

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.-**

&

DINESH MOHAN SINHA, JM

आयकरअपीलसं./ITA No.381&382/RJT/2024

निर्धारणवर्ष / Assessment Year: (2013-14, 2015-16)

(Hybrid Hearing)

Pareshkumar Nenshibhai Thakkar 6, Dharmendra Road, Rajkot-360001.	Vs.	Aayakar Bhavan, Race Course Ring Road, Rajkot-360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABDT0333R		
(Appellant)		(Respondent)

Appellant by : Shri D.M. Rindani, Ld. AR

Respondent by : Shri Sanjay Punglia, Ld. CIT(DR)

Date of Hearing : 20/01/2025

Date of Pronouncement : 26/02/2025

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by assessee, pertaining to Assessment Year 2013-14, is directed against the order passed by the Commissioner Of Income Tax (Appeal), vide order dated 25/03/2024, which in turn arises out of an order passed by the Assessing Officer, dated 27/03/2022, u/s 147 r.w.s. 144B r.w.s 143 (3)of the Income Tax Act, 1961.

Grounds of appeal (A.Y. 2013-14)

1. *The learned Principal Commissioner of Income-tax-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 of 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 263 of the Act and hence the impugned order is bad in law.*

2. *The learned Principal Commissioner of Income-tax-1, Rajkot erred in setting aside the assessment order framed u/s 147 r.w.s. 1448 of the Act by holding that the A.O. did not conduct any inquiries in respect of cash transactions of Rs. 15,84,210/- alleged to be carried out by the Appellant with M/s National Shroff.*

3. *The learned Principal Commissioner of Income-tax-1, Rajkot failed to appreciate that the impugned issue was duly examined by the assessing officer by way of specific inquiry/notice and replies thereto, while finalizing assessment proceedings u/s 147 r.w.s. 1448 of the Act and hence there is no lack of inquiry thereon.*

4. *The learned Principal Commissioner of Income-tax-1, Rajkot erred in improving upon the issue on which the Appellant was show-caused and further erred in passing order u/s 263 on issues not confronted to the appellant and hence on this ground also, the order u/s 263 is bad in law.*

5. *The learned Principal Commissioner of Income-tax-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.*

and

GROUND OF APPEAL (A.Y. 2015-16)

1. *The learned Principal Commissioner of Income-tax-1, Rajkot erred in holding that the assessment order dated 27-03-2022 passed u/s 147 r.w.s. 1448 of the Act was erroneous and prejudicial to the interest of 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 263 of the Act and hence the impugned order is bad in law.

2. The learned Principal Commissioner of Income-tax-1, Rajkot erred in setting aside the assessment order framed u/s 147 r.w.s. 1448 of the Act by holding that the A.O. did not conduct any inquiries in respect of cash transactions of Rs. 1,42,62,299/- alleged to be carried out by the Appellant with M/s National Shroff.

3. The learned Principal Commissioner of Income-tax-1, Rajkot failed to appreciate that the impugned issue was duly examined by the assessing officer by way of specific Inquiry/notice and replies thereto, while finalizing assessment proceedings u/s 147 r.w.s. 1448 of the Act and hence there is no lack of inquiry thereon.

4. The learned Principal Commissioner of Income-tax-1, Rajkot erred in improving upon the issue on which the Appellant was show-caused and further erred in passing order u/s 263 on issues not confronted to the appellant and hence on this ground also, the order u/s 263 is bad in law.

5. The learned Principal Commissioner of Income-tax-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.

That the above two appeals petition for A.Y. 13-14 and A.Y.15-16. Since the issue involved in all the appeals are comment. Therefore this to appeals are heard together and are being disposed of by the consolidated order.

Facts Of The Case

That the Assessee is an individual prop. of m/s K.P traders for A.Y 2013/14. That the IT return was file showing income of rs 549434. This office has received information from the DCIT, Central Circle-1, Rajkot vide letter No. DCIT/CC-1/RJT/Angadiya/National Shroff/17-18 dated 08/02/2018, Survey Action u/s 133A was carried out on 18 September 2014. On verification

of the records and available information, it is seen that assessee has carried out transactions through M/s. National Shroff and obtained the cash/cheque. Since the assessee has filed return of income for A.Y. 2013-14 disclosing total income of only Rs. 5,49,434/-, the transactions of Rs. 15,84,210/- hence income escaped the assessment within the meaning of sec. 147 of the IT Act. and reopening of assessment order u/s 148 of the Act. and assessment proceedings initiated by the Ld AO. During the course of assessment proceeding. The assessee has denied having any transaction with M/s National Shroff (Angadiya/Shroff). However, the AO did not make any efforts to find out correctness of the information from the Assessee concerned who gave such information to the AO. The AO has accepted the submission of the assessee without necessary inquiry and assessment completed on return income.

2. That the Ld. PCIT issued notice for hearing in this respect of revision process u/s 263 of the Act. for A.Y. 2013/14. According to notice, the assessment pass without making inquiry and verification and The AO has simply accepted your submission in the absence of necessary verification and inquiry. The AO has failed to treat the cash transactions of Rs.15,84,210/- as income.As the transaction with M/s National Shroff during the year under consideration, remain unexplained within the meaning of section 69A of the IT Act.

3. In this case the assessment order has been passed without making due inquiry/verification. Hence in terms of Explanation 2 to section 263 of the Income-tax Act, 1961, such order is erroneous in so far as it is prejudicial to the interest of revenue.

4. That the Assessee replied to notice of the Ld PCIT and submitted that during the course of assessment the Ld AO has called for details for explanation with regards to the transaction made with M/s National Shroff during assessment proceeding and after satisfying explanation advance and documents

analysed by the FAO, the FAO was of the view that explanation of the assessee is accepted and completed assessment on the basis of returned income. Once the assessment order passed after taking all necessary details and verifying each transaction, the same cannot be treated as erroneous, unless the view taken by A.O. is unsustainable in law. Therefore, we are of the view that the Assessing Officer took one of plausible/possible view looking into the instant facts of the case and the Id. PCIT cannot take recourse to proceedings u/s. 263 of the Act only with a view to supplant/substitute his own view with that of the Assessing Officer on the ground that alternate view should have been taken by the Assessing Officer. Hon'ble Apex Court in the case of Malabar Industrial Co. Ltd. v. CIT [2000] 81 TAXLOK.COM (IT) 133(SC), (2000) 243 ITR 83 (SC), wherein it was held as under:

5. That the Ld PCIT make an order dated 25/03/2024 with following observation “I am of the considered view that this is a fit case for invoking section 263 of IT. 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. 1448 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 reational Shroff and if not found satisfactorily, appropriate addition under appropriate section should be made and relevant penalty proceedings should be initiated.”

5 A. The assessee is in appeal before us against the impugned order dated 25/03/2024.

6. During the course of hearing the Ld AR submitted that in show course notice it was reproduce: “ During the financial year 2012-13, you have transaction of Rs. 15,84,210/- with M/s. National Shroff & Co. Please explain along with evidence why this amount should not be treated as unexplained within the meaning of section 69A of the I.T. Act, 1961.”

The Assessee replied: “ I have not entered in to any transaction with M/s National Shroff for the period relevant to the AY 2013-14. Hence, information is Not Applicable, however, any details, any instances whatever you are in a possession kindly provide the same otherwise it will be considered as you have no material, only on presumption and wrong inferrance the proceedings are initiated.”

Thus the FAO fails to demonstrate any nexus between the material before him and the formation of belief, therefore, on the basis of the material available on records, the explanation of the assessee on the issue were accepted by the FAO. On our side, the allegation made in the reasons recorded that National Shroff has issued cheque/DD in lieu of cash, the said allegation was dis-proved by submitting detailed bank statement hold by the assessee during the year, wherein not a single cheque/DD have been issued from the said Naional Shroff as alleged therefore by producing documentary evidence in the form of bank statement the allegation was disproved, thus, there were no financial transaction entered into with National Shroff and after making necessary enquiry, the FAO completed the reassessment proceeding.

7. 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.

8. We have carefully considered that the assessee's submission and relevant facts available on records. The submission filed by the assessee is in general nature. The assertion of the assessee in its reply that the Income tax Officer of National Faceless Assessment has taken all diligence steps till the end of the case and the FAO had made all due enquiries and taken a plausible view. is factually incorrect.

9. We have noted that the Assessing Officer fails to conduct the investigation, of the transaction in question, the Ld. AO has committed an error while passing an order. The word 'erroneous' includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been conducted in all the available means provided under the Act.

10. We note that In view of the above discussions and under the facts and circumstances of the case, the cash truncations aggregating to Rs.15,84,210/- made by the assessee with M/s National Shroff ought to have detailed inquiry under the I.T. Act 1961.

11. It is worthwhile to mention here that this bench has come across with Aangadias cases, and 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 squarely 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.

“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 Id 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 Trikamlol 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 "Angodiya. Besides, the shroff works on accounted bill of sales and accounted payment by seller. Therefore, assessee under consideration is not a shroff also. Thus, Id 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 LACITIA LA CITU) dismissed the same, In respect of addition made by the wing officer account of separate peak investment, in respect of each undisclosed bank account, instead of consolidated peak, of all bank accounts together, the Lil CITA) noted that assessee submitted calculation of peak of Rs. 35.99.721/- and LACITA) 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 met 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 Lit. CITYA) 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, duuring 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 Id 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 Id CIT(A) has co-terminus power, as that of assessing officer, however, Id 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 Id. 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 Id. CIT(A) and remit the matter back to the file of the Id. 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 Id. 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/Rj1/2018, 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 Id. 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 Id 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 Coordinate 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 nts 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 Id CIT(A) has co-terminus power, as that of assessing officer, however, Id 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 Id 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 Id 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 Id. 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 w/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.

12. It is the bounded duty of the Assessing Officer to collect the information related to the case and then make proper investigation of the facts collected and with proper application of law is to be made while making the assessment. In considering that this is fit case for invoking the jurisdiction u/s 263 of the Act. since, the condition laid down in section 263 are satisfied. Hence, the order of Ld AO on 27/03/2022 is set aside for fresh assessment after making necessary relating to cash transaction, related to M/s of the assessee with Nation Shroff. We have not noted any infirmity in the order of Ld PCIT

In view of the above discussion we are of the view that the appeal filed by the assessee against the impugned order date 25/03/2024 are having no merit in these case. That these appeals of the assessee are having no merit.

13. 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.

14. In result the appeal of the assessee is here by dismissed.

Order pronounced in the open court on 26 /02/2025.

Sd/-

(Dr. A.L. SAINI)

ACCOUNTANT MEMBER

Sd/-

(DINESH MOHAN SINHA)

JUDICIAL MEMBER

Rajkot

दिनांक/ Date: 26/02/2025

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