IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, AM.

&

DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No.376 & 377/RJT/ 2024

(निर्धारणवर्ष / Assessment Year: (2014-15& 2015-16)

(Hybrid Hearing)

Leader Electric Co. Dindayal Industries Estates, Aji Vasahat, Opp. Gamara Hostel, Rajkot - 360003	**Vs.**	The PCIT – 1, Aayakar Bhavan, Race Course Ring Road, Rajkot – 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AADFL6072C**		
(Appellant)		**(Respondent)**

Appellant by	: ShriD. M. Rindani, Ld. AR
Respondent by	: ShriSanjay Punglia, Ld. CIT (DR)
Date of Hearing	:22/01 /2025
Date of Pronouncement	:28/02 /2025

आदेश / O R D E R

PER DINESH MOHAN SINHA, JM:

This is assessee's appeal preferred against the order dated 26.03.2024 passed u/s 263 of the Income Tax Act, 1961 (hereinafter called 'the Act') by the Ld. Pr. C.I.T., Rajkot – 1.

In ITA No. 376/Rjt/2024 for assessment year 2014-15. The Ld. Pr. CIT, in the impugned order, has held that the Assessing Officer did not conduct

inquiries/verification that he should have done before passing the assessment order u/s 147 r.w.s. 144B of the Income Tax Act, on 27.03.2022.

And

In ITA No. 377/Rjt/2024 for assessment year 2015-16. The Ld. Pr. CIT, in the impugned order, has held that the Assessing Officer did not conduct inquiries/verification that he should have done before passing the assessment order u/s 147 r.w.s. 144B of the Income Tax Act, on27.03.2022.

It has been held by the Ld. Pr. CIT in both the assessment order is erroneous in as much as it is prejudicial to the interest of revenue. Vide the impugned order, the Ld. Pr. CIT has cancelled assessment and has directed the Assessing Officer to make fresh assessment order after making necessary inquiries related to Transactionsbetween the assessee and M/s. National Shroff & Co.

2. Grounds raised by the assessee in ITA No. 376/Rjt/2024 (AY 2014-15) are as follows:

1. The Ld. Pr. Commissioner of Income-Tac -1, Rajkot erred in holding that the assessment order dated 27.03.2022 passed u/s. 147 r.w.s. 144B of the Act was erroneous and prejudicial to the interest or revenue and thus erred in assuming jurisdiction u/s. 263 of the Act, in the light of show cause notice and the order passed u/s. 2 63 of the Act and hence the impugned order is bad in law.

2. The Ld. Pr. Commissioner of Income tac-1, Rajkot erred in setting aside the assessment order framed u/s. 147 r.w.s. 144B of the Act by holding that the AO did not conduct any inquiries in respect of cash transactions of Rs. 34,68,879/- alleged to be carried out by the Appellant with M/s. National Shroff.

3. The Ld. Pr. Commissioner of Income tax -1, Rajkot failed to appreciate that the impugned issue was duly examined by the AO by way of specific inquiry/notice and replied thereto, while finalizing assessment proceedings u/s. 147 r.w.s. 144B of the Act and hence there is no lack of inquiry thereon.

4. The Ld. Pr. Commissioner of Income Tax -1, Rajkot erred in improving upon the issue on which the appellant was show cause and further erred in passing order u/s. 263 on issues not confronted to the appellant and hence no this ground also, the order u/s. 263 is bad in law.

5. The Ld. Pr. Commissioner of IT-1, Rajkot failed to appreciate the contention of the appellant raised before him that the underlying order u/s. 147 itself was bad in law and therefore it was not amenable to revision u/s. 263 of the Act.

6. The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.

3.Grounds raised by the assessee in ITA No. 377/Rjt/2024 (AY 2015-16) are as follows:

1. The Ld. Pr. Commissioner of Income-Tac -1, Rajkot erred in holding that the assessment order dated 27.03.2022 passed u/s. 147 r.w.s. 144B of the Act was erroneous and prejudicial to the interest or revenue and thus erred in assuming jurisdiction u/s. 263 of the Act, in the light of show cause notice and the order passed u/s. 2 63 of the Act and hence the impugned order is bad in law.

2. The Ld. Pr. Commissioner of Income tac-1, Rajkot erred in setting aside the assessment order framed u/s. 147 r.w.s. 144B of the Act by holding that the AO did not conduct any inquiries in respect of cash transactions of Rs. 46,87,316/- alleged to be carried out by the Appellant with M/s. National Shroff.

3. The Ld. Pr. Commissioner of Income tax -1, Rajkot failed to appreciate that the impugned issue was duly examined by the AO by way of specific inquiry/notice and replied thereto, while finalizing assessment proceedings u/s. 147 r.w.s. 144B of the Act and hence there is no lack of inquiry thereon.

4. The Ld. Pr. Commissioner of Income Tax -1, Rajkot erred in improving upon the issue on which the appellant was show cause and further erred in passing order u/s. 263 on issues not confronted to the appellant and hence no this ground also, the order u/s. 263 is bad in law.

5. The Ld. Pr. Commissioner of IT-1, Rajkot failed to appreciate the contention of the appellant raised before him that the underlying order u/s. 147 itself was bad in law and therefore it was not amenable to revision u/s. 263 of the Act.

6. The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.

4. Since, the issue involved in above two appeals are common and identical. Therefore, the appeal of the assessee have been clubbed together and framed a consolidated order for the sake of brevity.

5. Brief facts of the ITA No. 376/Rjt/2024 are that in this case the return of income was filed declaring total income of Rs. 29,114/- on 26.02.2015. The case was reopened notice under section 148 of the Act was issued to the assessee, assessment proceeding initiated u/s. 147 r.w.s. 144 B of the Act. during the course assessment proceeding the assessee submitted the detail is support of return file and Assessing Officer make inquiries/ investigated/verified the various details and the assessee has categorical detained about the cash transaction with National Shroff & Co.

5.1. That the Ld. Pr. CIT has issued the notice u/s. 263 of the Income Tax on 19.02.2024, Whereby the opinion that since the law had been amended and Explanation 2 had been introduced below section 263 which specified that the order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the revenue if in the opinion of the Pr. Commissioner or the Commissioner, the order has been passed without making all the inquiries or verification which should have been made by the Assessing Officer. The Ld. Pr.CIT was of the opinion that since the Assessing Officer had not carried out the investigation/inquiry which he should have, according to the Ld. Pr. CIT the Assessing Officer did not make proper inquiries nor he investigated/verified the various details cash transaction with National Shroff & Co. rendering the assessment so made to be erroneous and prejudicial to the interest of the revenue. The assessee was asked to show cause notice as to why the assessment order passed on 27.03.2022 u/s. 147 r.w.s. 144B of the Act not be revised. In

response, the assessee had filed all the requisite details and information regarding the nature and source such as,

5.2 The Ld. Pr.CIT proceeded to cancel the assessment with following observation:

> *I am of the considered view that this is a fit case for invoking section 263 of 1. T. Act as the twin conditions namely, (i) the order of the Assessing Officer sought to be revised is erroneous: and (ii) it is prejudicial to the interests of the revenue are satisfied. Accordingly, the impugned assessment order passed by the A.O. u/s 147 r.w.s. 144B of the Income-tax Act, 1961 on 27.03.2022 is set aside for fresh assessment only to the extent of the issues discussed supra and direct the Assessing Officer to pass a fresh assessment order after making necessary enquiries relating to cash transactions made by the assessee with M/s National Shroff and if not found satisfactorily, appropriate addition under appropriate section should be made and relevant penalty proceedings should be initiated.*

6. Aggrieved by this order of the Ld. Pr.CIT, the assessee is now in appeal before the ITAT.

7. During the course of the hearing, the Ld. AR submitted that it is not the case of the Ld. Pr. CIT that no inquiry was conducted by the Assessing Officer during the course of assessment proceedings. He drew our attention to the copy of notice u/s 143(2) of the Act dated 11.11.2021 issued during the course of assessment proceedings and also a copy of questionnaire dated 16.03.2022, and reply submitted and filed in Form of Paper Book (Paper book is placed on record).

> *(a) Assessment proceedings in this case was completed e-proceeding system and NFAC system framed the intention form the assessment with very credibility, authenticity and legality of the assessments framed with great effort of very credibility, authenticity and legality*
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> *(b) In reference all notices u/s. 142(1), 143(2) r.w.s. 147 under the Income Tax Act for the said assessment Year. (i) Notice issued under section 148 on 31.03.2021 vide reference ID: 100033439508 and reply was filed revised return on 24.05.2021. (ii)*

Notice u/s. 142(1) in 16.03.2022 vide reference ID: 100045995456 and replied submitted with evidences on 17.03.2022. (iii) Notice u/s. 143(2) on 11.01.2024 vide reference ID: 100040044748 and replied submitted on 25.01.2021. (iv) Show Cause Notice on 22.03.2022 vide reference ID: 10033439508 replied submitted with evidences on 23.03.2022. (iv) Final Assessment Order u/s. 147 r.w.s. 144B of the IT Act, 1961 was framed on 16.03.2022 without raising any demand.

(c) The role of all difference authorities under the national assessment scheme are casted with responsibility and there is no any single authority who passed the final order. Therefore, the reason for reopening is not a valid reason u/s. 263 under the IT Act, 1961.

(d) That the assessee had not purchased any cheques or DD in lieu of cash from National Shroff, Rajkot, this fact was supported and verified by the FAO in reference to out submission and evidences such as bank book, cash book and balance sheet. The assessee had furnished the requisite information with the NFAC has completed the assessment after considering all the facts, the order passed by the FAO cannot be termed as erroneous. In this regard;

(e)That the order passed after proper scrutiny of the return of income and the view taken by the FAO was plausible view therefore, the assessment order cannot be considered to be erroneous and prejudicial to the interest of the Revenue, which was required to be taken in revision by the Commissioner u/s. 263 of the IT Act.

1. CIT v. Ratlam Coal Ash Co. (1988) 171 ITR 141 (MP)

2. Ashok Kumar Parasramka v. ACIT (1998) 65 ITD 1(Cal)

3. CIT v. Mahrortra Brothers (2004) 270 ITR 157 (MP)

4. CIT v. Parmeshwar Bohra (2004) 267 ITR 698 (Raj.)

5. Paul Mathews & Sons v. CIT (2003) 263 ITR 101 (Ker)

6. CIT v. Arvind Jewellers (2003) 259 ITR 502 (Guj.)

7. CIT v. Hastings Properties (2002) 253 ITR 124 (Cal)

8. CIT v. Goal (JP) (HUF) (2001) 247 ITR 555 (Cal)

(e)Assessee submitted that explanation 2 to section 263 was inserted with effect from the date 01.06.2015, hence, same is not retrospective in nature. Merely just because the view taken by the FAO was not acceptable does not mean that respective FAO has failed to make requisite enquiries. As your honour will be find that FAO has made due enquiries and had taken a plausible view, hence, same, cannot be disturbed by Pr. CIT in the name of further, verification and farming fresh assessment.

(f) Explanation 2 of section 263 is not justified not it is applicable for the assessment year under consideration as it was inserted with effect from 01.06.2015. for which we rely on the following judgements;

a) Hon'ble Income Tax Appellate Tribunal Amritsar Bench in Sathish Kumar v. PCIT -1, Jalandhar, ITA No. 258/Asr/2019.

b) Similar decision in case of Amira Pure Foods P. Ltd. v. PCIT (2018) 63 ITR (Tri.) 355; 2017 Tax Pub(DT) 5413 (Del Tri.)

c) Arun Kumar Garg (HUF) v. PCIT, New Delhi – 13, ITA No. 3391/Del/2018 : 2019 Tax-Pub (DT) 2089 (Del Tri.)

d) Torrent Pharmaceutical Ltd. v. Dy. CIT (2018) 196 TT (Ahd) 318

(g)Assessee has submitted point wise details/clarifications in respect of all the quarries raised by you vide your letter dated 19.02.2024 and also from the above objections, it is respectfully submitted that revision proceedings-initiated u/s. 263 of the IT Act, 1961 is kindly to be dropped.

8. Before the Bench, the assessee has submitted the following documents as evidence.

1. Copy of reply dated 26-11-2021 filed by the Appellant in response to notice u/s 143(2) of the Act during proceedings u/s 147 r.w.s. 144B of the Act

2. Copy of notice u/s 143(2) of the Act dated 12-11-2021 issued by the ITO, Ward - 2(1)(1), Rajkot stating reasons recorded for re-opening during proceedings u/s 147 r.w.s. 144B of the Act.

3. Copy of notices u/s 142(1) of the Act dated 16-03-2022 issued by the NFAC, Delhi during proceedings u/s 147 r.w.s. 144B of the Act.

4. Copy of show cause notice dated 22-03-2022 issued by the NFAC, Delhi during proceedings u/s 147 r.w.s. 144B of the Act.

5. Copy of show cause notice u/s 263 dated 19-02-2024 from the PCIT-1, Rajkot

6. Copy of reply dated 26-02-2024 in response to notice u/s 263 dtd. 19-02-2024

9. On the contrary, the Ld. CIT DR vehemently supported the order of the Ld. Pr. CIT and submitted that since the Assessing Officer had not made any inquiry regarding the transaction/detail with National Shroff & Co. Hence,the exercise of revisionary jurisdiction by the Ld. Pr. CIT was justified.

10.We have heard the rival submissions and perused the material available on record. From the records produced before us.We note that the case of the assessee that the Ld. AO/ NFAC/FAO has made an assessment after due inquires and with detail scrutiny. The Assessing Officer had made detailed inquiries regarding the assessee's claim and, after considering the reply submitted by the assessee, the Assessing Officer had made further inquiries also which is evident from the reply about that there is no dealing with National Shroff & Co.

11. We note that in case of National Shroff Company and the assessees, connected with National Shroff Company, their cases have been remitted back to the file of the Assessing Officer for fresh examination by this Bench. This Bench has passed an order in the case of National Shroff Company in IT(SS)A No. 118 to 125/Rjt/2018 vide order dated 30.12.2024, wherein the Bench has remitted the issue back to the file of the Assessing Officer observing as follows:

> *12. We note that issue under consideration in case of assessee`s appeal is squirely covered, by the order of the Coordinate Bench, Rajkot, in the case of Karim K. Makhani, IT(SS)A Nos.103-108/RJT/2017, wherein, Tribunal held as follows.*
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> *"14. Therefore, we have heard Learned CIT-DR for the Revenue and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record.*

15. In these appeals some of the assessment orders were passed by the Assessing Officer under section 143(3) read with section 263 of the Act and some of the assessment orders were passed by the Assessing Officer under section 153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short 'the Act').The main ground of appeal by the department (Revenue) is pertaining to assailing and deletion of 70% of additions made on account of unexplained cash deposits. The assessee, on the other hand is assailing the confirmation of 30% of cash deposits, in addition to other legal grounds regarding not considering assessee, as an Angadia, not adopting peak balance in the bank account, not giving credit/ benefit of telescopic effect of intangible addition and not considering decision relied upon by the assessee etc. The Learned CIT- DR for the revenue, argued before us that in the eyes of judiciary, the Angadiya are couriers who deal with 'container' and not with 'content'. Learned CIT- DR pointed out that in many decisions, it has been held that "Angadiya" is dealing with "Container" and not with "Contents". Similar contentions of Angadiyas are also seen in High Court decisions on related matters, viz. ***Kanchanlal Trikamlal Patel vs Shyamal Ghosh (1975) 16GLR675****, wherein the Angadiyas have submitted that they are 'couriers. These legal positions imply that 'Angadiya' as a courier cannot deal in cash/ precious metal by transferring it in its books of account as Cash in hand/ goods in stock and deliver it through "hawala" at other locations in lieu of commission. The 'Angadiya' can only accept 'parcel' or 'container' and has no right to deal with the 'content.' In the assessee`s case under consideration, the assessee has deposited the cash in his own bank account and withdraw the cash from his own bank account, therefore the assessee has ownership of all the transactions in his bank account. Hence, the assessee under consideration cannot be treated as 'Angadiya'. Besides, the shroff works on accounted bill of sales and accounted payment by seller. Therefore, assessee under consideration is not a shroff also. Thus, ld CIT- DR pointed out that assessee is a hawala operator (businessman) therefore, addition made by the assessing officer should be sustained.*

16. Since none appeared on behalf of the assessee, before the Bench to argue, the case, on merit. Therefore, Bench is not aware about the essential facts, such as maintenance of books of accounts by the assessee, cash book, purchase book, sales book, Bank book, Journal book, stock register etc, to understand about the ownership of the transactions of the assessee. Therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee and revenue and argued by ld. CIT -DR for the revenue.

17. We note that assessing officer, made addition on account of Commission income as well as on account of cash deposited in the bank account treating the assessee as a businessman. For example, in ITA No. 210/Rjt/2018, for assessment year 2008-09, assessing officer framed assessment under section 143(3) r.w.s. 263 of the Act and Assessing Officer made following addition:

i. Addition an account of commission income of Rs. 8,61,446/-.
ii. Addition of peak credit in bank account of Rs. 46,50,353/-.

On appeal, before Ld. CIT(A), the assessee did not press ground relating to commission income of Rs. 8,61,446/-, therefore, Ld. CIT(A) dismissed the same. About

addition of Rs. 46,50,353/-, made by the assessing officer, on account of peak investment in respect of undisclosed bank accounts, since the assessee did not press this ground before the Ld.CIT(A), hence Ld. CIT(A) dismissed the same. In respect of addition made by the assessing officer an account of separate peak investment, in respect of each undisclosed bank account, instead of consolidated peak, of all bank accounts together, the Ld. CIT(A) noted that assessee submitted calculation of peak of Rs. 35,99,721/- and Ld.CIT(A) in turn, by following the judgement of Hon'ble Karnataka High Court, in the case of Parag Kotecha 61 DTR 19 and Co-ordinate Bench of Kolkata, in the case of Golam Mostafa, ITA No. 382 and 405/kol/2012, directed the assessing officer to restrict the addition of consolidated peak investment of Rs. 35,99,721/-. During the appellate, proceedings, the assessee also prayed for seeking credit of intangible addition made in the year under consideration, however, the Ld. CIT(A) did not accept the argument of the assessee, as the assessee has not accepted the addition made of the assessee, as the assessee has not accepted the addition made in his case, either in this year or in earlier year. The assessee has agitated the matter before 'Higher Form' and hence unless and until the matter is finalized, the credit of the disputed addition cannot be given, therefore, the Ld. CIT(A) dismissed the same.

In these cases, Ld. PCIT has exercised his jurisdiction u/s 263 of the Act, and directed the assessing officer to verify the source of cash deposited in the bank accounts, which have been left out, during the course of original assessment proceedings. Accordingly, assessing officer made addition of peak credit in individual bank accounts. However, on further appeal by assessee, before the Ld. CIT(A), the Ld. CIT(A), directed the assessing officer to make the addition as per consolidated peak, (not individual, bank peak) investments. Aggrieved by this action of the ld CIT(A), the revenue is in appeal before this Tribunal.

18. From the above discussion, it is vivid that ld CIT(A) sustained the addition on account of Commission income of the assessee, as well as addition on account of cash deposited in the bank account, treating assessee, as a businessman. In our view, both the additions should not be made in the hands of the assessee by the Ld CIT(A). If the Revenue authorities, treat the assessee, as a businessman, addition on account of commission income, should not be made, in the hands of the assessee, therefore, we direct the ld. CIT(A) to delete the addition made by the assessing officer on account of 'Commission income', treating the assessee, as Angadia.

19. We note that it is the contention of the assessee that he was only a commission agent and derives commission for transfer of money on behalf of the manufacturers of tiles and ceramics of Morbi. However, no proof in this regard was submitted by him viz., who was the manufacturer who had supplied the goods, name of the dealer who had remitted the money, confirmation from the manufacturer that the cash deposits actually belonged to them, etc. When there are cash deposits in the said bank accounts, it is obvious that the explanation as to the source of such cash deposits has to be furnished by the assessee. Merely by stating that somebody's cash was deposited which assessee would withdraw and hand it to so-called manufacturers, does not exempt the onus cast upon the assessee to prove the source of such huge cash deposits. The ld CIT(A) has co-terminus power, as that of assessing officer, however,

ld CIT (A) failed to ask the assessee, name of the dealer who had remitted the money, confirmation from the manufacturer that the cash deposits actually belonged to them. The ld CIT(A) also failed to ask the assessee to furnish the list of the persons whose cash was remitted to assessee`s bank accounts and also list of the beneficiaries. The ld CIT(A) failed to do so. Had the assessee furnished the list of the persons, whose cash was remitted to assessee`s bank accounts, the revenue authorities, would have reopened the assessment of those persons whose cash was deposited in the assessee`s bank account. The ld. CIT(A) also failed to ascertain the source of the cash deposits, therefore, in the absence of any explanation as to the source of cash deposits, we do not wish to comment on the merits of the grounds raised by the revenue and assessee. Besides, as noted above, assessee did not appear before us and did not explain about the essential facts, such as maintenance of books of accounts by the assessee, cash book, purchase book, sales book, Bank book, Journal book, stock register etc, to understand and to ascertain about the ownership of the transactions of the assessee, whether assessee is Angadia or a businessman.

20. We also note that during the assessment proceedings, there was a Non-Co-operation, on the part of the assessee, and this non-co-operative attitude of the assessee, is proved from the facts narrated by the assessing officer, in para number one of the assessment order, which reads as follows:

"A search action u/s 132 of the Act, was carried out at the premises of the assessee on 17.01.2013. Consequent to search u/s 132 of the Act, proceedings u/s 153A of the Act was initiated by issuing notice, dated 30.07.2014, which was duly served upon the assessee. The assessee was required to file return of income within 30 days of the receipt of the notice. In response to notice, the assessee had not filed his return of income. Therefore, a notice u/s 142(1) was issued on 16.01.2014, requesting the assessee to file his return of income. Since no return was coming forth, a show cause notice for initiation of prosecution proceedings was issued on 23.07.2014. Again no return was coming forth, therefore, the assessee was issued one final show -cause notice for initiation of prosecution proceedings, vide notice dated 24.04.2014. However, despite these notices and reminders, no return has been filed. Therefore a final notice along with show- cause notice was issued on 02.03.2015, asking the assessee to show -cause as to why his assessment should not be completed ex-parte, on the basis of material available on record."

21. Therefore, we note that the assessing officer issued several notices to the assessee, however, at the end, the assessee submitted, return of income on 16.03.2015, and assessment order was framed only after six days on 23.03.2015, therefore, we find that assessment order was framed in haste, which is against the principle of natural justice, and this way, the assessing officer, could not get proper opportunity to examine the assessee`s facts, by issuing notices to various beneficiaries involved with the assessee. Therefore, we are of the view that entire matter should be remitted back to the file of the lower authorities for fresh adjudication on facts and merit.

22. In these circumstances, we set aside the order of the learned CIT(A) and remit the issue back to the file of the ld. CIT(A) to ascertain the above facts by appointing Departmental Inspector on the business premises of the assessee/ by issuing notices to

various beneficiaries, or by calling a remand report from the assessing officer in respect of the above facts, and then, adjudicate the issue in accordance with law. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, all appeals of the assessee and all appeals of Revenue, are treated as allowed.

*23. For the sake of convenience, the grounds as well as the facts narrated in Revenue`s appeal in IT(SS)A No.103/RJT/2017, for assessment year 2007-08, have been taken into consideration, for deciding the appeals of Assessee and Revenue. Since, we have adjudicated the issue by taking the "**lead**" case in IT(SS)A No.103/SRT/2017 in the case of Karim K. Makhani, for A.Y 2007-08 and the same identical and similar facts are involved in other remaining appeals of assessee and revenue, therefore, our instant adjudication shall apply mutatis mutandis to other appeals of assessee and revenue, also.*

24. In the combined result, all appeals filed by the Revenue, and all appeals filed by the Assessee, are allowed for statistical purposes, in above terms."

13. Therefore, respectfully following the judgement of the Co-ordinate Bench (supra), we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back (assessee`s appeal and revenue`s appeal) to the file of the assessing officer to adjudicate the issue afresh on merits.

14.For statistical purposes, the appeal of the assessee and revenue are treated as allowed.

12. The Bench has also remitted the Angadiya's cases to the file of the Assessing Officer in the case Shri Saurabh M. Kathwadia, in ITA No. 234 – 237/Rjt/2018, vide order dated 11.11.2024, wherein the tribunal has remitted the issue back to the file of the Assessing Officer for fresh examination. The findings of the tribunal are given below:

15. We have heard ld. DR for the revenue and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. We note that the assessing officer, made 100%(hundred percent) addition, in respect of cash deposit by assessee, in his bank account, however, on appeal by the assessee, the ld. CIT(A) restricted the addition at the rate of 30% of the cash deposit in the bank account, presuming that amount deposited in the bank account were the term of the assessee. This way, learned CIT(A) deleted 70% of the total addition made by the assessing officer. The

revenue is in appeal before us on the ground that 70% addition deleted by the learned CIT(A) is not justified, therefore, addition made by the assessing officer at the rate of 100% (hundred percent) of cash deposit should be sustained in the hands of the assessee, as the assessee, is the owner of bank accounts, and therefore, the assessee has ownership of all the cash transactions recorded in the bank accounts. However, assessee is in appeal before us, on the ground that he has earned only Commission, therefore, 30% addition sustained by the ld. CIT(A) may also be deleted.

16. During the course of hearing before us, none appeared on behalf of the assessee nor any adjournment application was received on behalf of assessee. The Tribunal has allowed more than 20 adjournments and sent notices through registered post, however, neither the assessee nor his Authorized Representatives (ARs) appeared before the Bench. Since these appeals pertained to AYs 2008-09 & 2012-13 and listed in 2018, and seven years have already been passed, the assessee never appeared before the Tribunal. Notice of hearing of these appeal were sent to the assessee at the address given by the assessee in Form No.36. The said notices have been returned unserved. Today when the case was called for hearing none appeared on behalf of the assessee nor any request for adjournment was made. It means that assessee is not interested in prosecuting these appeals.

Therefore, we have heard Ld.DR for the Revenue and proceed to decide these appeals based on the material available on record. Since none appeared on behalf of the assessee, before the Bench to argue, the case, on merit. Therefore, Bench is not aware about the essential facts, such as maintenance of books of accounts by the assessee, cash book, purchase book, sales book, Bank book, Journal book, stock register etc, to understand about the ownership of the transactions of the assessee. Therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee and revenue and argued by ld. CIT -DR for the revenue.

17. On merit, we find that issue is squarely covered by the judgement of this Co-ordinate Bench in the case of DCIT vs. Karim K. Makhani in IT(SS)ANo.103-108/RJT/2017 & Others dated 11.11.2024 where in it was held as follows:

> *"13. Notice of hearing of this appeal was sent to the assessee at the address given by the assessee in Form No.36. More than 25 adjournments were granted to the assessee. Notices were sent to the assessee through registered post. The said notice has been returned unserved. During the appellate proceedings, before Ld. CIT(A), Shri S.G. Bhuptani, Chartered Accountant appeared, who is also appearing before this Tribunal, he informed the Bench that assessee is not available on his home address/ office address, and it is not known whether assessee is in India or not. Today when the case was called for hearing none appeared on behalf of the assessee nor any request for adjournment was made. It means that assessee is not interested in prosecuting these appeals.*
>
> *14. Therefore, we have heard Learned CIT-DR for the Revenue and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the*

case including the findings of the ld CIT(A) and other materials brought on record.

15. In these appeals some of the assessment orders were passed by the Assessing Officer under section 143(3) read with section 263 of the Act and some of the assessment orders were passed by the Assessing Officer under section 153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short 'the Act').The main ground of appeal by the department (Revenue) is pertaining to assailing and deletion of 70% of additions made on account of unexplained cash deposits. The assessee, on the other hand is assailing the confirmation of 30% of cash deposits, in addition to other legal grounds regarding not considering assessee, as an Angadia, not adopting peak balance in the bank account, not giving credit/ benefit of telescopic effect of intangible addition and not considering decision relied upon by the assessee etc. The Learned CIT- DR for the revenue, argued before us that in the eyes of judiciary, the Angadiya are couriers who deal with 'container' and not with 'content'. Learned CIT- DR pointed out that in many decisions, it has been held that "Angadiya" is dealing with "Container" and not with "Contents". Similar contentions of Angadiyas are also seen in High Court decisions on related matters, viz. Kanchanlal Trikamlal Patel vs Shyamal Ghosh (1975) 16GLR675, wherein the Angadiyas have submitted that they are 'couriers. These legal positions imply that 'Angadiya' as a courier cannot deal in cash/ precious metal by transferring it in its books of account as Cash in hand/ goods in stock and deliver it through "hawala" at other locations in lieu of commission. The 'Angadiya' can only accept 'parcel' or 'container' and has no right to deal with the 'content.' In the assessee`s case under consideration, the assessee has deposited the cash in his own bank account and withdraw the cash from his own bank account, therefore the assessee has ownership of all the transactions in his bank account. Hence, the assessee under consideration cannot be treated as 'Angadiya'. Besides, the shroff works on accounted bill of sales and accounted payment by seller. Therefore, assessee under consideration is not a shroff also. Thus, ld CIT- DR pointed out that assessee is a hawala operator (businessman) therefore, addition made by the assessing officer should be sustained.

16. Since none appeared on behalf of the assessee, before the Bench to argue, the case, on merit. Therefore, Bench is not aware about the essential facts, such as maintenance of books of accounts by the assessee, cash book, purchase book, sales book, Bank book, Journal book, stock register etc, to understand about the ownership of the transactions of the assessee. Therefore, we do not wish to make any comments on the merits of the grounds raised by the assessee and revenue and argued by ld. CIT -DR for the revenue.

17. We note that assessing officer, made addition on account of Commission income as well as on account of cash deposited in the bank account treating the assessee as a businessman. For example, in ITA No. 210/Rjt/2018, for assessment year 2008-09, assessing officer framed assessment under section 143(3) r.w.s. 263 of the Act and Assessing Officer made following addition:

i. *Addition an account of commission income of Rs. 8,61,446/-.*
ii. *Addition of peak credit in bank account of Rs. 46,50,353/-.*

On appeal, before Ld. CIT(A), the assessee did not press ground relating to commission income of Rs. 8,61,446/-, therefore, Ld. CIT(A) dismissed the same. About addition of Rs. 46,50,353/-, made by the assessing officer, on account of peak investment in respect of undisclosed bank accounts, since the assessee did not press this ground before the Ld.CIT(A), hence Ld. CIT(A) dismissed the same. In respect of addition made by the assessing officer an account of separate peak investment, in respect of each undisclosed bank account, instead of consolidated peak, of all bank accounts together, the Ld. CIT(A) noted that assessee submitted calculation of peak of Rs. 35,99,721/- and Ld.CIT(A) in turn, by following the judgement of Hon'ble Karnataka High Court, in the case of Parag Kotecha 61 DTR 19 and Co-ordinate Bench of Kolkata, in the case of Golam Mostafa, ITA No. 382 and 405/kol/2012, directed the assessing officer to restrict the addition of consolidated peak investment of Rs. 35,99,721/-. During the appellate, proceedings, the assessee also prayed for seeking credit of intangible addition made in the year under consideration, however, the Ld. CIT(A) did not accept the argument of the assessee, as the assessee has not accepted the addition made of the assessee, as the assessee has not accepted the addition made in his case, either in this year or in earlier year. The assessee has agitated the matter before 'Higher Form' and hence unless and until the matter is finalized, the credit of the disputed addition cannot be given, therefore, the Ld. CIT(A) dismissed the same.

In these cases, Ld.PCIT has exercised his jurisdiction u/s 263 of the Act, and directed the assessing officer to verify the source of cash deposited in the bank accounts, which have been left out, during the course of original assessment proceedings. Accordingly, assessing officer made addition of peak credit in individual bank accounts. However, on further appeal by assessee, before the Ld. CIT(A), the Ld. CIT(A), directed the assessing officer to make the addition as per consolidated peak, (not individual, bank peak) investments. Aggrieved by this action of the ld CIT(A), the revenue is in appeal before this Tribunal.

18. From the above discussion, it is vivid that ld CIT(A) sustained the addition on account of Commission income of the assessee, as well as addition on account of cash deposited in the bank account, treating assessee, as a businessman. In our view, both the additions should not be made in the hands of the assessee by the Ld CIT(A). If the Revenue authorities, treat the assessee, as a businessman, addition on account of commission income, should not be made, in the hands of the assessee, therefore, we direct the ld. CIT(A) to delete the addition made by the assessing officer on account of 'Commission income', treating the assessee, as Angadia.

19. We note that it is the contention of the assessee that he was only a commission agent and derives commission for transfer of money on behalf of

the manufacturers of tiles and ceramics of Morbi. However, no proof in this regard was submitted by him viz., who was the manufacturer who had supplied the goods, name of the dealer who had remitted the money, confirmation from the manufacturer that the cash deposits actually belonged to them, etc. When there are cash deposits in the said bank accounts, it is obvious that the explanation as to the source of such cash deposits has to be furnished by the assessee. Merely by stating that somebody's cash was deposited which assessee would withdraw and hand it to so-called manufacturers, does not exempt the onus cast upon the assessee to prove the source of such huge cash deposits. The ld CIT(A) has co-terminus power, as that of assessing officer, however, ld CIT (A) failed to ask the assessee, name of the dealer who had remitted the money, confirmation from the manufacturer that the cash deposits actually belonged to them.The ld CIT(A) also failed to ask the assessee to furnish the list of the persons whose cash was remitted to assessee`s bank accounts and also list of the beneficiaries. The ld CIT(A) failed to do so. Had the assessee furnished the list of the persons, whose cash was remitted to assessee`s bank accounts, the revenue authorities, would have reopened the assessment of those persons whose cash was deposited in the assessee`s bank account. The ld. CIT(A) also failed to ascertain the source of the cash deposits, therefore, in the absence of any explanation as to the source of cash deposits, we do not wish to comment on the merits of the grounds raised by the revenue and assessee. Besides, as noted above, assessee did not appear before us and did not explain about the essential facts, such as maintenance of books of accounts by the assessee, cash book, purchase book, sales book, Bank book, Journal book, stock register etc, to understand and to ascertain about the ownership of the transactions of the assessee, whether assessee is Angadia or a businessman.

20. We also note that during the assessment proceedings, there was a Non-Co-operation, on the part of the assessee, and this non-co-operative attitude of the assessee, is proved from the facts narrated by the assessing officer, in para number one of the assessment order, which reads as follows:

> *"A search action u/s 132 of the Act, was carried out at the premises of the assessee on 17.01.2013. Consequent to search u/s 132 of the Act, proceedings u/s 153A of the Act was initiated by issuing notice, dated 30.07.2014, which was duly served upon the assessee. The assessee was required to file return of income within 30 days of the receipt of the notice. In response to notice, the assessee had not filed his return of income. Therefore, a notice u/s 142(1) was issued on 16.01.2014, requesting the assessee to file his return of income. Since no return was coming forth, a show cause notice for initiation of prosecution proceedings was issued on 23.07.2014. Again no return was coming forth, therefore, the assessee was issued one final show -cause notice for initiation of prosecution proceedings, vide notice dated 24.04.2014. However, despite these notices and reminders, no return has been filed. Therefore a final notice along with show- cause notice was issued*

on 02.03.2015, asking the assessee to show -cause as to why his assessment should not be completed ex-parte, on the basis of material available on record."

21. Therefore, we note that the assessing officer issued several notices to the assessee, however, at the end, the assessee submitted, return of income on 16.03.2015, and assessment order was framed only after six days on 23.03.2015, therefore, we find that assessment order was framed in haste, which is against the principle of natural justice, and this way, the assessing officer, could not get proper opportunity to examine the assessee`s facts, by issuing notices to various beneficiaries involved with the assessee. Therefore, we are of the view that entire matter should be remitted back to the file of the lower authorities for fresh adjudication on facts and merit.

22. In these circumstances, we set aside the order of the learned CIT(A) and remit the issue back to the file of the ld. CIT(A) to ascertain the above facts by appointing Departmental Inspector on the business premises of the assessee/ by issuing notices to various beneficiaries, or by calling a remand report from the assessing officer in respect of the above facts, and then, adjudicate the issue in accordance with law. Therefore, we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter back to the file of the ld. CIT(A) to adjudicate the issue afresh on merits. For statistical purposes, all appeals of the assessee and all appeals of Revenue, are treated as allowed.

23. For the sake of convenience, the grounds as well as the facts narrated in Revenue`s appeal in IT(SS)A No.103/RJT/2017, for assessment year 2007-08, have been taken into consideration, for deciding the appeals of Assessee and Revenue. Since, we have adjudicated the issue by taking the "lead" case in IT(SS)A No.103/SRT/2017 in the case of Karim K. Makhani, for A.Y 2007-08 and the same identical and similar facts are involved in other remaining appeals of assessee and revenue, therefore, our instant adjudication shall apply mutatis mutandis to other appeals of assessee and revenue, also.

24. In the combined result, all appeals filed by the Revenue, and all appeals filed by the Assessee, are allowed for statistical purposes, in above terms."

18. Since the issue is covered by the judgement of the Co-ordinate Bench in the case of DCIT vs. Karim K. Makhani.(supra), therefore, respectfully following the judgement of the Coordinate Bench, we remit all the appeals of the Revenue and Assessee to the file of the ld. CIT(A), for fresh adjudication.

19.In the combined result, all appeals filed by the assessee and all appeals filed by the Revenue, are allowed for statistical purposes, in above terms.

13. Since, this Bench has remitted the issue back to the file of the Assessing Officer relating to all Angadiya cases and Shri Saurabh M. Kathwadi. Therefore, this issue should also be relooked by the Assessing Officer with reference to all the observations made in the case of National Shroff Company and other angadiya cases. Therefore, we dismissed these appeals of the assessee and confirmed the order of Ld. PCIT.

14. We make it clear that since we have remitted the case of M/s. National Shroff Company, with which the assessee is connected, i.e., assessee is a beneficiary. It would be early for the assessing officer to cross verify the statements and facts, etc. Just to issue the notice by Ld. AO u/s. 142(1) and reply by assessee does not mean that view taken by the assessing officer is sustainable in the eye of law. There are the cases of Angadiya, wherein the assessing officer needs to decide whether assessee deals with "contents" or "container". All the principal Agngadiya cases were remitted back to the file of the Ld.AO for fresh examination of "contents" or "container". Hence, beneficiaries' cases are also remitted back to the file of Ld. AO.

15.In the result, the appeals of the assessees are dismissed.

Order pronounced in the open court on 28-02-2025

Sd/-	**Sd/-**
(A. L. SAINI)	**(DINESH MOHAN SINHA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Rajkot
दिनांक/ Date:28/02/2025

Copy of the Order forwarded to

1. The Assessee

2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot