

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B-BENCH" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्रीनरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM& SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 379 to 381/JPR/2024
निर्धारणवर्ष / Assessment Year : 2016-17 to 2018-19

Fazle Raof Sheikh A-5-AA, Solanki Takiz Road, Sashtri Nagar, Bhilwara.	बनाम Vs.	The DCIT, Ajmer.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AEGPR7486D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Sunil Porwal, C.A. (Through V.C.)
राजस्व की ओरसे / Revenue by: Mrs. Alka Gautam (CIT)

सुनवाई की तारीख / Date of Hearing : 21/10/2024
उदघोषणा की तारीख / Date of Pronouncement: 25/10/2024

आदेश / ORDER

PER: Narinder Kumar, Judicial Member.

All the above captioned three appeals came to be presented on 27.03.2024. Same are accompanied by separate applications seeking condonation of delay, if any, in filing thereof.

2. The appellant-application has challenged three impugned orders each dated 11.01.2024 by Learned CIT(A), whereby his appeals filed against three assessment orders came to be dismissed, thereby upholding the assessment orders.

One assessment order pertains to the assessment year 2016-17, other pertains to assessment year 2017-18 and the third pertains to the assessment year 2018-19.

3. Three assessment orders mentioned above were framed by the Assessing Officer on 30.12.2019 u/s 144 r.w.s. 153A of the Act. The Assessing Officer assessed income of the assessee-appellant at Rs. 31,65,380/-, as regards the assessment year 2016-17; at Rs. 31,10,380/- as regards assessment year 2017-18 and; at Rs. 4,32,45,510/- as regards assessment year 2018-19.

4. The assessment order for the assessment year 2016-17 was framed calculating commission income of the assessee at 50% of the income from Hawala Business carried out by the assessee and his partner Deepak Samtani.

As regards assessment year 2017-18, addition has been made on the basis of 50% commission income to the assessee from Hawala Business, carried out by the assessee and his above-named partner.

As regards assessment year 2018-19, assessment has been framed by way of addition of Rs. 4,00,00,000/- due to unexplained cash fund, resorting to the provisions of section 69A of the Act. Furthermore, addition of Rs. 27,00,000/- has been made on account of undisclosed commission

income from Hawala Business carried out by the assessee and the above-named partner..

5. It may be mentioned here that the assessments were framed after issuance of notice 153A of the Act as regards two assessment years mentioned above 2016-17 and 2017-18.

As regards third assessment year 2018-19, notice u/s 143(2) of the Act was issued to the assessee. As regards said assessment year, the assessee had filed original return of income, declaring total income only of Rs. 5,45,510/- and therein claimed loss on account of interest on borrowed capital as SOP of Rs. 1,08,514/- towards house property and also claimed deduction to the tune of Rs. 1,50,000/- under chapter-VIA.

6. As per case of the department, on 29.03.2018, a search and seizure action was carried out at rental and business premises of the assessee-appellant i.e. group of Bhilwara and his family members.

Said action led to disclosure of incriminating documents/loose papers, which were seized.

7. After filing of the appeals, as noticed above, the assessee-applicant presented an application seeking condonation of delay in filing of said appeals.

8. In the application, the applicant-appellant alleged that the impugned order passed by Learned CIT(A) was received by him on 05.02.2024, and as such the appeals filed on 27.03.2024 were within prescribed period of limitation. At the same time, the applicant-appellant requested for condonation of delay, if any.

With these applications, the assessee-applicant also filed his affidavit dated 16.05.2024 reiterating the averment put forth in the application that the impugned order was received by him only on 05.02.2024.

Revenue has neither cross examined, appellant on the point of explanation of delay, nor brought any record to suggest that copy of each impugned order was delivered to assessee before 05.02.2024. Therefore, we hereby condone the delay and admit the appeals.

9. As noticed above, as a result of search and seizure action u/s 132 of the Act, carried out on 29.03.2018 at the residential and business premises of Fazle Raof, Bhilwara and his family members, various incriminating documents/loose documents are stated to have been recovered at the time of search and accordingly, seized.

10. In response to notice u/s 153A of the Act, the assessee filed ITR for the assessment year 2016-17.

11. As is available from the assessment order, for non compliance with the notice issued on 03.06.2019, u/s 153A of the Act, penalty proceedings were initiated. Notices stated to have been sent by registered email were held to be valid service.

12. While making observations as regards nature of business of the assessee, Assessing Officer observed in the assessment order in para 4 and 5 as under:-

“4. NATURE OF BUSINESS

The assessee is showing income from Business which is not Hawala Business, rather from his proprietorship concern namely Limra Traders. From this business he has shown his gross turnover of Rs. 39,54,520/ and u/s 44AD, he has shown net profit of Rs. 5,90,215/- under presumptive scheme at 14.92%.

5. As per Information/Appraisal Report, received from the Addl. Director of Income-tax (Inv.), Jaipur, it was learned that the A.T.S. Jaipur had seized cash of Rs.4,00,00,000/- on 28.03.2018 at Manoharpura Toll Durgapura, Delhi-Jaipur Highway from Shri Banwari Lal Mishra (Dadhich) S/o Shri Rameshwar Lal Dadhich, Resident of Harni Mahadev Road, Bhopalpura, Indira Colony, Bhilwara u/s 102 of CPC and informed to Investigation Wing on even date. Accordingly, the competent authority issued Warrant of Authorization u/s 132A, which was executed on 29.03.2018 and the entire cash of Rs.4,00,00,000/- was seized on 29.03.2018. When the departmental officers enquired from Shri Banwari Lal Dadhich about the ownership of the said cash found with him, he stated that he was assigned the task to bring this cash from Delhi to Jaipur by his “Seth Shri Fazle Raof aka Lutfy” because he is an employee of him. He also asserted the name of Shri Deepak Samtani with whom Shri Fazle Raof was working as partner in Bhilwara. Later on, when the

departmental team searched the assessee's premises as well as premises of his partner Shri Deepak Samtani and in the statement recorded of him u/s 132(4), he categorically accepted the assessee as his partner in the Hawala Trading Business. Shri Fazle Raof, the assessee however absconded from his house before the search carried out at his residence and business premises and did not turn up during the entire proceeding. The search team which searched his residence A-179, Hussain Colony, Shastri Nagar, Bhilwara and his mother Smt. Khushnasib's residence at Quazi-e-mitra, Hussain Colony, Bhopalpura Road, Shastri Nagar, Bhilwara. Meanwhile, statement of Shri Firoz Khan, driver of Shrinath Travel Bus, boarding which Shri Banwari Lal Dadhich employee of the assessee was travelling and carrying with him Rs. 4 crore in cash, apprehended by ATS, Jaipur. Circumstantial evidences were also gathered by the Investigation Wing of the department such as "Call Data Record" of the assessee's mobile number 9829844444 was also enquired and it was found that assessee had made enquiries at 01.57AM & 01.59AM on 29.03.2018, from the office of Shrinath Travels, Udaipur at mobile number 9413424080 and at 02.04AM on mobile number of Shrinath Travels 9214779001.

From the above, it was proved beyond any doubt that the assessee was actively indulged in the Hawala Business activities along with Shri Deepak Kumar Samtani in partnership which means whatever income Shri Deepak Kumar Samtani was earning was also shared by the assessee in respect of this business. He along with Shri Deepak Samtani are indulged in money transfer business at large scale in a undisclosed partnership and share the profits between each other. The quantum of their earning is already explained by Shri Deepak Samtani in his statement recorded.

In the assessment order of Shri Deepak Samtani on the basis of his categorical admission of earning of Commission Income from Hawala Trade with Shri Fazle Raof in an undisclosed partnership and as per his version, his 50% commission income earned from the same is

added as his undisclosed income for A.Y. 2016-17. On the same footing since similar to Shri Deepak Samtani, the assessee was also not disclosing his commission income of Hawala Business in the ITR, the same is liable to be added to his income for A.Y. 2016-17. In the case of Shri Deepak Samtani, the addition of Rs. 27 lac was made for A.Y. 2016-17 on the basis of following working:

50% of commission income earned as per admission of Shri Deepak Samtani @ Rs.7500 per day

(7500X30 days X 12 months) of

Hawala Business carried out

Rs.27,00,000/-

Hence, on the same footing the income of the assessee for A.Y. 2016-17 from Hawala Business commission is estimated at Rs. 27,00,000/- and added to his total income for this year.”

13. When the matter came up before Learned CIT(A), he rejected ground no. 1 raised by the assessee-appellant that the Assessing Officer had erred in making addition of Rs. 27,00,000/- by way of commission from Hawala Business. In this regard, Learned CIT(A) observed as under:-

“4.2 Decision:

I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

4.2.1 In this case A.T.S. (Anti Terrorist Squad), Jaipur had seized cash of Rs. 4,00,00,000/- on 28.03.2018 at Manoharpura Toll Durgapura, Delhi-Jaipur Highway from Shri

Banwari Lal Mishra (Dadhich) S/o Shri Rameshwar Lal Dadhich, Resident of Harni Mahadev Road, Bhopalpura, Indira Colony, Bhilwara u/s 102 of CPC and informed to Investigation Wing on even date. Accordingly, the competent authority issued Warrant of Authorization u/s 132 of the I.T.Act, 1961, which was executed on 29.03.2018 and the entire cash of Rs. 4,00,00,000/- was seized on 29.03.2018. The cash seized from Shri Banwari Lal Mishra (Dadhich) had been deposited in the P.D. Account of Pr. Commissioner of Income-tax (Central), Jaipur on 31.03.2018.

4.2.2 Statement of Shri Banwari Lal Dadhich (Mishra), Bhilwara, u/s 132(4) of the Income-tax Act dated 29.03.2018, recorded by the ADIT (Inv.)-1, Jaipur. As per assessment order of the AO as well as Statement of Shri Banwari Lal Dadhich (Mishra), Bhilwara, it revealed that Shri Fazle Raof and Shri Deepak Samtani Bhilwara were main Key Persons of this Group. Shri Fazle Raof and Shri Deepak Samtani of Bhilwara were partners and engaged in the business of Money Transfer i.e. "Hawala" Transaction. Shri Banwari Lal Mishra (Dadhich) was an employee of Shri Fazle Raof since last 5-6 months and working as Courier Boy for making delivery of cash from here and there. Shri Fazle Raof paid Rs. 10,000/- Per Month to Shri Banwari Lal Mishra (Dadhich) for work of Courier Boy.

4.2.3 Consequent upon the deposing of names of both Shri Fazle Raof and Shri Deepak Samtani by the intercepted person Shri Banwari Lal Dadhich, who stated to be an employee of Shri Fazle Raof and carrying the said amount on the instruction of Shri Fazle Raof, from New Delhi to Jaipur, search action was immediately taken up by the Investigation Wing at the residential and business premises of Shri Deepak Kumar Samtani and Shri Fazle Raof, because Shri Banwari Lal Dadhich had also submitted that both Shri Fazle Raof and the assessee were partners in Hawala Business.

4.2.4 In the statement recorded on 29.03.2018 u/s 132(4) of the I.T.Act, 1961, Shri Deepak Kumar Samtani had also confessed that he with Shri Fazle Raof were in partnership for last 3 years doing Hawala Business and no books of accounts were ever maintained by them of this unaccounted business. During the search proceedings, a bunch of currency notes involving Hawala transactions with Rs.3,58,85,810/-, used in Hawala business were found & seized from his shop.

4.2.5 Shri Fazle Raof, was absconded from his house before the search carried out at his residence and business premises and did not turn up during the entire proceeding. The search team searched his residence A-179, Hussain Colony, Shastri Nagar, Bhilwara and his mother Smt. Khushnasib's residence at Quazi-e-mitra, Hussain Colony, Bhopalpur Road, Shastri Nagar, Bhilwara. Statements of Shri Fazle Raof u/s132(4) of the I.T.Act, 1961 were taken on 03.04.2018.

4.2.6 Considering the facts of the case, it is noticed that A.T.S. (Anti Terrorist Squad). Jaipur had seized cash of Rs. 4,00,00,000/- on 28.03.2018 at Manoharpura Toll Durgapura, Delhi-Jaipur Highway from Shri Banwari Lal Mishra (Dadhich) S/o Shri Rameshwar Lal Dadhich. Statement of Shri Banwari Lal Dadhich (Mishra), Bhilwara, u/s 132(4) of the Income-tax Act dated 29.03.2018 were recorded by the ADIT (Inv.)- 1. Jaipur. In the statements recorded u/s 132(4) of the I.T.Act, 1961 dated 29.03.2018, Shri Banwari Lal Dadhich (Mishra) had stated that he was an employee of Shri Fazle Raof since last 5-6 months and working as Courier Boy for making delivery of cash from here and there. Shri Fazle Raof paid Rs. 10,000/- Per Month to Shri Banwari Lal Mishra (Dadhich) for work of Courier Boy.

4.2.7 During the search proceedings in the case of Shri Deepak Kumar Samtani, statements of Shri Deepak Kumar Samtani were recorded u/s 132(4) of the I.T.Act.1961 dated 29.03.2018. In his statements Shri Deepak Kumar Samtani had accepted that Shri Banwari Lal urf Pandit ji was working with him for the last 3-4 years for the salary of Rs.15,000/- per month and Deepak Samtani had sent him Delhi to receive the cash from Shri Ashok Gurnani.

4.2.8 During the search proceedings in the case of Shri Fazle Raof, statements of Shri Fazle Raof were recorded u/s 132(4) of the I.T.Act, 1961 dated 03.04.2018. In his statements Shri Fazle Raof had denied that neither he known Shri Banwari Lal nor did any money laundering /Hawala transaction through Shri Banwari Lal. In his statements Shri Fazle Raof had first in answer to Q.No.13 had accepted that he had known to Shri Deepal Samtani and Shri Mohan Samtani but on making further enquiries in reply to Q.No. 24, he denied to know Shri Deepak Samtani and refuted the statements of Shri Deepak Samtani by saying that Deepak was telling a lie.

4.2.9 On the basis of above facts, it is clear that Shri Banwari Lal was working for Shri Deepak Kumar Samtani and Shri Fazle Raof, who were engaged in the business of illegal money transferring/Hawala. In these circumstances, there is no doubt that in the whole game of such illegal money transfer, Shri Banwari Lal Mishra (Dadhich) was a carrier person and working for Shri Deepak Kumar Samtani and Shri Fazle Raof. During the assessment proceedings, notices were issued to Shri Fazle Raof, but the appellant had neither complied with any notice issued to him nor filed any return of income.

4.2.10 During the search proceedings in the case of Shri Fazle Raof, search was also conducted at the residential and

business premises of his partner Shri Deepak Kumar Samtani. Statements of Shri Deepak Kumar Samtani were recorded under section 132(4) of the IT Act, 1961 and he categorically accepted that the assessee as his partner in the Hawala Trading Business. Shri Fazle Raof, the assessee however absconded from his house before the search carried out at his residence and business premises and did not turn up during the entire proceeding.

4.2.11 Further during the course of search proceedings in the case of Shri Deepak Kumar Samtani, seized Annexure Exhibit 11 from his business premises, currency notes of denomination Rs. 5/- Rs. 10/- and Rs. 20/- and in reply to specific query in Question No. 31, he described in detail about the notings made upon each of the note with explanation regarding the code word 'ok' means 'amount is delivered and 'kg' means 'Rs. 1 lac. He further deciphered the find details of all the notings made upon each of the note.

4.2.12 The working given by Shri Deepak Kumar Samtani in his statement during the course of search proceedings indicates the magnitude of his earning from Hawala Business and endorses his own acceptance in reply to Query No. 10 of his statement that he earns normally Rs. 15,000 to Rs. 20,000 per day and this volume of income earned by him.

4.2.13 The AO had mentioned in the assessment order that circumstantial evidences were also gathered by the Investigation Wing of the Department such as "Call Data Record" of the assessee's mobile number 9829844444 was also enquired and it was found that assessee had made enquiries at 01.57AM & 01.59AM on 29.03.2018, from the office of Shrinath Travels, Udaipur at mobile number 9413424080 and at 02.04AM on mobile number of Shrinath Travels 9214779001.

From the above, it was proved beyond any doubt that the assessee was actively indulged in the Hawala Business activities along with Shri Deepak Kumar Samtani in partnership which means whatever income Shri Deepak Kumar Samtani was earning was also shared by the assessee in respect of this business. He along with Shri Deepak Samtani were indulged in money transfer business at large scale in an undisclosed partnership and shared the profits between each other. The quantum of their earning was already explained by Shri Deepak Kumar Samtani in his statement recorded u/s 132(4) of the I.T. Act, 1961 during the search proceedings u/s 132 of the IT Act, 1961.

4.2.14 The AO had clearly mentioned in the order of Shri Deepak Kumar Samtani that various incriminating material/loose papers had been found and seized during search action. Further in the statement recorded u/s 132(4) especially in q no. 23, 31 etc, the appellant had admitted that some currency notes with description written on it were seized which were used for Hawala business. Considering such facts and circumstances the argument of appellant is not correct that no incriminating material was found and seized during search. Thus all argument and case law relied by the appellant relating to non-existence of incriminating material is not valid.

4.2.15 In the assessment order of Shri Deepak Kumar Samtani on the basis of his categorical admission of earning of Commission Income from Hawala Trade with Shri Fazle Raof in an undisclosed partnership and as per his version, his 50% commission income earned from the same was added as his undisclosed income for A.Y. 2016-17. On the same footing since similar to Shri Deepak Kumar Samtani, the assessee was also not disclosing his commission income of Hawala Business in the ITR, the same was liable to be added to his income for

A.Y. 2016-17, In the case of Shri Deepak Kumar Samtani, the addition of Rs. 27 lac was made for A.Y. 2016-17 on the basis of following working:

*50% of commission income earned as per admission of Shri Deepak Kumar Samtani @7500 per day
(7500 X 30days X 12 months) of Hawala Business carried out
Rs.27,00,000/-*

Hence on the same footing the income of the assessee for the A.Y. 2016-17 from Hawala Business Commission was estimated by the AO at Rs. 27,00,000/- and added to the total income of the assessee for year under consideration.

4.2.16 During the appellate proceeding before me the appellant had made written submission and submitted that the whole of gross receipts had been considered as income of the assessee & no credit for expenses like security, travelling, liaison etc. had been adequately granted since the nature of money transfer is a risky preposition & needs lot of security & liaison expenses.

4.2.17 From the above facts discussed and the submission of the appellant, it is very clear that he was engaged in the business of illegal money transfer or Hawala. But during the course of search proceedings and assessment proceedings, he had not co-operated Department. It is a default on the part of the appellant, as he had misguided the whole investigation by not presenting the truth facts of the case. In this case one of the key persons was Shri Fazle Raof, who was aware of the all facts of the case but he had not co-operated with the Department to disclose the truth. In these circumstances, it is very clear that Shri Fazle Raof was also engaged in the business of illegal money transfer or Hawala, Further It was the onus on the appellant to prove that he was not involved in such

illegal transfer of money, which was disclosed when the ATS team has seized the cash of Rs.4,00,00,000/- and further search were conducted u/s 132 of the I.T.Act, 1961 in the cases of Shri Banwari Lal Mishra (Dadhich), Shri Deepak Kumar Samtani and Shri Fazle Raof. All these three persons were suspected, who know the true facts but despite of repeated opportunities no one of them co-operated the Department to disclose the owners of the seized money.

4.2.18 The appellant has again not submitted the true facts at the appellate stage. In the reply, the appellant has only described the story on the basis of assessment order passed by the AO. The appellant has not made any effort to disclose the truth facts of the case and silent on the points which can disclose a clear picture of the case. Such non co-operation indicates that the appellant has no explanation to offer in the matter and there is no factual basis of the claims made in the grounds of appeal, and I am agree with the decision of the AO. Further in view of my findings contained in pare pages, it is held that the AO had made addition of Rs.27,00,000/- correctly as commission income from Hawala business. The ground 1 raised by the appellant regarding this issue is dismissed.”

14. While challenging the impugned order and the impugned assessment, Ld. AR for the assessee-appellant has submitted that during assessment proceedings, the version narrated by Shri Deepak Kumar Samtani in his statement was not cross verified and rather in the interest of justice, the Assessing Officer should have

thoroughly enquired into the matter of his own even if the assessee did not cooperate during assessment proceedings.

Other contention raised by Ld. AR for the assessee-appellant is that while framing assessment, the Assessing Officer presumed from the statement of Shri Deepak Kumar Samtani recorded u/s 132(4) of the Act, that the share of the assessee in money transfer business of Rs. 7500/- per day i.e. being 50% of the commission income, but the Assessing Officer did not afford any opportunity to the assessee for cross examination of Shri Deepak Kumar Samtani on his said statement, that there was no material on record to draw any such presumption. As regards recovery of loose papers and other documents from the possession of the Shri Deepak Kumar Samtani, Ld. AR submitted that the same pertains to the month of March, 2018 which revealed that money transfer business was not on daily basis.

15. In support of his submission that this is a case no incriminating material against the assessee, except the statement of Shri Deepak Kumar Samtani, and as such, assessment deserves to be set aside, Ld. AR for the assessee has relied on the following decisions:-

- CIT vs. Kabul Chawla (2015) 61 taxmann.com 412 (Delhi)
- Pr.CIT vs. Ms Lata Jain (2016) 384 ITR 543 (Delhi)
- CIT vs. Deepak Kumar Agarwal (2017) 86 taxmann.com 3 (Bom)
- Pr.CIT vs. vikash Gutgutia (2017) 396 ITR 691 (Delhi)
- Pr. CIT vs. Dipak Jashvantlal Panchal (2017) 397 ITR 153 (Guj.)
- Pr. CIT vs. Devangi (2017) 394 ITR 184 (Guj.)
- Pr. CIT vs. Abhisar Build Well (P) Ltd. dated 24.04.2023 (149 Taxman 399.

16. On the other hand, Ld. DR for the Department has submitted that admittedly, the assessee-appellant did not participate in the proceedings conducted by the search team. As further submitted, the assessee had absconded while proceedings were being conducted by the search team, even before search and seizure action was conducted 29.03.2018 at his premises. Learned DR has also submitted that the assessee did not participate in the assessment proceedings conducted by the Assessing Officer.

The contention on behalf of the Department is that having regard to the said conduct of the assessee, there is no merit in the contention raised on behalf of the appellant that no reliance should have been placed on the statement of Shri Deepak Samtani recorded u/s 132(4) of the Act, and that he should have been provided an opportunity to cross examine said Shri Deepak Samtani.

Ld. DR has further submitted that from the material seized on search, it stood established that the appellant and Shri Deepak Samtani had entered into a partnership to run Hawala Business; that Hawala business was run by them for about 3 years, and further that having record to the incriminating material made available to the Assessing Officer, he was justified in calculating the income earned by the appellant by way of commission from said Hawala Business.

Therefore, Ld. DR has urged that there is no merit in the contention raised on behalf of the appellant that the Assessing Officer erred in calculating income of the appellant @ 50%.

17. Admittedly, search and seizure action was carried out on 29.03.2018. It was carried out at the residential and business premises of the appellant and his family members.

As is available from record, incriminating material in the form of documents/loose papers was discovered at the time of search, and same were seized.

Said search and seizure action was conducted after recovery of cash to the tune of Rs. 4 Crores on 29.03.2018 itself from Shri Banwari Lal Mishra (Dadhich) S/o Shri Rameshwar Lal Dadhich, Resident of Harni Mahadev Road, Bhopalpura, Indira Colony, Bhilwara.

Said amount was seized by ATS Jaipur, u/s 102 of Cr. P.C. ATS, Jaipur informed Investigation Wing of the Income Tax Department about the said seizure on the same date.

18. Case of the department, as is available from the assessment orders, is that on the basis of the aforesaid information received by the Investigation Wing, warrant of authorization was issued by the competent authority u/s 132A of the Act, same was executed on the same day, and that is how, cash to the tune of Rs. 4 Cr. was seized.

Above named Shri Banwari Lal Mishra was then enquired about the cash recovery from his possession and as to who was owner of the said cash amount.

During inquiry Shri Banwari Lal Mishra disclosed that he was employee of the assessee-appellant and that the latter had assigned him the task to bring cash from Delhi to Jaipur.

Shri Banwari Lal Mishra further disclosed that assessee-appellant was a partner of Shri Deepak Samtani, named above.

19. It is case of the Department, as is available from the assessment orders, that the team then conducted search at the premises of the assessee-appellant, and also at the premises of above named Shri Deepak Samtani.

20. As noticed above, version of the Department is that at the time of search of his premises, assessee-appellant had absconded from his house and he never turned up during the proceedings conducted by the said team.

21. Statement of Fazle Khan, driver employed with Shrinath Travel bus was contacted. He was also enquired, the reason being that the above said Shri Banwari Lal Dadhich when apprehended with huge cash, was travelling by bus of the said travel agency, being driven by said driver.

22. The assessee has not been brought on record any convincing material to suggest that he did not abscond. He has also not brought on record any material to support plea of *alibi*.

23. Another piece of evidence collected by the Investigation Wing by the department consists of electronic evidence i.e. by way of CDR as regards the calls made from and received on, mobile No. 9829844444.

Said electronic evidence is stated to have disclosed that the assessee-appellant, on 29.03.2018, made calls at the office of Shrinath Bus Travel, Udaipur at 01.57AM and 01.59AM.

24. Assessee-appellant has not brought on record any material to suggest that said calls were not made by him or that he had made the said calls for such and such purpose. In other words, assessee-appellant has not brought on record any material to justify making of the said calls at the office of the said travel agency, on the day of Shri Banwari Lal Mishra was apprehended with huge cash.

Assessee-appellant has not brought on record any material to suggest that Shri Banwari Lal Mishra had made false statement regarding his employment with him (the assessee).

Assessee-appellant has not brought on record any material to justify the delivery of the said huge amount to Shri Banwari Lal Mishra.

25. In view of the above incriminating material available with the Assessing Officer, it can safely be said that the department had enough material to connect the assessee-appellant with the said huge cash recovered from Shri Banwari Lal Mishra on 29.03.2018 and that the said amount was being carried by Shri Banwari Lal Mishra from Delhi to Jaipur Highway at his instance.

26. As regards the factum of partnership of the assessee-appellant with Shri Deepak Samtani in conducting Hawala Business activity, department made enquiries from Shri Deepak Samtani and recorded his statement.

In his statement Shri Deepak Samtani clearly disclosed that he and the assessee-appellant were indulging in money transfer business at large scale, in concealed manner, and further that they were sharing profits in equal shares.

27. As noticed above, assessee-appellant did not co-operate with the search team on 29.03.2018, and rather, he opted to abscond from his premises even before the arrival of the said team.

28. Had he not absented, he would have replied the notice issued to him u/s 153A and furnished his version. However, assessment order reveals that the assessee did not submit any return of income in response to the said notice.

29. The Assessing Officer had to issue him show cause notice on 15.11.2019 to initiate penalty proceedings u/s 271(1)(b) of the Act, and also call upon him to explain as to why the proceedings u/s 144 be not completed.

30. However, the assessee-appellant did not care and dare to reply the said notice despite service. Thereupon, notices were sent to the assessee even by registered post/speed post, but same were received back undelivered. In the given situation, the Assessing Officer had no option to deem it to be a case of valid service, and proceed ahead.

The fact remains that the assessee-appellant has not brought on record any material to justify his non appearance in the assessment proceedings despite service of notices.

Once the assessee-appellant opted to remain absent from the assessment proceedings, it does not lie in his mouth that he was entitled to

cross examine Shri Deepak Kumar Samtani as regards the version narrated by him on the point of partnership by running money transfer business, in a concealed manner and sharing of profits.

Assessee-appellant has not brought on record any material to suggest that Shri Deepak Samtani was inimical towards him so as to level false allegations against him.

It is true that subsequently on 03.04.2018, assessee-appellant made statement u/s 132(4) of the Act, and denied the allegation of relationship of employer and employee between him and Shri Banwari Lal Mishra and his partnership with Shi Deepak Samtani.

31. Learned CIT(A) observed in para 4.2.8 of the impugned order that in the reply to Question No. 13, assessee-appellant admitted that he knew Shri Deepak Samtani and one Shri Mohan Samtani and that only subsequently, in reply to question No. 24 he denied having knowledge of or acquaintance with Shri Deepak Samtani.

32. It is significant to note that the authorities below took into consideration not only statement of Shri Deepak Samtani, but also Exhibit-11 discovered on search from the business premises of said Shri Deepak

Samtani and currency notes of the denomination Rs. 5/-, Rs. 10/- and 20/- seized from there. The authorities below also took into consideration certain notings made on the notes as decoded by Shri Deepak Samtani. Learned CIT(A) has discussed these facts in para 4.2.11 of the impugned order.

33. Learned CIT(A) also took into consideration, statement made by Shri Deepak Samtani that from the said Hawala Business run in partnership, with assessee-appellant, they had an earning of Rs. 15,000/- to 20,000/- per day.

It is significant to note that in reply to questions No. 23 and 31 and other questions, i.e. at the time of statement of Shri Deepak Samtani recorded u/s 132(4) of the Act, he admitted that some currency notes with notings thereon were seized and that the said currency notes were used in Hawala business.

34. In view of the above incriminating material on record, the decisions referred to in the written submissions by extracting certain portions therefrom, do not come to the aid of the assessee-appellant, particularly when this is a case of incriminating material connecting the assessee-appellant with the Hawala Business transactions.

35. In the assessment order pertaining to the assessment Year 2018-19, Assessing Officer took into consideration certain entries/notes which pertain to the month of March, 2018, as regards Hawala Business Transactions carried out.

From the said details, Assessing Officer was of the view that gross amount of cash movement came to Rs.3,58,85,810/- and that calculating the commission, as per statement of Deepak Samtani, commission income of both of them, on this amount, came to Rs.35,886/-.In other words, commission which fell to the share of the assessee appellant was Rs.17,943/-so far as the month of March, 2018 is concerned.

36. Having regard to all this, the commission income when calculated for the FY 2017-18, on the basis of the seized incriminating material, comes to Rs.2,15,316/-.

37. As regards the previous two years i.e. FY 2015-16 and 2016-17, it may be observed that the assessments for the said assessment years cannot be upheld in absence of recovery of any incriminating material pertaining to said period. In other words, when the incriminating material pertains to only one assessment year, jurisdiction could not be assumed

under section 153A and no guess work could be made as regards the Assessment Years 2016-17 and 2017-18.

38. Therefore, the addition on the basis of Hawala commission income is restricted to Rs. Rs.2,15,316/-and that too for the Assessment Year 2018-19.

39. Additions made on the basis of Hawala commission income for the other two Assessment years 2016-17 and 2017-18 deserve to be set aside. We order accordingly.

ITA No.381/JPR/2024-Ground No.2 as regards addition of Rs. 4 Crores.

40. So far as ground No. 2, in appeal ITA No.381/JPR/2024 as regards addition of Rs.4 crores is concerned, said addition has been made due to unexplained cash pertaining to Hawala Business seized from Sh. Banwari Lal. Said addition has been made u/s 69A of the Act, on protective basis. We take judicial notice of the fact, and it is not disputed by any of the parties before us, that as regards Sh. Banwari Lal, same addition was made on substantive basis.

It may be mentioned here that arguments in this bunch of appeals filed by Banwari Lal, Deepak Samtani and the assessee-appellant were advanced together, as search and seizure operations were carried out by the Investigation Wing after cash worth Rs. 4 Cr. was recovered from Shri Banwari Lal.

While hearing the appeal filed by Shri Banwari Lal, it was brought to our notice by Learned DR by way of report requisitioned from the Assessing Officer that Banwari Lal assessee therein has filed an application before the department for release of the cash seized, but, at the same time, by filing appeal Banwari Lal was denying recovery of any such amount from him and that said huge cash belonged to him.

We confronted learned AR of Banwari Lal with said report of the Assessing Officer. Thereupon, Learned AR representing Banwari Lal submitted an application withdrawing the appeal filed by him and for its dismissal as having been withdrawn, after instructions from the assessee-Banwari Lal. Consequently, said appeal filed by Banwari Lal stands dismissed as having been withdrawn.

In the given situation, when addition of Rs. 4 Cr. has been made in the case of Shri Banwari Lal, on substantive basis, and he has ultimately

claimed release of said amount, we do not find any reason to sustain the addition of Rs. 4 Crores made u/s 69A of the Act, against present appellant on protective basis.

Conclusion

41. Accordingly, ground No. 2 raised by the assessee is allowed.

42. Grounds no. 3 and 4 raised by the assessee are general in nature and therefore, the same are not required to be adjudicated.

43. As a result, this appeal-ITA No.381/JPR/2024 deserves to be partly allowed.

Result

44. As a result, appeals-ITA No. 379/JPR/2024 and ITA No.380/JPR/2024 are allowed and the impugned orders passed by Learned CIT(A) upholding the assessment orders for the assessment years 2016-17 and 2017-18 are hereby set aside.

45. Appeal-ITA No.381/JPR/2024 is partly allowed in the manner indicated above, and the impugned order passed by Learned CIT(A) and the assessment order are modified accordingly.

Copy of the common order be placed in the connected two appeal files. Files of appeal be consigned to the record room after the needful is done by the office.

Order pronounced in the open court on 25/10/2024.

Sd/-

(राठौड़ कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 25/10/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Fazle Raof Sheikh, Bhilwara.
2. प्रत्यर्थी / The Respondent- DCIT, Ajmer.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 379 to 381/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar