

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'H' BENCH MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI PAVAN KUMAR GADALE, JM**

**ITA No.7105/Mum/2017
(Assessment Year :2009-10)**

**ITA No.7106/Mum/2017
(Assessment Year :2006-07)**

**ITA No.7107/Mum/2017
(Assessment Year :2007-08)**

&

**ITA No.7108/Mum/2017
(Assessment Year :2008-09)**

M/s. Khyati Sales Agency Pvt. Ltd., B-11, Dahisar Gaurav H. Joshi Marg Dahisar (E) Mumbai – 400 068	Vs.	Dy. Commissioner of Income Tax- 8(1) Aayakar Bhavan M.K.Road Mumbai- 400 020
PAN/GIR No. AACCK1949B		
(Appellant)	..	(Respondent)

Assessee by	Shri Ajay Singh
Revenue by	Shri Gurbinder Singh
Date of Hearing	06/01/2021
Date of Pronouncement	13/01/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

ITA No.7105/Mum/2017 (A.Y.2009-10)

These appeals in ITA No.7105/Mum/2017, 7106/Mum/2017, 7107/Mum/2017 & 7108/Mum/2017 for A.Y.2009-10, 2006-07, 2007-08 &

2008-09 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-50, Mumbai in appeal Nos.CIT(A)-50/IT-73/2016-17-AY 2006-07, CIT(A)-50/IT-72/2016-17-AY 2007-08, CIT(A)-50/IT-71/2016-17-AY 2008-09 & CIT(A)-50/IT-70/2016-17-AY 2009-10 respectively dated 25/04/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.144 r.w.s.263 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 21/03/2016 by the Id. Dy. Commissioner of Income Tax Central Circle-8(1), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in all these appeals and hence, they are taken up together and disposed off by this common order for the sake of convenience.

2. At the outset we find that all these appeals are recalled matters vide M.A Order in MA Nos.22-25/Mum/2020 dated 24/07/2020 wherein it was held as under:-

“3. The brief facts of the present Miscellaneous application are that the appeal bearing ITA. No.7105/M/2017 relevant to the A.Y.2006-07 has been disposed by Hon’ble Mumbai Tribunal Bench ‘F’ by virtue of order dated 25.03.2019. The appeal pertains to the addition of Rs.2,34,52,668/- u/s 68 of the Income Tax Act, 1961 on the basis of this fact that the company was dealing in providing the accommodation entries. The addition was raised on account of third party statement. The assessee alternate plea was that the assessee was earning the commission by providing accommodation entries, the only amount of commission could be added to the assessee’s taxable income and not entire amount of transaction. In brief, the search was conducted in the case of M/s. JIK Industries Ltd. The statement of Shri DilipJayantilal Shah was recorded on 04.02.2011. It was stated that the applicant used to issue accommodation entries on commission basis @ 0.02% to 0.10%. On the basis of the said information, the noticed u/s 153C of the Act was issued. The assessment u/s 153C was completed treating the 4% as income. Subsequently, the PCIT-4 passed the order u/s 263 of the Act and thereafter the assessment u/s 144/142(1) r.w.s. 153C of the Act was completed by assessing the 100% addition i.e. in sum of Rs.2,34,52,668/-. The CIT(A) upheld the disallowance. The applicant/appellant had produced the order of co-ordinate bench in the case of M/s. Chaitali

Sales Agency Pvt. Ltd and Gold Star Finvest Pvt. Ltd. The said cases were related to same search in which the commission was assessed @ 0.15% of total deposits but the alternate contention was not dealing with the Hon'ble ITAT, therefore, the present Miscellaneous Application has been filed.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. All the appeals bearing ITA. Nos. 7105/M/2017 to 7108/M/2017 for the A.Y.2006-7 to 2009-10 has been decided by Hon'ble ITAT Mumbai 'F' Bench by virtue of order dated 25.03.2019. After perusing the order dated 25.03.2019, we noticed that the decisions in the case of Chaitali Sales Agency Pvt. Ltd. and Gold Star Finvest Pvt. Ltd. were not dealt with. Subsequently these decisions were confirmed by the Hon'ble Bombay High Court. Applicability of these cases may effect the merits of the case also. So by not dealing these cases, there is mistake apparent on record, therefore, we recall the order dated 25.03.2019. Registry is directed to refile the case in due course of time. Parties be informed.

M.A NO. 23 to 25/M/2020

5. Since all the Miscellaneous Applications filed by the assessee in case bearing ITA. No.7106 to 7108/M/2017 having similar controversy, therefore, the finding above is quite applicable to the facts of these cases also as mutatis mutandis, therefore, these Miscellaneous Applications are hereby also allowed accordingly."

3. The only identical issue to be decided in these appeals is as to whether only commission income could be assessed in the hands of the assessee being an accommodation entry provider, in the facts and circumstances of the instant case.

3.1. We have heard the rival submissions and perused the materials available on record. We find that a search and seizure action was conducted in the case of M/s. JIK Industries Ltd., on 04/02/2011. The assessee was issued notice u/s 153C of the Act as an offshoot of the said search action. A statement was recorded from Shri Dilip Jayantilal Shah during the course of search on 04/02/2011 wherein it was found that assessee company had transactions with JIK Industries Ltd. Shri Dilip

Jayantilal Shah had mentioned in his statement that, he being an accommodation entry provider, had resorted to issue various bogus bills to various parties through his various entities and one such entity was Khyati Sales Agency Pvt. Ltd., i.e. the assessee herein. It is not in dispute before us at this stage that assessee company is engaged in the business of providing accommodation entries. We find that there were credits to the tune of Rs.2,19,20,333/- in the bank account of the assessee company, on which only commission income @4% was originally added by the Id. AO in the assessment framed u/s.153C of the Act. Later, this assessment was sought to be revised u/s.263 of the Act by the Id. Pr. Commissioner of Income Tax directing the Id. AO to add 100% of the credits in the bank account as income of the assessee. The Id. AO accordingly had added the entire sum credited in the bank account as unexplained cash credit u/s.68 of the Act in the hands of the assessee company, which was upheld by the Id. CIT(A).

3.2. It is an admitted fact that assessee during the course of original appellate proceedings had indeed made an alternative contention before this tribunal stating that, it being only an accommodation entry provider, only commission income on the transactions could be added in its hands, in support of which he had placed reliance on the Co-ordinate Bench decision of this Tribunal in the case of Chaitali Sales Agency Pvt. Ltd., in ITA Nos.4908 and 4910/Mum/2016 dated 17/05/2017 for A.Yrs. 2009-10 and 2011-12 which was also covered in the same search and seizure action of JIK Industries Ltd., and only commission income was added in its hands . Reliance was also placed on various other Tribunal decisions by the assessee in the case of Goldstar Finvest Pvt. Ltd., and among others in support of the same contentions. Since, these cases were not considered by this Tribunal while disposing off the original appeals, the

same were rightly recalled by this Tribunal in MA proceedings and hence, the present proceedings before us.

3.3. It is not in dispute that assessee is only an accommodation entry provider. In this scenario, it would be just and fair that only the commission income could be brought to tax in the hands of the assessee and not the entire credits and debits in the bank account of the assessee company. In support of this, the assessee placed reliance on the following decisions:-

- a. DCIT vs. Chaitali Sales Pvt. Ltd., in ITA No.4908 and 4910/Mum/2016 dated 17/05/2017 for A.Yrs. 2009-10 and 2011-12 respectively, where the commission income @.15% was directed to be added by this Tribunal under the similar facts and circumstances emanating out of the identical search in the case of JIK Industries Ltd., u/s.132 of the Act, as in the case of the assessee hereinbefore us.
- b. DCIT vs. Chaitali Sales in ITA No.4909/Mum/2016 for A.Y.2010-11 dated 05/09/2018.
- c. Decision of the Hon'ble Jurisdictional High Court in the case of PCIT vs. Mihir Agencies Pvt. Ltd., in Income Tax Appeal Nos. 71,74,94,100,119 and 133 of 2017 dated 25/03/2019 wherein the Hon'ble Jurisdictional High Court upheld the adoption of commission income @.15% in the hands of that assessee engaged in providing accommodation entries.

- d. Decision of the Hon'ble Jurisdictional High Court in the case of PCIT vs. Goldstar Finvest Pvt. Ltd., in ITA No.1729 of 2016 dated 01/04/2019 upholding the same view as above.
- e. Decision of Mumbai Tribunal in the case of Goldstar Finvest Pvt. Ltd., vs. ITO reported in 33 Taxmann.com dated 129 dated 28/03/2008 upholding the commission income percentage @0.15% on the total accommodation entries provided which was subsequently approved by the Hon'ble Jurisdictional High Court referred to supra in the same case.
- f. Decision of the Hon'ble Jurisdictional High Court in the case of PCIT vs. Alag Securities Pvt. Ltd., in Income Tax Appeal No.1512 of 2017 dated 12/06/2020 upholding the same commission percentage of 0.15% in the case of assessee engaged in the business of providing accommodation entries.

3.4. We find that assessee had raised an additional ground in the present proceedings before us as a matter of abundant caution with a prayer that only commission income added in its hands and not the entire credits in the bank account. We find that this additional ground has been raised in the present proceedings before us only as a matter of abundant caution even though the same were already raised by it as an alternate contention during the course of original appellate proceedings. In fact the same issue was also raised by the assessee before the Id. CIT(A) which is also evident from the perusal of the order of the Id. CIT(A) in page 5 of its order. Moreover, this alternate contention raised by the assessee was also accepted by this tribunal in the MA order referred to supra. In this peculiar factual background, we

are inclined to entertain the additional ground raised by the assessee in the present proceedings before us for all the assessment years under consideration. From the perusal of the various Tribunal and Hon'ble Jurisdictional High Court orders referred to supra and more so in the case of certain sister concerns of the assessee which was also covered as an offshoot of the same search operation of JIK Industries Ltd., as in the case of assessee herein, we hold that only commission income @0.15% could be added in the hands of the assessee on the total accommodation entries provided by it on the total credits available in the bank account being the accommodation entries for the respective assessment years. Accordingly, Ground Nos. III & IV raised by the assessee in the original grounds for all these assessment years read together with additional ground raised by the assessee are disposed off accordingly.

4. In the result, appeals of the assessee are partly allowed.

Order pronounced on 13/01/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai; Dated 13/01/2021
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai