IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

&

DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 134 & 135/RJT/2023

(निर्धारणवर्ष / Assessment Years: (2007-08 & 2008-09)

Income Tax Officer, Ward-1(2)(1), Aaykar Bhavan, 5th Floor, Room No. 517, Race Course Ring Road, Rajkot-360 001	**Vs.**	Shri Kherajmal Lekhrajbjai Thavrani, 4- Parsana Nagar, Shri Vaheguru Grupa, Near Refugee Colony, Rajkot-360 001
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.: **ADRPT 5807 E**		
(Appellant)		**(Respondent)**

CO. No. 01&02/RJT/2023
(a/o ITA No.134 & 135/Rjt/2023)
(निर्धारण वर्ष/Assessment Year: (2007-08 & 2008-09)

Shri Kherajmal Lekhrajbjai Thavrani, 4- Parsana Nagar, Shri Vaheguru Grupa, Near Refugee Colony, Rajkot-360 001	**Vs.**	The Income Tax Officer, Ward-1(2)(1), Aaykar Bhavan, 5th Floor, Room No. 517, Race Course Ring Road, Rajkot-360001
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.: **ADRPT 5807 E**		
(Applicant)		**(Respondent)**

आयकर अपील सं./ITA No. 16/RJT/2019
(निर्धारणवर्ष / Assessment Year: (2010-11)

Damjibhai Lekharj Tharvani C/o. Sarda & Sarda, CAs, 1st Floor, "Sakar" Opp. Rajkumar College, Dr. Radhakrishnan Road, Rajkot-360 001	**Vs.**	Income Tax Officer, Ward-1(2)(4), Aaykar Bhavan, 5th Floor, Room No. 506, Race Course Ring Road, Rajkot-

Rajkot 360001		360 001
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.: **AEYPT 7701 B**		
(Appellant)		**(Respondent)**

आयकर अपील सं./ITA No. 31,32,33/RJT/2019
(निर्धारण वर्ष / Assessment Year: (2009-10 to 2011-12)

Income-tax Officer, Ward-2, Junagadh Income-tax Office, Bhutnath Chambers, Opp. Bahauddin College, College Road, Junagadh – 362 001	**Vs.**	Shree Damjibhai Lekhraj Thavrani, 302-Sai Darsan Apartment, Adarshnagar-2, Joshipura, Junagadh-362 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AEYPT 7701 B**		
(Appellant)		**(Respondent)**

CO. No. 02 to 04/RJT/2019
(a/o ITA Nos.31 to 33/RJT/2019)
(निर्धारण वर्ष / Assessment Years: (2009-10 to 2011-12)

Shree Damjibhai Lekhraj Thavrani, 302-Sai Darsan Apartment, Adarshnagar-2, Joshipura, Junagadh-362 001	**Vs.**	Income-tax Officer, Ward-2, Junagadh Income-tax Office, Bhutnath Chambers, Opp. Bahauddin College, College Road, Junagadh – 362 001
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.: **AEYPT 7701 B**		
(Applicant)		**(Respondent)**

आयकर अपील सं./ITA No. 171/RJT/2015
(निर्धारण वर्ष/Assessment Year: (2006-07)

Bharatkumar Ishwarbhai Bhatiya 301, UVI Palace, Wing -1, Opp. Gitanjali College, Sadhu Vasvani	**Vs.**	Asstt. Commissioner of Income Tax Central Circle –1, Rajkot

Road, Rajkot		
स्थायी लेखा सं/.जीआइआरसं/.PAN/GIR No.: **AIRPB 2097 F**		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

आ.(खो और ज).सं./IT(SS)A No. 01 to 06 /Rjt/2018

(निर्धारण वर्ष/Assessment Years: (2007-08 to 2012-13)

Bharatkumar Ishwarbhai Bhatiya 301, UVI Palace, Wing -1, Opp. Gitanjali College, Sadhu Vasvani Road, Rajkot-360 001	**Vs.**	Asstt. Commissioner of Income Tax Central Circle –1, Rajkot
स्थायी लेखा सं/.जी आइ आर सं/.PAN/GIR No.: **AIRPB 2097 F**		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

आ.(खो और ज).सं./IT(SS)A No. 32 to 37 /Rjt/2018

(निर्धारण वर्ष/Assessment Year: (2007-08 to 2012-13)

Deputy Commissioner of Income Tax Central Circle – 1, Rajkot, "Amruta Estate", 2nd Floor, M.G. Road, Rajkot-360 001	**Vs.**	Bharatkumar Ishwarbhai Bhatiya 301, UVI Palace, Wing-1, Opp. Gitanjali College, Sadhu Vasvani Road, Rajkot-360 001
स्थायी लेखा सं/.जी आइ आर सं/.PAN/GIR No.: **AIRPB 2097 F**		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

आयकर अपील सं./**ITA No. 04 & 49/RJT/2018 &**

(निर्धारण वर्ष/**Assessment Year: (2013-14)**

Bharatkumar Ishwarbhai Bhatiya 301, UVI Palace, Wing-1, Opp. Gitanjali College, Sadhu Vasvani Road, Rajkot Deputy Commissioner of Income Tax Central Circle – 1, Rajkot, "Amruta Estate", 2nd Floor, M.G. Road, Rajkot-360 001	**Vs.**	Asstt. Commissioner of Income Tax Central Circle –1, Rajkot Bharatkumar Ishwarbhai Bhatiya 301, UVI Palace, Wing-1, Opp. Gitanjali College, Sadhu Vasvani Road, Rajkot
स्थायी लेखा सं./.जी आइ आर सं./.PAN/GIR No.: **AIRPB 2097 F**		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

आयकर अपील सं./**ITA Nos. 44 to 46 /RJT/2023**

(निर्धारण वर्ष/**Assessment Years: (2006-07, 2012–13 & 2013-14)**

Bharatkumar Ishwarbhai Bhatiya 205, Krishna Complex, Opp. Panchayat chowk, University Road, Rajkot	**Vs.**	Assistant Commissioner of Income-tax, Central Circle-1, Rajkot Income Tax Officer, Ward–1(1)(2), Rajkot-360 001
स्थायी लेखा सं./.जी आइ आर सं./.PAN/GIR No.: **AIRPB 2097 F**		
(अपीलार्थी/Appellant)		**(प्रत्यर्थी/Respondent)**

Appellant by : Shri Vimal Desai, Ld. AR

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

सुनवाई की तारीख/ **Date of Hearing : 04/06/2025**

घोषणा की तारीख/**Date of Pronouncement : 19/06/2025**

आदेश / O R D E R

PER BENCH:

This is bunch of twenty nine appeals, including Cross Objections (Cos) of assessees, consisting of common and identical issues; out of which eighteen appeals pertain to Bharatkumar Iashwarbhai Bhatiya, wherein ITA No.44/RJT/2023 pertains to penalty proceedings. Seven appeals pertain to Shri Damjibhai Lekharj Tharvani, consisting three appeals each filed by both Revenue and assessee. Four appeals pertain to Shri Kherajml Lekhrajbhai Thavrani, consisting two appeals each filed by Revenue and assessee. All these appeals pertain to different assessment years (AYs) and directed against the separate orders passed by the Ld. Commissioner of Income Tax (Appeals) (in short, "Ld. CIT(A)') which in arose out of separate assessment orders passed by the Assessing Officer (in short, 'AO') under section 153A r.w.s 144 r.ws. 147/143(3) and penalty u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Since the issues involved in the case of all the appeals are common and identical; therefore, the appeals of the three assessees have been clubbed and heard together, and a consolidated order is being passed for the sake of convenience and brevity.

3. First, we shall take eighteen appeals, pertaining to Bharatkumar Iashwarbhai Bhatiya, which consists seven appeals filed by Revenue and eleven appeals filed by assessee, for different assessment years. We have taken the lead case in IT(SS)A No.32/RJT/2018 for A.Y. 2007-08 for deciding the above appeals *en masse.* The grounds of appeals raised by the assessee in "***lead***" case in IT(SS)A No.32/Rjt/2018 for A.Y. 2007-08 are as follows:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and on facts in deleting the 70% of the addition of Rs.84,93,54,606/- made on account of unexplained cash deposit.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO.

3. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the AO. be restored to the above extent."

4. Brief facts *qua* the issue are that 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, the proceedings u/s. 153A of the Act were initiated by issuing notice on 17.01.2013 and 30.07.2013 which were 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 filed return of income showing total income of Rs.88,340/- on 27.02.2014. A notice u/s. 143(2) of the Act was issued on 22.04.2014 which was served upon the assessee. Further detailed questionnaire was issued on 07.10.2014 along with a notice u/s. 142(1) of the Act. On verification of return of income, it was noticed by the AO that the assessee has deposited cash in the bank account. The facts of the case is that, there was huge deposit in the assessee's bank account maintained with following banks, in his individual names and also in the names of his proprietary concerns.

Name of the concern and bank name	Bank account No.	Amount
Shree Bharat Enterprises ICICI Bank	CA-005806	24,52,70,182
Mahek Enterprise ICICI Bank	CA011014	46,36,58,157
Shree Bharat Enterprises ICICI Bank	CA010058	14,03,91,267
Bharat Bhatiya Karnataka Bank	SB00325201	35,000
	Total	84,93,54,606

These accounts are in the name of the assessee. The cash deposits pertained to the period covered under this assessment. Since the returned income of the assessee did not match with the cash deposits, therefore AO issued show cause

notice and letter dated 03.03.2015, wherein the assessee was asked to explain the source of cash deposits along with supporting evidences.

5. In response, the assessee submitted his reply before AO stating that he is engaged in the business of shroff. Brief nature of our activity is that we collect money on behalf of our customer and remits it to the customer or collects the money from our customer and remits it to the persons as directed by our customer. By doing this activity we receive certain amount as our commission which is very nominal as compared to the amount involved in the transactions. The said commission may vary from Rs 50 to Rs 100 per Rs 100000/-. During the course of said activity certain amount of cash is deposited by some persons to be remitted to our customer or vice versa. However, as said nature of our activity is shroff, the cash deposited in the bank account is not belonging to us but we just act as an intermediary or say, agent of our customers. For generally most of our customers are ceramic unit located surrounding the Morbi and assessee collect money on behalf of them and remit the same to them.

6. However, the AO rejected the reply of the assessee and noted that it is the contention of the assessee that they were only a commission agent and generally the beneficiaries of the cash were ceramic unit manufacturers of Morbi. However, no proof in this regard was submitted by them 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 account, 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 they 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.

7. Without prejudice to the above, the AO noticed that if at all it was the sales proceeds of the manufacturers, then why would the dealer not deposit these cash into the accounts of the manufacturers directly. Why has he got to route this through the assessee's bank account and why would the assessee take the risk of carrying cash and handing it over to the manufacturers. The assessee was also requested to furnish the list of the persons whose cash was remitted to its bank accounts and also list of the beneficiaries. However, the assessee failed to submit these details. Therefore, in the absence of any explanation as to the source of cash deposits, the AO did not have alternative but to treat the same as unexplained cash belonging to the assessee, and tax the same in its hands. The total of cash deposits made into the above mentioned bank accounts for the year under consideration, runs to Rs.84,93,54,606/-, which was added to the assessee's returned income.

8. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld.CIT(A) who has partly allowed the appeal of assessee. The AO made 100% addition of the amount deposited in the bank account. However, Ld. CIT(A) restricted the addition @ 30% of the amount deposited in the bank account. The detailed findings of Ld.CIT(A) are as under:

> *3.11. The ground No.1 is general in nature. However, during the course of appellate proceedings the appellant has contended as under:-*
>
> *(i) From the assessment order it appears that the additions made do not have any nexus with any seized material. In the assessment order no specific seized material has been referred to.*
>
> *(ii) It is settled position under the law that the assessment u/s.153A is require to be completed on the basis of seized material and in the absence of any reference to the seized material, the addition cannot be sustained.*
>
> *3.11.1. A search action u/s.132 of the Act was carried out at the premises of the assessee on 17.01.2013. During the course of search various documents/diaries/mobile back up were found and seized/impounded. The books seized from his residential premise contain the details of the amount received on behalf of beneficiaries of Morbi Ceramic Units. It was gathered that he was maintaining the bank accounts in various banks. It is further submitted that from the*

mobile backup, certain images were captured and printed and Shri Bharat Bhatiya accepted it to be from his cell phone and signed on it. It is seen from this print out that these are deposit slips which contain the amount deposited in his bank account. The addition is based on the seized material and the fact that the assessee fails to explain the source of cash deposits with relevant supporting documents. The assessment orders passed by the AO are as per law.

Thus the ground of appeal is dismissed to this extent.

3.12. With regard to the ground on merits, the submission of the appellants and the assessment orders have been considered carefully. The only effective ground of appeal is against the additions made by the A.O. by considering deposits in bank accounts as income of the appellant. Facts of the case in brief as per assessment order are that an action w/s. 132 of the Act was conducted at the premises of the appellant on 17.01.2013 Notices u/s.153A of the Act were issued by the A.O. to the appellants in consequent of the search & seizure actions. The appellants filed return in response to the said notices. The assessee filed its returns of income for A.Ys. 2007-08 to 2013-14. During the course of assessment proceedings, it was found that there were cash deposits in the assesseee's bank accounts. The details of income declared and cash deposits are as under:-

Sr. No.	A.Y.	Returned	Amount of cash
1.	2007-08	Rs.88340/-	Rs.849354606/-
2.	2008-09	Rs. 101380/-	Rs.856064053/-
3.	2009-10	Rs. 147550/-	Rs.32938258/-
4.	2010-11	Rs. 142830/-	Rs.78170284/-
5.	2011-12	Rs.399530/-	Rs.738455428/-
6.	2012-13	Rs.419380/-	Rs.1777201183/-
7.	2013-14	Rs.336340/-	Rs.584625710/-

3.12.1. There is no dispute about the fact that the bank accounts have been opened in the name of appellant and operated by him. The A.O. issued show cause notice to the appellant stating that why the cash deposited in his bank accounts should not be considered as their income of the year, in which cash was deposited. The appellant replied to the A.O. that they derive commission income upon the cash deposited in these accounts. The appellant further stated that the cash has been deposited at various place in the country in their bank accounts by several people and the cash belongs to ceramic manufacturer of Morbi. The cash deposited is sale proceeds of these ceramic manufacturers and deposited by the buyers at various places. On receipt of amount in the bank accounts, the appellant used to withdraw the amount in cash & handed it to the persons authorized by the ceramic manufacturers to collect the same from the appellant. The appellant got commission ranging from Rs.50/- to Rs.100/- per lakh. Therefore, the appellant requested that only commission income should be considered in the hands of the appellant. The A.O. considered the reply of the appellant but it was not found satisfactory. The operative part of the assessment order is reproduced below: (Assessment order for one assessment year for A.Y. 2007-

08 is reproduced for ready reference. All other assessment orders are identical except the amount of additions made.)

> *"4. The reply of the assessee has been perused, but the same is not acceptable. Vide the above submission, it is the contention of the assessee that they were only a commission agent. However, no proof in this regard was submitted by them 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 account, 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 they 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.*
>
> *4.1 Without prejudice to the above, if at all it was the sales proceeds of the manufacturers, then why would the dealer not deposit these cash into the accounts of the manufacturers directly. Why has he got to route this through the assessee's bank account and why would the assessee take the risk of carrying cash and handing it over to the manufacturers.*
>
> *4.2 The Id. AR was also requested to furnish the list of the persons whose cash was remitted to its bank accounts and also list of the beneficiaries. However, the assessee failed to submit these details.*
>
> *5. Therefore, in the absence of any explanation as to the source of cash deposits, I have no alternative but to treat the same as unexplained cash belonging to the assessee, and tax the same in its hands. The total of cash deposits made into the above mentioned bank accounts for the year under consideration, runs to Rs 84,93,54,606/-, which is added to the assessee's returned income. Penalty proceedings u/s. 271 (1)(c) of the IT Act is initiated for concealing the particulars of income."*

3.12.2. Same finding has been given by the A.O. for the other assessment years in all the case of above mentioned appellant. During the appellate proceedings, the appellant filed detailed submission against the additions made. The appellant contended that they are engaged in the business of money transfer (Angadia Service) by charging commission, which is 0.05% to 1% or on lump sum basis. The appellant received cash from different parties and at several places in his bank accounts, from which, he disbursed/remitted the funds to actual beneficiaries after retaining his commission. Appellant mostly worked for ceramic manufacturers. These ceramic manufacturers sale their goods across country and receive sale consideration through appellant's bank accounts, because such sales remained unaccounted in the books of accounts of ceramic manufacturers. The cash deposited in bank accounts was withdrawn in cash by the appellant and handed over to the authorized persons of ceramic manufacturers after deducting commission. The appellant stated on the basis of these facts that he is merely an Angadla and earned only commission income. It is further contended that the impugned cash belonged to the ceramic manufacturers of Morbi was already on record of the AO by way of Director General of Central Excise

Intelligence (DGCEI) show cause notice in the case of various ceramic manufacturers of Morbi and assessment orders framed to their case. During the search, several diaries/papers were found & seized, which contain detail of cash deposited in bank account and disbursement of cash after withdrawal from these accounts to the authorized person of the beneficiaries along with amount of commission charged. The appellant contended on the basis of above mentioned grounds that the additions made by the A.O. should be deleted. Alternatively, the appellant contended that even if the submission that the appellant is commission agent is disbelieved, the entire cash deposited in the bank account cannot be added but only a peak thereof can be added. The appellant cited case of Ms. Sidhnath Enterprise, in whose case Hon'ble Gujarat High Court, Ahmedabad vide order dated 28.03.2016 has held that only the income of the petitioner should be taxed. The appellant cited other case laws as reproduced in the submission above.

3.12.3. The submission of the appellant and the facts of the case along with reasons mentioned in the assessment order have been considered carefully. There is no dispute about the ownership of these bank accounts. The appellant admitted that these accounts are in his name and operated by him. There is no dispute about the quantum of cash deposits in these bank accounts also. There is continuous cash deposit and withdrawal on daily basis from these accounts. The A.O. has made addition of total cash deposits in these bank accounts by considering only the credit side of the bank account and the debit side i.e. withdrawal has been ignored altogether. This cannot be considered justified because, it is legally settled principle that the evidence should be relied upon in total and not in piece-meal manner. It is also legally settled principle that if there are withdrawal from the same account in cash prior to the deposit in cash, it is considered that the cash withdrawn has been utilized to deposit in the same account, if that has not been found invested in other asset or incurred as expenditure by the assessee. Keeping in view the facts of the case that the cash deposited in the bank account and amount was withdrawn in cash from the same bank account, the additions of total cash deposits made by the A.O. are not found justified. If these cash deposits would have remained in the bank account or found by the A.O. as invested by the appellants in other assets or incurred expenditure; additions to the extent of such investment/ expenditure could have been justified. But in the present case, no such findings have been given by the A.O. Therefore, it is held that the additions of total cash deposits made by the A.O. are found excessive.

3.12.4. After the findings, given about the excessiveness of the additions made by the A.O the contentions of the appellant about determining of income by taking commission at the rate of Rs.50 to Rs. 100 per lakh are considered below. The contention of the appellant is that he is engaged in Aagadia/shroff business is not found factually correct. To run business of Andadia/shroff, license to that effect is required from the appropriate state government authorities. To run business of shroff, license under the Money Lending Act is required from the District Collector. As shroff provides services to clients, he has to register under Central Service Tax Act (now modified as GST); But the appellant could not submit any documentary evidence to show which substantiate his contention that he is engaged in the business of Angadia/shroff. In the business of Angadia, details of person who sends money

through angadia can be ascertained, as proper record is maintained but in the case of the appellant, details of the person who deposited cash cannot be ascertained. In the case of shroff, sometime cheques is given by the client to the shroff & cash is taken by the client and sometime, cash is given by the client to the shroff & cheque is taken. But in the case of the appellant, deposits & withdrawals both are only in cash. Therefore, this contention of the appellant that he is angadia or shroff is dismissed. The appellant's another contention is that he charged commission at the rate of 0.05% to 1% & Rs.50 to Rs.100/- per lakh are contradictory. The rate of commission stated by the appellant is not found harmonious with the rate stated by him during the course of search. From the perusal of facts, it is also found that the appellant has not shown any commission income in his return of income in all these assessment years. This proves that the appellant earned income more than the income shown in regular returns filed. Therefore, this contention of the appellant is rejected. The appellant's another contention is that he is merely facilitator and the actual beneficiaries are ceramic manufacturers of Morbi. The appellant is master of facts and he should have told the whole truth. He should have submitted complete details of person wise transactions, so the department could have taken action to assess income related to these transactions in their hands but the appellant failed to do so during assessment proceedings and even during appellate proceedings. During the course of assessment proceedings the assessee was requested to furnish the specific details of entry-wise beneficiaries. Rather than providing the details of the entry beneficiaries and other details for these assessment years, the assessee submitted the same mechanical reply. These facts show that the appellant is partner with other black money generators/hoarders. Therefore, the contention that the appellant is earning only commission income on these transactions and real beneficiaries are others, is not found acceptable, hence it is dismissed. The alternate plea of the appellant that even if the submission that the appellant is a commission agent is disbelieved, the entire cash deposited in the bank account cannot be added but only a peak thereof can be added, is not tenable. The appellant has failed to furnish the details of the beneficiaries to the department. The benefit of peak can't be given to the assessee in the absence of discharge of onus on his part to divulge the information pertaining to beneficiaries. In the case of CIT Vs. D.K. Garg (August, 2017) the Hon'ble Delhi High Court has held as under:-

> *An accommodation entry provider wanting to avail the benefit of the **'peak credit'** has to make a clean breast of all the facts within his knowledge concerning the credit entries in the accounts. He has to explain with sufficient detail the source of all the deposits in his accounts as well as the corresponding destination of all payments from the accounts. The assessee should be able to show that money has been transferred through banking channels from the bank account of creditors to the bank account of the assessee, the identity of the creditors and that the money paid from the accounts of the assessee has returned to the bank accounts of the creditors. The assessee has to discharge the primary onus of disclosure in this regard*

Thus the plea of the appellant of peak credit is dismissed.

3.12.5 After having the above-mentioned discussions, it is clearly proved that appellant's all contentions regarding deletion of additions in total have been found without any substance, therefore, these are dismissed. Regarding the various case laws cited like Siddnath Enterprise and others, these case laws are not applicable to the appellant's case, as these case laws are pertaining to shroffs/angadia, whereas, the appellant has not been able to prove that he is angadia/shroff. Therefore, these case laws are not relied upon.

3.12.6 As discussed, and held above that the addition of total cash deposited made by the A.O. are not justified, at the same time, deletion of total additions; as contended by the appellant is also not found acceptable. Now question arises what is the role of the appellant in all these transactions and what should be his income from these transactions. As decided in paras above, the appellant cannot be considered merely a facilitator for money transfer. The Revenue is concerned about the collection of legitimate tax upon the income earned. As the appellant is not able to prove source of the amount deposited in these accounts which claimed to have been pertaining to so called ceramic manufactures, it is reasonable to consider that the deposits in these bank accounts are nothing but the business turnover of the appellants. The appellants themselves admitted that this turnover has not been shown in anybody's books of accounts. Therefore, it is proper and reasonable that these transactions should be taxed in the hands of the appellant. The bank accounts are in the name of the appellant and these have been operated by the appellant. The cash deposits made in these accounts were withdrawn by the appellant. Therefore, it is justified to consider that the turn over shown as deposits in these accounts pertain to the appellant only. This finding is in accordance with the provisions contained u/s.292(C) of the Act, which is reproduced below:

> *"62 [Presumption as to assets, books of account, etc.*
>
> ***292C**. {(1)] Where any books of account, other documents, money bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 [or survey under section 133A], it may, in any proceeding under this Act, be presumed*
>
> *(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person*
>
> *(ii) that the contents of such books of account and other documents are true; and*
>
> *(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.]"*

3.12.7 As contained in the provisions of section 292(C) of the Act, it is considered that these bank accounts pertain to the appellant & the transactions shown in these accounts are true & correct. On considering these transactions as turnover of the appellant, income on these transactions has to be estimated. Apart from these deposits & withdrawals in these accounts, there is no other evidence to decide the income of the appellant on this turnover. No purchase/sale bills were found & no stock register was maintained. Therefore, it is reasonable to estimate the income by taking some percentage of the turnover. To decide the percentage of the turnover, it is proper to take gross profit percentage shown by the ceramic industries of Morbi. It has been ascertained that the ceramic industry units in that area is showing gross profit @ 20 to 25% of the turnover. Therefore, it is reasonable to consider income of the

*appellant @ 25% of the turnover shown in these bank accounts. Along with income considered by taking gross profit of the turnover, it is also demand of the situation to consider 5% of the turnover as initial investment made to start this business. Keeping in view the discussion above, it is considered that 30% of the turnover is income of the appellants. Therefore, additions to the extent of 30% of the deposits are confirmed and remaining additions to the extent of 70% are deleted. The chart showing the details of additions made, 30% additions are **confirmed** & 70% additions are **deleted** is mentioned below.*

Sr. No.	Name of the appellant	AY	Total additions made (Rs.ini lacs)	30% of the additions confirmed	70% of the additions deleted.
I	Bharat I. Bhatia	2007-08	84,93,54,606/-	25,48,06,382/-	59,45,48,224/-
II	Bharat I Bhatia	2008-09	85,60,64,053/-	26,68,19,216/-	59,92,44,837/-
III	Bharat I Bhatia	2009-10	3,29,38,258/-	98,81,477/-	2,30,56,781/-
IV	Bharat I Bhatia	2010-11	7,81,70,284/-	2,34,51,085/-	5,47,19,199/-
V	Bharat I. Bhatia	2011-12	73,84,55,428/-	22,15,36,628/-	51,69,18,800/-
VI	Bharat I Bhatia	2012-13	177,72,01,183/-	53,31,60,355/-	124,40,40,828/-
VII	Bharat I Bhatia	2013-14	58,46,25,710/-	17,53,87,713	40,92,37,997/-

The A.O. is directed to consider the income of the above-mentioned cases as determined above. Thus the ground of appeal is partly allowed to this extent."

9. Aggrieved by the order of Ld. CIT(A) Revenue as well as assessee, filed appeals before us.

10. The Revenue is in appeal because Ld.CIT(A) has restricted upto 30% of the total addition made by AO. Therefore, Revenue stated in its grounds of appeal that 100% addition has made by the AO should be sustained. Therefore, Revenue is in appeal against the part addition deleted by Ld. CIT(A) whereas assessee is in appeal before us against the 30% addition, confirmed by Ld. CIT(A).

11. The Ld. CIT-DR for the Revenue submitted that in case of Shri Bharta I Bhaia, assessee owned all the transactions that is all transactions were through banking channel and assessee maintained his books of account, relevant balance-sheet and profit and loss account were also prepared which show that assessee is owner of the transactions. Therefore 100% addition should be made in the hands of assessee. The Ld. CIT-DR also submitted that if the angadia deals with (container) then he may be regarded as commission agent and if angadia deals with (contents) and shows all the transactions in his own balance-sheet and its profit and loss account and books of account and transactions are

through banking channel in that circumstances assessee deals with contents and therefore 100% addition should be made in the hands of assessee. The Ld. CIT-DR also submitted that assessee is engaged in illegal angadia business. Therefore, penalty should also be imposed upon the assessee in addition to addition made by AO in quantum proceedings. Apart from this, Ld. CIT-DR relied on the detailed submission in case of Karim K. Makani in IT(SS)A No.103-108 and 125-130/RJT/2017 dated 11.11.2024, which are reproduced below:

12. Before us, Ld.CIT-DR submitted written submission also, which are reproduced below:

1. The appeals are categorized under 2 categories for ease of reference.
   *a. **Category A** – Search & Seizure related appeals (date of search 17.01.2013). and*
   *b. **Category B** – Reopening/ Review related assessment and subsequent appeals.*

(Please refer to the enclosed chart for relevant assessment year, IT(SS)appeal/ ITA appeal number and other factual details pertaining to the appeal.)

*2. In these cases (**category A**), Search & Seizure operation happened on 17.01.2013 which resulted into seizure of incriminating materials and statement under oath of the assessee and his family members wherein the Modus Operandi adopted by the assessee was described by the assessee as follows: -*

"The assessee is the owner of multiple bank a/cs in his name and name of his family members. Huge cash deposits running into more than about 191 crores between A.Y.2007-08 to A.Y.2013-14. The assessee informed that he was engaged in the business of transfer of 'money' on commission basis which is mostly unaccounted/ illicit cash of tiles-manufacturers, flowing from the purchaser to the sellers. Such 'cash' deposited in the bank account of the assessee is either the result of undisclosed sales or the suppressed sales (for e.g. the actual sale price being Rs.100/-, out of which Rs.80/- is the disclosed sales while Rs.20/- is the suppressed sales). The assessee is in contact with the sellers and the purchasers. Since the purchasers are bound by sec.40A (3) and other provisions of I.T. Act by virtue of which it is not permissible for them to make payment of about Rs.20,000/- in cash, for purchases without attracting disallowance in the assessment proceedings; Hence, such 'illegal cash payment transactions" is added and abetted by the assessee and his associates whereby the purchaser deposits the differential cash amount in the bank a/c of the assessee. The assessee is contacted by the seller about the said deposit or informed by the purchaser about it. The assessee verifies the deposits in his bank a/c and after deducting definite transaction-fee based on deposited amount, withdraws the cash and hands over the cash to the seller. The assessee also, at times transfers the deposited cash from one a/c to another belonging to him or his associates or other similarly engaged entities in order to provide layering to the 'money' in the money laundering process."

*4. **Proceedings before Ld. assessing officer:***

a. The assessee has in his contentions before Ld. assessing officer argued that based on voluminous material seized/ impounded during the course of Search & Seizure, respectively; and in view of categorized statement accepting the Modus Operandi, the department may be pleased to accept that it was his business to earn commission by facilitating money transactions between third parties. That, the amounts credited in his bank accounts belonged to third parties and hence entire amount may not be considered in assessee's hand.

b. Ld. assessing officer has on the other hand invoked deeming provisions of I.T.Act, 1961. Upon being satisfied that the assessee has not been able to substantiate the source of credit in his bank a/cs, proceeded to conclude that the assessee has failed to give proper explanation about the nature and source of deposits in his bank a/cs and accordingly considered it as unexplained cash credit and taxed the amount credited in bank a/c. Ld. assessing officer has simultaneously initiated penalty and charged interest. Assessment for A.Ys. 2007-08 to 2012-13 are u/s.153A r.w.s. 143(3) of the I.T.Act, 1961. The assessment for search related A.Y.2013-14 is u/s.143(3). The Ld assessing officer has used the term 'unexplained credit' but not specified the specific section.

5.***Proceedings before Ld.CIT(A):***

a. Before Ld.CIT(A), the assessee raised multiple grounds of appeal which primarily relate to addition by the assessing officer on account of unexplained cash deposits.

b. Ld.CIT (A) has passed a common order on 27th September 2017 wherein he has decided appeals for A.Y.2007-08 to A.Y.2013-14.

c. Before Ld.CIT (A), the assessee briefly submitted that he is engaged as Angadia under the name and style: Shree Maruti Enterprise, Akshar Enterprise, OM Enterprise, Sagar Enterprise, M.M. Enterprise, etc. It was submitted that the assessee has been working for various tiles manufacturers (herein after, TM), wherein the assessee provided his bank a/c number to the TM who in turn provided the same to its customers/ dealers. The customers/ dealers of TM on instruction of TM deposits cash/ cheque in the bank a/c of the assessee and deposits the bank slip to the TM. The TM produces that slip to the assessee, who after verifying the bank balance used to withdraw the said deposit from his bank a/c and pay to the TM after deducting his commission which was ranging from Rs.250 to Rs.300 per lacs.

d. Ld. CIT(A) on page 6 has further reproduced that one of the depositions referred to in the name of the assessee in Q.No.12. Also, the response to Q.No.12.1.7 on page.7 specify that the cash/ cheque dealt with by the assessee is unaccounted cash.

e. Ld.CIT(A) has further reproduced the authorities referred upon by the assessee from page.8 onwards.

f. The decision of Ld.CIT(A) is from page.20 onwards.

(i) In para.5 Ld.CIT(A) states that the only effective grounds of appeal is against the addition made by the assessing officer by considering deposits in bank a/cs as 'deemed'
income of the assessee.

(ii) In para.5.1 THE Ld.CIT(A) has mentioned about the undisputed facts of the existence of multiple bank a/cs of the assessee and the modus operandi. It is also stated that the assessee's major plea is that only the commission income may be taxed in his hands, while the assessing officer has found response of the assessee as not satisfactory and taxed the entire income.

(iii) In para.5.2 Ld.CIT(A) speaks about the contention of the assessee about him being Angadia, and that the assessment was passed without giving opportunity of being heard to the assessee; alternatively, that if the cash deposited in the bank is considered assessee's turnover than only the profit/ income from the turnover should be taxed.

(iv) In para 5.3 Ld.CIT(A) holds that the additions of total cash deposits made by the assessing officer is excessive because there is a continuous cash deposit and withdrawal on daily basis from these a/cs.

(v) In para.5.4 Ld.CIT(A) rejects the contention of the assessee that he is working as Angadia/ Shroff, mainly because the deposits and withdrawals both are only in cash. Further, Ld.CIT(A) has also rejected the claim of commission stated to be earned by the assessee. Further, Ld.CIT(A) has dismissed the contention of the assessee that he is merely facilitator and the actual beneficiaries are ceramic manufacturers in and around Rajkot. He has held that the assessee is master of facts and he should have told the whole truth. He should have submitted complete details of person wise transactions so the department could have taken action to access the income related to these transactions in their hands. But the assessee failed to do so during assessment proceedings and even during appellate proceedings. These facts show that the assessee is a partner with other black money generators/ holders. Therefore, the contention that the assessee is earning only commission income on these transactions and real beneficiaries are others is not found acceptable.

(vi) Simultaneously, Ld.CIT(A) went ahead and dismissed all other contentions of the assessee regarding natural justice, lack of seizure of cash and jewellery etc. He also distinguished the case laws citied by the assessee stating that the assessee is neither an Angadia nor a Shroff.

(vii) Thereafter in para.5.6 Ld.CIT(A) has considered that the cash deposits in the bank a/c of the assessee is turnover of the assessee. On this in para.5.7, based on the gross profit shown by the ceramic manufacturers in the region he has decided that an amount of 30% of the turnover is income of the assessee. Accordingly, as per chart on page.27 of his order, Ld.CIT(A) has partly allowed the appeal by confirming 30% of the addition made by the assessing officer and deleting 70% of the addition from A.Y.2007-08 to A.Y.2013-14. Though Ld. CIT(A) has not mentioned any specific section, from the language adopted he has considered the cash deposited as Business Turnover.

6. ***Proceedings before Hon. ITAT (present proceedings):-***

(i) With respect to ***Category A appeals****, Search & Seizure, the department is in appeal for A.Y.2007-08 to A.Y.2013-14. The assessee is also in appeal for all the years. Thus there are 12 appeals in all.*

(ii) The main ground of appeal by the department 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 a/c, not giving credit/ benefit of telescopic effect of intangible addition and not considering decision relied upon by the assessee etc.

(iii) With respect to ***category B appeals****, brief facts are as follows: Long after the conclusion of the assessment proceedings, based on new information pertaining to bank a/cs which were not covered in the assessment order while they had cash deposits, reopening/review were carried out. The Review were probably not challenged by assessee. On page 2 of assessment order (A.Y.2009-10) in ITA No.211 of 2018, Ld.assessing officer has made a chart of such bank a/cs.*

(iv) <u>There is a difference in approach of Ld. assessing officer with respect to these cases</u>.
***A.Ys.2008-09 and 2009-10**: In all these cases the assessing officer has made addition on account of **peak credit** of cash deposit in the assessment order. He has further added commission income.*
*However**, for A.Ys. 2010-11, 2011-12 & 2013-14**, the assessing officer has made addition **on the difference between the cash credits and the quantum for which assessee has provided specific information regarding beneficiaries**. In addition, the assessing officer has also made addition in all these cases on account of commission.*

*8. **<u>Proceedings before Ld.CIT(A):</u>***

*With respect to **A.Ys.2008-09 & 2009-10**, the assessee has not pressed the addition on account of peak credits but has provided a reduced computation which has been conditionally approved by the Ld. CIT(A).*
*For **A.Ys.2010-11, 2011-12 & 2013-14**, Ld. CIT(A) has confirmed 30% of the additions made by the assessing officer and deleted 70% of the additions.*
*9. **<u>Brief of oral arguments by CIT(DR):</u>***
a) Request to consider the deeming provisions of IT Act on unexplained credit.

That as on date there are varied orders by the Ld. ITAT, Rajkot. This can be broadly divided into two types of orders :-

(i) Decisions in which the activity of the assessee has been considered as business activity, the amounts found deposited in bank accounts has been considered as business turnover and Ld. ITAT has variously directed that only commission income ranging from 0.25% of the turnover onwards has to be determined and taxed. In these orders Ld. ITAT has ignored the applicability of deeming provisions u/s 68, 69, 69A to 69D of the IT Act. [In the matter of KK Enterprises ITA 419 & 434/RJT/2017; Aniruddh Solanki ITA 454/Rjt/2018 & 02/Rjt/2019; Vallabhbhai K Hirani IT(SS)A 94 to 96/Rjt/2018]

(ii) The other categories of assessee are 3 orders in the case of Dhanji L Chikaliya , Paresh D. Patel and Ashok Parmar Ld. ITAT has confirmed the entire addition equal to credit in the bank account of the assessee, thus, agreeing with the view of the Assessing Officer that unexplained credit has to be taxed in the hands of the assessee in whose bank accounts such money has been found to be deposited. [ITA No. 23/Rjt/2016; 74/Rjt/2018; 81/Rjt/2017; 75 Rjt/2018; ITA No 212/Rjt/2016; ITA No. 24/Rjt/2016].

*(iii) In this regard, it was submitted that taxpayer, as-well-as authorities are equally bound by the provisions of section 68, 69, 69A to 69D of the IT Act and as such, in the light of non-disputed fact that unexplained credit whether found in the bank statement of the assessee, who regularly maintain books of accounts. Ld. ITAT should have agreed to legal-plea of the Revenue that till onus with respect to identity, credit worthiness and genuineness is discharged, the unexplained credit have to be added in the hands of the assessee. In other words, the orders of Ld. ITAT wherein deeming provisions have not been considered may be considered "erroneous" and **it is prayed that perpetuation of error needs to be prohibited**. Reliance in this regard is placed on the decision of Honourable Supreme Court in the matter of **Distributor (Baroda) Private Limited vs Union of India (1985) 22 taxman 49 (SC)** (para 19) copy of decision was supplied to Ld. ITAT during the course of hearing.*
(iv) That Ld. ITAT may consider their decisions in the matter of Dhanji L Chikaliya , Paresh D. Patel and Ashok Parmar, as applying the correct provisions of Law.

b) Powers of ITAT to decide taxable income afresh.

The Ld. ITAT is the highest fact-finding authority as per provisions of Income Tax Act,1961 that it has been held that proceeding of Ld. ITAT are also not meant to score a point but are meant to determine the correct income of tax payer for the year in question in accordance with provision for Income Tax Act. Reliance in this regard was placed on the decision of CIT vs Indian Express (Madurai) Private Limited (1983) 140 ITR 705 (Madras) which is bound form in Ramco Cement Limited Vs DCIT (2015) 55 Taxmann.com 79 (Madras) and which also mentions the decision of State of Tamil Nadu vs Arulmurugan and Company (1982) 51 STC 381 (Madras) (copy enclosed). It is, hence, requested that irrespective of decision of Ld. assessing officer and Ld. CIT(A), Ld. ITAT may independently examine the facts of the case and apply legal provisions, including the settled law that unexplained credit shall be taxed under deeming provisions. Reliance in this regard is further placed on the order of Honourable Supreme Court the case of Jute Corporation of India Limited vs CIT (1991) 187 ITR 688 (SC). In this regard it is further clarified that ***there is no new source of income in category 'A' case****, as defined by Honourable Supreme Court in CIT Vs Shapoorji Pallonji Mistri (1962) 44 ITR 891 (SC). To summarize, Ld. ITAT as plenary powers which Ld. CIT(A) as well as Ld. assessing officer possess and the prayer of Revenue is limited to sustaining additions already made by Ld. assessing officer by applying deeming provisions.*

c) Whether the assessee is an Angadiya/ Shroff? or is engaged in extra Commercium Activity?

a) *In various orders of Ld. ITAT/ CIT(A)/A.O., the assessee has been submitted and discharged as bound the Angadiya/Shroff/Commission agent dealing with money****. In this regard it was submitted that the assessee is neither Angadiya, nor Shroff but is engaged in money laundering / Hawala which can be categorized as extra commercium activity in accordance with the ratio of decision in the case of State of Bombay vs RMD Chamarbaugwala (SC) 1957 AIR 699.***

b) In a ***hawala****, a certain amount of 'cash' is transported from one place to another, or handed over through a chain of intermediaries, and/or, from one person to another, for a certain commission. It can be said with certainty that such cash is ordinarily illicit and black-money, otherwise, with the advance of internet based universal banking operations, the transfer of money through bank accounts is easily executable at the click of a button and with utmost confidentiality.*

c) The ***money-laundering*** *also deals with illicit 'cash' as a commodity, and coverts it into 'legal wealth.' Unlike hawala, which is completely out of legal channels, the money laundering utilizes the available legal channels, viz. multiple bank accounts located in multiple places, owned by multiple entities, in a well-orchestered 'layering' process, to hide the reality of illegal wealth and to 'make-believe' that ultimate outcome is a 'legal wealth.'*

d) ***Angadiya/Shroff vis-à-vis the hawala/money-launderers***

i. Defining an Angadiya*: Angadiya are couriers. The profession is one of trust and secrecy. Angadiya are historically known to be backbone of diamond and precious commodity business, carrying on person precious metals for display, transport and sale since ancient times. The Angadiyas are known to issue a receipt to their customers with valid recognizable details. Angadiya business is a legally recognized business. As of now there is a GST registration of courier business.*
How an Angadia business is generally conducted:

Step 1: Business entities with accounted Cash-in-hand / valuables/ precious metals/ important documents intending to "Courier" the same to their own branches/ customers/ associates contact angadiya. (The transport of cash has been severely disincentivized after amendments in IT Act 1961 and introduction of S 269ST vide FA 2017 restricting cash deposits of above Rs 2 Lakhs	**Step 2**: Angadia issues proper receipts with necessary details and enters necessary details in book of account with credentials of the owner. The angadiya is supposed to receive parcels where the unopened 'parcels / Containers' contain details of Sender and Receiver	**Step 3**: Angadia transfers the Parcel with cash/ valuables to the specified location and earns commission for such courier service	**Step 4**: Angadia maintains books of accounts, files Return of Income and upon enquiry/ Search action/ Survey action by the Tax/Enforcement departments, specifies the details of owners of cash/valuable article or thing and corroborates the receipt and payment as a 'courier' from his documents. **Real Angadia do not deposit any 'cash' in their 'bank account'**

In the eyes of judiciary, the Angadiya are couriers who deal with 'container' and not with 'content'. Elaborate discussion was held amongst member agencies on the "legal connotation" of subject between the members of the Study Group. The decision of the Hon'ble Ahmedabad Income Tax Appellate Tribunal in the case of ***Patel Somabhai Kanchanlal & Co Vs. DY. CIT (indiankanoon.org/doc/1381120; ITAT Ahmedabad order dated 26/12/1996)*** *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.'*

ii. Defining a shroff:

The business of 'shroff' or "bill-discounter/ Invoice-discounter" is a permissible legal business. Its origin lies in the concept of maintaining uninterrupted cash-flow in any business, while respecting the requirement of 'credit period' for payment of accepted Bills/Invoices. A shroff or Invoice Discounter, on being satisfied with the Invoice of sale (accepted by Buyer), pays the supplier of goods on behalf of seller, after deducting finance charges. It receives from Buyer payment on behalf of seller after the credit-period is over.

The transactions are through regular banking channels and accounted for in Books.

Thus, while the Seller gets immediate funds for a small cost, the 'shroff' earns on Bill-discounting, and the Buyer is able to pay after the declared credit-period. It is a win-win situation for everyone.

In modern times, the Government and RBI are encouraging Bill-discounting/factoring services for improving cash-flow of MSMEs and everyone in general. The Government's TReDS platform is being encouraged with policy interventions, including amendments in tax-laws. Trade Receivables electronic Discounting System (TReDS) is an online electronic platform and an institutional mechanism for factoring of trade receivables of MSME sellers. It enables discounting of invoices through an auction mechanism to ensure prompt realisation of trade receivables.

How a Bill discounting/ Shroff business is generally conducted:

Step 1: Sellers in need of immediate money and with an authentic Invoice raised on a Buyer, contact Shroff/Bill discounter/factor Discounter/ Invoice Purchaser **(in-order to manage the cash-flow of business after sales has taken place while payment from buyer is pending due to credit period/ verifications)**	Step 2: Shroff verifies Invoice and credentials of the Seller and Buyer and other documents of KYC norms, Credibility, past business history, etc. of Seller	Step 3: Shroff and Client agree on a particular rate of interest and other charges for Bill/Invoice discounting/ Invoice purchase, etc.	Step 4: Shroff contacts an approved financer (RBI approved Bank/ NBFC) [Shroff may also be an RBI approved entity for financing/ NBFC/ Bank]	Step 5: Shroff/ Financer remit an amount based on a calculated percentage of Invoice Value. The money is transferred to the Bank account of Seller. In due course, when Buyer releases payment of Invoice, the Shroff/ Financer receive the financed amount and the transaction is squared off	Step 6: Shroff earns a differential commission; Shroff maintains proper books of Accounts and files Return of Income; Financer complies with RBI guidelines

(iii) Comparing activities of Hawala operators/ Money launderers with Angadiya and shroff

a. The hawala operators/ money launderers are self-styled Angadiya, but are not comparable to the real Angadiya, as these persons are indulging in large scale aid and abetment of tax-evasion activities.

I. While the real Angadiya deal with 'container' or 'parcel', these hawala operators deal with the 'content,' i.e. cash, valuables, precious metals.

II. It is observed in almost all cases that such content, ie cash is deposited in the Bank accounts operated by hawala operator/money lender, or their associates and a regular account of such cash is maintained in the manner of carrying a routine business, in most cases. However, the Angadiya, as a courier, being not concerned with the 'content' is not required to deposit such illicit cash in their bank accounts. That such cash found with such money-launderers/hawala operators is illicit black money can also be understood from a simple logic- the purpose of utilization of bank account of hawala operators/money launderers, rather than the actual depositor and beneficiary is to hide the 'source'

of funds as well as the real beneficiary. These come to light only when an enforcement action occurs, which is rare, in statistical terms.

III. While real Angadiya deal with "courier/parcel as a commodity' which is safely and discretely transferred from sender to receiver, while maintaining necessary due diligence on the details of sender and receiver, the hawala operators/money launderers deal with 'cash/valuable as commodity.'

IV. While real Angadiya earn from service charges for courier, these hawala operators/ money lenders earn commission based on the quantum of cash/valuables/ precious metals they transport.

b. Similarly, hawala operators/ money launderers are self-styled shroff, but are not comparable to the real shroff, as these persons are indulging in large scale aid and abetment of tax-evasion activities.

i. The work of a real shroff commences when a seller presents a duly stamped and accepted bill of Sale. The shroff finances the Bill after deducting the finance charges. Thus, the basis of invoice-discounting is a sales-bill. The hawala operators/ money launderers neither have any such basis nor do the work of finance. They simply transport money from one place to another and deduct their commission.

ii. The cycle of shroff ends when the purchaser makes payment on the accepted bill of sales after the end of credit-period. This squares-off the transaction. However, the hawala operators/ money lenders have no comparable transaction.

iii. The shroff works on accounted bill of sales and accounted payment by seller. In the case of hawala operators/ money launderers, the entire cash transaction is illicit black money.

(iv) ***Highlights of difference between the affairs of a hawala-operator/ money-launderer with a Legitimate shroff/ Angadiya/ Money Remitter have been summarized in a chart, as follows****:*

Sr. No.	***Item of Comparison***	***Implied from submissions of assessee, and similar persons***	***Shroff/Bill Discounter***	***Angadiya***	***Money Remitter***
1	*Statutory Compliance*	***NIL***	*RBI Instructions; Payment and Settlement Systems Act,2007; CBDT instructions on Cash Receipts/payments*	*GST/Service Tax registration in the category of Courier Service; CBDT instructions on Cash Receipts/payments*	*Prevention of Money laundering Act (PMLA)/Foreign Exchange management Act (FEMA); RBI*
2	*Cash handling*	***Yes, Huge cash deposits found in bank accounts owned by Assessee***	*No*	*Only as a "container" and not "content";* ***Angadia do not deposit the cash of customer in any bank Account***	*Yes, foreign cash to domestic cash conversions and vice versa*
3	*Basis of*	***No***	*Value of an*	*Receipt raised on*	*Application/*

Sr. No.	***Item of Comparison***	***Implied from submissions of assessee, and similar persons***	***Shroff/Bill Discounter***	***Angadiya***	***Money Remitter***
	receipt of Cash	***documentary Basis***	*authentic Invoice raised on Buyer after sales*	*owner of cash as a courier enterprise.*	*Form to be filled up by the person intending for money remittance/ money exchange*
4	*Basis of remittance*	***No documentary basis***	*Percentage of computed discount based on agreed upon interest rates, duration, etc. and charges*	*The cash-container is delivered; or the 'unopened parcel' is delivered*	*Rate of conversion of respective Currencies minus commission*
5	*Identity of owner of Cash/ Financer*	***Not provided / not available/ incomplete details available like mobile number***	*Identity of Financer is on records*	*Details of "Container" owner is available; Details of receiver is available*	*Identity of both parties available*
6	*Confirmation from owners*	***Not provided / not available***	*Records contain details and documents of financer and hence confirmation is possible*	*It is possible; In multiple adjudications, including adjudications by the Ahmedabad Tribunal, instances have been mentioned wherein the Angadia have been able to submit confirmation from parties; have also been able to produce owners before Department in Search and Seizure actions e.g. NIA plus IT action on Angadiya's in Mumbai*	*Records contain details and documents of transacting parties and hence confirmation is possible*
7	*Nature of*	***Unknown in***	*Bill Discounting*	*Courier services/*	*Money*

Sr. No.	***Item of Comparison***	***Implied from submissions of assessee, and similar persons***	***Shroff/Bill Discounter***	***Angadiya***	***Money Remitter***
	business	***common parlance, but styled as Angadiya/ shroff***	*services/ Shroff*	*Angadiya*	*exchange services/ money remitter*

v. The misuse has been discovered by GST/IT department in a large number of cases, where in garb of being 'Angadiya'/'shroff' several unscrupulous entities, have engaged themselves in money-laundering and hawala and similar non-commercium activities. It has been observed in a number of cases that 'cash-discounting' is a type of discounting being practiced in which the money-launderer permits use of its bank account for deposit of cash at one location, and withdraws the cash/bank transfer at another location, earning commission on such transaction. There is no Invoice/Bill accepted by Buyer on supplies by Seller in these cases, or in other words, there is no basis of such deposit and discounting of cash. In a similar fashion, DGCEI detected GST evasion whereby the declared price of Tiles was lower than the actual sales price. ***As per IT Act, any purchase in cash above Rs. 20,000 (now 10,000) is not permitted****. Buyers across India deposit the cash purchase-amount into the bank-account of self-styled Angadiya/shroff, who remitted cash to seller, after deducting commission. In certain instances, such Bank-accounts were also used for layering and delayering of funds in the process of money laundering. Upon detection, the Income Tax department has treated these sums as unexplained cash deposits and taxed the entire amount as deemed income. The 'Angadiya/shroff' have disclosed the modus-operandi in clear terms.*

vi. The "Angadiya" is a very common term in Gujarat. Another common term related to monetary transactions is "shroff." While "Angadiya services" and "shroff services" are comparatively accounted transactions, the enforcement agencies also come across the term 'hawala' which indicates a complete unaccounted transaction of cash. The concern related to enforcement agencies is the veil of Angadiya and shroff to conduct unaccounted hawala business. In a most daring manner, hundreds of Bank-accounts have been used by vested groups to transfer and disseminate hundreds of Crores of unaccounted money, in the garb of cheque discounting/ cash discounting/ shroff and Angadiya business.

vii. In last decade, several decisions of ITATs in Gujarat, and Hon. High court of Gujarat can be found wherein the term Angadiya /shroff have been used interchangeably to cover the cases of unaccounted transactions of cash. Due to lack of clarity between these terms, several decisions of Ld. ITAT and Hon. HC have actually considered the activity of depositing many crores of cash in bank account and disseminating them to beneficiaries as a 'business transaction' and have directed the Income Tax department to levy taxes on profits ranging from 0.25% to 5% or so. Such decisions have the implied effect of legitimizing these transactions as the gains far outweigh the risks/tax/ penalty involved. There is no doubt that these activities aid in large scale tax-evasion. However, due to many reasons, the judiciary has been having differing views on these transactions undertaken by such entities, and their taxability – while one view amongst Gujarat Income Tax Appellate Tribunal/ Hon. HC is that such cash-deposits have been rightly treated by Income tax department as unexplained cash credits, while the other, divergent view is that such Cash-deposits are "Business Turnover" of these entities, despite being illegal. Consequently, these can be taxed variously at 0.5% to 3 percent

of Turnover. Prima facie, this view is fallacious when one looks at the decision and deliberations of Hon. SC in the above referred case of ***State of Maharastra vs RMD Chamarbaugwala****, supra.*

e) That activities of assessee are not 'business' but 'extra commercium' and 'taxable'

It is apt to reproduce the discussion in the order of Hon. Supreme Court of India in the matter of State of Maharastra vs R.M.D Chamarbaugwala 1957 AIR 699, 1957 SCR 874, AIR 1957 SUPREME COURT 699, 1957 SCJ 607, 1957 (1) MADLJ(CRI) 558, 1959 BOM LR 945

> *"The first branch of the argument on this part of the appeal raises a question of a very far-reaching nature. The question posed before us is: Can the promotion of prize competitions, which are opposed to public policy, be characterised as a "trade or business" within the meaning of Art. 19(1)(g) or "trade, commerce and intercourse" within Art. 301? (Page 20)*

It will be noted that Art. 19(1) (g) in very general -terms guarantees to all citizens the right to carry on any occupation, trade or business and el. (6) of Art. 19 protects legislation which may, in the interest of the general public, impose reasonable restrictions on the exercise of the right conferred by Art. 19(1) (g). Likewise, Art. 301 declares that trade, commerce and intercourse throughout the territory of India shall be free but makes such declaration subject to the other provisions of Part XIII of the Constitution. Arts. 302,304, which are in that Part, lay down certain restrictions subject to which the declaration contained in Art. 301 is to operate. Article 302 empowers Parliament by law to impose restrictions on the freedom of trade, -commerce or intercourse not only between one State and another but also within the State, provided in either case such restrictions are required in the public interest. Article 304 (b) authorises the State Legislatures to impose reasonable restrictions on the freedom of trade, commerce or intercourse with or within the States as may be required in the public interest, provided the formalities of procedure are complied with Arts. 19(1) (g) and 301, it is pointed out are two facets -of the same thing-the freedom of trade Art. 19(1)(g) looks at the matter from the point of view of the individual citizens and protects their individual right to carry on their trade or business, Art. 301 looks at the matter from the point of view of the country's trade and commerce as a whole, as distinct from the individual interests of the citizens and it relates to trade, commerce or intercourse both with and within the States. The question which calls for our decision is as to the true meaning, import and scope of the freedom so guaranteed and declared by our Constitution. (p 20)

The scheme of our Constitution, as already indicated, is to protect the freedom of each individual citizen to carry on his trade or business. This it does by Art. 19(1)(g). This guaranteed right is, however, subject to Art. 19(6) which protects a law which imposes, in the interest of the general public, reasonable restrictions on the exercise of the fundamental right guaranteed by Art. 19(1) (g). Our Constitution also proclaims by Art. 301 the freedom of trade, commerce and intercourse throughout the territory of India' subject to the provisions of Arts. 302-305 which permit the imposition of reasonable restriction by Parliament and the State Legislatures. The 'underlying idea in making trade, commerce and intercourse with, as well as within, the States free undoubtedly was to emphasise the unity of India and to ensure that no barriers might be set up to break up the national unity. One important point to note is that the language used in Art. 19(1) (g) and Art. 301 is quite general and that the provisions for restricting the exercise of the fundamental right and the declared freedom of the country's trade, commerce and intercourse are made separately, e.g., by Art. 19(6) and Arts. 302-305. (p 28)

Our attention has been drawn to Art. 25 where the limiting words " subject to public order, morality and health " are used and it is pointed out that no such limiting words are to be found in Art. 19(1)(g) or Art. 301. In short, the argument is that Art. 19(1) (g) and Art. 301 guarantee and declare the freedom of all activities undertaken and carried on with a view to earning profit and the safeguard is

provided in Art. 19(6) and Arts. 302-305. The proper approach to the task of construction of these provisions of our Constitution, it is urged, is to start with absolute freedom and then to permit the State to cut it down, if necessary, by restrictions which may even extend to total prohibition. (p 29) On this argument it will follow that criminal activities undertaken and carried on with a view to earning profit will be protected as fundamental rights until they are restricted by law. Thus, there will be a guaranteed right to carry on a business of hiring out goondas to commit assault or even murder, of housebreaking, of selling obscene pictures, of trafficking in women and so on until the law curbs or stops such activities. This appears to us to be completely unrealistic and incongruous. We have no doubt that there are certain activities which can under no circumstance be regarded as trade or business or commerce although the usual forms and instruments are employed therein. (p.29)*

The question arises whether our Constitution makers ever intended that gambling should be a fundamental right within the meaning of Art. 19(1)(g) or within the protected freedom declared by Art. 301. The avowed purpose of our Constitution is to create a welfare State. The directive principles of State policy set forth in Part IV of our Constitution enjoin upon the State the duty to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The question canvassed before us is whether the Constitution makers who set up such an ideal of a welfare State could possibly have intended to elevate betting and gambling on the level of country's trade or business or commerce and to guarantee to its citizens, the right to carry on the same. There can be only one answer to the question. (p 29)

It will be abundantly clear from the foregoing observations that the activities which have been condemned in this country from ancient times appear to have been equally discouraged and looked upon with disfavour in England, Scotland, the United States of America and in Australia in the cases referred to above. We find it difficult to accept the contention that those activities which encourage a spirit of reckless propensity for making easy gain by lot or chance, which lead to the loss of the hard earned money of the undiscerning and improvident common man and thereby lower his standard of living and drive him into a chronic state of indebtedness and eventually disrupt the peace and happiness of his humble home could possibly have been intended by our Constitution makers to be raised to the status of trade, commerce or intercourse and to be made the subject-matter of' a fundamental right guaranteed by Art. 19(1) (g). We find it difficult to persuade ourselves that gambling was ever intended to form any part of this ancient country's trade, commerce or intercourse to be declared as free under Art. 301. We are, however, clearly of opinion that whatever else may or may not be regarded as falling within the meaning of these words, gambling cannot certainly be taken as one of them. (p 32)

We are convinced and satisfied that the real purpose of Arts. 19(1) (g) and 301 could not possibly have been to guarantee or declare the freedom of gambling. Gambling activities from their very nature and in essence are extra-commercium although the external forms, formalities and instruments of trade may be employed and they are not protected either by Art. 19 (1) (g) or Art. 301 of our Constitution.

The Court of Appeal; we have already said, took the view that it was not open to the State, which had not thought fit to prohibit these prize competitions but had sought to make a profit out of them by levying a tax, to contend at the same time that it was illegal or was not a "trade" at all. But as pointed out in United States v. Kahrigar (1), the fact of issuing a license or imposing a tax means nothing except that the licensee shall be subject to no penalties under the law if he pays it. Lewis v. United States of America (2) also recognises that the Federal Government may tax what it also forbids and that nobody has a constitutional right to gamble but that if he elects to do, so, though it

be unlawful, he must pay the tax. In this connection reference may be made to the observation of Rowlatt J. in Mann v. Nash (3):

> *" The revenue authorities, representing the State, are merely looking at an accomplished fact. It is not condoning it or taking part in it.*

Further down he said:

" It is merely taxing the individual with reference to certain facts. It is not a partner or a sharer in the illegality."

That crime is not a business is also recognised in F. A. Lindsay, A. E. Woodward and W. Hiscox v. The Commissioners of Inland Revenue (4) (per Lord President Clyde and per Lord Sands) and in Southern (H. M. Inspector of Taxes) v. A. B. The fact that regulatory provisions have been enacted to control gambling by issuing licenses and by imposing taxes does not in any way alter the nature of gambling which is inherently vicious and pernicious.

We also arrive at the same result by applying the doctrine of 'pith and substance'." (p 32)

It may be observed that Hon. SC has not only considered certain forms of trade or commerce, opposed to public policy and morality, as 'extra commercium' and also discussed as to why the State has been permitted to impose a tax on the profits from such activities. Though this case and the discussions are with respect to activities of gambling, the observations can equally be imported to the activities of hawala and the money-laundering, which are equally heinous and are an outright crime, without any form of regulation by the Government. While Gambling is a regulated activity, the IT Act provisions outrightly prohibit procurement in 'Cash' above a prescribed limit.

f). On addition u/s 68, reliance is placed on the following authorities:

1. *In the matter of* ***Sudhir Kumar Sharma (HUF) V/s Commissioner of Income Tax- III, Ludhiana [2016] 69 taxmann.com 219 (SC)- 46 taxmann.com 340 (Punjab & Haryana),*** *in a similar case of assessment the Assessing Officer made an addition of entire amount of cash found credited in the books of the assessee amounting to Rs. 7.81 crores. On appeal Ld. CIT(A) partly allowed the appeal and sustained the addition on the basis of the peak deposits to the tune of Rs. 17,66,000/- thereby deleting the addition of Rs. 7.64 crores. On appeal by the assessee as well as by the department, Hon'ble Tribunal dismissed the appeals of the assessee and allowed the appeal of the Revenue.*

   Thereafter the matter came up for consideration of Hon'ble High Court of Punjab & Haryana which confirmed the additions made by the assessing officer and held as follows:

- *"A perusal of the findings recorded by the authorities below clearly spells out that admittedly, various amounts in cash were deposited in the bank account of the assessee and the onus was upon the assessee to explain the nature and source of the said cash deposits. The assertion of the assessee in this regard was that it was the amount received from his clients.*
- *However, the assessee failed to give the lists of persons along with confirmation in respect of the said cash credits nor any of the persons were produced for examination, who had advanced cash to him, before the Assessing Officer. The assessee also failed to bring on record any evidence to prove that it was the amount received from such persons who were his clients.*
- *The Assessing Officer had repeatedly provided opportunities to the assessee to produce the persons but they were not produced. The Tribunal had also noticed that in spite of opportunity having been provided to the assessee, in such circumstances, there was not justification to allow the assessee further opportunity to produce the persons. The parameters for leading additional evidence were not fulfilled.*

- *Further, the Tribunal had rightly held that there were cash deposits in the bank account and thereafter cheques were issued to different parties and in such circumstances, the theory of peak credit could not be accepted. Moreover, the assessee had not been able to show that there existed any nexus whereby the amount deposited in cash had been withdrawn in cash and thereafter redeposited to take benefit under peak credit theory. [Para 9]*
- *In view of the above, no substantial question of law arises. The assessee's appeal stands dismissed. [Para 11]"*

Hon'ble Supreme Court thereupon, ***Sudhir Kumar Sharma (HUF) V/s Commissioner of Income Tax-III, Ludhiana [2016] 69 taxmann.com 219 (SC),*** *dismissed SLP against High Court ruling that where assessee had failed to give list of persons who advanced cash to him along with their confirmation in respect of huge amount of cash deposited in his bank accounts, Assessing Officer was justified in adding said amount to assessee's taxable income.*

2. In the matter of ***Ravinder Kumar V/s Income Tax Officer [2020] 118 taxmann.com 166 (Delhi)*** *it has been held that where assessee had failed to produce any material to authenticate his contention that cash deposits in his account were on account of sales being made by him from Kirana business, tax authorities were justified in making addition of unexplained cash entries in bank account in hands of assessee.*

3. In the matter of ***Nemi Chand Kothari V/s CIT [2004] 136 Taxman 213 (Gauhati)/ [2003] 264 ITR 254 (Gauhati)/[2003] 185 CTR 635 (Gauhati)****, it has been observed that merely because a transaction takes place by cheque is not sufficient to discharge the burden. The assessee has to prove the identity of the creditors and genuineness of the transaction. "It cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. Once the assessee has proved the identity of his creditors the genuineness of the transactions which he had with his creditors, and the creditworthiness of his creditors I the transactions which he had with the creditors, his burden stands discharged and the burden then shifts to the revenue to show that though covered by cheques, the amounts in question, actually belonged to, or was owned by the assessee himself."*

4. Reliance is also placed on the decision of ***High Court of Bombay in the matter of Arunkumar J. Muchhala V/s Commissioner of Income Tax – 8 reported in [2017] 85 taxmann.com 306 (Bombay)*** *wherein it has been held that where assessee failed to produce relevant documents and confirmation in respect of loan taken from various parties, mere fact that he did not maintain proper books of account could not be accepted as a valid plea and, thus, amount in question was to added to assessee's taxable income under section 68.*

6. In ***Commissioner of Income Tax V/s DK Garg [2017] 84 taxmann.com 257 (Delhi)/[2017] 250 Taxman 104 (Delhi)/[2018] 404 ITR 757 (Delhi)/[2018] 300 CTR 510 (Delhi)*** *wherein it has been held that where assessee, an accommodation entry provider, was unable to explain all sources of deposits and corresponding payments, he would not entitled to benefit of peak credit.*

7. In ***Commissioner of Income Tax V/s Vijay Agricultural Industries [2007] 294 ITR 610 (Allahabad)*** *wherein in has been held that principle of peak credit is not applicable in case where deposits remain unexplained under section 68; it cannot apply in a case of different depositors where there has been no transaction of deposits and its repayment between a particular depositor and assessee.*

8. In ***Roshan Di Hatti V/s Commissioner of Income Tax [1992] 2 SCC 378, Hon'ble Supreme Court*** *has held that wherein it has been held that if the assessee fails to discharge the onus by producing cogent evidence and explanation, the assessing officer would be justified in making the additions back into the income of the assessee.*

In the light of above judicial interpretation and considering the fact that the assessee did not come forward to discharge the onus caused upon on him during the assessment proceedings and has till date not discharged the onus, Hon'ble Tribunal may restore the additions made by the Assessing Officer. This is supported by the above-mentioned judicial pronouncements and is put up for consideration for Hon'ble ITAT.

***Prayer and Summary of arguments**:*

1. *That deeming provisions of Sec. 68, S 69, S 69A- to S 69D are necessarily attracted whenever unexplained credits are found by the assessing officer and quarry is raised on the assessee. The assessee is thereafter liable to discharge the onus of explaining Identity, creditworthiness of depositor and genuineness of transaction. In the case of the assessee, such onus has not been satisfied, except for category B cases, reopened years AY 2010-11, 2011-12 and 2012-13, where, Ld assessing officer has added differential credits.*

2. *That even if the deeming provisions are not specified in the Assessment order, the additions of unexplained credits have to be made under the general principles of taxation. Reliance in this regard has been placed on the following authorities:*

    a. *Manoj Aggarwal (Spl Bench ITAT Delhi) (2008) 113 ITD 0377 (Del-Trib)*
    b. *Namdeo Arora (2016) 72 taxmann.com 124 (P&H)*
    c. *Shri Arif v ACIT (ITAT Bangalore) ITA No 976/Bang/2022*
    d. *Dr Prakash Tiwari vs CIT (1983) 14 taxman 252 (MP)*
    e. *Rajmeet Singh vs ITO, (2024) 160 taxmann.com 83 (Jharkhand)*

3. *That in addition to the deeming provisions, the Act requires taxation of profits from activities undertaken by the assessee, i.e. commission income.*

4. *That the activities of the assessee have been incorrectly considered as 'business' by Ld. CIT(A) as well as Ld. ITAT Rajkot. The activities undertaken by the assessee are **non-commercium activities**, in violation of the provisions of Income Tax Act whereby the assessee is aiding and abetting activities in violation of public policy, i.e. restriction on cash-purchases in business. The activities of assessee are akin to hawala, i.e. transporting "cash-as a commodity" while covering the details of "source" and "beneficiary"; and, money-laundering, ie. Layering illicit/unaccounted wealth by use of multiple bank accounts to give it a colour of legal-wealth. Reliance in this regard is placed on the decision and discussion by Hon'ble SC in the matter of State of Maharastra vs R.M.D. Chamarbaugwala, infra.*

5. *That peak-credit cannot be considered in any years in the hands of the assessee. For consideration of peak-credit, the assessee will have to own the entire transaction. This is not the case here. The assessee has been categorical in accepting that the third parties have been depositing cash in his bank account. Reliance in this regard is placed on the decision in **Bhaiyalal Shyam Behari V/s Commissioner of Income Tax [2005] 276 ITR 38 (Allahbad)/[2006] 202 CTR 515 (Allahabad)** wherein it has been held that for adjudicating upon plea of peak credit factual foundation has to be laid by assessee, who has to own all cash credit entries in books of accounts and only thereafter question of peak credit can be raised. Where amount of cash credits was standing in names of different persons which all along assessee had been claiming to be genuine deposit, withdrawal/payment of amount to different set of persons would not at all entitle assessee to claim benefit of peak credit.*

6. *It is also requested to consider commission income on money transaction of the assessee, as well as deeming income on S. 68 of the IT Act. S. 68 is being proposed because the assessee has been maintaining books of accounts in one form or another. Alternatively, assessee can be*

considered owner of cash-deposited in bank-accounts owned by the assessee under Sec. 69A, even under general provisions of taxation, as per relied upon authorities, supra.

Therefore, Ld. CIT-DR submitted that either the addition made by the AO should be sustained or the matter may be remitted back to the file of AO for fresh adjudication.

13. On the other hand, Ld. Counsel for the assessee taking the lead case in ITA No.45/RJT/2023 for AY 2012-13 argued that Department has accepted that assessee is an angadia. The Ld. Counsel took us through the paper book page-12, which is show cause notice issued by the Director General of GST Intelligence (DGGI) regional unit, in the said show cause notice, it was stated that assessee is providing business auxulary service and earned commission by way of shroff activities. Therefore, assessee is angadia and he used to gets Rs.300 on each transaction of Rs.1,00,000/- by way of shroff activities as commission. Therefore, assessee should be treated as commission agent. The Ld. Counsel also took us through paper book page 31 and stated that assessee adopted Vivad Se Viswas Scheme and the Department issued Form-1 which stated that assessee is an angadia. The Ld. Counsel also took us through paper book page-18 which is show cause notice of the DGGI and submitted that assessee was treated by them as angwadia/shroff business. Therefore, considering the facts of the case, assessee should be treated to be engaged in the angaria business. The Ld. Counsel also took us through the affidavit filed before the AO which is on page-34 of assessee's paper book and stated that assessee has submitted affidavit where he has stated that cash was deposited in various bank accounts and then after he has withdrawn cash deposit from his accounts and handed over to agents of such ceramic industry business. Therefore, assessee is a commission agent and such treatment is to be adopted in the hands of assessee. The Ld. Counsel also submitted that same facts are identical in ITA

No.46/RJT/2023 for AY 2013-14 and contended that assessee should be treated as commission agent and addition sustained by Ld. CIT(A) should be delated.

14. In rejoinder, Ld. CIT-DR argued that in case of ITA No.45 & 46/RJT/2023 Ld.PCIT has revised order u/s 263 of the Act and setting aside the assessment orders for de novo assessment and there are also, the AO has made entire addition. The Ld. CIT-DR also submitted that assessee has submitted on page-31, which is only a declaration under VSVS-Scheme wherein the assessee has agreed to pay tax under the VSVS Scheme and assessee has not paid any tax in VSVS Scheme. In addition to this, declaration accepted under the VSVS-Scheme is not the decision that assessee is a commission agent or a businessman i.e., VSVS- Scheme does not declare that assessee is a commission agent or he is doing business. The factual position has not identified by the authorities whether the assessee is a commission agent or a businessman. Therefore, just to adopt VSVS-Scheme only for one assessment year to demonstrate that in other assessment years also assessee should be treated as commission agent is nothing but to cheat the Revenue. However, the authorities of VSVS-Scheme did not declare that whether assessee is a commission agent or businessman. Therefore, just to adopt claim of one year of VSVS-Scheme wherein even no taxes have been paid, the assessee should not be treated as commission agent. The Ld. CIT-DR also submitted that show cause notice issued by DGGI which is placed at paper book 12 is only a show cause notice which does not determine whether assessee is angadia or businessman. The show cause notice does not give decision that assessee is a commission agent or businessman, it is a show cause notice issued to assessee to explain the situation. Even such show cause notice issued by the authority which are below the tax authorities. Therefore, such show cause notice cannot be used as evidence to determine whether assessee is a commission agent or businessman. The Ld. CIT-DR also submitted that assessee has not shown any income tax

return before the Bench. The assessee has been offered commission income as angadia also in the original return, however, again this is not a yardstick to determine that assessee is a commission agent or businessman. Just to show commission income in the income tax return *suo motu and* paid taxes thereon does not mean that assessee is a commission agent. The status of assessee is to be determined by his activities by examining transactions in the bank statements, books of account etc., that will be the true determining factor of the character of the assessee, whether assessee is an agent or the businessman. Therefore, none of the character has been satisfied by the assessee that he is a commission agent. Under the circumstances, assessee is owner of all the transactions which were shown in the bank accounts. Therefore, assessee should not be treated as commission agent and addition made by AO @ 100% should be sustained.

15. We have heard both the parties and perused materials available on record. We find that the AO passed assessment order in hurry wherein the AO did not get opportunity to issue notices u/s 133(6)/131 of the Act because all the assessments have been carried out in a haste manner. During assessment proceedings, when the AO issued notices to the assessee calling for details and documents then the assessee has submitted his reply at the fag-end of 11.03.2014 and assessment was framed after 12 days on 24.03.2014,Vide ITA No.171/RJT/2015 for AY 2006-07. Similarly, vide, assessee's appeals IT(SS)A Nos. 01-06/RJT/2018 for AYs 2007-08 to 2012-13 in all appeals, notices were issued by the AO calling for details and documents on 03.03.2015, however, the assessment orders were framed only after 9 days i.e., 12.03.2015. Therefore, it established that the assessment orders have been passed in hurried manner and therefore, the AO could not conduct necessary inquiries, which is against the principles of natural justice. Similarly, in ITA No.49/RJT/2023 AY 2013-14 assessee has submitted the details at the fag-end i.e., at the time when

assessment order was framed on 03.03.2015 and AO passed assessment order after 9 days on 12.03.2015. In case of ITA No.46/RJT/2023 AY 2013-14, notices were issued on 23.12.2019 and 21.12.2019, however, assessment order was framed on 30.12.2019.

16. Similarly, in ITA No.44/RJT/2023 AY 2006-07 which relates to penalty u/s 271(1)(c) of the Act. Since we are remitting back entire quantum proceedings to the file of AO for fresh adjudication, therefore penalty proceedings is also remitted back to the file of AO for fresh initiation of penalty, if any, as per the quantum proceedings.

17. In case of ITA Nos.45-46/RJT/2023 AO issued notices on 03.12.2019 and assessment order framed on 30.12.2019, it means that assessee has not filed any details and documents. Thereafter AO has asked the assessee that he should provide list of beneficiaries whose cash were deposited in the bank accounts and AO also requested the assessee to provide name and address of his customers whose money was deposited in his bank accounts. The assessee has failed to provide name and address of his customers, even a single name of customer has not been provided before AO, whose cash was deposited in his bank account. Therefore, all these appeals are remitted back to the file of AO with a direction to the assessee to provide list of beneficiaries to the AO and also provide the names and address of his customers for whom cash were deposited in bank account and later withdrawn by assessee and given to his customers. This basic information has not been provided by the assessee to the AO during assessment proceedings. Therefore, we are remitting all these appeals back to the file of AO with a direction to assessee to furnish list of beneficiaries and to furnish names and address of customers.

18. We note that facts of the assessee's case is similar in the case of Karim K Makhani vide IT(SS)A Nos. 103-108/RJT/2017 and IT(SS)A No.125-130/RJT/2017 (supra) wherein the entire issue was remitted back to the file of

AO for fresh examination of the nature of assessee's business, the findings in the case of Kari K. Makhani (supra) are reproduced below:

> *"**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****."*

19. Respectfully following the bindings judgments of this Tribunal in the case of Karim K. Makhani (supra), we restore the appeals of assessee and appeals of Revenue in case of Shri Bharatkumr I Bhatiya to the file of AO for fresh adjudication in accordance with law.

20. In the result, ITA Nos.44-46/RJT/2023, IT(SS)A No.01-06/RJT/2018 (assessee's appeals) and IT(SS)A Nos.32-37/RJT/2018 and ITA 49/RJT/2018 (Revenue's appeals) are treated as allowed for statistical purposes.

21. Now we shall take the appeals in the case of Shri Damjibhai Lekhrajbhai Thavrani, vide to ITA No.31-33/RJT/2019 (Revenue appeals) and Cos No.02-04/RJT/2019. For adjudication retreat, lead case in ITA No.31 of revenue`s appeal. Grounds of appeal raised by Revenue in lead case in ITA No.31/RJT/2019 are as follows:

"1. On the facts and circumstances of the case and in law, the learned CIT(A)-1, Rajkot has erred in quashing the assessment order to be without the jurisdiction without appreciating the provisions of section 124(3)(b) of the I.T. Act, 1961 in terms of which jurisdiction of an Assessing Officer cannot be called in question by on assessee after expiry of one month from date on which he was served with a notice for reopening assessment under section 148 of the I.T Act.

2. Thee learned CIT(A)-1 has erred in law in quashing the assessment order without following the order of Hon'ble High Cout of Delhi in the case of Shri Abhishek Jain vs. ITO Ward 55(1), New Delhi (2018) 94 txmann.com 355 (Del)

3. On the facts and in the circumstances of the case and in law, the learned CIT(A) ought to have upheld the order of the Assessing Officer.

4. It is therefore, prayed that the order of the CIT(A) be set aside and that of the AO be restored to the above extent.

5. Any other ground that the Revenue may raise before or during the proceedings before the Hon'ble ITAT."

22. The assessee has raised following grounds in CO No.2/RJT/2019 for AY 2009-10, which are as follows:

"1. The re-assessment order u/s 143(3) r.w.s. 147 of the Act is bad in law.

2. The learned CIT(A) has erred in law as well as on facts in not annulling the reassessment on the ground that the reopening was mechanical and without independent application of mind.

3. The learned CIT(A) has erred in law as well as on facts in not annulling the reassessment on the ground that the approval granted for reopening by the superior authority u/s 151 of the Act is mechanical and non-speaking.

4. The learned Assessing Officer has erred in law a well as on facts in making the addition of Rs.34,60,61,000/- on account of alleged unexplained cash deposits. The learned CIT(A) has erred in law as well as on facts in not deleting the impugned addition on merits.

5. The learned Assessing Officer has erred in law as well as on facts in making the addition of Rs.2,00,000/- on account of alleged unaccounted income. The learned CIT(A) has erred in law as well as on facts in not deleting the impugned addition on merits.

6. The learned Assessing Officer has erred in law as well as on facts in not accepting the stand of the appellant that he was a mere commission agent and the entire amount credited in his bank accounts did not belong to him. The learned CIT(A) has erred in law as well as in facts in not adjudicating the same."

23. Brief facts *qua* the issue are that assessee's case was reopened u/s. 147 of the Act, after recording reasons for reopening. As per the information in the possession of the AO, the assessee has deposited cash in aggregate of Rs.34,60,61,000/- in the bank accounts with ICICI Bank, Main Branch, Rajkot having A/c. Nos. (1) 084805000051, (2) 84805000052, (3) 84805000091 & (4)015305009196 and ICICI Yagnik Road Branch, Rajkot having A/c. No. 084801500013. In these accounts frequent cash deposit from the different part of the country followed by immediate transfer or cash withdrawal was observed. In absence of reply/clarification from the assessee, the deposit of cash remained unexplained. Therefore, the proceedings u/s 147 of the Act were initiated with prior approval of the Pr. CIT-I Rajkot and notice u/s.148 was issued on 31/03/2016 requiring the assessee to file the return of income for the assessment year under consideration. Therefore, inspector was deputed to serve the notice, who had served the notice by affixture on 03.07.2016 at last known address as per the record.

24. The assessee did not respond to the notice issued u/s. 148 of the Act. The assessee did not care to file return of income and to attend the office of AO or furnish required details. This shows non-cooperative nature of the assessee. Therefore, penalty proceedings u/s. 271(1)(b) of the Act are initiated separately for non-attendance/non-compliance to the statutory notices issued by the AO. However, keeping in view the principles of natural justice, a final show cause notice dated 17.11.2016 was issued and inspector of this ward was deputed to serve the notice, in spite of his best efforts the assessee could not be located, therefore the inspector had served the notice by affixture at the last known address of the assessee, fixing hearing on 22.11.2016. Vide show cause notice dated 17-11-2016, the assessee was requested to explain the nature of transactions undertaken and source of cash deposit aggregating to Rs.34,60,61,000/- in his bank account Nos. (1) 084805000051, (2) 84805000052, (3) 84805000091 (4) 015305009196 (5) 084801500013 maintained with ICICI Bank Rajkot.

25. Since the assessee has not submitted any reply before AO, during the assessment proceedings. In the circumstances, the AO has left with no option but to proceed to finalise the assessment as per provisions of Section 144 of the Act on the basis of material available on record and to the best of AO's judgment. For the reasons discussed in show cause notice referred to above, the AO proceeded to assess the income of the assessee u/s. 144 of the Act.

26. On verification of record and the details gathered u/s. 133(6) of the Act from the ICICI Bank Rajkot, it was noticed by the AO that the assessee had deposited cash in aggregate of Rs.34,60,61,000/- into the above referred bank accounts. Keeping in view the above factual position, non co-operative attitude of the assessee and in absence of any return of income or explanation, it was held by the AO that the assessee has failed to explain the source of cash deposits. In the circumstances, the total cash deposits of Rs.34,60,61,000/- was

treated as unexplained cash deposits made out of undisclosed sources of income and the same was added back to the total income of the assessee.

27. On verification of the records, it was noticed by the AO that the assessee in his statement dated 27.04.2010 recorded on oath u/s. 131(1A) of the Act by the ADIT (Inv.)-1, Rajkot accepted the unaccounted income of Rs.2,00,000/- for the year under consideration. Therefore, the same was also added to the total income of the assessee.

28. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A) who has deleted the addition made by the AO observing as follows:

> *7.* ***Decision****:*
>
> ***The Grounds of appeal no. 1 & 2****:- In these grounds validity of re-opening and re-assessment has been assailed.*
>
> *The relevant brief facts of the case are that, in the case of assessee a report was forwarded to ACIT Central Circle-1, Rajkot by ADIT (Inv), Rajkot on 14/03/2016 vide letter no. ADIT (Inv) Raj/BIHK/2015-16/4564/314 regarding unexplained cash deposit in bank accounts of the assessee. This report was forwarded by ACIT, Central Circle-1, Rajkot to ITO, Ward-1(2)(4), Rajkot. vide No. ACIT/CC-1/RJT/Case Records/DLT/2015-16/411 letter dated 23/02/2016 stating that jurisdiction over the case lay with him. The ITO, Ward-1(2)(4), Rajkot issued notices u/s 148 on 31/03/2016 and completed the assessment u/s 144 on 26/12/2016 making impugned addition in view of the non-compliance of assessee. The assessee has challenged validity of these orders contending that the correct jurisdiction over the case lay with ACIT, Central Circle-1, Rajkot and not with ITO, Ward-1(2)(4), Rajkot.*
>
> *The assessee in his written submission has contended that as per the information gathered by him the appellant has come to know that case of assessee was centralized with ACIT, Central Circle-1 by order section 127 in 2013 and there is no information with the assessee about decentralization of the case from ACIT, Central Circle-1, Rajkot. The assessee has contended that notice u/s 148 was issued by ACIT, Central Circle-1, Rajkot for AY 10-11 on 29/03/2017 i.e. after passing of Impugned assessments by ITO, Ward-1(2) (4), Rajkot. From this it is apparent that the correct jurisdiction over the case lay with the ACIT, Central Circle-1, Rajkot and therefore the issuance of notice u/s 148 by ITO, Ward-1(2) (4), Rajkot and consequent assessment by him was without jurisdiction. In this regard the assessee has relied upon various case laws cited in para 8 of his written submission which has been extracted (supra). With these arguments and relying on decisions of the High Court and the ITAT cited by assessee it has been contended that the notice issued by the*

Assessing Officer having no jurisdiction over the case is invalid. And this defect is not curable even by section 292B. It is also contended that since the earlier assessment was ex-party assessment assessee did not get opportunity to challenge the jurisdiction before the Assessing Officer.

On these submissions of assessee remand report was sought by my predecessor CIT(A)-1, Rajkot vide his letter dated 26/04/2017 asking for his comments as to the contentions of the assessee challenging jurisdiction. Remand report was received from ITO, Ward-1(2)(4), Rajkot on 25/07/2017 through the Additional CIT Range -1(2), Rajkot vide his letter dated 24/07/2017 wherein in para 3 it has been mentioned that the report of ADIT(inv) Rajkot sent to ACIT, Central Circle-1, Rajkot was forwarded to ITO, Ward-1(2), Rajkot stating that jurisdiction over the case lay with the latter. However no specific comments was given by the Assessing Officer as to the correct jurisdiction over the case. Consequently my predecessor CIT(A)-1, Rajkot vide his letter dated 28/07/2017 again sought comments of the Assessing Officer specific to the issue of jurisdiction. The Assessing Officer vide his report dated 02/08/2017 which was received by this office on 08/08/2017 through Additional CIT Range-1(2), Rajkot has reported that the by virtue of section 124(3)(a) of the Income Tax Act and the decision of Honable Delhi High Court in the case of Mega Corporation Limited ITA. No. 128 of 2016 dated 23/02/2017, the assessee was not entitled to question to jurisdiction of the Assessing Officer after expiry of 1 month from the date on which he was served with notice u/s 142(1) or 143(2) or 115(WE) (2) or after completion of the assessment, whichever is earlier. The Assessing Officer with these contentions submitted that the objections raised by the appellant regarding jurisdiction be not considered.

It is thus seen that the Assessing Officer has not categorically denied the factual contentions of the assessee that correct jurisdiction over the case letter with the ACIT, Central Circle-1, Rajkot.

The assessee in his re-joinder has contended that the provisions of 124(3)(a) and the decisions of Delhi High Court in the case of Mega Corporations cannot apply to this case because in the case of assessee due to change of address notice were not received by assessee and the assessment was completed in ex-parte manner and therefore the appellant had no effective opportunity to challenge the jurisdiction within the time envisaged under section 124(3). It is contended that the facts of the case being distinguishable from that of Mega Corporation (supra), the same is not applicable in this case.

Having ascertained from the Assessing Officer and the ACIT, Central Circle-1, Rajkot, it is found that the case of assessee was centralized to ACIT, Central Circle-1, Rajkot by order u/s 127 in the year 2013 and subsequently the case had been decentralized to ITO, Ward-1(2)(4), Rajkot vide order u/s 127 on 12/06/2017 (i.e. after completion of impugned assessments) For ready reference the PAN transfer history of the case is given by AO in the assessment order.

Thus, apparently the notice issued u/s 148 by ITO, Ward-1(2) (4), Rajkot prior to decentralization and the consequent assessment order dated 26/12/2016 was beyond his jurisdiction.

I find that the ITAT Delhi in the case of ITO v/s Indus Valley Investment and Finance Private Limited (supra) had dealt with the validity of re-assessment completed by correct jurisdiction on basis of notice u/s 148 issued by ITO, who had no jurisdiction over that case and held that:-

"It is well-settled that if a notice under section 148 of the Act has been issued without the jurisdictional foundation u/s 147 of the act being available to the AO, the notice and the subsequent proceedings will be without jurisdiction and thus, liable to be struck down. In view of the foregoing, we have no hesitation in upholding the findings of the Ld. CIT(A), quashing the re-assessment order. Consequently, ground no. 1 in the appeal is dismissed."

In view of the above facts and circumstances of the case and judicial rulings, I have no hesitation in holding that the present re-assessment proceedings are invalid as the ITO, Ward-1(2) (4) had no jurisdiction over the case at the time of issuance of notice u/s 148 as well as completion of assessment. The impugned assessments are therefore quashed. Since the assessment stands quashed, ground of appeal challenging merits of impugned addition does not require adjudication.

*8. In the result, the appeal is **allowed**."*

29. Further aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before us and assessee has filed CO before us.

30. The Ld. CIT-DR for the Revenue submitted that since the assessee engaged in angadia business and status of assessee had not been determined with cogent evidence and the relief given to assessee by Ld. CIT(A) is factually wrong as assessee engaged in illegal business and moreover the assessment order was framed u/s 144 of the Act. The re-assessment proceedings were valid. The AO did not get proper opportunity to verify the facts of the assessee's case although Ld. CIT(A) has called for remand report but this remand report is not clear on the jurisdictional issue and remand report did not speak about nature of assessee's business. Hence, this issue may also be remitted back to the file of AO for fresh adjudication. In this regard, Ld.CIT-DR relied on the submission made in the facts of Karim K. Makhani (supra). The Ld. CIT-DR also submitted a brief written submission, which are reproduced below:

2. The submission filed by Ld.AR cannot be considered for the following reasons.

1) The notice was validly served by affixure as per the provision of the I.T.Act. as well as Civil Procedure Code.

2) AO has done his duty as Quasi- Judicial authority and validly served the notice at the given address of the assessee.

3) The assessee has not received notice cannot be a ground because AO has discharged his legal onus of service of Notice.

4) None of the case laws relied upon by the assessee are relevant because they are not an section 124 of the I.T.Act. Whereas the decision of High court of Delhi in the case of Abhishek Jain Vs. ITO ward- 55(1), New Delhi is directly applicable to the facts of the case where it was held that ***"In terms of Section 124(3)(b) Jurisdiction of an Assessing Officer cannot be called in question by an assessee after expiry of one month from the date on which he was served with a notice for reopening assessment under section 148."***

3. In view of the above order of AO may be confirmed."

31. The ld. DR also submitted written submission dated 4th June 2025, which is reproduced below:

"Rejoinder to the submissions of Ld. CIT-DR dated 04.06.2025:

(1) Though assessee has received notice through affixture, doctrine of "Lex non Cogit Ad impossibilia" would apply.
(2) The judgment quoted in the submissions dated 04.06.2025 discussed the principle that law does not compel a man to do anything vain or impossible or to do something which he cannot possibly perform. It does not require that it should be specific for section 124(3).
(3) The judgment of Delhi High Court in case of Abhishek Jain relied on by the Department is distinguishable on two aspects which was discussed in first hearing.
(i) The High Court has observed that there was intentional and malevolent response in objecting late to the notice which in not in present case.
(ii) The High Court has also observed that other AO ha also concurrent jurisdiction which is not in present case.
Therefore, it would not apply."

32. On the other hand, Ld. Counsel for the assessee submitted that during appellate proceedings Ld.CIT(A) called for remand report and thereafter reached on the right conclusion. Therefore, the order passed by Ld. CIT(A) should be upheld. The Ld. Counsel submitted written submission, which are reproduced below:

"The doctrine of "Lex non Cogit Ad impossibilia":

In present case the "assessee" has not received notice. The notice has been served by the AO by Affixure. Under the situation, it is not possible for assessee to respond or take objection regarding jurisdictional officer within 30 days of receipt of the notice as required under section 124(3) of the Act. Law cannot compel the assessee to do something which he cannot possibly perform.

The doctrine of "Lex non Cogit Ad impossibilia" is of the Latin origin. It means the law does not compel a man to do anything vain or impossible or to do something which he cannot possibly perform. In Hughey v. JMS Development Justice Owens of the United States Court of Appeals used these words- "Lex Non cogit ad impossibilia: The law does not compel the doing of impossibilities.

***The Delhi High Court in the case of Arise India Ltd. V. Commissioner of Trade and Taxes [TS-314-HC-2017(Del)-VAT]**, has held that in the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Therefore, there was need to restrict the denial of ITC only to the selling dealers who had failed to deposit the tax collected by them and not to punish bona fide purchasing dealers. The latter cannot be expected to do the impossible. It is trite that a law that is not capable of honest compliance will fail in achieving its objective. If it seeks to visit disobedience with disproportionate consequences to a bona fide purchasing dealer, it will become vulnerable to invalidation on the touchstone of Article 14 of the Constitution.*

***The larger Bench in case of Lucas TVS Ltd., V. Commissioner of Central Excise, Chennai - 2009-TMI -32247- CESTAT CHENNAI** held that the doctrine cannot be invoked by any person who himself failed to do the possible, to do that the law required him to. The defense might be available to an assessee in procedural matters. It cannot be taken against the substantive provisions of a taxing statute providing for compulsory levy.*

***In case of Commissioner of Income Tax vs. Premkumar reported in 2008 (2014) CTR 452 (All) the Hon'ble Allahabad High Court** while dealing with the question whether an assessee can be faulted for not declaring the amount of capital gain on acquisition of land when the amount of compensation itself is not determined held that requiring the assessee to file a proper and complete return by including the income under the head 'Capital gain' would be impossible for the assessee in such cases.*

***A larger bench of the Tribunal in case of Hico Enterprise vs. Commissioner of Customs reported in 2005 (189) ELT (Tri.LB)** following the maxim Lex non Cogit Ad impossibilia held that the transferee of a quantity based license issued by the Licensing authority under the scheme of exemption notification no.204/92-Custom, cannot be denied the benefit of this exemption, if subsequently it is found that the original license holder (transferor) had obtained the license by fraud and misrepresentation and the condition of notification that in respect of the goods exported in discharge of the export obligation, Cenvat Credit had not been availed, had not been fulfilled, as the condition which is required to be fulfilled by the transferor cannot be expected to be fulfilled by the transferee.*

***Hon'ble Madras High Court in the case of CIT V. Revathi Equipment Ltd. (2008) 298 ITR 67 (Mad)**While dealing with question as to whether an assessee can be held liable to pay interest for failure to pay advance tax during the year when the liability*

to pay tax had arisen on account of amendment to law which took place after the end of the year, it is held that the assessee was not liable to pay advance tax and therefore levy of interest under sections 2348 and 234C is not justified.

In the case of Escorts Ltd. v. CIT [2002] 257 ITR 468, Hon'ble Delhi High Court *was concerned with claim of an assessee for grant of refund under section 244 of the Act, which was denied to an assessee by the revenue on the ground that the assessee himself was responsible for delay of refund, and therefore cannot claim the amount of interest. While considering the rights of the assessee to claim interest, the Hon'ble Delhi High Court held that if the Assessing Officer could not perform his duties to complete the order of assessment in the absence of any evidence furnished by the assessee, the Department cannot be blamed therefore. A law cannot be interpreted in vacuum. It has to be interpreted having regard to the facts and circumstances involved in each case."*

33. In case of CO No.2/RJT/2019, Ld. Counsel for the assessee stated that assessee has challenged the jurisdictional issue and conclusion reached by Ld. CIT(A) in this regard is correct.

34. On the other hand, Ld. CIT-DR for the Revenue stated that the jurisdictional issue in case by assessee is factually wrong and the assessment record clearly show that assessment order has been framed by applying the proper rules and regulation and by making the compliance of relevant Act and it was passed by the correct Assessing Officer. The Ld. CIT-DR submitted brief written submission which are reproduced below:

"2. The submission filed by Ld.AR cannot be considered for the following reasons.

1) The notice was validly served by affixure as per the provision of the I.T.Act. as well as Civil Procedure Code.

2) AO has done his duty as Quasi- Judicial authority and validly served the notice at the given address of the assessee.

3) The assessee has not received notice cannot be a ground because AO has discharged his legal onus of service of Notice.

4) None of the case laws relied upon by the assessee are relevant because they are not an section 124 of the I.T.Act. Whereas the decision of High court of Delhi in the case of Abhishek Jain Vs. ITO ward- 55(1), New Delhi is directly applicable to the facts of the case where it was held that ***"In terms of Section 124(3)(b) Jurisdiction of an Assessing Officer cannot be called in question by an assessee after expiry of one month from the date on which he was served with a notice for reopening assessment under section 148."***

3. In view of the above order of AO may be ***confirmed****."*

35. We have heard both the parties and perused the materials available on record. We find merits in the submission stated by Ld. CIT-DR and noted that there is no jurisdictional error in terms of section 124(3)(b) of the Act.

36. So far as merit is concerned, we remit this issue back to the file of AO for fresh examination as per the decision of this Tribunal in the case of Karim K. Makhani (supra). The assessment order is *ex parte* order and assessee has not submitted the name and address of the customers and name and address of the beneficiaries. Therefore, we restore the appeals of Revenue to the file of AO for fresh adjudication. As we have already remitted the appeals of Revenue to the file of AO, hence, Cos filed by the assessee have become infructuous and thus dismissed.

37. In the result, Revenue's appeals ITA Nos. 31-33/RJT/2019 are treated as allowed for statistical purposes, whereas assessee's CO Nos.02-04/2019 are dismissed as infructuous.

38. Now, we shall take the Revenue's appeals in ITA Nos.134-135/RJT/2023 for AYs 2007-08 and 2008-09 which pertain to Shri Khrajmal Lekhrajbhai Thavrani, wherein we have taken lead case in ITA No.134/RJT/2023 for AY 2007-08. The Revenue has raised following grounds of appeal, in lead case, in ITA No.134/RJT/2023 for AY 2007-08:

> *"1. The Ld.CIT(A) has erred in law and/or on facts in deleting addition of Rs.26,16,83,883/- on account of income from undisclosed sources overlooking the facts that the assessee has failed to discharge his onus.*
>
> *2. The Ld. CIT(A) has erred in law and/or on facts in directing the learned AO to compute the commission income @ 200/- per every lakh of cash deposited in the bank account."*

39. The assessee has raised following grounds in CO No.01/RJT/2023, which are reproduced below:

> *"1. The ld. CIT(A) has erred in law as well as on facts in upholding the reopening.*

2. The ld. CIT(A) has erred in law as well as facts in estimating the gross commission income @ Rs.200/- per lakh as against Rs.100/- per lakh and thereby determining the total income at Rs.6,03,370/- without granting the benefit of expenses. The ld. CIT(A) ought to have estimated the net profit from the gross commission income."

40. Brief facts *qua* the issues are that assessee had not filed return of income for the assessment year under consideration. As per the information the assessee had deposited cash aggregating to Rs.6,00,02,030/- in his bank account No.624805011209 and cash aggregating to Rs.19,16,81,853/- in his bank account No.624805011259 maintained with ICICI Bank limited, Rajkot during the Financial Year 2006-07. As the assessee did not file his return of income for the year under consideration, the source of above cash deposits remain unexplained. Therefore the proceedings u/s. 147 of the I.T. Act was initiated. A notice u/s 148 was issued to the assessee on 13.03.2014 after recording the reasons for reopening and with the prior approval of the Addl. CIT. Range-1. Rajkot. The notice was served upon the assessee by affixture. In response to the notice u/s. 148 of the Act, the assessee has not filed return of income nor submitted any reply fill date.

41. The Commissioner of Income tax-1. Rajkot has assigned the case vide order u/s 120(4)(b) of the Act dated 03.02.2015. The case is received from the ITO. ward 1(2) (4). Rajkot on 04.02.2015. The notice u/s. 142(1) of the I.T. Act was issued on 06.02.2015 due to change of incumbent and duly served upon the assessee by RPAD. The final notice was issued on 10.03.2015 and served upon the assessee upon the assessee on 12.03.2015. The details of the notices issued are as under:-

Notice u/s.	Issued on
148	13.03.2014
142(1)	30.12.2014
142(1)	06.02.2014
Show cause	10.03.2015

Since the assessee has not responded to any of the notices issued so far, the department does not have any option but to finalise the assessment to the best of judgment of the Assessing Officer on the basis of material available on record.

42. The AO noticed that as per the Information available with the department, the assessee deposited cash aggregating to Rs.6,00,02,030/- in his bank account No.624805011209 and cash aggregating to Rs.19,16,81,853/- in his bank account No.624805011259 maintained with ICICI Bank limited, Rajkot during the financial year 2006-07 relevant to A.Y. 2007-08 on different dates. The assessee was requested to show cause as to why the aggregated cash deposited aggregating to Rs.6,00,02,030/- in bank account No.624805011209 and cash aggregating to Rs.19,16,81,853/- in bank account No.624805011259 maintained with ICICI Bank limited, Rajkot should not be treated as income from undisclosed sources. The assessee neither replied nor produced any evidence to explain the source of these cash deposits. Therefore, the source of aggregated cash of deposited of Rs.6,00,02,030/- in his bank account No.624805011209 and cash aggregating to Rs.19,16,81,853/- in his bank account No.624805011259 maintained with ICICI Bank limited, Rajkot during the F.Y. 2006-07 remained unexplained. In absence of details, the source of cash deposits cannot be proved. The onus to prove the source of cash deposited by the assessee in his bank A/c lies upon the assessee. By not producing any details, the assessee has failed to discharge primary onus. As per section 68 of the Act, where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source there of or the explanation offered by him is not in the opinion of the A.O. satisfactory the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. Since the assessee has not furnished any details with regard to aforesaid cash deposits, the same is treated as unexplained cash credit u/s.68 of the Act. Accordingly, an addition of

Rs.25,16,83,883/-(Rs.6,00,02,030/-+Rs.19,16,81,853/-) was made by AO to the total income of the assessee u/s.68 of the

43. Aggrieved by the order of the Assessing Officer the assessee carried the matter in appeal before the Ld. CIT(A) who has partly allowed the appeal of the assessee observing as under:

> *5.5 I have carefully gone through the assessment order, submissions of the appellant, remand report and the rejoinder filed by the appellant. It is fact that the DGCEI conducted searches in number of tile manufacturers of Morbi, Gujarat and unearthed clandestine sale of tiles by the manufacturers and collecting the sale proceeds through the third parties, shroffs. The appellant was reported to be one of such shroffs. The A.O. reopened the case on the basis of information received from the DGCEI. Modus operandi was that various customers of ceramic manufacturers of Morbi deposited the cash in the bank accounts of the appellant and in turn the appellant obtained cash in lieu thereof and handed over such cash to the various ceramic manufacturers of the Morbi and the appellant was given commission for such transactions. Despite this being the fact which is evident from the DGCEI report/show cause notice, the AO ignored the actual role of the appellant and added the entire cash found deposited in his bank account. The AO failed take notice of the withdrawals from the bank account which corroborates with the credits and the role of a shroff in the clandestine sales of the manufacturers. The AO in his remand report has accepted that "in view of the above SCN of DGCEI, the stand of the assessee that he was a commission agent primarily finds some support". It appears that despite the fact that the appellant was working for a commission by lending his bank account, the A.O. added the entire cash deposited in the bank account of the appellant in the assessments u/s. 144 of the Act. When the AO is making a best judgment assessment, he is suppose to consider all the facts and materials on record and take a judicious and reasonable decision after application of mind instead of adding the entire transaction value as income particularly in the face of other facts.*
>
> *5.6 Gamut of transactions make it clear cash deposited in the appellant's bank accounts maintained with the ICICI Bank Ltd belonged to various ceramic manufacturers of Morbi and the appellant was earning only a commission as a shroff. The purchasers of goods from across the country consideration in appellant's mentioned bank account and the appellant had given cash back to the ceramic manufacturers of Morbi and thereby earned commission. This is also supported by the show-cause notice in case of various ceramic manufacturers of Morbi on the record issued by the Directorate General of Central Excise Intelligence (DGCEI).*
>
> *5.7 It appears that the Remand report of the AO is contradictory with the facts and findings reported. The basis of the reopening of the case of the appellant is the show-cause notice issued by the DGCEI, based on which the additions were also made by the department in the hands of ceramic manufacturers, which states that the appellant was a Shroff working for such ceramic manufacturers for a commission. Therefore the*

report of the A.O. that the DGCEI show-cause notice was 'not conclusive' is not correct. Department cannot believe certain portions of the show cause notice of DGCEI as true and ignore other collateral facts as not correct. The AO in his report stated that the appellant failed to give independent evidence. Assessments in the case of manufacturers and shroffs started with the search and show cause notice of DGCEI collected by the department. Bank account collected by the department matched with the report of the DGCEI. Appellant's explanation of he being a shroff, modus operandi is matching with the transaction in the bank account of the appellant and the ceramic manufacturers have also admitted the earning of undisclosed profits through the medium of Shroffs like the appellant. I am at loss to understand as to what other independence evidence the AO was looking for.

5.8 The AO in his remand report has stated that in the DGCEI show cause notice, some shroffs have deposed that they were earning commission of Rs.100/- per lakh but he opined that the rate of Rs.100/- per lakh of sale consideration collected from clandestine sales appears to be very low and the same is not believable. Here, the indirectly accepted that the appellant was working as a shroff and the commission at 1Rs100 per lakh of rupees is very low. It is not the case of the AO that the DGCEI in their report/SCN have not accepted the statements of shroffs regarding the commission earned by these middle men. It appears that assessment of some shroffs have also been completed, but neither the AO nor the appellant have brought any such order on record for the benefit of the undersigned to peruse such assessment orders or appeal orders. I have independently examined the issue at hand. It transpires from the record that appellant is a semi-literate man lending his bank account for a commission from the ceramic tile manufacturers of Morbi for their clandestine sales. The business of the appellant was actually run by his father who had expired when the assessment proceedings were in progress with the A.O. It also appears that due to financial conditions, the appellant could not avail the services of any professional and he himself appeared in the assessment proceedings before the A.O. Considering the facts of the case, I am inclined to accept the fact that the appellant was a shroff who lent his bank account for earning a commission from the tile manufacturers in their clandestine sales, which is unearthed by the searches conducted by the DGCEI. Relying on decisions of the CIT(A) in some of the cases in which the issues was of cash deposits in the bank accounts in case of shroffs, the appellant pleaded that the peak balance may be taxed. However, this alternate plea cannot be accepted as the appellant has not worked out any peak either before the AO during the assessment or remand proceedings or during the appeal proceedings. Therefore, I direct the AO to estimate the commission earned by the appellant as a shroff at the rate of Rs.200/ per every lakh of cash deposit made in his bank account by the clandestine customers of the tile manufacturers. For the year under consideration total cash deposits in the bank account of the appellant are Rs. 25,16,83,883/- and the commission for the year works out to Rs.5,03,366 (2516.83x200). The AO is directed to assess the commission income from the cash deposits at Rs.5,03,370/-.

5.9 Further, there is a mistake in the computation of total income in the assessment order., The AO has taken basic exemption of Rs.1,00,000/- and added

Rs.25,16,83,880/- to it to arrive at Rs.26,16,83,680/- which is arithmetically wrong. Rs.1,00,000/- is considered as one crore by the AO by mistake. Therefore the total income to be assessed is Rs.6,03,370/- (1,00,000+ 5,03,370). Appellant gets relief. Ground number 3 of appeal is ***partly allowed****.*

44. Aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before us and assessee has filed its CO. before us.

45. The Ld. CIT-DR for the Revenue submitted that since the assessee engaged in angadia business and status of assessee had not been determined with cogent evidence and the relief given to assessee by Ld. CIT(A) is factually wrong as assessee engaged in illegal business and moreover the assessment order was framed u/s 144 of the Act hence, assessee did not file any evidence. Therefore, AO did not get proper opportunity to verify the facts of the assessee's case although Ld. CIT(A) has called for remand report but his remand report is not clear. That is, the assessment order and remand report did not speak about nature of assessee's business. Hence, this issue may also be remitted back to the file of AO for fresh adjudication. In this regard, Ld.CIT-DR relied on the submission made in the facts of Karim K. Makhani (supra). The Ld. CIT-DR submitted brief written submission which are reproduced below:

"Kindly refer to the above.

2.With regard to the additions made, it is submitted that the legal submissions, as per the issues applicable, submitted in the matter of Shri Karim K.Makhani A. 2007-08 & 2008-09 is relied upon in the above case.

3. Prayer: It is an accepted legal position that business income as well as deeming additions can be made in the case of unexplained credit entries. As such Ld. AO's action in applying section 68 on unexplained cash credits is the correct position of law. It is requested to sustain the unexplained cash credits u/s 68 of the IT Act and dismiss the appeal of the assessee while confirming the appeal of the Department."

46. On the other hand, Ld. Counsel for the assessee submitted that during appellate proceedings Ld.CIT(A) called for remand report and thereafter reached on the right conclusion. Therefore, the order passed by Ld. CIT(A) should be upheld.

47. In case of CO No.1/RJT/2023, Ld. Counsel for the assessee stated that contention raised by the assessee in his CO, may be upheld.

48. We have heard both the parties and perused the materials available on record. We note that during the assessment proceedings, the assessee never appeared before AO and never submitted the name and address of his customers. The assessee has also not filed the list of beneficiaries before AO. If the assessee wants to treat himself as commission agent, then he should come clean hand. Those who seek equity, should come with clean hand. In order to treat the assessee as commission agent, in our view, it is mandatory for the assessee to submit the name and address of his customers, whose case was deposited and confirmation from the customers and their bank statements. The assessee should also submit the name and address of the beneficiaries along with pin number and enter list of the beneficiaries and also submit the confirmations from the beneficiaries. Without submission of these documents, in our view, the assessee should not be treated as a commission agent. Therefore, we direct the assessee to submit the above details before the assessing officer.

49. The Ld. CIT(A) treated the assessee as commission agent, without having examined the above facts, hence order of Ld. CIT(A) is not acceptable. Since the assessment order was framed u/s 144 of the Act and assessee never appeared before AO during assessment proceedings, therefore, we are of the view that matter may be remitted back to the file of AO for fresh adjudication. We further note that facts of the assessee's case is similar to Shri Karim K. Makhani vide IT(SS)A Nos. 103 to 108 and 125 to 130/RJT/2017 (supra), therefore, respectfully following the binding precedent, we restore these appeals to the file of AO for fresh adjudication and cross objection of the assessee are dismissed as infructuous.

50. In the result, appeals filed by the Revenue, in ITA No.134-135/RJT/2023, are allowed for statistical purposes, whereas Cross Objections filed by the assessee are dismissed as infructuous.

51. In combined result, all appeals of Assessee and all Revenue`s appeals are allowed for statistical purposes. The cross objections, raised by different assessee are dismissed, as infructuous.

Order is pronounced on 19/06/2025 in the open court.

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

राजकोट /Rajkot
दिनांक/ Date: 19/06/2025
DKP Outsourcing Sr.P.S
आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

आदेश से /By order,

// True Copy // सहायक पंजीकार

आयकर अपीलीय अधिकरण, राजकोट