

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“J (SMC)” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 2963/Mum/2024  
(Assessment Year: 2015-16)**

<b>ITO-13(1)(1)</b> Room No. 215, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	<b>Nirnay Commodities and Derivatives Pvt. Ltd.</b> 26B, Dattani Apartment, 2 <sup>nd</sup> Floor, Chitabhai Patel Road, Kandiwali (East), Maharashtra-400101. <b>PAN : AAGCM2014D</b>
<b>Appellant)</b>	:	<b>Respondent)</b>

**Revenue/Appellant by** : None  
**Assessee/Respondent by** : Shri Sridhar G. Menon, Sr. DR

**Date of Hearing** : 05.08.2024  
**Date of Pronouncement** : 06.08.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal by the Revenue is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)'] dated 31.03.2024 for Assessment Year (AY) 2015-16. The Revenue raised the following grounds of appeals:

*“1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition u/s 68 of the I.T. Act of Rs. 32,00,000/- (on protective basis) when the Director of assessee company, Shri Lavekush Gadiya had accepted that assessee company have provided bogus*

*accommodation entries to various entities, thereby the nature of transaction are non-genuine transactions?"*.

*2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition u/s 68 of the I.T. Act of Rs. 32,00,000/- (on protective basis), ignoring the facts and findings made by the investigation Wing and the fact that the assessee company failed to explain the source of the credit entries of Rs. 32,00,000/-?"*

*3. The appellant prays that the order of the CIT(A) on the grounds be set aside and confirm the order of the AO.*

*4. The appellant craves leave to add, amend or alter all or any of the grounds of appeal."*

2. The assessee is a Private Limited Company and did not file the return of income for AY 2015-16. The Assessing Officer (AO) received information from DDIT (Investigation), Indore as a result of survey carried out at Indore Branch of the above Co-operative Credit Society that the assessee has huge cash deposited in Dnyanradha Multistate Co-operative Credit Society Ltd. and thereafter transferred the said money to Suraj Enterprises. On the basis of said information, the AO had the reason to believe that the income chargeable to tax has escaped assessment and accordingly served notice under section 148 of the Income Tax Act, 1961 (the Act) on the assessee and the assessee filed the return of income in response to notice under section 148 of the Act. Subsequently, the AO issued notice under section 143(2) and called for details pertaining to the impugned transactions. The assessee submitted before the AO that Shree Lavkush Gadiya, Director of the assessee has already admitted before the Investigation Wing, Indore that he was involved in providing accommodation entries and assessee is one of the conduit through which these fictitious entries were routed. The assessee also submitted the copies of bank statements and also the details of the beneficiaries i.e. M/s. Cyano Finance and Sales Limited & M/s Kwantum Devcon and Allied Limited, to whom the money is

ultimately transferred to support the claim that the assessee is only a conduit. The assessee also submitted that since the Director has already admitted that he is providing accommodation entries, the re-opening cannot be done in assessee's case for the same reason. The assessee also submitted that in similar cases, the commission at the rate of 0.25% to 1% on the amount of accommodation entries have been added and submitted the details of various parties in whose case such additions are made. After considering the submissions of the assessee, the AO made the addition of the entire amount on protective basis in the hands of the assessee by following the orders passed for AY 2011-12 and 2012-13. The AO also held that in case the assessee's case if the protective assessment is declared null and void, after finding that the same is taxed in the hands of the beneficiaries, the amount of Rs. 38,400/- @ 1.25% being commission is to be treated as income in the hands of the assessee.

3. None appeared for the assessee.

4. The Id. Departmental Representative (DR) submitted that the assessee has not substantiated the source for the accommodation entries and therefore, the CIT(A) is not correct in deleting the entire addition under section 68 and confirming that only commission @ 1.25% should be added. The Id. DR further submitted that the CIT(A) has not verified whether the entire amount is assessed in the hands of the beneficiaries before giving relief to the assessee.

5. We have heard the Id. DR. The assessee's case was re-opened on the basis of the information from DDIT (Investigation) as a result of a survey operation conducted in the Branch Office of Dnyanradha Multistate Co-operative Credit

Society Ltd. The AO received the following information from DDIT (Investigation)

Sr No.	Date	Third Party	Amt trsf Through RTGS to second party	A/c No of beneficiary	IFS C	A/c in Dnyanrad Co.Op. Soc. Ltd.	Name of second party
1.	30.03.15	Nirnay Commodities and Derivatives P. Ltd.	9,00,000	RTGS/DD=TRF		65	Suraj Ent.
2.	30.03.15	-do-	10,00,000	RTGS/DD=TRF		65	Suraj Ent.
3.	30.03.15	-do-	4,00,000	RTGS/DD=TRF		65	Suraj Ent.
4	30.03.15	-do-	9,00,000	RTGS/DD=TRF		65	Suraj Ent.

6. The AO treated the entire amount as unexplained in the hands of the assessee and made the addition under section 68 of the Act to the tune of Rs. 32,00,000/- on protective basis. The CIT(A) has deleted the addition based on the admitted fact that the assessee only a conduit and also by placing reliance on the fact that during the re-assessment proceedings in the hands of the Director of the assessee-company commission income at 1% was taxed. As already mentioned, it is an undisputed fact that the assessee has been used as a conduit for providing accommodation entries and that the AO himself has given findings that the money deposited in Dnyanradha Multistate Co-operative Credit Society Ltd. has been transferred by the assessee to the beneficiaries thereby admitting the fact that the assessee is only a conduit. The AO has made the addition on the protective basis in the hands of the assessee for the reason that if the impugned amount is not assessed in the hands of the beneficiaries company it has to be taxed on the hands of the

assessee. It is also to be noted that in the hands of the Director of the company, the addition was made only towards 1% commission in providing accommodation entries. Considering the facts and circumstances of the present case, that the assessee is admittedly only a conduit for providing accommodation entries, we are of the considered view that the CIT(A) has rightly assessed only commission income @ 1.25% in the hands of the assessee. Accordingly, we see no reason to interfere with the decision of the CIT(A).

7. In the result, the appeal of the Revenue is dismissed.

*Order pronounced in the open court on 06 -08-2024.*

*Sd/-*  
**(AMIT SHUKLA)**  
**Judicial Member**

*\*SK, Sr. PS*

*Sd/-*  
**(PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**