

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.4077 & 4074/Mum/2023
Assessment Years: 2011-12 to 2012-13**

ITO 8(1)(1), Mumbai	Vs.	Saraswati Trade Centre Pvt. Ltd. C/o. Shri Pravin Patel, B-13/116, Mohan Co. Op. Housing Society, Govind Nagar, Sodawala Lane, Borivali, Mumbai-400092.
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri B. Laxmi Kanth, Sr. DR

Date of Hearing : 10.07.2024
Date of Pronouncement : 29.07.2024

ORDER

PER AMARJIT SINGH, ACCOUNTANT MEMBER:

Both these appeals of the revenue for the assessment year 2011-12 & 2012-13 are directed against the different orders passed by the ld. Principal Commissioner of Income-tax - 8 Mumbai. Since common issue and identical facts involved in these appeals therefore these people are adjudicated together by this common order by taking the ITA No. 4077/Mum/2023 as lead case and its finding will be applying mutatis mutandis to the other appeal.

ITA No. 4077/Mum/2023 for A.Y. 2011-12

2. Fact in brief is that return of income declaring total income at Rs. 4,82,806/- was filed on 31.10.2011. The return was processed

u/s 143(1) of the Act on 14.01.2012. Subsequently, the case was reopened by issuing of notice u/s 148 of the Act on 31.03.2018. The case was reopened u/s 147 of the Act on the basis of information received from DDIT (Inv.), Unit-2(3), Mumbai that during the course of investigation proceedings in the case of M/s. Crest Marketing it was noticed that this entity was maintaining a current account no. 2070 with Saraswat Bank and also maintain current account in the ICICI Bank, Andheri (W) Branch. It was observed that total credits made in these accounts were not found matching with figures of sales and debtors. As per the information received from the Investigation Wing, the AO noticed that assessee had made purchases of Rs. 1,48,19,02,795/- from M/s. Crest Marketing and assessing officer observed since there was no opening and closing stock therefore aforesaid purchases has escaped assessment in the case of the assessee. During the course of assessment, the assessing officer has issued notices u/s 133(6) of the Act to the various parties calling for information in order to verify the genuineness of the purchases and sales made during the year by the assessee as reflected in the Profit & Loss A/c. The AO stated that notices issued u/s 133(6) were return unserved except some of the parties who submitted the detail as asked by the assessing officer. The AO further stated that assessee has neither produced the party M/s. Crest Marketing nor any books of account of Crest Marketing for A.Y. 2011-12 were submitted. The assessee has not reconciled the difference with regard to the figure of closing balance of Crest Marketing of Rs. 147296528.19 with the sundry creditor negative balance of Rs. 11,40,93,653/-. In view of the aforesaid facts and circumstances, the AO concluded that

assessee was only issuing invoices with regard to the sale without actual delivery of the goods and only a small percent of transactions were settled through banking channel just to colour the transactions to appear genuine. The assessing officer noticed that Crest Marketing was acting as conduit between M/s. Bradhouse Retail Ltd. and M/s. Saraswati Trading Centre (P) Ltd. by purchasing yarn from M/s. Bradhouse Retail Ltd. and selling to M/s. Saraswati Trading Centre (P) Ltd. The assessee further observed that as per market price of such entities function on commission basis which ranges from 0.5% to 1%. Therefore, income of the assessee company was ascertained @ 1% of the sale and purchase transaction as under:

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Rate of Commission</i>	<i>Commission Income of the Assessee (Rs.)</i>
<i>Sales</i>	<i>381,15,18,117</i>	<i>1%</i>	<i>3,81,15,181</i>
<i>Purchases</i>	<i>381,08,71,890</i>	<i>1%</i>	<i>3,81,08,719</i>
<i>Total</i>	<i>762,23,90,007</i>		<i>7,62,23,900</i>

3. The assessee preferred appeal before the ld. CIT(A). The ld. CIT(A) restricted the commission income earned by the assessee to the extent of 0.10% of the total purchases and sales turnover of the assessee as determined by the AO at Rs. 7,62,23,900/-.

4. Heard the ld. DR and perused the material on record. After considering the facts and circumstances as discussed above in this order, it is evident that assessee company was engaged in providing accommodation entries in respect of total sales shown by the assessee of Rs. 381.15 crores and total purchase of Rs. 381.08 crores aggregating to Rs. 762.23 crores. During the course of assessment, the assessing officer has issued notice u/s 133(6) to

the various parties and most of the notices were returned unserved by the postal authority and in other cases no replies were received from the said parties. From the aforesaid facts and circumstances, the assessing officer found that assessee was engaged in providing accommodation entries and it did not have any infrastructure to carry the business in the high volume of sale and trade as shown by the assessee. The assessee has also not shown any stock of metal in its books of account. Therefore, the income of the assessee was estimated by taking the rate of commission @ 1% of the turnover as mentioned above in this order. The ld. CIT(A) in his finding has discussed the judicial pronouncement of the ITAT, Mumbai on the proposition of estimating the commission in the case where the parties were indulged in providing similar kind of accommodation entries on commission basis. The relevant extract of the order of ld. CIT(A) is reproduced as under:

“7. Ground no.1 is relating to the addition made by the AO of Rs.7,67,06,710/- towards the commission income on providing accommodation entries. The contention of the appellant in raising this ground is that the AO has not specified the section under which the addition is made and the additions are made on the basis of assumptions and presumptions. As seen from the facts of the case, the appellant was engaged in providing accommodation entries which has been proved by the AO with the help of transactions in the bank account of the appellant. The total sales shown by the appellant are Rs.381.15 crores and purchases are Rs.381.08 crores, the total turnover is Rs.762.23 crores. The AO has rejected the books of the appellant and estimated the income @ 1% of the total turnover.

7.1 During the appellate proceedings, the appellant has not made any submissions in spite of giving several opportunities. Hence, the appellant's case is decided on the basis of judicial pronouncements in cases having identical facts. The AO when issued notices u/s. 133(6) of the Act to the various parties dealt by the appellant, most of the notices were returned unserved by the postal authorities and in other Cases, no

replies were received from the said parties. This shows that the parties dealt by the appellant were not doing any worthwhile business activities and were in the business of providing accommodation entries as they did not have any infrastructure to carry the business worth hundreds of crores. This shows that the parties dealt with by the appellant also were either shell companies or entities existed only on paper without doing any worthwhile business of purchase / sale. Thus, the appellant has not been able to prove that the purchases and sales shown are actual purchases and sale of ferrous and non-ferrous metals. The appellant has not shown any stock of metals in the books, which is not possible when trader is having a turnover of Rs.762.00 crores. Therefore, the AO is right in coming to a conclusion that the transactions carried by the appellant were merely paper transactions and the parties to whom the purchases and sales were, effected were shell companies running only on paper with no real business activities. The bank statements and ledgers / confirmations produced by the appellant are merely the documents created as part of the modus operandi acquired by such entry providers which are meant only to fabricate the books of accounts without there being any actual purchase or sale of goods or services. Hence, plea of the appellant that he is having a genuine business is without any merit.

7.2 Once it is held that the appellant has only provided accommodation entries of purchase and sale has not done any, worthwhile trading in goods or services, the income of the appellant has to be estimated on the basis of the rate in the market for providing such services of providing entries of purchases and sales. The AO has taken the rate of commission in entry operating business @ 1% of the turnover and has separately brought to tax the other income shown in the P&L Account.

Hon'ble ITAT in identical cases of accommodation entry providers have held 0.02% to 0.05% as the commission for providing accommodation entries depending on the facts of the case. The gist of commission finally upheld by the Hon'ble ITAT in the said cases is given in the turnover below:

Name of the assessee	Sales turnover	Purchase turnover	Loans and advances
Rajendra Sohanlal Jain ITA Surat dated 26.11.2021 (7 appeals) IT(SS)A No. 294 to 299/SRT/2017	0.02%	NIL	0.5%
Bhanwarlal M Jain ITAT Mumbai dated 06.08.2021 (16 appeals) ITA No. 108 to 114/Mum/2018	0.05%	NIL	0.75%
Rajendra P Jain ITAT Mumbai dated 03.05.2019 (3 appeals) ITA	0.05%	NIL	0.5%

No. 296 to 298/Mum/2018			
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7.3 Thus, considering the decisions of various Benches of Hon'ble ITAT, I am of the opinion that 0.10% of the total purchase and sales turnover (the Hon'ble ITAT has held that the commission to be in the range of 0.02% to 0.05%) can be estimated as the gross commission earned by the appellant in the business of providing accommodation entries of purchase and sale. I am of the opinion that the entry providers get commission for providing of entries of purchases as well as sales separately from the beneficiaries and hence, the commission has to be worked out on both purchases and sales. In providing the services as entry provider, the appellant must have incurred an expenditure towards administrative cost and personnel cost for which 25% of the gross commission is allowed as expenditure as held by the Hon'ble ITAT, Surat Bench in the case, of Rajendra Kumar Jain (IT(SS)A 294 to 299/SRT 2017 Accordingly, the net commission income earned by the appellant is computed as under:

0.10% of the total purchases and sales turnover as per the AO of Rs. 762.23 crores	76,22,390/-
Less: estimated expenditure @25% of gross commission	19,05,597/-
Net income chargeable as business income u/s 28 of the Act	57,16,793/-

7.4 The AO has made an addition of Rs. 7,62,23,900/-. The addition to the tune of Rs. 57,16,793/- as tabulated above is sustained and the appellant gets relieve of Rs. 7,05,07,107/-. Ground no. 1 is treated to have been partly allowed.”

5. In the light of the facts and findings as elaborated above, the ld. CIT(A) has restricted the estimated addition to the extent of 0.10% of the total purchases and sales turnover after considering the decision of ITAT, Mumbai on the similar proposition wherein the commission income was estimated in the range of 0.02% to 0.05% therefore considering the decisions of the ITAT as discussed in the order of the ld. CIT9A), we do not find reason to interfere in the decision of ld. CIT(A) in estimating the commission income to the extent of 0.10% of total purchase and sales turnover as

discussed supra in this order. Therefore, grounds of appeal filed by the revenue are dismissed. The appeal of the revenue is dismissed.

ITA 4074/Mum/2023

6. On similar fact and identical issue as above, we have dismissed the appeal of the revenue as supra in this order therefore applying the findings of ITA 4077/M/2023 to ITA 4074/M/2023 mutatis mutandis this appeal of the revenue vide ITA No. 4074/Mum/2023 is also dismissed.

7. In the result, both appeals of the revenue are dismissed.

Order pronounced in the open court on 29.07.2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 29.07.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai