

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI**  
**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER**  
**AND**  
**SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.772/MUM/2024**  
**Assessment Year: 2018-19**

Dhirain Mahesh Sadhwani, 1102, Shivaradhna Apt., Meadows Khadakpada, Kalyan, Maharashtra – 421301 (PAN : DDFPS8318A)	Vs.	Income Tax Officer – 2(1), Kalyan
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Sunil Makhija, Advocate  
Ms. Manisha Ghind, Advocate

Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 02.07.2024

Date of Pronouncement : 27.09.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1059215490(1), dated 29.12.2023, against the assessment order passed by the Assessing Officer, National Faceless Assessment Centre, Delhi, u/s. 143(2) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 16.09.2021 for Assessment Year 2018-19.

2. In the grounds of appeal taken by the assessee, addition of Rs.11,83,07,423/- is challenged which is treated as unexplained money u/s.69A of the Act.

3. Brief facts of the case are that, assessee filed his return of income on 11.12.2018 reporting the total income at Rs.6,25,360/- as presumptive income from business and profession with gross receipts of Rs.12,14,100/-. Case of the assessee was selected for limited scrutiny assessment on the issue of "cash withdrawal". In the course of assessment, ld. Assessing Officer noted that assessee had made frequent cash deposits and withdrawals from the nine bank accounts and in most of the cases withdrawals were of the same amount as deposit which were made on the same day or the very next day. Summary of total deposits and withdrawals is tabulated as under:

Dhirain Sadhwani A.Y 2018-19						
Summary of Total Deposits						
Sr. No	Bank Accounts	Name of A/c Holder	A/c No	Total Deposits	Internal Transfer / Cheque Return	Net Deposits
1	Bharat Co-operative bank	Eka Enterprises	2612100056142	1,44,18,430.00	29,67,220.00	1,14,51,210.00
2	Bharat Co-operative bank	Jai Ambe Textiles	2612100055736	4,19,44,775.00	27,53,000.00	3,91,91,775.00
3	Bharat Co-operative bank	Seema Enterprises	2612100056090	2,09,33,712.00	20,53,000.00	1,88,80,712.00
4	Konark Urban Co-operative bank	Seema Enterprises	1110100002955	4,05,23,509.00	6,43,000.00	3,98,80,509.00
5	Konark Urban Co-operative bank	Jai Ambe Textiles	1110100002977	2,39,10,729.42	5,22,415.00	2,33,88,314.42
6	Konark Urban Co-operative bank	Shree Omkar Textiles	1110100003149	84,65,325.00	1,68,000.00	82,97,325.00
7	Axis Bank	Seema Enterprises	917020033546631	6,29,02,546.00	-	6,29,02,546.00
8	Dhanlaxmi Bank	Seema Enterprises	21005300013940	14,57,48,214.00	1,50,01,831.00	13,07,46,383.00
9	Konark Urban Co-operative bank	Aashirwad Textiles	1110100003148	46,36,275.00	-	46,36,275.00
10	Mahanager Coop Bank	Seema Enterprises	C/A/44	73,77,000.00	10,00,000.00	63,77,000.00
	<b>Total</b>			<b>37,08,60,515.42</b>	<b>2,51,08,466.00</b>	<b>34,57,52,049.42</b>

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4. Assessee was asked to explain the source of these cash withdrawals since the gross receipts of the assessee declared from his business in the return was only Rs.12,14,100/- during the year. Assessee claimed that he is a commission agent and earns commission income from trading of textiles and garments in Ulhasnagar and nearby places on behalf of various textile and garment merchants. He receives commission at the rate of 0.5% from both the parties i.e. seller and buyer. Most of these transactions are in cash because of which frequent deposit and withdrawal has occurred in cash in the bank accounts of the assessee. Assessee claimed that his bank accounts were used in the course of business activities of facilitating sales and purchases, he being an intermediary/commission agent. According to the assessee, amount deposited in bank account and withdrawn are on behalf of principal and such withdrawals cannot be taxed in his hands and he is only acting as commission agent (kachha Arahia) to facilitate transactions between the parties whereby he collects the orders and sale proceeds for a consideration of net commission at the rate of 0.5%.

4.1. On the issue relating to no TDS done on the commission earning as claimed by the assessee and not reflected in Form 26AS for the year, assessee submitted that the commission was collected from various small scale retailers and hawkers who do not fall within the ambit of tax audit and TDS provisions were not applicable on them. Assessee was asked to explain the source of cash withdrawals and gross receipts. He was also enquired and asked to furnish the details relating to name, PAN, Address of his major customers to establish identity, credit worthiness and genuineness of the transactions. It was also required by the Id. Assessing Officer to furnish cash book, copies of invoices, contact details, confirmation of the persons with whom he had done business

and received commission from them. Since no such details were placed on record except for copies of bank statements of the nine bank accounts, ld. Assessing Officer proceeded to conclude the assessment by treating Rs.11,83,07,423/- representing cash withdrawal as unexplained money in the hands of the assessee.

5. Aggrieved, assessee went in appeal before the ld. CIT(A), before whom similar submissions were made. After considering the submissions of the assessee, ld. CIT(A) confirmed the addition made by the ld. Assessing Officer and dismissed the appeal. Aggrieved, assessee is in appeal before the Tribunal.

6. Before us, ld. Counsel for the assessee reiterated the submissions made before the authorities below. It was also contended that in the mofussil areas where the assessee has carried out his activities, such type of transactions as entered into by the assessee are common practice. To substantiate this claim, it was submitted that Department itself has completed the assessments u/s. 143(3) in case of various other assessees falling in the same range as that of the assessee in whose cases commission at the rate of 0.5% of the gross receipts has been accepted, including that in the case of assessee's father. According to him, only a small percentage of 0.5% is liable to be treated as income and be brought to tax instead of the gross amount of deposits/withdrawals.

7. Ld. Sr. DR submitted that no documents were furnished by the assessee to substantiate the claim made by him in respect of earning of commission. She thus, placed reliance on the orders of the authorities below to uphold the additions so made.

8. We have heard both the parties. Case records have been perused. Before us, assessee has placed a paper book containing 424 pages. From the index of the same, we note that it primarily contains copies of bank statements of all the nine bank account in which deposits and withdrawals had been done, subject to the addition made by the Id. Assessing Officer. There are two sheets containing summary of total deposits and cash withdrawals which have been already extracted above. Other documents include copy of acknowledgement of return filed by the assessee and show cause notice issued by the Id. Assessing Officer. Thus, it is apparent that there is nothing placed on record in respect of earning of commission income as claimed by assessee in respect of transaction of deposit and withdrawals in the nine bank accounts. There are no details from the assessee in respect of transactions from whom the money was received and to whom the money was paid. Also, there are no evidence on record to establish that assessee is working as a commission agent either by direct or indirect evidences.

8.1. Further, on the submissions made by the Id. Counsel that Revenue has accepted the claim of the assessee in the assessments completed of other assesseees u/s.143(3) whereby commission at the rate of 0.5% has been assessed to tax on such similar transactions as undertaken by the assessee including that of his father, we note that no such assessment orders are placed on record to corroborate the same. We also take note of the observations of both, the Id. Assessing Officer and Id. CIT(A) that, if the claim of the assessee being the commission agent is accepted, charging 0.5% commission from both the parties aggregating to 1%, the gross receipt of commission earned by him

should have been shown at Rs.32,85,805/- on consignment sale of Rs.32.07 Crores as against gross receipts of Rs.12,14,100/- reported by the assessee in his return.

9. Keeping the facts as narrated above in juxtaposition with the submissions made by the assessee, we find it appropriate to remit the matter back to the file of ld. Assessing Officer for *denovo* meritorious adjudication by taking into account the claim of the assessee both in respect of *modus operandi* of the business carried out by him and the stance of the Revenue in case of the other assesseees including that of the father of the assessee as submitted before us though without any corroborative material put forth before us in this regard.

10. Since the matter is restored to the file of ld. Assessing Officer for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the assessment procedure before the ld. Assessing Officer. The observations herein made by us in remanding the matter back to the file of ld. Assessing Officer will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee. Needless to say, assessee be given a reasonable opportunity of being heard and make any further submissions with corroborative documentary evidences.

11. Accordingly, grounds taken by the assessee are allowed for statistical purposes.

12. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on day of 27 September, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 27 September, 2024***

*MP, Sr.P.S.*

**Copy to :**

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

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai