IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.316/RJT/2024

(निर्धारणवर्ष / Assessment Year: (2013-14)

(Hybrid Hearing)

Solo Steel Tech 30, Samrat Industrial Area, B/H S. T. Workshop, Gondal Road, Rajkot – 36004	**Vs.**	The Pr. CIT – 1, Aayakar Bhavan, Race Course Ring Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ABGFS6424H**		
(Appellant)		**(Respondent)**

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

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

Date of Hearing : 03/04/2025

Date of Pronouncement : 01/07/2025

आदेश / O R D E R

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee is directed against the order passed by the Principal Commissioner of Income Tax[(in short "Ld. Pr.CIT"] u/s. 263 of the Act, vide order dated 28.03.2024.

2. Grounds of appeal raised by the assessee are as follows:

1)The learned Principal Commissioner of Income tax -1, Rajkot erred in holding that the assessment order dated 22.09.2021 passed u/s. 147 r.w.s. 144B of the Act was erroneous and prejudicial to the interest of revenue and thus erred in assuming jurisdiction u/s. 263 of the Act, in the light og show cause notice and the order passed u/s. 263 of the Act and hence the impugned order is bad 9in law.

2) The learned Principal Commissioner of Income Tax -1, Rajkot erred in setting aside the assessment order framed u/s. 147 r.w.s. 144B of the Act by holding that the AO did not conduct any inquiries in respect of cash transaction of Rs. 3,95,000/- alleged to be carried out by the appellant with M/s. National Shroff.

3) The learned PCIT-1, Rajkot failed to appreciate that the impugned issue was duly examined by the assessing officer by way of specific inquiry/notice and reply thereto, while finalizing assessment proceedings u/s. 147 r.w.s. 144B of the Act.

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

3. Brief facts of the case arethat the assessee filed his return on 28.09.2013 at Rs. 88,980/- the return was proceed u/s. 143(1) on 12.04.2014 at Rs. 88,980/-. As per information received form the office of Deputy Commissioner of Income Tax, Central Circle -1, Rajkot vide its letter dated 08.02.2018, the assessee is found to be one of the beneficiaries of angadiya group name "M/s. National Shroff and entered into the transaction with M/s. National Shroff i.e., cash to cash and cash to cheque /DD. On 19.09.2014, a search action u/s. 132 of the Act was carryout at the business remies of M/s/ National Shroff &Co. From the details submitted by M/s. National Shroff and on perusal of record. It was found that the assessee is one of the beneficiaries of angadiya group named "M/s. National Shroff and entered into the transaction with M/s. National Shroff i.e., cash to cash and cash.

A notice u/s. 148 dated 23.03.2020, assessee filed return of income on 31.07.2020 at Rs. 88,980/- notice u/s. 143(2) of the Act was issued on 28.09.2020 and duly served to the assessee along with reason recorded for reopening of the case u/s. 147/148 of the Act. On perusal of record, it was found that the assessee found to be one of the beneficiaries of angadia group; named "M/s. National Shroff and entered into the transaction with M/s. National Shroff i.e., cash to cash and cash to cheque/DD. As per record the assessee has made cash to cash transaction with M/.s National Shroff amounting to Rs. 3,95,000/-. Please explain the said transaction with documentary evidences. Please show cause as to why the profit earned on undisclosed sales of Rs. 3,95,000/- should not be added to assessee's total income. It is observed that the assessee earned Gross profit @ 18.32% on

turnover. For the unaccounted sales the GD @20% is adopted to arrive at unaccounted income and accordingly the profit earned by the assessee out of the undisclosed sales of Rs. 3,95,000/- is worked out at Rs. 79,000/-. Thus, Rs. 79,000/- is added to the total income of the assessee on account of undisclosed profit/income.

4. The Ld. Pr. CIT(A) has initiated proceedings u/s. 263 of the Act issue a show cause notice on 19.02.2024, whereby it was observed by the Ld. Pr. CIT(A). That the AO has accepted the submission of the assessee without necessary verification and inquiry/investigation. The AO has failed to treat the cash transactions aggregating to Rs. 3,95,000/- made by assessee with M/s National Shroff during the year under consideration, as unexplained within the meaning of section 69A of the IT Act and not charged tax u/s section 115BBE of the IT Act. In this case the assessment order has been passed without making due inquiry/verification. Hence, in terms of Explanation 2 to sec. 263, such order is erroneous in so far as it is prejudicial to the interests of revenue. The above facts show that the assessment order passed u/s. 147 read with section 144B of the Act on 28.03.2020 by the Assessing Officer in respect of A.Y. 2013-14 appears to be erroneous and prejudicial to the interest of the revenue

5. That Ld. PCIT carefully considered assessee's submission and relevant facts on records. The submission filed by the assessee is in general nature. The assertion of the assessee in its reply that the Income tax Officer of National Faceless Assessment has taken all diligence steps till the end of the case and the FAO had made due enquiries and taken a plausible view is factually incorrect. The case of the assessee was reopened on the basis of information that during the year under consideration, the assessee has made

cash transactions aggregating to Rs 3,95,000/-with M/s National Shorff which was physically in existence in bank accounts of the National Shroff group and was disbursed to the assessee as per established Modus Operandi between the National Shroff and the assessee. The Assessing Officer is both an investigator and an adjudicator. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word 'erroneous'includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits. In this case the AO has not conducted the critical enquiry by calling for the information/ evidence already available with the Department, with respect of beneficiaries under consideration in connection with Nation Shroff and Company.

5.1. The assessing officer has without any basis or confirmation accepted that the payment made in cash to the assessee by M/s National Shroff represented unaccounted sales of the assessee. There is no description of the goods sold, the persons to whom sales have been made or any other evidence to establish that the amount represented unaccounted sale made by the assessee. No explanation has been furnished by the assessee regarding the source of cash received by it/Hence, the presumption that the amount received was on account of unaccounted sales is untenable and arrived at without making any enquiry or relying on any evidence in this regard. It is a well settled position of law that no burden lies on the Revenue to show the income is received from any particulars source before invoking the provisions of section 68/69.

5.2. Keeping in view these facts, I am of the considered view that this is a fit case for invoking section 263 of I. T. Act as the twin conditions namely, (i) the order of the Assessing Officer sought to be revised is erroneous: and (ii) it is prejudicial to the interests of the revenue are satisfied. Accordingly, the impugned assessment order passed by the A.O. u/s 147 r.w.s. 144B of the Income-tax Act, 1961 on 22.09.2021is set aside for fresh assessment only to the extent of the issues discussed supra and direct the Assessing Officer to pass a fresh assessment order after making necessary enquiries.

6. That the assessee filed an appeal before us, against the impugned order of the Ld. CIT(A), order dated 28.03.2024.

7. During the course of hearing, the Ld. AR of the assessee, filed an reply to the notices issued by the Ld. Pr. CIT(A). The notice u/s. 148 was issued on the very issue itself about the alleged transaction with M/s. National Shroff Company. The relevant of reasons recorded as:

> *"The assessee has filed return of income for A.Y. 2013-14 disclosing total income of Rs. 88,980/- under the head Profits and gains from business or profession. But he has carried out transactions of Rs. 3,95,000/- as mentioned above through M/s. National Shroff and obtained the cash / cheque."*

8. The Ld. AR of the assessee, submitted that the Ld. AO has issued notice on 19.11.2021, wherein question no. 2, it was asked and replied with supported documentary evidence, in respect of transaction of Rs. 14,61,000/- with M/s. National Shroff Company and the same was furnished. The assessee submitted that how the side has been reflected against the name of the assessee. The assessee had been carried out any transaction with National Shroff Company of Rs. 14,61,000/-. The Ld. AO further issued show cause notice on 06.01.2022 asking about transaction carried out of Rs. 14,61,000/- through M/s. National Shroff Company by cheque or cash. Since

on verification, it was noted that dealt with National Shroff Company. Hence, transaction of Rs. 14,61,000/- remain unexplained within meaning of section 69A. The Ld. AR of the assessee, submitted that since, no transaction has been made with National Shroff Company, however, in case, if any material about the transaction supply to us. The Ld. AR further drawn our attention to the assessment order in para no. 2. The same is reproduced:

> *"After considering replied and submitted the documents by the assessee, that total income of assessee is assessed at Rs. 3,91,859/- u/s. 147 and 148 r.w.s. 144B of the Income Tax Act."*

9. The Ld. AR of the assessee submitted that, in view of this avery issue has been examined by the Assessing Officer. Hence the action u/s. 263 is unwarranted, since, there is no question of lack of inquiry/ no adequate inquiry by the Assessing Officer. The Ld. AR further relied on the under-mentioned following judgement:

- *Clix Finance India (P.) Ltd. (2024) 160 taxmann.com 357 (Delhi HC);*
- *Shreeji Prints (P.) Ltd. (2021) 130 taxmann.com 294 (SC);*
- *Dipesh Lalchand Shah (2022) 143 taxmann.com 419 (Guj. HC);*
- *Kutch District Co-op. Milk Producers' Union Ltd. (2024) 159 taxmann.com 347 (Rajkot Trib.);*
- *BhikhabhaiRajabhaiDhameliya (2023) 151 taxmann.com 493 (Surat Trib.);*
- *Rajendrakumar Kantilal Patel (2023) 150 taxmann.com 71 (Surat Trib.);*

10. Further, Ld. AR of the assessee relied, there is no incriminating material available with Ld. Pr. CIT(A) with M/s. National Shroff Company, hence, Ld. Pr.CIT(A) has no jurisdiction u/s. 263 of the Act. The Ld. AR also relied on"Reliance is placed upon the decision of Gujarat High Court in an identical case of beneficiary of M/s National Shroff, namely Amitkumar Chandulal Rajani in SCA No. 2930 of 2022 dated 20-01-2025 (copy attached) wherein it was held that absence of any material found from M/s. National Shroff pertaining to the assessee so as to prove that income had escaped assessment and in absence of any link established between the

material found and the reasons recorded, assessment u/s 147 deserves to be quashed. It may be pertinent to note that reasons recorded in case of Appellant (PB Page 7-8) and in case of Guj. HC are exactly similar and hence the finding in said case would squarely apply to that of Appellant. Hence, order u/s 147 is bad in law and consequently revision of said order u/s 263 is also bad in law."

11. On the contrary, the Ld. DR for the revenue, relied on the judgement of the Ld. PCIT.

12. We note that, in case of M/s. National Shroff and company, this Bench remitted the issue back to the file of the Assessing Officer, vide IT(SS)A Nos. 118 to 125/RJT/2018 IT(SS)A Nos. 01 to 05/RJT/2019, ITA No. 03/RJT/2019, wherein the case relating to the M/s. National Shroff and company has been remitted to the file of the Assessing Officer for examination of the necessary facts and evidences, the decision of the Tribunal is reproduced below:

> *12. We have heard both the parties and perused the materials available on record. We find merit in the submissions of ld. DR to the effect that the assessee who maintains his own books of accounts and other details like ledger and stock and record the transactions, as if, he is owner. We note that there is a non-compliance, during the assessment stage, and even during the proceedings, the assessee did not co-operate with the assessing officer. The ld DR for the revenue stated that assessee`s income should be determined afresh in the light of the written submission , which are reproduced below:*
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> *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 para5.3 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) There is a difference in approach of Ld. assessing officer with respect to these cases.

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

*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.**Brief of oral arguments by CIT(DR):***

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

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'

Step 3: Angadia transfers the Parcel with cash/ valuables to the specified location and earns commissio n 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.

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 SomabhaiKanchanlal& 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.* ***KanchanlalTrikamlal 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**	Step 2: Shroff verifies Invoice and credentials of the Seller and Buyer and other documents of KYC norms, Credibility, past business history.	Step 3: Shroff and Client agree on a particular rate of interest and other charges for Bill/Invoice discounting/ Invoice	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	Step 6: Shroff earns a differential commission; Shroff maintains proper books of Accounts andfiles 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***	*No*	*Only as a "container" and not "content";*	*Yes, foreign cash to domestic cash*

Sr. No.	***Item of Comparison***	***Implied from submissions of assessee, and similar persons***	***Shroff/Bill Discounter***	***Angadiya***	***Money Remitter***
		accounts owned by Assessee		***Angadia do not deposit the cash of customer in any bank Account***	*conversions and vice versa*
3	*Basis of receipt of Cash*	***No documentary Basis***	*Value of an authentic Invoice raised on Buyer after sales*	*Receipt raised on owner of cash as a courier enterprise.*	*Application/ 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*	*Records contain details and documents of transacting parties and hence confirmation is possible*

Sr. No.	***Item of Comparison***	***Implied from submissions of assessee, and similar persons***	***Shroff/Bill Discounter***	***Angadiya***	***Money Remitter***
				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	
7	*Nature of business*	***Unknown in common parlance, but styled as Angadiya/ shroff***	*Bill Discounting services/ Shroff*	*Courier services/ Angadiya*	*Money 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. Primafacie, 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 querry 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.*

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."

12. We note that issue under consideration in case of assessee`s appeal is squirely covered, by the order of the Coordinate Bench, Rajkot, in the case of Karim K. Makhani, IT(SS)A Nos.103-108/RJT/2017, wherein, Tribunal held as follows.

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

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

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

assessee was issued one final show -cause notice for initiation of prosecution proceedings, vide notice dated 24.04.2014. However, despite these notices and reminders, no return has been filed. Therefore a final notice along with show-cause notice was issued on 02.03.2015, asking the assessee to show -cause as to why his assessment should not be completed ex-parte, on the basis of material available on record."

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

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

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

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

13. Therefore, respectfully following the judgement of the Co-ordinate Bench (supra), we deem it fit and proper to set aside the order of the ld. CIT(A) and remit the matter

back (assessee`s appeal and revenue`s appeal) to the file of the assessing officer to adjudicate the issue afresh on merits.

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

11. We have also remitted the cases and appeals back to the file of the Assessing Officer, in respect of beneficiaries of the M/s. National Shroff and company and the assessee under consideration in ITA 316/Rjt/2024 for AY 2013-14 is also one of the beneficiaries of the M/s. National Shroff and company. Since, we have remitted all the appeals which are relating to the M/s. National Shroff and company, and the assessee's who have transaction with the M/s. National Shroff and company. In case of M/s. National Shroff and Company and its beneficiaries, the transaction between the M/s. National Shroff and Company and the beneficiaries were owned by the respective parties and bank statements of these beneficiaries are also reflecting these transactions which clearly states that M/s. National Shroff and Company was owner of the transaction. Since, the Ld. DR for the revenue pointed out that if the bank statement of Angadia reflects the transaction and, if the assessee maintain himself, books of account and all transactions are through his bank account and maintain necessary books of account, then, he is considered owner of the transaction, whether M/s. National Shroff and Company is dealing with the "container" or deals with the contents, this aspects has not been examined by the assessing officer in all the cases therefore, this bench remitted back to the file to the assessing officer in respect of main angadia M/s. National Shroff and Company and his beneficiaries, therefore, since, all cases have been remitted back to the file of the Assessing Officer. Therefore, this appeal also by following the same ratio of other decisions, we remit back to the file of the Assessing Officer for necessary examination. We find that M/s. National Shroff and

Company and its beneficiaries engaged in illegal business. We note that if the assessee deals with "container", then he will be regarded as an Angadia/Commission agent. However, if the assessee deals with "contents", then he will be regarded as businessmen. We find that M/s. National Shroff and Company and its all beneficiaries are maintaining their own books of accounts, like cash book, ledger, stock registers and transactions routed through bank accounts have been shown in books of accounts. Hence, as per Ld. DR, M/s. National Shroff and Company and its beneficiaries should be examined by the Ld. AO to find out whether they are businessmen or Angadia. Therefore, we find that the view taken by the Ld. PCIT is sustainable in the eye of law. Hence, we uphold the order of the Ld. PCIT and dismissed the appeal of the assessee.

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

Order pronounced in the open court on 01-07-2025.

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

Rajkot
दिनांक/ Date: 01/07/2025

Copy of the Order forwarded to

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

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot