

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

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SUNIL KUMAR SINGH, JM**

ITA Nos.4510 to 4512 & 4514/Mum/2023
(Assessment Years: 2015-16 to 2017-18 & 2019-20)

Rahul Chandrakant Jhaveri,
Flat No.12, 1st Floor,
Apurva Building,
KEMPS corner,
Above Union Bank of India,
Mumbai-400 036

(Appellant)

DCIT,
Central Circle 8(2)
Room No. 658, 6th Floor,
Aaykar Bhavan,
M.K road,
Mumbai-400 020

Vs.

(Respondent)

PAN No. AAGPJ5270R

Assessee by : Shri Rashmi Modi &
Ms.Ketki Rajeshirke, ARs
Revenue by : Smt. Sanyogita Negapal, CIT
DR

Date of hearing: 27.05.2024

Date of pronouncement : 31.05.2024

ORDER

PER BENCH:

01. ITA Nos. 4510,11,12 and 14 are the four appeals filed by Mr. Rahul Chandrakant Jhaveri (assessee / appellant) for A.Ys. 2015-16, 2016-17, 2017-18 and 2019-20 against the appellate order passed by the Commissioner of Income-tax (Appeals)-

50, Mumbai [the learned CIT (A)] on 28th September, 2023, for all these years separately dismissing the appeal of the assessee filed against the assessment order passed under Section 153A read with section 144 of the Income-tax Act, 1961 (the Act) passed by the Dy. Commissioner of Income Tax, Central Circle 8(2), Mumbai (the learned Assessing Officer) dated 30th September, 2021. All these above four appeals have identical facts and therefore, these appeals are disposed of by this common order.

02. A search and seizure under Section 132 of the Income-tax Act, 1961 (the Act) was carried out on 6th November 2019, at One World Group entities. The residence of the assessee was also searched. Subsequently, the case of the assessee was centralized with Dy. Commissioner of Income Tax, Central Circle 7(2), Mumbai. The notice under Section 153A of the Income-tax Act, 1961 (the Act) was issued on 24th December 2020. The assessee did not file any return of income in response to that notice. Subsequently, notice under Section 142(1) of the Act was also issued to the assessee as did not comply by filing the return. This was also not complied with. Thereafter, the learned Assessing Officer issued a show cause notice to proceed with Section 144 of the Income-tax Act, 1961 (the Act) as the assessee has failed to make any compliance with the statutory notices. Thus, the assessee was completely non co-operative during the assessment proceedings.
03. The brief fact of the case clearly shows that information was received from GST authorities that One World Group along

with other companies formed cartel of companies whereby bogus sales and purchase invoices without actual supply of goods were issued. The whole activity was carried out by one Shri Urvil Jani Director of One World Group of companies. In the statement of several persons the above facts were admitted. Mr. Urmil Jani has also accepted the above fact.

04. The assessee is found to be proprietor of 8 different entities which is engaged in providing bogus invoices. This activity was found to be carried out from A.Y. 2015-16 to A.Y. 2019-20. These entities were operating from the house of the assessee. During the course of search, the statement of the assessee was also recorded, wherein he categorically admitted that all his proprietary concerns were actually bogus entities, and no actual transactions were carried out between his concerns and One World Group. It is also found that assessee is also involved in advancing loan to the One World Group of companies. Based on this, the total turnover reported by the assessee of sales is ₹2567 crores and also the sale of ₹2567 crores. The learned Assessing Officer found that a total turnover of purchase and sales, the commission income earned by the assessee is 5% of the total turnover. Accordingly, on total transaction of ₹5135 crores commission of 5% was determined at ₹256,78,39,269/-. The assessment order under Section 144 of the Act was passed on 30th September 2021.
05. The assessee challenged the same before the learned CIT (A). Before learned CIT (A), eight opportunities were given to the assessee; however, none of them were availed. Therefore, the learned CIT (A) dismissed the appeal holding that assessee is

not availing the opportunities of hearing and therefore, he concurred with the findings of the learned Assessing Officer and dismissed the appeal of the assessee.

06. For A.Y. 2016-17, on identical facts, assessee was found to be engaged in total turnover of purchase and sales of ₹4532 crores on which commission at the rate of 5% was determined at ₹226,61,87,866/- by assessment order dated 30thSeptember 2021.
07. For A.Y. 2017-18, by order dated 30thSeptember 2021, the learned Assessing Officer computed 5% commission income on turnover of ₹258 crores at ₹102,94,99,457/-.
08. For A.Y. 2019-20, the learned Assessing Officer found that assessee has entered into a turnover of ₹16,26,22,957/- on which commission income at the rate of 5% was determined at ₹81,31,147/-.
09. For A.Y. 2016-17, 2017-18 and 2019-20, the assessee preferred the appeal before the learned CIT (A) which was dismissed for non-prosecution and order of the learned Assessing Officer were confirmed. Now, the assessee has preferred these appeals before us.
010. At the inception, we find that the appeal for A.Y. 2015-16, is delayed by 15 days, for A.Y. 2016-17 and 2017-18 and 2019-20, are also delayed by 15 days.
011. The assessee has filed an affidavit stating that assessee met with huge demand of approximately Rs. 525 crores and he was unable to appoint any proper tax consultant and was also

not able to meet his daily routine expenses as , he did not have any business activity, in absence of any source of income, he could not hire a consultant. Due to this a minor delay has occurred in filing of the above appeal. We find that the assessee has given this cause for the delay.

012. The learned CIT Departmental Representative objected to the admission of the appeal.

013. Shri Rashmi Modi, CA stated that the delay in filing of the appeal is because of sufficient reasons and therefore, appeal of the assessee should be admitted.

014. We have carefully considered the contention and the reasons filed in delay in filing of the appeal. We find that the delay caused in the filing of these four appeals is 15 days. There is sufficient reason also that the assessee is met with the huge demand of Rs. 525 crores and is an accommodation entry provider who has given the bills to the One World Group. Forint is also apparent that assessee was running several proprietary concerns by giving bogus bills to only One entity i.e. One World Group. From the assessment order also, it is apparent that he does not have any source of income except earning out from these accommodation entries. Even otherwise, nobody benefited by filing an appeal belatedly. Therefore, we find that there is sufficient cause in the filing of appeal delayed by 15 days.

015. It is held by the Honourable Supreme court in 2023 INSC 885 Sheo Raj Singh (Deceased) through L.Rs. and Ors. vs. Union of India (UOI) and Ors. (09.10.2023 - SC) :

MANU/SC/1098/2023 that condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial. The law of limitation was founded on public policy, and that some lapse on the part of a litigant, by itself, would not be sufficient to deny condonation of delay as the same could cause miscarriage of justice. The expression sufficient cause is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail. It is upon the court to consider the sufficiency of cause shown for the delay, and the length of delay is not always decisive while exercising discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such applications for condonation of delay. such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts. Accordingly, we admit all these appeals of the assessee by condoning the delay.

016. On the merits of the case, the learned Authorized Representative submitted that all these additions have been made ex-parte and therefore, assessee was not in a position to attend hearing either before the learned Assessing Officer or before the learned CIT (A). He submits that such non representation is because of the huge demand on the assessee and search matters. If an opportunity is given to the assessee, he will definitely avail the same.

017. On the merits, he submitted that search took place on 6/11/2019. During the course of search nothing was found at the premises of the assessee. The books of accounts of all these proprietary concerns were also maintained and was found at the premises of Mr. Jani. Therefore, in the absence of any incriminating material found during the course of search, the only addition is made on the basis of the statement of the assessee. He submits that even on the statement also assessee has confessed to have earned ₹ 1600 as his income on accommodation entry of Rs. 1 crore. The learned assessing officer has assumed the commission income from accommodation entry at the rate of 5% without any basis. Thus, additions made by the Id. AO is devoid of any merit and without any basis.
018. The learned Departmental Representative vehemently objected and stated that assessee is an accommodation entry provider and therefore, assessee did not go before any of the authorities. Thus, the assessee is thwarting all attempts at the revenue of making investigation, enquiry in the matter and is also acting on behalf of Mr. Jani. It was submitted that assessee strategically did not remain present before the lower authorities. He submits that it is the act of the assessee which is saving the beneficiaries and now the assessee is saying that proper opportunity is not available to the assessee. He submits that even the attempt of the assessee to obtain one more opportunity of hearing before the lower authorities is delaying tactics to further prevent revenue from recovery of the taxes and reaching to the beneficiaries. He submits that if the

assessee is an accommodation entry provider, he must show who are the beneficiaries and such beneficiaries should be taxed on substance on the whole transaction then only assessee can say that his commission income is merely ₹ 1600/- per crore. It was further stated that this was the big scam of accommodation entries which prevented GST authorities, income tax authorities, other regulatory authorities in reaching at investigation results for the reasons that people like assessee did not remain present before the lower authorities. It was further submitted that by hiking huge turnover by the beneficiaries have either defrauded the banks or the investors. Therefore, the assessee must cooperate in investigation by the income tax authorities.

019. In rejoinder, the learned Authorized Representative submitted that even otherwise, the learned Assessing Officer has made an addition at the rate of 5% of bogus commission of purchases and sales both. He referred to the statement under Section 132(4) of the Act of the assessee where, he admitted having earned a consideration of ₹1600 per transaction of ₹1 crores by Mr. Urvil Jani for issue of invoice of sales and purchase without actual delivery of goods for entities of One World Group of Mr. Urvil Jani. It is further stated that the statement of the assessee itself shows that he has simply signed the blank cheques which are kept by Mr. Urvil Jani. It is further stated Mr. Urvil Jani is maintaining the books of account of these bogus concerns and complies with the statutory compliances as well as the bank statement. He is also aware about the books of accounts and the bank statement.

According to him, even the search dated 6th November 2019, also shows that no incriminating materials were found from Rahul Jhaveri.

020. We have carefully considered the rival contentions and perused the orders of the lower authorities. The facts gathered from the assessment orders; it is apparent that.

- a. Mr. Rahul Chandrakant Jhaveri is an accommodation entry provider, running several proprietary concerns for issuing bogus bills and sales and purchases to One World Group of companies.
- b. The bogus invoices of the sale and purchase without actual delivery of goods are alleged to have been given to the beneficiary One World Group entities which are owned and managed by Shri Urvil Jani.
- c. Though assessee is stated to have earned consideration of ₹1,600 crores, per transaction of ₹1 crores paid to him by Shri Urvil Jani
- d. Mr. Jani has also made a statement before the GST authorities accepting that he has inflated the turnover of the group companies without an actual supply of any goods or services. It is also specifically stated that there is a GST element in each of the invoices of purchase and sales.
- e. The GST authorities also arrested Mr. Jani.

- f. The assessee is also a person who supported Mr. Jani in such an activity by forming several proprietary ship concerns. All these books of accounts, bank statements operation of bank accounts, legal compliances with respect to all these proprietary concerns were carried out by Mr. Jani as stated by the assessee.
- g. Thus, it is clear that all these proprietary concerns were mere paper entities, and no actual transactions were carried out between the assessee and one world group entities but merely for the benefit of one world group entities these transactions were carried out. Naturally Mr. Jani who is also operating one world group also confirmed this fact.
- h. Thus, it is clear that the real beneficiary in all these transactions are one world group entities and assessee is also a conduit in helping to carry out all these GST frauds etc. it is also a fact that implications are not only on GST but also on income tax and other fiscal statutes.
- i. It is also a fact that the assessee did not remain present before any of the lower authorities with the sole intention of preventing the income tax authorities in further investigating the issue. This could also be the sole intention of saving the beneficiaries.
- j. Huge commission income is estimated by the learned assessing officer at the rate of 5% of bogus purchases and bogus sales. In fact, this commission income is

paid by the beneficiaries, therefore the income tax impact of this entries and assessment is also required to be taken care of in the hands of the beneficiaries.

021. We cannot close our eyes to such nefarious financial activities and therefore, do not hesitate to restore all these appeals before the learned assessing officer for further investigation in whatever manner the learned AO desires. In fact, which is the request of the learned DR which is not opposed by the learned AR but even learned AR has also requested for an opportunity to present the case of the assessee. Further, merely because the assessee says that he is an accommodation entry provider, it cannot be believed, unless the assessee names the beneficiary with cogent evidence. Necessarily, the bills issued by the assessee of purchases and bills received of the sales are to be investigated further about the beneficiaries.
022. Accordingly we restore all these appeals filed by the assessee to the file of The Jurisdictional Assessing officer (JAO) i.e. the deputy Commissioner of income tax, Central Circle – 8 (2) Mumbai, with a direction to carry out all necessary investigation in this matter and thereafter determine the income of the assessee after finding out the beneficiaries, and then decide the income earned by the assessee from such an activity. The assessee is directed to remain present with all his arguments and evidence which he would like to make to help his case within 90 days from the date of receipt of this order. The failure of the assessee to not avail this opportunity will also empower the assessing officer to decide the issue in accordance with the law. Needless to say, the learned



assessing officer must follow the principles of natural justice therefore no prejudice should be caused to the assessee.

023. In the result, all these appeals are allowed in accordance with the above direction.

Order pronounced in the open court on 31.05.2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.05.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai