

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI
BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER
ITA No. 2421/Ahd/2011 : Asstt. Year: 2003-04
ITA No. 2422/Ahd/2011 : Asstt. Year: 2008-09**

M/s Buniyad Chemicals Ltd., Block-H, Shri Sadashiv Co. Op. Hsg. Soc. Ltd., 6 th Road, Santacruz (East), Mumbai-400055	Vs.	ACIT, Circle-2(3), Ahmedabad
APPELLANT		RESPONDENT
PAN NO : AABCB6954G		

Assessee represented by	Shri Mukesh Choksi,
Department represented by	Shri Kailash C. Kanojiya, CIT-DR Shri Paresh Deshpande, Sr. DR

Date of hearing	10-10-2024
Date of pronouncement	18-10-2024

ORDER

PER BEENA PILLAI, JM:

Present appeals filed by the assessee arises out of order dated 26.06.2011 passed by the Ld. CIT(A)-III, Ahmedabad for Assessment Years 2003-04 and 2008-09 on following grounds of appeal:

"1. The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in passing order u/s. 250 of the Act.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in upholding the validity of the order passed u/s.

143(3)(3) r.w.s. 147 of the Act. The Ld. Commissioner of Income-Tax (Appeals) ought to have appreciated that the assessment reopened u/s. 143 r.w.s. 147 of the Act was invalid in as much as the notice u/s. 148 of the Act was not issued in accordance with the provisions of the Act.

3. The Ld. Commissioner of Income-tax (Appeals) has erred in law and in facts in not appreciating that the provisions of s. 148 and s. 151 of the Act were not complied with while issuing the notice u/s. 148 of the Act.

4. The Ld. Commissioner of Income-Tax (Appeals) has erred in law and in facts in observing that the addition on account of unexplained deposits would be confirmed to the extent the appellant is unable to provide the list of beneficiaries before the Assessing Officer.

5. The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in shifting the onus of bringing the beneficiaries on the appellant when the entire list was in the possession of the department.

6. The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in determining the commission income of the appellant 0.37% of the gross amount instead of 0.15% as earned by the appellant.”

Brief facts of the case are as under:

2. The Ld. AR submitted that the assessee has raised additional ground which is based on the document already available on record, and no new facts needs to be looked into in order to adjudicate the same. The additional ground raised by the assessee reads as under:

“1. The learned Assessing Officer has erred in law and in facts in estimating the income on gross receipts without reducing the transfer entries amount in bank account from which no income is earned.

2. The learned Assessing Officer has erred in law and in facts in not allowing business expenses against the income estimated. The expenses are genuine and incurred necessarily and exclusively for the purpose of earning income.

3. The learned Assessing Officer and CIT (A) has erred in law and in facts by not allowing 50% expenses against the income earned 0.15% of bank deposits.”

2.1 The Ld. AR placed reliance on following decision in support to admit additional ground.

- *National Thermal Power Corporation Vs. CIT [229 ITR 383] (SC)*
- *Jute Corporation of India Ltd. Vs. CIT (187 ITR 688) (SC)*
- *Ahmedabad Electricity Co. Ltd. Vs. CIT (199 ITR 351) (Bom)*

2.2 The Ld. DR though objected to the admission of addition ground however could not controvert that the issue raised in the additional ground can be adjudicated based on the facts already available on record.

2.3 Upon perusal of the additional grounds, we find that these are directly connected with the addition made in the hands of the assessee and no new facts needs to be investigated for adjudicating the same. It is noticed that the issue raised by the assessee is an alternate plea based on various decision of this Tribunal on identical facts.

2.4 Considering the submissions and respectfully following the decisions of *Hon'ble Supreme Court* in case of *National Thermal Power Co. Ltd. Vs. CIT* reported in (1998) 229 ITR 383 and *Jute Corporation of India Ltd. Vs. CIT* reported in 187 ITR 688, we are

admitting the additional grounds raised by the assessee. Respectfully following the above, we admit the additional grounds raised by assessee under consideration.

Accordingly, the additional grounds filed by assessee stand admitted.

Brief facts of the case are as under:

3. The assessee is a company, operating and managed by Mukesh Chokshi & Other Associates. A search action was carried out at the premises of Mukesh Chokshi and other group companies on 25.11.2009. During the course of search, it transpired that Shri Mukesh Chokshi and the assessee with other group companies were involved in the business of facilitating and providing accommodation entries to beneficiaries.

3.1 It was submitted that, during the course of business various customers approached the assessee for obtaining adjustment bills. The customers make deposit in cash and in turn, take cheque from the assessee for amount slightly lesser than the amount on deposit. The difference representing the commission realized by assessee. It is submitted that many times commission is paid in cash. It is also submitted that the prevalent commission on such dealing was at around 0.15%.

3.2 It was submitted that, the amount deposited in bank accounts does not belong to assessee, and therefore taxing the said deposits

in the bank account of assessee also does not arise. It was also submitted that identical issue was raised in the case of Shri Mukesh Chokshi and his various corporate entities in earlier assessment years wherein the entire deposits in the bank accounts were assessed to tax. Co-ordinate Bench of this *Tribunal* took a view that, since these concerns are involved in providing accommodation entries, a percentage of commission should be assessed in their hands and not the entire amount. It was thus submitted before Ld. AO that, the assessee requested to consider 0.15% of credits in the bank accounts should be treated as income of assessee.

3.3 The Ld. AO after considering the submissions of the assessee was of the opinion that the assessee was involved in an activity contrary to the law wherein huge amount was deposited in the bank account of the assessee and therefore, it was incumbent upon the assessee to submit an explanation of the credit entries as per the provisions of Section 68 of the Act. The Ld. AO also opined that as the necessary criteria u/s 68 of the Act was not fulfilled. The addition was thus made in respect of entire credit entries in the bank account of the assessee as unexplained u/s 68 of the Act.

4. Aggrieved by the order of the Ld. AO, the assessee preferred appeal before the Ld. CIT(A).

4.1 Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

5. We have considered the rival contention of both sides in light of records placed before us. The Ld. CIT(A) confirmed the addition made by the Ld. AO as assessee failed to identify the beneficiaries. The Ld. CIT(A) however noted that assessee was carrying out the activity of providing accommodation entries for commission varying to 0.25% to 0.5% and from the statement recorded for the year under consideration, it was noted by the Ld. CIT(A) rate of Commission was nothing less than 0.37%.

5.1 Before us, the Ld. AR vehemently relied on the decision of Co-ordinate Bench of the *Tribunal* in similar facts like that of assessee for Assessment Year 2008-09. This Tribunal rejected the contention of the Revenue to treat the entire deposit as unexplained cash credit. This Tribunal observed that: "*The theory of Assessing Officer to treat the entire deposit as unexplained cash credits, cannot be accepted in the light of assessment orders in the case of beneficiaries and also in the light of the fact that assessee is only concerned with the commission earned on providing accommodation entries. We, therefore, of the view that since the assessee itself has declared the commission on turnover at 0.15% which is more than the percentage considered to be reasonable by the Tribunal in the case of Palresha & Co and Kiran & Co (supra), the same should be accepted. We, accordingly, accept the commission declared by the assessee and set aside the order of the CIT (A) in this regard.*"

5.2 The above view was taken in case of *M/s Goldstar Finvest Pvt. Ltd.* by Co-ordinate Bench of this *Tribunal* in *ITA Nos. 6114 to 6120/Mum/2012 vide order dated 01.06.2016.*

It is further submitted by the Ld. AR that the above decision in case of *M/s Goldstar Finvest Pvt. Ltd.* was subject matter of appeal before *Hon'ble High Court in ITA No. 1729/2016* wherein *Hon'ble High Court* vide order dated 01.04.2019 on similar issue observed as under:

"4. In our opinion, the entire issue is based on facts. The estimation of the rate of commission of the Assesee would always be subject-matter of some guesswork. No precise formula could be applied.

The Tribunal having taken into consideration the relevant factors, has arrived at a certain percentage of commission that any such kind of activities could be expected to be derived from. This does not give rise to any substantial question of law.

5. The Revenue also disputes the expenditure allowed by the Tribunal on such activities. Here also, for the same reasons cited above, in our opinion, no question of law arises.

6. In the result, the Appeals are dismissed."

3. We are conscious that unlike in case No.54/17 and connected Appeals, in the present case, the Assessing Officer had added the entire sum not limiting to the commission charged. However, CIT (A) had applied the percentage of commission deleting the rest of the additions.

4. In the result, Income Tax Appeal is dismissed."

5.3 Considering the fact that these appeals pertains to very old Assessment Years no purpose would be served by remanding to the Ld. AO to adjudicate these issues afresh as due to the time lapse

there will be lot of documents and personal verification which could not be made available.

Respectfully following view taken by *Hon'ble High Court* in case of *M/s Goldstar Finvest Pvt. Ltd. (supra)*, we restrict the addition to 0.15% of the deposits made in the bank account of the assessee.

Accordingly, the additional ground No. 3 raised by the assessee is partly allowed.

All other grounds are not adjudicated following the view taken on similar facts and circumstances by *Hon'ble Bombay High Court (supra)*.

In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 18/10/2024.

Sd/-

**(RENU JAUHRI)
ACCOUNTANT MEMBER**

Sd/-

**(BEENA PILLAI)
JUDICIAL MEMBER**

Dated: 18th October, 2024

Subodh Kumar, Sr. PS

प्रतिलिपि अग्रेषित **Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी / The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि , आय.अपी.अधि , मुंबई/ DR, ITAT, Mumbai
6. गार्ड फाइल/ Guard file.

//True Copy//

BY ORDER,

Asstt. Registrar, **ITAT, Mumbai**