

आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.3653/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2010-11)

आयकर अपील सं./I.T.A. No.3654/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2009-10)

आयकर अपील सं./I.T.A. No.3655/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2011-12)

Shri Rahul L. Singhvi, C/o Shri Prakash Jhunjhunwala, Chartered Accountant, 5, Jolly Bhawan No. 2, Ground floor, 7 New Marine Lines, Churchgate, Mumbai - 400 020.	बनाम/ v.	Asst. Comm. Of Income Tax - Central Circle - 13, Mumbai.
स्थायी लेखा सं./PAN : ABAPS8698F		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by :	Shri Prakash G. Jhunjhunwala and Shri Abhishek Jhunjhunwala
Revenue by :	Shri Rahul Raman, CIT-DR

सुनवाई की तारीख /**Date of Hearing** : 09-03-2017

घोषणा की तारीख /**Date of Pronouncement** : 11-05-2017

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

These three appeals by the assessee are directed against common order dated 22nd September, 2015 passed by the learned Commissioner of Income Tax(Appeals)- 48, Mumbai (Hereinafter called "the CIT (A)") pertaining to the assessment year's 2009-10 to 2011-12. Since identical issues are involved in all three appeals, these appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. The common grounds of appeal raised by the assessee in all these appeals (only difference in amount) in the memo of appeals filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

First, we shall take up assessee's appeal in ITA No. 3654/Mum/2016 for assessment year 2009-10.

1.0 A humble prayer is made to condone the delay of 167 days in filing of the appeal being caused under the bonafide reasons and compelling circumstances beyond control of the appellant;

2.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in upholding the Search warrant u/s 132(1) and consequential assessment order u/s 153A as valid without considering the fact that the Search warrant had been invalidly issued in Joint names of 2 different persons;

3.0 On facts and circumstances of the case and in Law, Ld. CIT(A) erred in confirming the addition, on estimation basis, of undisclosed commission income of Rs. 8,70,800/- @ 1% of gross transaction value on ignoring the fact that the appellant, in statement u/s 132(4), disclosed the commission income @ 0.10% of transaction value;

4.0 The Ld. CIT(A), before estimating the undisclosed commission income on very higher side @ 1% of entire transactions, erred in not considering the understated vital facts, being;

- a) The appellant, in statement recorded u/s 132(4), stated of having earned a meager introductory commission @ 0.10% of transaction value;
- b) The main broker Mr Tejas Shah, in statement u/s 131, confirmed that the appellant acted as merely as a middleman and normal brokerage earned is around @ 0.30% to 0.40% of transaction value;
- c) The comparative instances relied by the appellant discloses the commission income of 0.15% to 0.35% of transaction value;
- d) The undisclosed commission earned by main broker Mr Tejas Shah cannot be taxed in hands of the appellant.”

3. Brief facts of the case are that the assessee is a Chartered Accountant by profession and is having income from profession and other sources.

4. At the outset, the Id. Counsel for the assessee submitted that this appeal is delayed by 167 days. Affidavit dated 07-03-2017 for condonation of delay has been filed whereby the assessee averred and deposed in the said affidavit that the appeal could not be filed in time as the assessee was terribly disturbed due to serious medical illness of his father Sh. Lekraj Singhvi who is residing in Jaipur. In his above stated affidavit dated 07-03-2017 filed by the assessee, it is stated that his father suffered a brain stroke resulting into loss of eye-vision and paralysis and was hospitalized several times. It is deposed in the said affidavit that due to the above compelling circumstances he had to go to Jaipur frequently for a substantial period of time to attend his father's illness. Thereafter, his father suffered from lung cancer and due to all these problems, the assessee could not concentrate on his business and other tax matters, are the deposition and averments of the assessee in the said affidavit dated 07-03-2017. The assessee has also placed on record documents by way of hospital and doctor records concerning medical illness of his father which are placed in file. The affidavit along with other

hospital/medical records are filed by the assessee and is placed on record vide page No. 1 to 20 in file. Thus, the assessee prayed that the delay of 167 days may be condoned and the appeal may be decided on merits. The ld. CIT-D.R. after perusal of the documents on records submitted that since the assessee has produced all the relevant records concerning illness of his father, the decision in this matter is left to the discretion of Bench to be decided on merits in the interest of justice. We have observed that the appeal is delayed by 167 days. The assessee has brought on record documents evidencing illness of the father which included hospital records and treatment record from 21-05-2015 to 30-11-2016. The father was treated at both Jaipur and Mumbai as per these medical records placed in file . The assessee has claimed that his father met with brain stroke and thereafter suffered lung cancer and due to all these compelling circumstances, the assessee could not concentrate on his work as well as the tax matters. Thus, keeping in view the genuine and bonafide reasons demonstrated by the assessee as above, we are of the considered view that the assessee was prevented by sufficient cause in filing the appeal in time and in our considered view and in the interest of justice , the delay of 167 days in filing of the second appeal before the tribunal is hereby condoned and we direct admission of all the three appeal(s) for adjudication on merits. Thus, all the appeals bearing ITA no. 3653 to 3555/Mum/2016 filed by the assessee for assessment year 2010-11,2009-10 and 2011-12 are directed to be admitted to be adjudicated on merits. We order accordingly.

5. At the outset, the ld. Counsel for the assessee submitted that ground No. 1, which relates to the condonation of delay is already argued by him separately before the Tribunal and hence the same does not require separate adjudication. Ground No. 2 is not pressed by the ld. Counsel and request has been made during the course of hearing by learned counsel for the assessee to dismiss this ground as not being pressed. The ld. D.R. has also not raised

any objection for dismissal of ground no 2 , while it is agreed by learned DR that ground no 1 concerns with condonation of delay of 167 days which is already argued by both the rival parties before the tribunal. Hence, after hearing both the parties, we dismiss ground No. 2 as not pressed before the tribunal. The ground no 1 is already adjudicated by us in preceding para's of this order and now it does not require separate adjudication by us. We order accordingly.

6. With respect to the ground No. 3 and 4, the brief facts of the case are that the assessee was searched u/s 132 of the Act on 17th February, 2012 by the DDIT (Inv.), Bhavnagar along with ship breakers group of Bhavnagar viz Bansal sub-group and Lelea sub-group. The DDIT (Inv.), Bhavnagar recorded the statement of the assessee u/s 131 of the Act and thereafter on various dates , whereby the assessee had admitted that he used to receive cash from Komalkant Sharma and in turn provide RTGS/cheque entries to Leela sub-group and Bansal group in the guise of share capital and share premium from fictitious companies. In his statement , he also stated that Mr Tejash J. Shah ran the fictitious companies and engaged few persons of no means as Directors of these companies. The assessee further admitted that he received 0.1% as commission for arranging bogus entries by way of cheque against the cash for Bansal Group and Leela Group.

In his statement recorded on oath u/s 131 of the Act on 13th March, 2012, Sh Tejash J. Shah had admitted that he had floated various companies for this scheme of conversion of cash into cheque through these bogus companies and introduction of unaccounted income into the regular books of account. It was also stated by Shri Tejash J. Shah that the assessee was the facilitator for handling the cash from ship breakers through angdias and arranging cheque for Tejas Shah group companies and cheques were introduced in the Bansal group and Leela group of companies as share capital and share

premium. The extract of the statement recorded of Shri Tejash J Shah on 13th March, 2012 by the DDIT (Inv.) Bhavnagar is reproduced hereunder:-

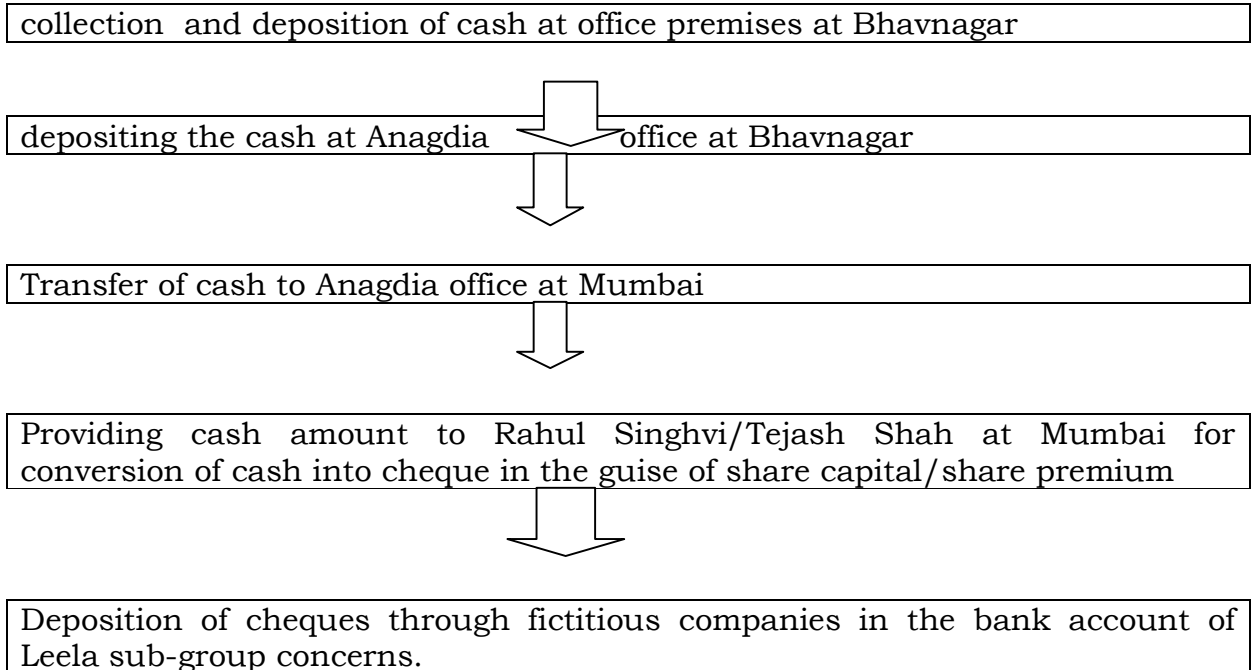
“I do hereby acknowledge and confirm that after receiving cash from Bansal or Leela group of Bhavnagar , the same was converted in to cheques in favour of any of my managed company from different shroffs situated at Kalbadevi, Mumbai. Later on, after rotating said cheque in my owned managed companies, I used to issue either cheque or make RTGS in favour of the desired concern of Bansal or Leela group of Bhavnagar. Mr. Rahul Singhvi is the middleman in all the transactions which I have made with Mr. Vijay Bansal and Komalkant Sharma. In fact, Shri. Rahul Singhvi is the persons who asks me to arrange cheque of certain amount to Bansal or Leela Group of Bhavnagar and he only discuss with Shri. Vijay Bansal or Shri. Komalkant Sharma about the quantum of share capital or premium required and later on through angadia arranges cash. This cash is actually being sent by Shri.Vijay Bansal and Komalkant Sharma for want of desired entries. When the bank accounts of Mr. Vijay Bansal and Komalkant Sharma got credited, Shri. Rahul Singhvi used to confirm this deposition of cheques to Mr. Vijay Bansal on telephone.

Sir here I want to mention that this practice of providing cheques-in-exchange-of cash amount is prevalent across Mumbai and the place Kalbadevi in Mumbai is hub of such financial transactions. Several persons based in Kalbadevi area of Mumbai are doing business of providing cheques in exchange of cash amount. It is also submitted that this is a voluminous nature of cheque-cash transfer business done on daily basis and several parties bank accounts/cheques/share transfer forms/stamp pads/signatures are used for multi-layering. Sir in this business brokerage/commission income @0.30-0.40 paisa per hundred rupees (Rs. 30,000 – Rs. 40,000 per Crore) is earned/given on every transfer of cash/cheque amount.”

The modus operandi for this arrangement of movement of unaccounted cash as admitted by Shri Tejash J Shah and assessee is in the following style:-

Generation of unaccounted cash income from sale of ship-breaking material at Alang ship breaking yard





It was also admitted by the assessee and Shri Tejash J Shah that the cash received from Leela and Bansal group was reinvested in their group companies as share capital after routing the same through fictitious companies of Shri Tejas J. Shah and in many cases the cash was deposited in some individual shroff's account and the same was routed through few layers of other bank accounts and ultimately the money was transferred to various beneficiary companies in the form of share capital/premium. The A.O. noted that Bansal and Leela group approached the settlement commission and had offered the investment made in the share capital as well as commission paid/expenditure incurred for procuring the accommodation entries as additional income. Further the AO observed from the perusal of page No. 101 of the seized material from the assessee during search u/s 132 of the 1961 Act that the assessee had received commission ranging from 1.5 to 2.45% for arranging the bogus entries for Leela Group and Bansal Group.

The A.O., based on above facts, issued show cause notice dated 26th March, 2014 to the assessee, the contents of which are reproduced below:-

“1. During the course of search proceedings, your statement recorded u/s 131 of the I.T. Act, 1961, on 17/02/2012 and thereafter on various dates, admitted that you have given bogus share capital entries amounting to Rs. 4.15 crs to Bansal Group and entries amounting to Rs. 4,55,80,000/- to Leela Group, Natraj Logistics & Services (P) Ltd. and Komalraj Transport (P) Ltd., Further, you stated that all the financial transactions recorded on the page number 101 of the impounded material from your premises were nothing but the cash received on various dates from Leela sub-group and Bansal Group, and date-wise cheques deposited in their bank accounts. You further admitted that you used to receive cash from Komalkant Sharma and in turn provide RTGS/cheque entries to Leela sub-group in the guise of share capital and share premium.

You further stated that you were only a mediator or communicator, who used to arrange cheque entries by converting cash in to cheque and in fact, Shri Tejash J Shah was the real entry provider, who managed all daily affairs of alleged bogus concerns.

2. It is seen from the analysis of seized material that you were getting commission for conversion of cash in cheque in range from 1.5% to 2.45%. In this regard you are requested to show cause as to why the average rate of commission income which is @ 2% should not be added back to your total income.”

In reply to the above show cause notice, the assessee submitted as under:-

“ The assessee humbly submits that the addition proposed in the show notice of Rs. 17,41,600/- (2% of Rs. 8,70,80,000/-) would be unjustified for understated reasons :-

The assessee as a finance broker had arranged funds to certain parties. His role was merely to introduce the investor (having funds) and /or brokers of such investors with the companies who were interested in obtaining share capital money from such

investor parties. Such transactions had been routed mainly through companies managed, operated and floated by Mr. Tejas Shah and others. The assessee, personally, did not handle the cash funds as cash payments were made directly by and between the parties. The recipient company paid the gross brokerage ranging from 1.50% to 2.45% whose major portion was handed over to cheques issuing parties and their brokers and the assessee's share of brokerage was only @0.10% of the transacted value;

The assessee had not taken any risk of funds and did not handle the movement of cash funds. Further, the assessee has not routed any transactions to /from his own bank accounts, thus the brokerage margin earned by the assessee is nominal of around 0.10% of the transaction value. It is only in exceptional cases, its staff Mr. Vilas Wankhede accompanied with either of the parties to ensure that the funds are handed over to proper hands. As the assessee was not involved in handling of funds and minimized risk, thus the assessee received a nominal brokerage of 0.10% on the transactions;

It is to further submit that in such transactions, many finance brokers/ mediators are involved who jointly share the gross brokerage provided by the cheque receiver and such gross brokerage, thereafter, is distributed between the brokers/ mediators by Mr. Tejas Shah, accordingly, the estimation of undisclosed brokerage income @ 2% in hands of the assessee would be on very higher side, Further, such percentage @ 2% represents the gross brokerage and does not represent the actual brokerage earned by the assessee which was around 0.10%;

It is to further submit that the seized papers discloses the various transactions entered into by and between the parties and does not represent any amounts received by the assessee. Further, in such seized papers, the brokerage is disclosed @1.50% to 2.45%. Factually, such brokerage represents the gross brokerage on entire transaction which had been received by various brokers and mediators including by Mr. Tejas Shah. Thus, it would be incorrect to presume that entire brokerage of 1.50% to 2.45% is earned by the assessee, accordingly the undisclosed income of 0.10% as brokerage belonging to the assessee may kindly be estimated;

The assessee, during course of search in statement u/s 132(4) recorded on oath, categorically stated that the seized papers relate to the cash payment made by the companies to various cheque issuers/ investors through Mr. Tejas Shah and others and it is also stated that the assessee had earned a small brokerage of 0.10% on the value stated in the seized documents. The statement of the assessee u/s 132(4) recorded on oath/may kindly be given due importance, thus the estimation of income belonging to the assessee be determined @ 0.10% of the transaction value.

In view of the above, a humble prayer is made to estimate the assessee's income at Rs. 87,080/ - being 0.10% of Rs.8,70,80,000/ - for which the assessee shall ever grateful and oblige. '

The A.O., however, rejected the contention of the assessee as the assessee could not produce any documentary evidence which could show that the commission rate of 0.10% for arranging cheque against the cash. The AO also observed that the seized material in the case of the assessee clearly mentions that the assessee has received commission ranging from 1.5% to 2.45% on various transaction. The A.O. accordingly took the average of 2.45% and 1.5% as 2% on the total amount of Rs. 8,70,80,000/- which worked out to commission of Rs. 17,41,600/- which was added to the total income of the assessee by the AO vide assessment order dated 31-03-2014 u/s 153A r.w.s. 143(3) of the 1961 Act.

7. Aggrieved by the assessment order dated 31-03-2014 passed by the A.O. u/s 143(3) r.w.s. 153A of the 1961 Act, the assessee filed an appeal before the ld. CIT(A).

8.The assessee reiterated its submissions as were made before the AO and assailed the assessment order dated 31-03-2014 passed by the AO u/s 143(3) r.w.s. 153A of the 1961 Act. The ld. CIT(A) observed that the assessee has not disputed to have acted as middleman for arranging the accommodation

entries of share capital and share premium for Bansal Group and Leela Group through fictitious companies floated by Mr Tejash J Shah. It was also observed by learned CIT(A) that the assessee has not disputed the quantum of transaction on which undisclosed commission income had been computed by the AO . The learned CIT(A) observed that only dispute is with respect to the A.O. adopting 2% of the admitted transaction value as commission income in the hands of the assessee. The learned CIT(A) observed from perusal of seized material / page no 101(pb/page 1) that assessee had received commission @1.5% on transaction value and in few instances commission was ranging from 2.35% to 2.45% and average commission works to 1.6% of the transaction value. The learned CIT(A) also observed that the assessee in the statement recorded admitted the undisclosed commission income @ 0.10% . The learned CIT(A) also observed that Shri Tejash J. Shah had also admitted in his statement recorded u/s 131 of the Act that the assessee is a middleman and normal commission earned in the business of accommodation entries ranges from 0.30% to 0.40% on the value of transaction. The ld. CIT(A) allowed the expenses incurred by the assessee on account of angadia expenses for money transfer, conveyance and telephone expenses which was allowed by learned CIT(A). The ld. CIT(A) finally held that although no documentary evidence has been submitted, it would be appropriate to estimate the net commission(after allowing expenses)) earned by the assessee @ 1.00% of the transaction value which according to learned CIT(A) will meet the ends of justice and accordingly directed the A.O. to restrict the addition of undisclosed commission income @ 1% of the transaction value and directions were issued for deletion of the balance additions as were made by the AO , vide appellate orders dated 22-09-2015 passed by learned CIT(A).

9. Aggrieved by the appellate order dated 22-09-2015 passed by the ld. CIT(A), the assessee filed an appeal before the Tribunal.

10. The ld. Counsel for the assessee reiterated its submissions as were made before the authorities below and submitted that a search action against the assessee was conducted by Revenue u/s 132 of the Act on 17th February, 2012 by the DDIT (Inv.), Bhavnagar along with ship breakers group of Bhavnagar viz. Bansal sub-group and Leela sub-group. It is submitted that the assessee was not the accommodation entry provider but a middleman and facilitator of providing these accommodation entries by way of share capital /share premium to companies of Bansal sub-group and Leela sub-group through companies promoted by Sh Tejash J Shah. It was submitted that accommodation entries were provided by Sh. Tejash J. Shah. It was submitted that in the statement recorded u/s 131 of the Act, the assessee also admitted that he had received 0.10% commission for arranging the bogus entries by way of cheque against the cash for both the Bansal group and Leela group. In the statement recorded u/s 131, Shri Tejash J Shah also stated that the assessee is merely a middleman and normal commission earned in accommodation entries was of 0.30% to 0.40%. It is submitted that adequate opportunity was not provided to the assessee as the notices were issued at fag end on 14-03-2014 while the assessment was getting time barred on 31-03-2014. It was submitted that sufficient time was not granted by the AO to the assessee for filing return of income u/s 153A of the 1961 Act. It was submitted that sufficient time was not granted by the AO to reply to SCN which was issued on 26-03-2014 while the assessment was getting time barred on 31-03-2014. The A.O. adopted commission @2% on transaction amount of these accommodation entries while the ld. CIT(A) reduced the same to 1%. It is submitted that during course of search document marked as 101(pb/page1) was found and seized by Revenue which reflects commission ranging from 1.5% to 2.45% of transaction amount , wherein average comes to 1.6% . Our attention was drawn to the seized material marked page no 101 which is placed in paper book/page 1. The ld.

Counsel also invited our attention to the order of the A.O. and learned CIT(A). The ld. Counsel also relied on the decision of the Mumbai-tribunal in the case of Shri Ramesh Kumar Jain v. ACIT in ITA No. 3512 -3518/Mum/2013 for assessment years 2004-05 to 2010-11 vide common order dated 22nd April, 2015 . The assessee also relied upon decision of Special Bench decision of the Tribunal in the case of Manoj Aggarwal v. DCIT(2008) 117 TTJ 0145 (Del) [SB] whereby the Tribunal accepted net commission income at 0.3 paise, wherein tax-payer in that case admitted to have earned commission at 0.5 paise for giving accommodation entries and allowance @10% of gross commission was allowed for expenses to bring to tax net commission income at 0.35 paise . The assessee also relied upon decision of the tribunal in the case of Gold Star Finvest Private Limited v. ITO (2013) 33 taxmann.com 129(Mum-trib.) and Sanjay Kumar Garg v. ACIT (2012) 134 ITD 0082(Del0-trib)

11. The ld. CIT-D.R. submitted that the ld. CIT(A) has granted maximum relief to the assessee based on facts and circumstances of the case. There was seized material marked page no 101 (pb/page1) which was seized from assessee which reflect commission @1.5% to 2.45% on transaction value. The assessee is a link in the chain of providing accommodation entry was the contention of learned CIT(A) which is itself admitted by assessee. The document marked as page 101 (pb/page1) was seized during the course of search and contents will be presumed to be true. The assessee is not denying and rather admitting that the assessee arranged accommodation entries in concert with other middlemen such as angadia's , Sh Tejash J Shah . The learned CIT-DR contended that the assessee was handling cash which was received from beneficiaries of these accommodation entries and which was passed on to Sh Tejash J Shah in lieu of cheques arranged by Tejash J Shah favouring companies of Bansal Group and Leela Group. The learned CIT-DR relied upon the orders of the authorities below. The fictitious companies which

are used as conduits for organizing fictitious share capital and share premium in favour of Bansal Group and Leela Group are owned by Sh Tejash J Shah who was mastermind of these clandestine activities.

12. On being asked by Bench, it could not be brought on record both by learned counsel for the assessee as well by learned CIT-DR as to the fact whether Revenue has filed any appeal before the tribunal against the order of learned CIT(A) granting part relief to the assessee. The learned counsel for the assessee stated before the bench that no notice has been received from tribunal/Revenue intimating that appeal has been filed by Revenue against the appellate order of learned CIT(A).

13. We have considered rival contentions and also perused the material available on record including case laws relied upon by the rival parties. We have observed that assessee is a Chartered Accountant by profession and having income from profession and other sources.

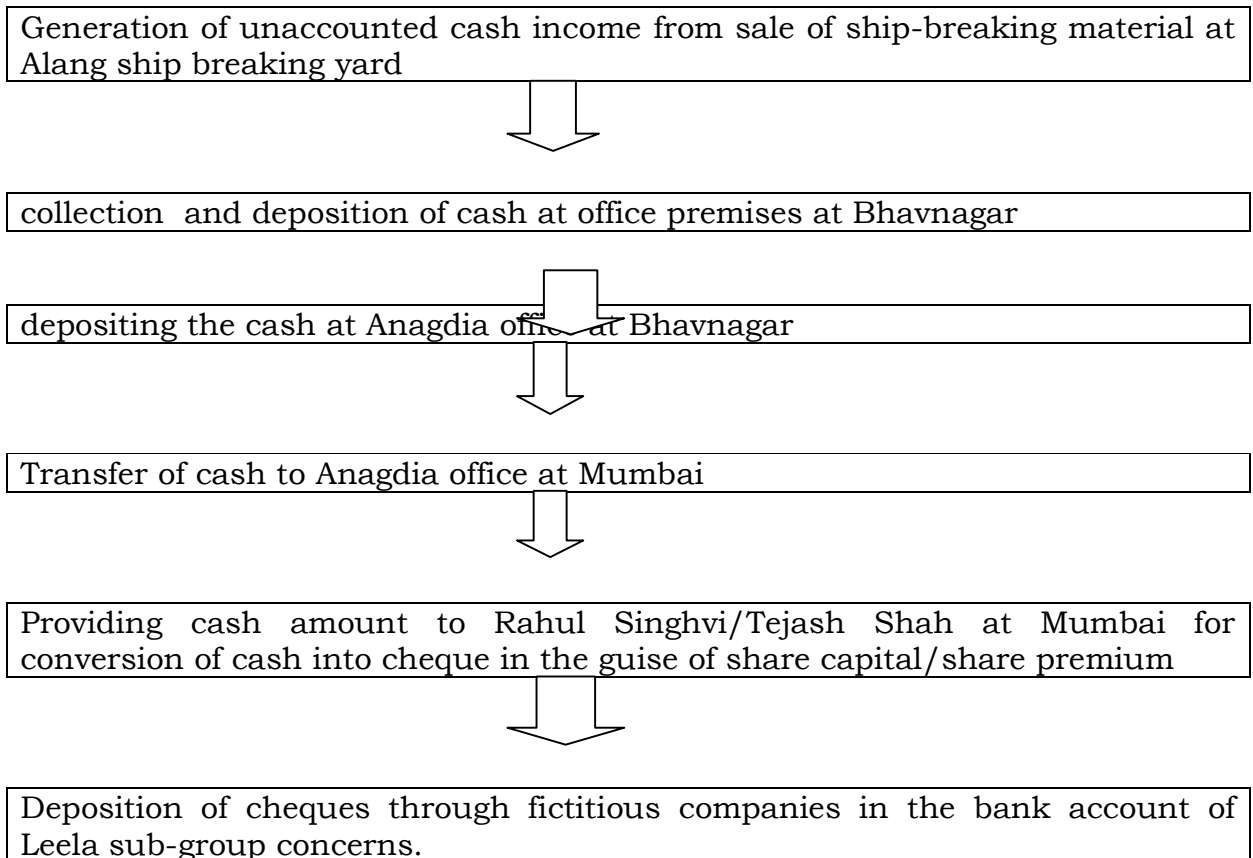
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Tejash J Shah had admitted that he had floated various companies for this scheme of conversion of cash into cheque through these bogus companies and introduction of unaccounted income into the regular books of account. It was also stated by Shri Tejash J Shah that the assessee was the facilitator for handling the cash from ship breakers through angdias and arranging cheque for Tejash J Shah group companies and cheques were introduced in the Bansal group and Leela group of companies as share capital and share premium. The extract of the statement recorded of Shri Tejash J Shah on 13th March, 2012 by the DDIT (Inv.) Bhavnagar is reproduced hereunder:-

“I do hereby acknowledge and confirm that after receiving cash from Bansal or Leela group of Bhavnagar , the same was converted in to cheques in favour of any of my managed company from different shroffs situated at Kalbadevi, Mumbai. Later on, after rotating said cheque in my owned managed companies, I used to issue either cheque or make RTGS in favour of the desired concern of Bansal or Leela group of Bhavnagar. Mr. Rahul Singhvi is the middleman in all the transactions which I have made with Mr. Vijay Bansal and Komalkant Sharma. In fact, Shri. Rahul Singhvi is the persons who asks me to arrange cheque of certain amount to Bansal or Leela Group of Bhavnagar and he only discuss with Shri. Vijay Bansal or Shri. Komalkant Sharma about the quantum of share capital or premium required and later on through angadia arranges cash. This cash is actually being sent by Shri.Vijay Bansal and Komalkant Sharma for want of desired entries. When the bank accounts of Mr. Vijay Bansal and Komalkant Sharma got credited, Shri. Rahul Singhvi used to confirm this deposition of cheques to Mr. Vijay Bansal on telephone.

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The modus operandi for this arrangement of movement of unaccounted cash as admitted by Shri Tejash J Shah and assessee is in the following style:-



It was also admitted by the assessee and Shri Tejash J Shah that the cash received from Leela and Bansal group was reinvested in their group companies as share capital after routing the same through fictitious companies of Shri TejasH J Shah and in many cases the cash was deposited in some individual shroff's account and the same was routed through few layers of other bank accounts and ultimately the money was transferred to various beneficiary companies in the form of share capital/premium. The

A.O. noted that Bansal and Leela group approached the settlement commission and had offered the investment made in the share capital as well as commission paid/expenditure incurred for procuring the accommodation entries as additional income. Further the AO observed from the perusal of page No. 101 (pb/page1) of the seized material from the assessee during search u/s 132 of the 1961 Act that the assessee had received commission ranging from 1.5 to 2.45% for arranging the bogus entries by way of share capital/share premium for Leela Group and Bansal Group. The assessee admitted to be part of the chain being facilitator of the accommodation entries being provided to Bansal Group and Leela Group. The quantum of accommodation entries is also admitted by the assessee to be Rs. 8,70,80,000/- which was arranged by the assessee for Bansal and Leela Group as facilitator. The AO based on the material seized , statement recorded of the assessee and Mr Tejash J Shah brought to tax commission income which was worked out at 2% of the transaction amount of Rs.8,70,80,000/- based on average commission of 1.5% and 2.45% of transaction amount as was recorded in seized material marked as 101(pb/page 1). The learned CIT(A) after considering the submission of the assessee reduced the additions on account of commission income to 1% of transaction amount as the learned CIT(A) allowed the benefit of expenses incurred in connection with earning of these commission income from arranging accommodation entries as also trend of generation of income in these activities , which aspects were considered by the learned CIT(A) while partly allowing the relief to the assessee . Thus, the assessee was granted part relief by the learned CIT(A) . It is not brought on record by both the rival parties that Revenue has filed any appeal against the orders of learned CIT(A) granting part relief to the assessee. The activities of arranging accommodation entries which are hawala transactions in various modes and forms to generate or convert black money and/or evasion of taxes is rampant in Indian Economy which is destroying the economic fabric of the country by creating a

parallel economy . Several laudable measures are taken by Government of India to curb this menace which included the latest move of the GOI to demonetize currency notes of Rs. 500 and Rs 1000 on 8th November 2016. Such types of clandestine activities of engaging in hawala/accommodation entries are hampering national growth and prosperity and needs to be discouraged at all levels. Conspiracies are hatched in secrecy and executed in dark. Several persons form a chain in the ring of conspiracy to convert or generate black money through accommodation entries with objective to defraud revenue to evade taxes which are otherwise legitimately due to Government. Income generated out of such activities are not declared in normal course to the State and it is only through the extra-ordinary measures executed by State such as searches and surveys, these clandestine activities are discovered. Coming back to the instant case, the Revenue has seized document marked 101 (pb/ page 101) from the possession of the assessee during the course of search operations u/s 132(1) of the Act. The said document marked 101 (pb/page1)reveals that commission to the extent of 1.5% to 2.45% on transaction value of these accommodation entries has changed hand facilitated by or through assessee in a chain of conspiracy to conclude these accommodation entries to defraud revenue. This is an admitted position by the assessee himself that the assessee is part of the chain of activities leading to facilitating accommodation entries towards fictitious share capital and share premium for companies of Bansal Group and Leela Group of Bhavnagar. It is also brought on record that the Bansal Group and Leela Group approached settlement commission to declare these income representing by fictitious share capital/ share premium and commission / expenses paid thereto. The presumption u/s 132(4A) r.w.s. 292C shall apply and content of the document being seized by revenue marked as page 10 will be presumed to be true and correct. The onus as well burden of proof is squarely on the assessee to bring on cogent material and evidences on record to prove that all the income as reflected in the seized

material is duly accounted for and dues taxes paid to Revenue. The AO has allowed an average of 2% of transaction amount to be brought to tax as commission keeping in view average of recorded commission of 1.5% to 2.45% mentioned in the seized document marked as 101(pb/101). The learned CIT(A) after considering the market trends in these type of clandestine activities and also keeping in view that expenses are also incurred in the course of such clandestine activities deem it fit to bring to tax commission income @1% of transaction amount. The quantum of transaction is not disputed by the assessee nor involvement/participation in these accommodation entries are disputed by the assessee . The Revenue is not in appeal against part-relief granted by learned CIT(A) . The assessee has placed reliance on other case laws as mentioned in preceding para's which we have gone through and we are afraid that said case laws cannot come to rescue of the assessee as it is purely a factual matter and every case is to be decided on facts and circumstances of the said case. In the instant case there is a finding supported by document seized during the searches conducted by Revenue u/s 132(1) wherein it is mentioned that commission ranging from 1.5%-2.45% on transaction value is paid on accommodation entries . The assessee has admitted to be involved in these clandestine activities. The assessee may be a part of the chain of persons who are beneficiary of these clandestine activities but since the document is seized from the assessee , the assessee has to demonstrate that the entire income as is reflected in the seized document marked as 101 (pb/page 1) is brought to tax albeit in the hands of other persons who were part of common conspiracy in these clandestine activities and the entire income suffered taxation. No such cogent material and evidences has been brought on record by the assessee. Mere statement recorded of Sh. Tejas J Shah u/s 131 is not sufficient as it is merely material obtained during search, while the document seized during the search speaks loudly of commission to the tune of 1.5% to 2.45% being paid on these accommodation entries. In-any case , learned CIT(A) has factored for expenses

to be allowed for meeting various expenses which are likely to had been incurred by the assessee in undertaking these clandestine activities of being facilitator of accommodation entries. We donot find any infirmity in the appellate order of the learned CIT(A) which we are inclined to affirm/sustain. The assessee fails in this appeal. We order accordingly.

14. In the result , appeal of the assessee in ITA no.3654/Mum/2016 for assessment year 2009-10 is dismissed. We order accordingly.

15. Our above decision in ITA No. 3654/Mum/2016 for assessment year 2009-10 shall apply mutatis mutandis to the assessee's other appeals in ITA No. 3653/Mum/2016 assessment year 2010-11 and ITA No. 3655/Mum/2016 for assessment year 2011-12 , wherein the facts are identical.We order accordingly.

16. In the result, appeals filed by the assessee in ITA No. 3653/Mum/2016 for assessment year 2010-11, ITA No. 3654/Mum/2016 for assessment year 2009-10 and ITA No. 3655/Mum./2016 for assessment year 2011-12 are dismissed. We order accordingly.

Order pronounced in the open court on 11th May, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 11/05/2017 को की गई ।

(C.N. PRASAD)
JUDICIAL MEMBER

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 11/05/2017

व.नि.स./ R.K., Ex. Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai H" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai