

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA Nos. 317 to 321/Del/2023
Assessment Years: 2012-13, 2014-15 to 2017-18

ACIT, Central Circle-1, Gurugram	Vs.	M/s. Sahil Tradewell Marketing Pvt. Ltd., UFG 24, Sushant Vyapar Kendra, Sushant Lok 1, Gurugram
PAN :AAPCS1810E		
(Appellant)		(Respondent)

With

ITA No. 3968/Del/2024
Assessment Year: 2013-14

DCIT, Central Circle-05, New Delhi	Vs.	Smt. Saroj Bhatia, WZ-77, Srinagar, Shakur Basti, Delhi
PAN :AJFPB6280P		
(Appellant)		(Respondent)

Assessee by	None
Department by	Ms. Jaya Chaudhary, CIT(DR) Sh. Sahil Kumar Bansal, Sr. DR

Date of hearing	12.12.2024
Date of pronouncement	20.12.2024

ORDER

PER SATBEER SINGH GODARA, JM

The instant batch of six cases pertains to the twin assessees herein, namely, M/s. Sahil Tradewell Marketing Pvt. Ltd. and Smt. Saroj Bhatia. All other relevant details stand tabulated as under:

Sl. No.	Appeal No.	Appellant	Respondent	Order Appealed against
1.	317/Del/2023 for AY 2012-13	ACIT, Central Circle-1, Gurugram	Sahil Tradewell Marketing Pvt. Ltd.	CIT(A)-3, Gurgaon's order dated 29.11.2022 passed in case no. 10412, involving proceedings under Section 153A r.w.s. 143(3) of the Act.
2.	318/Del/2023 for AY: 2014-15	ACIT, Central Circle-1, Gurugram	Sahil Tradewell Marketing Pvt. Ltd	CIT(A)-3, Gurgaon's order dated 29.11.2022 passed in case no. 10452, involving proceedings under Section 153A r.w.s. 143(3) of the Act.
3.	319/Del/2023 for AY: 2015-16	ACIT, Central Circle-1, Gurugram	Sahil Tradewell Marketing Pvt. Ltd.	CIT(A)-3, Gurgaon's order dated 29.11.2022 passed in case no. 10459 involving proceedings under Section 153A r.w.s. 143(3) of the Act.
4.	320/Del/2023 for AY: 2016-17	ACIT, Central Circle-1, Gurugram	Sahil Tradewell Marketing Pvt. Ltd.	CIT(A)-3, Gurgaon's order dated 29.11.2022 passed in case no. 10468 involving proceedings under Section 153A r.w.s. 143(3) of the Act.
5.	321/Del/2023 for AY: 2017-18	ACIT, Central Circle-1, Gurugram	Sahil Tradewell Marketing Pvt. Ltd.	CIT(A)-3, Gurgaon's order dated 29.11.2022 passed in case no. 10478 involving proceedings under Section 153A r.w.s. 143(3) of the Act.
6.	3968/Del/2014 for AY: 2012-14	DCIT, Central Circle-05, New Delhi	Smt. Saroj Bhatia	CIT(A)-24, New Delhi's DIN ITBA/APL/M/250/2024-25/1065646594(1) & order dated 14.06.2024 involving proceedings under Section 147 of the Act.

2. Cases called twice. None appears at the assessee's behest.

They are accordingly proceeded *ex-parte*.

3. We wish to make it clear at the outset that the former five cases relate to M/s. Sahil Tradewell Marketing Pvt. Ltd. and latter tax payer herein Smt. Saroj Bhatia do not emanate from the same search; but, at the same time, they are being disposed of together hereunder for the precise reason that the Revenue raises identical substantive issue(s) that the CIT(A)'s corresponding lower appellate orders have erred in law and on facts in deleting all the protective additions herein, involving varying sums. We thus deem it appropriate to decide all these cases vide common adjudication for the sake of convenience and brevity.

4. Learned CIT(DR) invites our attention to the CIT(A)'s lower appellate jurisdiction in the former assessee's appeal(s) deleting the corresponding protective additions as under:

"4. Ground of appeal no. 11 to 14

Search and seizure proceedings u/s 132 of the Act were carried out in the case of the appellant alongwith Shri Atul Tyagi, one of the directors of the appellant company on 09.12.2016. Consequently, notice u/s 153A was issued on 12.06.2018. During the course of search proceedings, it was found that various bank accounts of the appellant have been used to make cash deposits during demonetization period. Additionally, the said bank accounts of the appellant have been used to provide accommodation entries to various beneficiaries in the shape of bogus sale and purchase whereas no actual business activities were carried out by the appellant. Details of such accommodation entries provided through such bank accounts were contained in annexure A-1, A-2 (seized document in the shape of diaries). In his statement recorded u/s 131 of the Act on

02.05.2017, Shri Atul Tyagi admitted that he used to get commission @ 0.15 to 0.50% against providing such accommodation entries. He explained the modus operandi in this respect wherein he used to collect cash from the beneficiaries which was being deposited in various bank accounts in his name or in the name of the his family members or other concerns including the appellant and subsequently he used to issue RTGS/ cheques from various bank accounts to such beneficiaries. He explained the pattern of codes used in recording various such transactions in the diaries. The AO made analysis of various bank statements related to various concerns floated in the name of the appellant. The AO relied upon the decision of Hon'ble Supreme Court in the case of Mukund Ray K Shah in order to infer that the Department came to know that the appellant was providing accommodation entries consequent to search proceedings carried out. In the statement recorded u/s 131 of the Act before the AO, Shri Atul Tyagi admitted that various concerns floated by him were not carrying out any business activity, no sale/ purchase were being made through such concerns. During demonetization period (08.11.2016 to 30.11.2016), he accepted that he used to deposit cash from different persons in his bank accounts and transfer the same to such persons through RTGS/Cheques/NEFT after charging his commission. The AO had made analysis of various concerns floated by him for this purpose wherein cash has been deposited during Demonetization period. The AO has shared information in respect of the beneficiaries with their respective AOs for taking action as per provision of the Act In such cases. It is relevant to mention here that the appellant vide letter dated 08.06.2017 has declared unaccounted income of Rs. 50 lacs, though the said disclosure was not complied with. One such beneficiary Shri Gautam Gupta Prop. M/s Ajanta Overseas disclosed income of Rs. 7,81,40,000/- in his statement recorded u/s 131 of the Act in respect of accommodation entries taken from the appellant. Similarly many other beneficiaries with the details as under made disclosure of additional income in respect of accommodation entry taken from the appellant with particulars as under:

Sr. No	Name	Amount (in Rs.)
1	Shri Gautam Gupta Prop. Ajanta Overseas	7,81,40,000/-
2	Shri Ankit Jain Prop Rishabh Trading	2,22,60,000/-
3	M/s Kiwi Merchandise Pvt Ltd	6,70,00,000/-
4	M/s Manish Auto Industries	24,00,000/-
5	M/s Moondrop Chemineers	7,50,000/-
6	Smt. Neha Mehta Prop M/s Obilique	32,00,000/-
7	Shri Akshay Gandhi (HUF) Prop. M/s DU Bulk	18,00,000/-
8	M/s Altrustic Trading Pvt Ltd	32,00,000/-
9	Smt. Richa Bangia	12,62,225/-
10	Smt. Pratibha Bangia	12,50,000/-

Shri Gautam Gupta and Shri Ankit Jain, beneficiaries in their statement recorded u/s 131 of the Act stated that they have paid commission @ 10% to 12% to Shri Atul Tyagi against accommodation entries taken through him. After confronting the appellant, the AD reached to the inference that the appellant has provided bogus accommodation entries by charging commission @ 10 to 12%. On the basis of such facts, the AO quantified that the appellant has provided accommodation entries of Rs. 52,74,81,102/- for AY 2016-17 and commission of Rs. 6,32,97,732/- on account of commission earned by providing accommodation during the year under consideration. On similar facts the AO quantified commission income earned for different assessment years as under:

Sr. No	AY	Quantum of accommodation entries (in Rs.)	Unaccounted commission earned (in Rs.)
1	2011-12	4,23,12,926/-	50,77,551/-
2	2012-13	27,09,24,789/-	3,25,10,974/-
3	2013-14	9,45,40,500/-	11,34,486/-
4	2014-15	1,33,42,17,649/-	16,01,06,117/-
5	2015-16	41,90,31,274/-	5,02,83,752/-
6	2016-17	52,74,81,102/-	6,32,97,732/-
7	2017-18	31,00,43,130/-	3,72,05,175/-

42 During the appellate proceedings notice u/s 250 of the Act were issued in the case of the appellant on various dates i.e. 01.02.2021, 17.08.2021 and 18.11.2022 at the e-mail address provided in Form-35. However no compliance was made by the appellant. Keeping in view such facts the various grounds of appeals are adjudicated after considering the material on record.

From the assessment order it is observed that substantive additions were made by the AO in the case of Shri Atul Tyagi on account of commission income earned by the appellant by providing bogus accommodation entries for various assessment years. The AO further made the above additions on account of bogus accommodation entries in the case of the appellant on protective basis. The appellant is one of the companies run by Shri Atul Tyagi who was the director. It has been admitted by Shri Atul Tyagi in his statement recorded u/s 131 of the Act under oath on 10.04.2017 and 09.08.2018 that he has been operating all the bank accounts in his name or his family members or other concerns where he was the director including the appellant. It was explained by him that names of his family members and other companies including the appellant have been used by him whereas they do not have any relation with such accounts. The AO has also held in his order that Shri Atul Tyagi was operating all such bank accounts and therefore the AO has made addition in the hands of Shri Atul Tyagi on substantive basis in respect of commission income earned by providing accommodation entries to various beneficiaries through layering of transaction of bogus sale/ purchase through such bank accounts. Therefore by considering the statement of Shri Atul Tyagi recorded u/s 131 (supra) and the findings of the AO, it is evident

that various bank accounts in the name of the appellant have been used by Shri Atul Tyagi who earned such unaccounted commission income by providing accommodation entries. On such facts it is found that there is merit in the treatment given by the AO by making addition in the hands of Shri Atul Tyagi on substantive basis. It is relevant to mention here that the addition made in the hands of Shri Atul Tyagi for AY2011-12, 2012-13, 2013-14, 2015-16,2016-17 and 2017-18 have been confirmed vide consolidated order dated 28.11.2022 u/s 250 of the Act. The relevant part of the said order is reproduced as under:

On consideration of facts as emanating from the assessment order, it is found that during the search proceedings the appellant was found running different bank accounts in the name of various proprietary concerns such as M/s RK Enterprises, M/s Maankesh Trading Company, M/s Daksh Enterprises, M/s Mac Allied Sales corporation, M/s SKM India, M/s SR Enterprises, M/s Disha Enterprises, M/s Shri Krishna Enterprises, M/s Durga Enterprises, M/s Kirpalu Enterprises etc. Such bank account have been used by him for providing accommodation entries of bogus sale/ purchase to various beneficiaries against charging of commission. Such bank account have also been used by him for depositing old currency notes during the Demonetization period. (08.11.2016 to 30.11.2016) and issued cheques/RTGS/NEFT to such beneficiaries. He has admitted in his statement recorded on oath u/s 131 of the Act recorded before the AD and the Investigation Wing that he has been providing such accommodation entries to various beneficiaries against commission charged @ 0.15 to 0.50%. Such accommodation entries were provided through various concerns floated by him through bills of bogus sale and purchase whereas no actual business was carried out through such concerns. The statement of Shri Atul Tyagi has been corroborated by the admission of additional income by various beneficiaries who have taken such accommodation entries from the appellant and whose particulars have been given by the AO in the assessment order. The appellant could not explain genuineness of such transactions carried out by him through various concerns floated by the appellant with various beneficiaries. The onus was upon the appellant to substantiate genuineness of business activities carried out by him through various prap concerns in his name. Such onus has not been discharged The findings of the AO have been independently corroborated with the admission made by the various beneficiaries. The appellant during the appellate proceedings did not make any submissions in support of

various grounds of appeals taken against the quantum addition made.

Keeping in view above facts and discussion, it is found that there is merit in the findings of the AO that the appellant has been in the business of providing accommodation entries and has earned unaccounted commission. The rate of commission adopted by the AD was on the basis of statement of various beneficiaries who have stated that Shri Atul Tyagi has taken commission @ 10 to 12% against such accommodation entries. Therefore the inferences drawn by the AO are based upon independent evidence gathered, which have been confronted to the appellant. Adequate opportunity of being heard has been provided to the appellant during the assessment and appellate proceedings. It is relevant to mention here that the AO has not made the addition based upon suspicion, whims and fancies rather the same is based upon concrete evidence. Assessment have been framed u/s 153A of the Act consequent to appellant being covered u/s 132 (1) of the Act. No merit is found in various grounds of appeal taken by the appellant.

Keeping in view above facts the following additions made by the AO are hereby confirmed.

Addition in the hand of Shri Atul Tyagi on substantive basis has been already confirmed vide order dated 27.11.2019 u/s 250 of the Act passed by the CIT(A)-3, Gurgaon for AY 2014-15. Once the additions have been made and confirmed in the hands of Shri Atul Tyagi on substantive basis, it is logical to infer that the same additions cannot be made in the hands of the appellant on protective basis. Accordingly the quantum additions made in the hands of the appellant are deleted from AY2011-12 to2017-18. Ground of appeal no. 11-13 and 15 are hereby allowed. Remaining grounds of appeal no. 1-10 are not separately adjudicated as the quantum additions have been already deleted.”

5. Ms. Choudhary, next submits that the factual position is hardly different in CIT(A)'s lower appellate order in the latter assessee's case as well wherein he has deleted the impugned protective addition on the ground that the corresponding

substantive addition made in the hands of Mr. Ram Prakash Bhatia, stood confirmed as under:

“4.1 I have considered the material on record including written submission of the AR of the appellant filed in course of appellate proceedings. I have perused the assessment order u/s 147 of the Act passed by the Assessing Officer. In the present appeal the appellant has raised the following grounds of appeal.

4.1.1 In Ground No. 1, the appellant has contended that the ACIT-CC-05 have not considered the facts available on records and have passed an erroneous and unjustified, unlawful order by making addition of Rs. 3,21,56,437/- to the income of the Assessee.

4.1.2 In Ground No. 2, the appellant has contended that the Assessee has admitted in his statement under Section 131A of the Income Tax Act, 1961 that he was working as Accommodation entry provider under various firms in the name of his family members.

4.1.3 In Ground No. 3, the appellant has contended that the amount of Rs. 3,12,47,867/- has already been added to the income of husband of Assessee on SUBSTANTIVE basis resulting into double taxation.

4.1.4 In Ground No. 4, the appellant has contended that the Assessing Officer has made additions which are not correct on the basis of facts and records available.

4.1.5 In Ground No. 5, the appellant has contended that on the basis of above grounds addition of income made in the income of the Assessee for A.Y. 2013-14 may kindly be deleted.

4.1.6 In Ground No. 6, the appellant has contended that alternatively the case of the Assessee may kindly be

adjourned sine die till the case of husband of Assessee Mr. Ram Prakash Bhatia is decided.

4.1.7 Since Ground Nos. 1 to 6 deals with similar issues, all the grounds have been adjudicated together in the following paras.

4.1.8 A survey u/s 133(A) was carried out on appellant's husband Sh. Ram Prakash Bhatia on 08.08.2014. During the course of survey his statement was recorded u/s 131(1A) of Income Tax Act wherein he mentioned that he had been carried out the work of billing and was earning commission income. He stated that he has been doing the work of providing accommodation entries and bogus bills. As per his statement, the appellant's husband categorically admitted that the concerns mentioned by him, registered at premises C-48/3A, 2nd Floor, Lawrence Road Industrial Area were either his proprietorship concerns or in the proprietorship of his family members but the work is being managed/operated by the appellant's husband only. He further stated that he used to provide bills to various persons against the goods supplied by some other traders. As per the Assessing Officer, the allegations that appellant's husband Sh. Ram Prakash Bhatia is an entry provider have been clearly established by his statement. For the purpose of providing entries he was managing a number of concerns through his family members.

4.1.9 During the proceedings, the appellant's husband Sh. Ram Prakash Bhatia had admitted that the bank account No. 1552320005555 of M/s Chaudhary & Co. registered in the name of his wife Smt. Saroj Bhatia was operated by him for providing accommodation entries.

4.1.10 During the course of assessment proceedings, notice u/s 133(6) of the Income Tax Act was issued to the various bank and information from Punjab National Bank and HDFC Bank received. In the HDFC Bank Account No. 01552320005555 deposits of Rs. 8,79,83,921/- and withdrawal of Rs. 8,78,93,421/- have been found during

the FY 2013-14. The deposits are in the mode of cheque/RTGS/CASH.

4.1.11 The amounts of transactions used for accommodation entries have been taken into consideration while assessing the total income of the Mrs. Saroj Bhatia protectively and Rs. 3,21,56,437/- was added which included cash credits of Rs. 3,09,83,921/- and commission of Rs. 11,72,516/-, In this case, substantive addition is made in the hands of Sh. Ram Prakash Bhatia for AY 2013-14.

4.1.12 In the case of appellant's husband, Sh. Ram Prakash Bhatia he could not offer any satisfactory explanation regarding the source of this money deposited in bank. Even the explanation offered during the course of appellate proceedings by him was neither considered sufficient nor satisfactory. He did not submit any documentary evidence explaining the linkages of amounts withdrawn from one bank account and subsequent deposits in other bank account. It is also not known as to whether the same cash which was withdrawn from one bank account has been deposited in other bank account or was handed over to some other party as part of accommodation entry business. The appellant's husband could not provide the names and addresses of the entities, whose cash was apparently deposited in this bank account. In view of these findings, the CIT(A) decided that the Assessing Officer did not commit any error in considering the cash deposited in the bank account amounting to Rs. 8,71,25,010/- as unexplained cash credit u/s 68 of Income Tax Act in the hands of Sh. Ram Prakash Bhatia on substantive basis. Herein, total deposits of Rs. 8,21,25,010/- included amount of Rs. 3,09,83,921/- which was deposited in Appellant's account.

4.1.13 Since, this issue has been considered in the appellate order of appellant's husband Sh. Ram Prakash Bhatia by the CIT(A). Since the very source of such cash which was deposited in this bank account is not known, it was considered appropriate to presume that it is Sh. Ram

Prakash Bhatia's money deposited by him or through his sources in the bank account of M/s. Chaudhary & Co. in the name of his wife Smt. Saroj Bhatia. The CIT(A) was of the considered opinion that the Assessing Officer did not commit any error in considering the cash deposited in the bank account amounting to Rs. 3,09,83,921/- as unexplained cash credit u/s 68 of Income Tax Act in the hands of Sh. Ram Prakash Bhatia on substantive basis. Accordingly, the action of the Assessing Officer considering the cash deposited in the bank account amounting to Rs. 3,09,83,921/- as unexplained cash credit u/s 68 of Income Tax Act and adding the same to the total income of the appellant's husband Sh. Ram Prakash Bhatia was upheld by the CIT(A)

4.1.14 As mentioned earlier, in the statement recorded u/s 131(1A) of Income Tax Act during the survey on 08.08.2014 the appellant's husband Sh. Ram Prakash Bhatia had specifically mentioned that M/s Chaudhary & Co. is a concern of his wife but all these firms are being operated by the appellant only. Therefore, the cash deposits in this bank account in the name of Smt. Saroj Bhatia, pertains to her husband Sh. Ram Prakash Bhatia. Further, this very issue has been considered by CIT(A) and the addition of cash deposits amounting to Rs. 3,09,83,921/- in this very bank account have been considered as unexplained cash credit in the hands of the appellant's husband Sh. Ram Prakash Bhatia, there is no justification to continue with the protective addition in the hands of the appellant Smt. Saroj Bhatia. It will not be appropriate to continue with the protective addition when the substantive addition has already been confirmed in the hands of appellant's husband at first appellate stage vide order dated 31.01.2024. Accordingly, the addition of cash credits appearing in the bank account in the name of Smt. Saroj Bhatia on protective basis is not required to be sustained and is therefore stands deleted.

4.1.15 For credit/debit entries in the case of Sh. Ram Prakash Bhatia, the appellant's husband had stated that he

used to get commission of Rs. 150 on providing bogus bill/accommodation entry of Rs. 1 lac. Accordingly, the Assessing Officer calculated the total commission on substantive basis in the hands of Sh. Ram Prakash Bhatia. Further, the amount of Rs. 11,72,516/- as commission has been added to the income of the appellant on protective basis. Appellant has also submitted that there is a computation mistake in calculating commission, which is considered correct. The issue of commission was also agitated before CIT(A) in the case of appellant's husband and after considering all aspects, CIT(A) confirmed the addition on account of commission in the hands of the appellant's husband.

4.1.16 As held in previous paras, it will not be appropriate to continue with the protective addition when the substantive addition has already been confirmed in the hands of appellant's husband at first appellate stage. In view of the discussion in the above paragraphs the additions made by the Assessing Officer on protective basis are deleted. Accordingly, Ground Nos. 1 to 6 of appeal are allowed.”

6. It is in this factual backdrop that learned CIT(DR) vehemently argues that both the CIT(A) herein have erred in law and on facts in deleting the corresponding protective additions despite the fact that they had been rightly made in these twin assessee's hands. And that hon'ble apex court in Lalji Haridas Vs. ITO (1961) 43 ITR 387 (SC) has settled the issue long back that when there arises a doubt in the mind of the Assessing Officer that a particular income might be taxable in more than one assessee's hands, he could indeed make such protective addition so as to protect the interest

of the Revenue as per '*ex-abundat cautela*' i.e. as a matter of abundant caution. We now advert to the Revenue instant identical sole substantive grievance wherein it seeks to revive the impugned protective additions. We are of the considered view that although there would be no dispute about the foregoing settled legal proposition involving a protective assessment, the facts herein stand on a different footing since there is a clear cut finding that the corresponding substantive additions in case of Sh. Arun Tyagi involving former Sh. Ram Prakash Bhatia in the latter assessee's case, had been duly confirmed. And also that both these assesseees are found to be mere namelanders only without having derived any independent taxable income. We accordingly are of the considered view that the learned CIT(A) has rightly deleted the impugned protective additions after only confirming the corresponding substantive additions and therefore, the Revenue's instant identical sole grievance deserves to be rejected. Ordered accordingly.

7. All other pleadings on merits herein stand rendered academic.

8. These Revenue's six appeals ITA Nos. 317 to 321/Del/2023 & ITA No. 3968/Del/2024 are dismissed in above terms. A copy of this common order be placed in all the respective files.

Order pronounced in the open court on 20th December, 2024

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 20th December, 2024.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi