. The Ahmedabad Tribunal in the case of **Kaushik Pravinchandra Gohel vs. Jurisdictional Assessing Officer in ITA No. 690 to 694/Ahd/2023** vide order dated 17.04.2024 while dealing with similar issue in detail and after carrying out detailed analysis has held that commission income @ 0.25% should be held to be the unaccounted commission income in the hands of the assessee, so as to meet the interest of justice. It would be useful to reproduce the relevant extracts of the ruling for ready reference:-

> *"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 RoI 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."*

23. Accordingly looking into the instant facts, in our view the unaccounted brokerage income on such bogus losses provided by the assessee by misusing the NMCE platform should be restricted to 0.25% of the losses provided to it's clients.

24. Before concluding this ground of appeal, it would also be pertinent to deal with the arguments of the Ld. Counsel for the assessee for dismissal of order under Section 147 of the Act for non-grant of opportunity of cross-examination. In the instant facts, the assessee had taken a argument that opportunity of cross-examining of Shri Ram Awatar Dhoot, who had made a statement that the assessee was providing accommodation loss entry was

not provided to the assessee. However, in the instant facts, Ld. CIT(A) has correctly observed that Shri Ram Awatar Dhoot, was the main Director of the assessee company itself and it was Shri Ram Awatat Dhoot who was primarily engaged in providing bogus accommodation entry to various clients of the assessee as the principal Director of the assessee company. The Ld. CIT(A) correctly observed that the assessee is unjustified in giving the impression that Shri Ram Awatar Dhoot was a third party for the purpose of assessment, whereas Shri Dhoot was the Principal Director and main person of the assessee company and notably Shri Dhoot did not retract from the statement given during the course of survey. Therefore, in the instant facts, looking into the totality of the circumstances, we are of the considered view that the statement of Shri Ram Awatar Dhoot the main Director and person responsible for providing accommodation entry carries substantial evidentially value, more so in light of the facts that the statement was never retracted by Shri Ram Awatar Dhoot. The principle which has been enunciated by various Courts is that the totality of circumstances and the surrounding facts and circumstances have to be giving due weightage, while arriving at the correct amount of taxable income. Further, in cases when the surrounding facts and circumstances clearly point out that the assessee has been systematically engaged in providing bogus losses using the NMCE platform and earning unaccounted income, then the technical plea of cross-examination should not come to the rescue of the assessee, and the entire Investigation done by various authorities cannot be annulled / brought to a naught by accepting the plea of cross-examination not having being provided to the assessee when the assessee was actually engaged in malpractice of misuse of NMCE platform for providing bogus losses to it's

clients. The Hon'ble Supreme Court in the case of **Sumati Dayal vs. CIT 80 Taxman 89 (SC)** the Hon'ble Supreme Court held that:

> *"This raised the question whether the apparent could be considered as real.* ***Apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities.*** *The Chairman of the Settlement Commission, in his dissenting opinion, had laid emphasis on the fact that the appellant had produced evidence in support of the credits in the form of certificates from the racing clubs giving particulars of the crossed cheques for payment of the amounts for winning of jackpots, etc. The Chairman had rejected the contention regarding lack of expertise in respect of the appellant and had observed that the expertise was the last thing that was necessary for a game of chance and anybody had to go and call for five numbers in counter and obtain a jackpot ticket and that books containing information are available which are quite cheap.* ***This was a superficial approach to the problem. The matter had to be considered in the light of human probabilities.*** *"*

25. In the case of **Swati Bajaj 139 taxmann.com 352 (Calcutta)** the High Court held that report submitted by the Investigation department could not be thrown out on the ground on account of non-furnishing of the investigation report or non-production of the persons for cross examination. The High Court made the following observations:

> *"The report submitted by the* ***Investigation department could not be thrown out on the grounds urged on behalf of the assessees.*** *The assessees have not been shown to be prejudiced on account of non-furnishing of the investigation report or non-production of the persons for cross examination as the assessee* ***has not specifically indicated as to how he was prejudiced, coupled with the fact as admitted by the revenue****, the statements do not indict the assessee. That apart, the investigation has commenced targeting the individuals who dealt with the penny stocks and after examining the modus seeing the cash trail the report has been submitted recommending the same to be placed before the DGIT (Investigation) of all the States of the country. It is thereafter the concerned Assessing Officers have been informed to consider as to the bona fideness and genuineness of the claims of LTCG/LTCL of the respective assessees qua the findings which emanated during the investigation conducted on the individuals who dealt with the penny stocks. Therefore, the assessments have commenced by the Assessing Officers calling upon the assessee to explain the genuineness of the claim of LTCG/LTCL made by them. In all the assessment orders, substantial portion of the investigation report has been noted in*

full. A careful reading of the same would show that the assessee has not been named in the report. If such be the case, unless and until the assessee shows and proves that she/he was prejudiced on account of such report/statement mere mentioning that non-furnishing of the report or non-availability of the person for cross examination cannot vitiate the proceedings. The assessees have miserably failed to prove the test of prejudice or that the test of fair hearing has not been satisfied in their individual cases. In all the cases, the assessees have been issued notices under sections 143(2) and 142(1) they have been directed to furnish the documents, the assessee have complied with the directions, appeared before the Assessing Officer and in many cases represented by Advocates/Chartered Accountants, elaborate legal submissions have been made both oral and in writing and thereafter the assessments have been completed. Nothing prevented the assessee from mentioning that unless and until the report is furnished and the statements are provided, they would not in a position to take part in the inquiry which is being conducted by the Assessing Officer in scrutiny assessment under section 143(3). The assessee were conscious of the fact that they have not been named in the report, therefore made a vague and bold statement that the non-furnishing of report would vitiate the proceedings. Therefore, merely by mentioning that statements have not been furnished can in no manner advance the case of the assessee. If the report was available in the public domain as has been downloaded and produced by the revenue, nothing prevented the assessees who are ably defended by the Chartered Accountants and Advocates to download such reports and examine the same and thereafter put up their defence. Therefore, the based on such general statements of violation of principles of natural justice the assessees have not made out any case.

…

On preponderance of probabilities

To prove the allegations, against the assessee, can be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled and when direct evidence is not available, it is the duty of the Court to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded so as to reach a reasonable conclusion and the test would be what inferential process that a reasonable/prudent man would apply to arrive at a conclusion. Further proximity and time and prior meeting of minds is also a very important factor especially when the income tax department has been able to point out that there has been a unnatural rise in the price of the scrips of very little known companies. Furthermore, in all the cases, there were minimum of two brokers who have been involved in the transaction. It would be very difficult to gather direct proof of the meeting of minds of those brokers or sub-brokers or middlemen or entry operators and therefore, the test to be applied is the test of preponderance of probabilities to ascertain as to whether there has been violation of the provisions of the Income-tax Act. In such a circumstance, the conclusion has to be gathered from various circumstances like the volume from trade, period of persistence in trading in the particular scrips, particulars of buy and sell orders and the volume thereof and proximity of time between the two which are relevant factors. Therefore, the methodology adopted by the revenue cannot be faulted."

26. The High Court of Delhi in the case of **Sajan Dass & Sons v. CIT [2003] 128 Taxman 621/264 ITR 435**, wherein it was held that a mere identification of the donor and showing the memo of the gift amount through bank channel was not sufficient to prove the genuineness of the gift and the claim of gift having been made by the assessee the onus is placed on the assessee to establish the identity of the persons making the gift and also his capacity to make a gift and that it has actually be received as gift from the donor.

27. The Bombay Bench of the ITAT in the case of **ITO v. Mont Blanc Properties and Industries (P.) Ltd., ITA No. 614/Bom/87** dated 20.04.1994 A.Y. 1983-84 wherein the Tribunal held that the word "evidence" as used under section 143(3) covered circumstantial evidence also and cannot be confined to direct evidence and in tax jurisprudence the word "evidence" had much wider connotations. Further, the use of the word "material" in Section 143(3) showed that the Assessing Officer not being a Court could rely upon material which might not strictly be evidence admissible under the Indian Evidence Act, for the purpose of making an order of assessment.

28. The High Court of Bombay in the case of **Sanjay Bimalchand Jain vs. Pr. CIT [2018] 89 taxmann.com 196** upholding the order of Nagpur Bench of the Tribunal holding that on the facts emergent in the case and the preponderance of probabilities, the entire capital gains claim were to be treated as fictitious and bogus.

29. On the preponderance of probabilities, in the case of **Sanjay Kaul 119 taxmann.com 470 (Delhi), the Delhi High Court** held that where assessee was not a regular investor in shares and had invested only in high risk stocks of obscure companies with no business activity or asset which were identified as 'Penny Stocks', Assessing Officer had correctly concluded that assessee had entered into a pre-arranged sham transaction so as to convert unaccounted money into accounted money in guise of capital loss; alleged short term capital loss was rightly disallowed.

30. The Hon'ble Supreme Court in **SEBI v. Kishore R. Ajmera [2016] 66 taxmann.com 288** has pointed out as to the important aspect with regard to the proximity of time between the buy and sell orders, prior meeting of minds, unnatural rise in the prices of the scripts and how the conclusion can be gathered from the various circumstances coupled with preponderance of probabilities.

31. In the case of **CIT vs. Durga Prasad More 82 ITR 540 (SC), the** Hon'ble Supreme court made the following important observations:

> *"**8.** Now we shall proceed to examine the validity of those grounds that appealed to the learned judges, it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, other wise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. **The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents."***

32. In this case, we observe that from the detailed observations made by the Investigation Wing, the Ld. AO, the Ld. CIT(A), the facts which are coming from statements of various parties who have accepted having received bogus loss accommodation entries, the fact that the NMCE platform has been systematically misused by various parties including the assessee, the fact that the license of various brokers has been rescinded etc., all lead to the clear conclusion that the assessee has been systematically engaged in providing bogus losses to various clients by misusing the NMCE platform. Therefore, in view of the decision of Hon'ble Supreme Court in the case of Sumati Dayal (supra) and Hon'ble Calcutta High Court in the case of Swati Bajaj (supra), and looking into the instant facts, this argument of the Ld. Counsel for the assessee is hereby rejected that additions are not liable to be sustained only on account of not providing opportunity of cross-examination.

33. In the result, in view of the aforesaid discussion, the brokerage commission income earned by the assessee is directed to be reduced to 0.25% of the bogus losses.

34. In the result, Ground Nos. 2, 3 & 4 of the assessee's appeal are partly allowed.

Ground Nos. 5&6:- The CIT(A) erred in Rs. 75,00,000/- & Rs. 7,00,000/- unaccounted income as unexplained income.

35. The brief facts in relation to these ground of appeal are that the Ld. AO and CIT(A) observed and held that the assessee through a series of layered transactions through banking channels has received certain amounts

in his bank account, the source of which remained unexplained. Before the AO or before the CIT(A) the assessee has not given any plausible explanation with regards to the source of such deposits made in his bank account and in no reason was given why such amount was credited in his bank account. Before Ld. CIT(A), the assessee has made a blank statement that all the payments which were received by the assessee was immediately transferred to NMCE Ahmedabad and none of the receipts belonged to the assessee or was the income of the assessee. However, the CIT(A) observed that all the cash deposits in the bank accounts of various concerns ultimately reached the assessee and therefore, it was the assessee who was the ultimate beneficiary of deposits in the accounts held by the assessee. Accordingly, the addition of a sum of Rs. 75 lakhs and Rs. 7 lakhs as unaccounted income in the hands of the assessee which was confirmed by the Ld. CIT(A) with the following observations:-

> *"**6.2 As to the addition of Rs. 75,00,000/-** on account of the amounts deposited in the bank accounts of the appellant which were ultimately found to be cash deposits in the accounts of M/s Raj Laxmi Ornaments and Stones and M/s Krishna Infotech which reached the appellant after 2 to 8 layers of transactions. The AO treated the amount to be unexplained cash credit in the hands of the appellant and made the addition.*
>
> *6.2.1 It is contended by the appellant that it received the sum of Rs.75,00,000/- from M/s Vatika Merchant Pvt. Ltd., M/s Sutanuti Distributors Pvt. Ltd. and M/s Matribhumi Commerce Pvt. Ltd. against the payment of losses suffered by M/s Vatika Merchant Pvt. Ltd., M/s Sutanuti Distributors Pvt. Ltd. and M/s Matribhumi Commerce Pvt. Ltd., that all the payments received were immediately paid to NMCE Ahmedabad, that none of the receipt was income of the assessee. It is argued by the appellant that no incriminating material was brought on record by A.O to prove that the sums belonged to the assessee. However it is the case of the AO that all the cash deposits in the bank accounts of various concerns ultimately reached the appellant and thus the appellant was the ultimate beneficiary of the cash deposits in the accounts few layers down.*
>
> *6.2.2 In this regard I am of the firm view that the explanations of the appellant cannot be accepted at their face value because the fraudulent and non- genuine*

transactions undertaken by the appellant for the benefit of its clients have to be given due weightage and the transactions shown in the books cannot be taken to be real and true. Further, in view of the findings of the investigations carried out by the FMC, the NMCE and the Investigation Wing of IT Department at Ahmedabad and Kolkata, the affairs of the appellant have to be weighed on preponderance of probability and the over whelming circumstantial evidences going beyond the apparent facts as per the system generated documents. Under the circumstances I find no merit in the academic argument by the appellant and no basis to interfere in the addition made by the AO by treating the cash deposits in the bank accounts of other parties to be the income of the appellant. The appellant is the beneficiary of the deposits in its accounts. The addition of Rs.75,00,000/- is ***confirmed. The related ground is rejected****.*

6.3 ***As to the addition of Rs.7,00,000/-*** *it is seen that as per the AO the appellant was also beneficiary to the extent of Rs.7,00,000/- out of the cash deposited in the bank account of M/s Superior International (India) because the cash deposited in the bank accounts of M/s Superior International (India), M/s. Ganpati Traders, M/s. Anurag Trade Agency, M/s Roopa Trading Company and M/s AAR JAA International (India) reached to the bank account of the appellant after 2-4 layering and the amount was treated as unexplained cash credit in the hands of the appellant. This issue is similar to the issue related to addition of Rs. 75,00,000/- and following the decision related to the said issue in preceding paragraph, the addition of Rs. 7,00,000/- also is* ***confirmed. The related ground is rejected.***

7. The appeal for A.Y. 2010-11 is dismissed."

36. The assessee is in appeal before us against the aforesaid additions confirmed by Ld. CIT(A). The Counsel for the assessee submitted that the deposits were made in bank accounts of other parties and not in the assessee's account. Further, the amount has been received by the assessee after several layers and therefore, in the instant facts there is no justification for adding this amount in the hands of the assessee. The Counsel for the assessee submitted detailed submission before us on this point and the primary arguments of the assessee was that the assessee received sum of Rs. 75 lakhs against payment of losses offered by M/s. Vatika Merchant Pvt. Ltd., M/s. Sutanuti Distributors Pvt. Ltd. and M/s. Matribhumi Commerce Pvt. Ltd. All the payments received were immediately paid to NMCE Ahmedabad and none of the receipts were income of the assessee. Further,

no incriminating material was brought by the AO to prove that these sums belong to the assessee. Accordingly, it was submitted that the additions made in the hands of the assessee cannot survive.

37. However, on going through the facts of the instant case, it is seen that the assessee has provided no evidence before any of the Tax Authorities that the payments which were received by the assessee were paid to NMCE Ahmedabad. The assessee has been admittedly engaged in the business of providing bogus accommodation entries thereby earning unaccounted brokerage income and the assessee through a layer of transaction through the banking channels has received the aforesaid amounts in his bank account. The assessee has given no explanation with regards to the nature of these credit entries in his bank account and neither was the same offered to tax. The assessee has been consistently engaged in malpractices using the NMCE platform. No proof has been furnished by the assessee that this amount was deposited by the assessee with NMCE platform. Accordingly, in light of the above facts and looking into the totality of the circumstances, we find no infirmity in the order of Ld. CIT(A) and the AO so as to call for any interference.

38. In the result, Ground Nos. 5 & 6 of the assessee's appeal are dismissed.

39. We observe that similar additions have been made by the Ld. AO and later confirmed by Ld. CIT(A) for the balance years as well. Accordingly, the grounds of appeal raised by the assessee for A.Y. 2011-12 and 2012-13

are also disposed of accordingly, in light of the our observations made in the preceding paragraphs for A.Y. 2010-11.

40. In the combined result, appeal of the assessee is partly allowed.

This Order pronounced in Open Court on	**31/05/2024**

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated 31/05/2024
TANMAY, Sr. PS ***TRUE COPY***

आदेश की प्रतिलिपि अग्रेषित/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