

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
(HYBRID HEARING)**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 548/SRT/2024
(Assessment Year: 2017-18)

Mukesh Kedia-HUF, CA. Ashokkumar S. Gupta, 203/1, New Cloth Market, O/s. Raipur Gate, Raipur, Ahmedabad-380002	Vs.	Principal Commissioner of Income Tax-1, Surat
[PAN No.AAJHM3750J]		
(Appellant)	..	(Respondent)

Appellant by :	None for Assessee
Respondent by:	Shri Mukesh Jain, CIT DR

Date of Hearing	23.04.2025
Date of Pronouncement	06.05.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax-1, (in short “Ld. PCIT”), Surat vide order dated 28.03.2024 passed for A.Y. 2017-18.

2. The assessee has raised the following grounds of appeal:

“1. LD. PCIT-1, Surat erred in law as well as on fact in assuming jurisdiction u/s 263 of the IT Act.

2. LD. PCIT-1, Surat erred in law as well as on fact in holding that assessment order passed by LD. AO is erroneous and prejudicial to interest of the revenue.

The appellant craves leave to amend, alter, modify and/or raise additional ground of appeal.”

- 2-

3. The brief facts of the case were that as per information available with the Assessing Officer, search action under section 132 of the Act was conducted on 11-09-2018 in the case of Jignesh Shah and Sanjay Shah Group of Ahmedabad. The search resulted into seizure of unaccounted cash of ₹19.37 crores, related to accommodation entries and commission earned, along with incriminating evidences. During the course of search, it was found that both Jignesh Shah and Sanjay Shah had been managing and controlling multiple companies and concerns, which were not carrying out any business activities. The assessee was found to be one of the beneficiaries, who had obtained accommodation entries amounting to ₹79 lakhs in the form of fictitious loans from Jignesh Shah during the year under consideration. Thereafter, after obtaining necessary statutory approvals, proceedings under section 147 of the Act were initiated on the assessee. The assessment was completed by the assessing officer wherein an addition of ₹79 lakhs was made, under section 68 of the Act, on account of unexplained cash credits in the assessee's books. Further, the Assessing Officer also initiated proceedings under section u/s 271(1)(c) of the Act, for concealment of income.

4. Subsequently, the Principal CIT initiated proceedings under section 263 of the Act, by observing that with effect from 01-04-2017, penalty should have been initiated under section 271AAC of the Act, when the additions are made under section 68 of the Act. However, in the instant case, the assessing officer initiated penalty proceedings under section u/s 271(1)(c) of the Act, due to non-application of mind and incorrect

application of legal provisions, thereby resulting in a revenue loss of ₹6,10,275/-. Further, the Principal CIT observed that the assessee being the beneficiary of accommodation entry, in the instant facts, should have paid commission for obtaining the aforesaid accommodation entries. However, neither any addition nor any enquiry with respect to such unaccounted payment of commission was made by the assessing officer, which was required to be made and unexplained expenditure under section 69C of the Act on account of commission paid by the assessee to the entry providers (for obtaining the bogus accommodation entries amounting to ₹79 lakhs) should have been added in the hands of the assessee during the impugned assessment proceedings. However, from the case records, it is evident that no such enquiry was made by the assessing officer and no such addition was made by the assessing officer in the hands of the assessee, which renders the assessment order as being erroneous and prejudicial to the interests of the Revenue.

5. Accordingly, in view of the aforesaid errors pointed out by the Principal CIT in the assessment order, the assessment order was set aside as being erroneous insofar as prejudicial to the interests of Revenue.

6. Before us, none appeared on behalf of the assessee at the time of hearing. On going to the case records, we are of the considered view that Principal CIT has correctly observed that in the instant case, penalty had been initiated against assessee under incorrect provisions, as they stood at the relevant time and further, no enquiry was made with respect to the commission which should have been paid by the assessee for obtaining

- 4-

bogus accommodation entries amounting to ₹79 lakhs, during the impugned year under consideration. Accordingly, in light of the facts as are coming from the case records, we are of the considered view that Principal CIT has not erred in facts and in law in holding that the present assessment order is erroneous insofar as prejudicial to the interest of the Revenue.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 06/05/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 06/05/2025

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat