

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM
AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.5039/Mum/2024
(Assessment Year: 2009-10)

Income Tax Officer, Ward 2(1), Room NO.25, B Wing, Ashar IT Park, Wagle Estate, Thane – 400 604	Vs.	Mr. Bherulal Chunnilal Jain, B 201, Jay Rajleela CHS Ltd., Deepak Nagar, 90 Feet Road, Bhayander West, Maharashtra – 400 101
PAN:AFNPJ6760J		
(Appellant)	:	(Respondent)

Assessee by	:	None
Respondent by	:	Shri S. Srinivasu, CIT DR

Date of Hearing	:	23.12.2025
Date of Pronouncement	:	08.01.2026

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the Revenue, challenging the order of the Learned Commissioner of Income Tax (Appeals) [‘Ld. CIT(A)’ for short], National Faceless Appeal Centre (‘NFAC’ for short) passed u/s. 250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2009-10.

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

“1. On the facts and in circumstances of the case and is law, the Ld. CIT(A) erred holding merely by looking at the of bank statement only, which reflects that there exists debit entries of almost similar amounts of credit entries, confirms that it would be incorrect to hold that entire credit entries can be added u/s.68 of the Act.



2. On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in misinterpreting the AO's stand that in case the assessee is able to prove the source & destination of the credit and debit entries in the bank account, then the assessed is liable to tax of commission income only.

3. On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred by relying upon the self serving bank summary and some details regarding names and PANs of various parties, and summarily deciding the issue in favour of the assessee by not making any further enquiries in this regard to arrive upon the correct facts substantiating the source and destination of credit and debit entries.

4. The order of the Ld. CIT(A) may be vacated and that of the Assessing Officer may be restored.

5. The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary."

3. It is observed that the Revenue has filed the appeal belatedly after the delay of 45 days beyond the prescribed period of limitation and upon considering the application for condonation of the delay, we deem it fit to condone the delay in filing the present appeal. Hence, the delay is condoned.

4. As there was no representation on behalf of the assessee and neither any adjournment application was filed before us, we hereby proceed to decide the appeal by hearing the Learned Departmental Representative ("Ld. DR" for short) and on perusal of the materials available on record.

5. Brief facts of the case are that the assessee is an individual and had filed his return of income declaring total income at Rs.1,10,850/- and the same was processed u/s. 143(1) of the Act on 29.07.2010. The assessee filed his revised return of income dated 19.12.2011 declaring total income at Rs.1,62,560/-. The assessee's case was reopened vide notice dated 28.10.2013 u/s 148 of the Act based on the information received from the ACIT



Circle 23(3), Mumbai that during the course of investigation in the case of Shri Vinay G. Desai that the assessee has received a sum of Rs.25,87,01,299/- in account bearing No.233010200016250 at Axis Bank, New Marine Lines, Mumbai-20 maintained by M/s. Navkar Trading Co., in which the assessee is said to be the proprietor and since the assessee has not declared the same in his return of income, the assessment was reopened as income chargeable to tax has escaped assessment. In response to the said notice the assessee filed his return of income dated 19.12.2011 declaring the original return of income to be the return of income in response to the said notice. It is observed that the assessee has not filed any details pertaining to the debit and credit entries in spite of various opportunities granted by the Ld. AO and further it was also observed that the Central Bureau of Investigation has also conducted an inquiry into the bank account in connection with fraudulent overdraft transaction from Canara Bank, Khar West Branch, Mumbai parallelly. After considering the assessee's submission the Ld. AO passed the assessment order dated 28.03.2015 u/s. 143(3) r.w.s. 147 of the Act thereby determining the total income of Rs.25,88,63,860/- after making an addition of Rs.25,87,01,299/- as unexplained cash credit u/s. 68 of the Act and the Ld. AO also initiated penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income. The Ld. AO also made an addition of Rs.25,87,013/- being commission income @ 1% on protective basis.

6. Aggrieved, the assessee was in appeal before the first appellate authority, who vide order dated 14.06.2024 had partly allowed the appeal filed by the assessee by restricting

the addition to Rs.12,93,507/- being commission income @ 0.50% on the total credit of Rs.25,87,01,299/-.

7. Aggrieved, the Revenue is in appeal before us, challenging the order of the Ld. CIT(A).

8. Before us, the Ld. DR for the Revenue contended that the assessee has failed to give the details of all debit and credit entries in the bank account held in the proprietor's name of M/s. Navkar Trade Company maintained with Axis Bank, New Marine Lines, Mumbai neither before the Ld. AO nor before the first appellate authority. It was further contended that that though the assessee claims that the said account was operated by Shri Rajesh Pamecha who worked in the diamond market for cheque discounting, based on the advice from the assessee's brother Shri Rajendra Jain who was also engaged in diamond brokerage but the assessee had furnished in the declaration of Shri Rajesh Pamecha only at the fag end of the assessment which was getting time barred on 31.03.2015 and also that the same was in the form of a letter written on plain paper is not sufficient to prove the assessee to be not liable. The Ld. DR further stated that though Shri Rajesh Pamecha has mentioned that the assessee was not concerned with the impugned bank account the authenticity of the said declaration could not be verified as there was no compliance by the said person to the summons issued u/s 131 of the Act and since the assessee has not discharged the primary onus casted upon him the Ld. AO had rightly made an addition u/s 68 of the Act. The Ld. DR further contended that the Ld. CIT(A) erred in restricting the commission only to the extent of 0.5% of the total credits which amounted to Rs.2,93,507/- without



considering the fact that the assessee has not discharged the onus of proving the identity and creditworthiness of the parties and the genuineness of the transactions. The Ld. DR further contended that the assessee has not submitted all the relevant documentary evidences in support of his claim before the Ld. AO and though the Ld. CIT(A) has specified that the assessee has filed copies such as bank statement, summary of bank transactions and partywise details of receipts and payments before the first appellate authority no remand report was called for by the Ld. CIT(A) from the Ld. AO. The Ld. DR also relied on the decision of the Hon'ble Jurisdictional High Court in the case of Pr. CIT Vs. Buniyad Chemicals Ltd. (2025) 172 taxmann.com 462 (Bom.) wherein it has been held that if the details of the beneficiaries are not furnished by the assessee then the Ld. AO can make the entire addition in the hands of the assessee and commission income has to be charged only to the extent of the transaction where the details of the beneficiaries are furnished by the assessee to the lower authorities. The Ld. DR reiterated that even the Ld. CIT(A) has not discussed anything on the documentary evidences furnished by the assessee pertaining to the alleged beneficiaries of such accommodation entry. The Ld. DR relied on the order of the Ld. AO.

9. We find justification in the arguments of the Ld. DR in holding that the assessee has not discharged his primary onus casted upon him where he is liable to disclose the identity and creditworthiness of the parties and the genuineness of the transactions whereas in this case there are credits and debits found in the bank account maintained by the assessee in the capacity of proprietor of M/s. Navkar Trade Company. Though the assessee's



contention was that he was not aware of the transactions carried out in the said account which initially was opened on the instigations of his cousin brother Shri Rajendra Jain and was operated by Shri Rajesh Pamecha for undertaking cheque discounting activities, it is observed that the assessee's contention was that he was promised to be paid brokerage on the said transactions. No details pertaining to the brokerage received by the assessee were furnished neither before the lower authorities nor before us. Further, it is a settled proposition of law by various decisions that the assessee cannot discharge his liability merely by pleading ignorance of the details of the transactions but rather is casted with a heavy burden of proving diligently by discharging the primary onus. Even before us there are no documentary evidences filed by the assessee. Mere denial on the ground that the account was used by an accommodation entry provider Shri Rajesh Pamecha without substantiating with corroborative evidences does not discharge the assessee from his liability. Though the Ld. CIT(A) has relied on various decisions to hold that in case of accommodation entries only the commission income has to be added, we do not agree with the same, as the recent decision of the Hon'ble Jurisdictional High Court in the case of Pr. CIT Vs. Buniyad Chemicals Ltd. (supra) relied upon by the Ld. DR, held that when the assessee has not given the details of the beneficiaries of the accommodation entries then the entire addition has to be made in the hands of the assessee and only when the details of beneficiaries have been given to the Ld. AO during the assessment proceedings then the commission income has to be added in the hands of the assessee. Though the Ld. CIT(A) has stated that the assessee has given party-wise details of the credits and debit entries, no verification, nor the details were recorded by the Ld. CIT(A) in his order. Pertinently, The



Ld. CIT(A) has extensively relied only on the statement of the assessee recorded before the CBI Authorities as well as u/s. 131 of the Act where the assessee has contended that the bank account was used by the accommodation entry provider Shri Rajesh Pamecha for undertaking cheque discounting activities in which the assessee claims no involvement in the same and that the assessee was pressurized and lured to open the bank account and promised commission @ 0.02% of the total transaction value. Beyond this, the Ld. CIT(A) has failed to examine whether any documents pertaining to the commission income received by the assessee was filed to substantiate the contention of the assessee. The Ld. CIT(A) has also not given any finding as who were the beneficiaries of the bogus transactions and whether or not the same was provided by the assessee has not been specified in the impugned order. The Ld. CIT(A) has also erred in relying on the assessee's contention that the Ld. AO has accepted that the Axis bank account was used for accommodation entries by way of cheque discounting and therefore the Ld. AO had made an addition on estimating the commission income @ 1% on protective basis. On perusal of the assessment order it is clear that the Ld. AO has categorically mentioned that if the assessee is able to establish the source and destination of the credit and debit entries appearing in the impugned bank account then on without prejudice basis the assessee is liable for commission income @ 1% on the total debit and credit transactions. This cannot be interpreted to hold that the assessee has established the source such as the identity and creditworthiness of the parties and the genuineness of the transactions, in the failure of documentary evidences as to who are the beneficiaries of the accommodation entries reflected in the bank statement of the account held by the assessee as proprietor of M/s.

Navkar Trading Co. It is also observed that the assessee has not completely denied that the impugned bank account does not pertain to him but had merely stated that he was ignorant about the transactions made in the bank account which was opened by him on the instigation of Shri Rajendra Jain with an assurance to earn commission income @ 0.02%. The Ld. CIT(A) has also failed to consider the subsequent decision of the Hon'ble Jurisdictional High Court in the case of Buniyad Chemicals Ltd. (supra) which held that in the absence of providing details of the beneficiaries by the assessee in whose bank account credits were found, section 68 of the Act will be attracted on such unaccounted sum in the hands of the assessee in case of accommodation entries and addition can be restricted only to the extent of commission income only for those transactions where the assessee has identified the beneficiaries and furnished details of the same to the Ld. AO. In the present case in hand, we do not find any such details being furnished by the assessee neither before the lower authorities nor before us and even the Ld. CIT(A) has not given any finding pertaining to the details of the beneficiaries. As the proposition laid down by the Jurisdictional High Court is of binding nature by respectfully following the same, we deem it fit to allow the grounds of appeal raised by the Revenue on the above observations and holding the same, we hereby set aside the Ld. CIT(A)'s order and uphold the Ld. AO's order.

10. Accordingly, all the grounds raised by the Revenue are hereby allowed on the above terms.



11. In the result, the appeal filed by the Revenue is allowed.

Order pronounced in the open court on 08.01.2026

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

Mumbai; Dated: 08.01.2026

* Kishore, Sr. P.S.

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai