

**THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “D” BENCH**

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**IT(SS)A Nos. 495, 496, 497, 498, 499, 500 & 1604/Ahd/2019
Assessment Years 2011-12 to 2017-18**

Chintan Niketan Bhandari, B-101, Scarlet Heights, Anandnagar Cross Road, Statellite, Ahmedabad-380015 PAN: AFVPB7221E (Appellant)	Vs	DCIT, Central Circle-1(4), Ahmedabad (Respondent)
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Assessee by: Shri B.R. Popat, A.R.
Revenue by: Shri Ritesh Kumar, CIT-D.R.

Date of hearing : 18-10-2022
Date of pronouncement : 29-11-2022

आदेश/ORDER

PER BENCH:-

These seven appeals filed by the assessee are against the order of the Id. Commissioner of Income Tax (Appeals)-11, Ahmedabad, in proceeding u/s. 143(3) r.w.s. 153A vide order dated 11/09/2019 passed for the assessment year 2011-12 to 2017-18.

2. Since common issues are involved for all the years under consideration, the same are being disposed by way of a common order. Assessment year 2017-18 shall serve as the lead year since the search took place during the year under consideration.

3. The assessee has taken the following grounds of appeals:

Assessment year 2017-18:

“The learned CIT(A)-11, Ahmedabad has erred in law and on facts in:

Sl. No.	Grounds of Appeal	Tax Effect relating to each Ground of appeal
1	<i>Confirming the addition of Rs.295,56,30,168/- originally made by the AO by arbitrarily invoking the provisions of section 69 of the Act. He confirmed this addition by disregarding the nature of business activity carried out by the Appellant, as cross-verifiable inter alia from various documentary evidences found and impounded/ seized during the course of survey/ search, from the contents of various statements recorded and from the written submissions filed from time to time. He further erred in confirming the said addition which was made by the AO by treating the aggregate deposits appearing in the bank accounts as unexplained credit deposits while ignoring the rest of the evidences, including the transactions appearing on the withdrawal side of the same banking accounts.</i>	<i>Rs.228,43,91,272/- (excluding interest) [Rs.228,53,96,912/- as per the AO's computation sheet before giving effect to CIT(A)'s order, as reduced by a sum of Rs.10,05,640/- representing tax on addition to the extent telescoped by CIT(A)]</i>
2	<i>Confirming the addition of Rs.28,30,100/- in respect of the cash of equivalent amount found and seized during the course of search, albeit after giving telescoping of the same against the corresponding income. While doing this, he erred in not giving specific direction that this telescoping is required to be given against the corresponding income very much</i>	<i>Nil, as CIT(A) directed this addition to be telescoped against the corresponding income.</i>

	<i>offered for taxation - partly in the year under consideration and partly in the earlier years.</i>	
Total Tax Effect		Rs. 228,43,91,272/-

The appellant craves to add, amend, delete or alter one or more grounds of appeal."

Assessment year 2016-17

"The learned CIT(A)-11, Ahmedabad has erred in law and on facts in:

Sl. No.	Grounds of Appeal	Tax Effect relating to each Ground of appeal
<i>1</i>	<i>Confirming the addition of Rs. 615,82,50,749/- originally made by the AO by arbitrarily invoking the provisions of section 69 of the Act. He confirmed this addition by disregarding the nature of business activity carried out by the Appellant, as cross-verifiable inter alia from various documentary evidences found and impounded/seized during the course of survey/search, from the contents of various statements recorded and from the written submissions filed from time to time. He further erred in confirming the said addition which was made by the AO by treating the aggregate deposits appearing in the bank accounts as unexplained credit deposits while ignoring the rest of the evidences, including the transactions appearing on the withdrawal side of the same banking accounts.</i>	<i>Rs. 213,12,32,387/- (excluding interest)</i>
Total Tax Effect		Rs. 213,12,32,387/-

The appellant craves to add, amend, delete or alter one or more grounds of appeal."

Assessment year 2015-16:

"The learned CIT(A)-11, Ahmedabad has erred in law and on facts in:

Sl. No.	Grounds of Appeal	Tax Effect relating to each Ground of appeal
<i>1</i>	<i>Confirming the addition of Rs. 795,01,93,883/- originally made by the AO by arbitrarily invoking the provisions of section 69 of the Act. He confirmed this addition by disregarding the nature of business activity carried out by the Appellant, as cross-verifiable inter alia from various documentary evidences found and impounded/seized during the course of survey/search, from the contents of various statements recorded and from the written submissions filed from time to time. He further erred in confirming the said addition which was made by the AO by treating the aggregate deposits appearing in the bank accounts as unexplained credit deposits while ignoring the rest of the evidences, including the transactions appearing on the withdrawal side of the same banking accounts.</i>	<i>Rs. 245,65,18,432/- (excluding interest)</i>
Total Tax Effect		Rs. 245,65,18,432/-

The appellant craves to add, amend, delete or alter one or more grounds of appeal.”

Assessment year 2014-15:

“The learned CIT(A)-11, Ahmedabad has erred in law and on facts in:

Sl. No.	Grounds of Appeal	Tax Effect relating to each Ground of appeal
<i>1</i>	<i>Confirming the addition of Rs. 1,125,97,09,837/- originally made by the AO by arbitrarily invoking the provisions of section 69 of the Act. He confirmed this addition by disregarding the nature of business activity carried out by the Appellant, as cross-verifiable inter alia from various documentary evidences found and impounded/seized during the</i>	<i>Rs. 382,70,99,365/- (excluding interest)</i>

	<i>course of survey/search, from the contents of various statements recorded and from the written submissions filed from time to time. He further erred in confirming the said addition which was made by the AO by treating the aggregate deposits appearing in the bank accounts as unexplained credit deposits while ignoring the rest of the evidences, including the transactions appearing on the withdrawal side of the same banking accounts.</i>	
Total Tax Effect		Rs. 382,70,99,365/-

The appellant craves to add, amend, delete or alter one or more grounds of appeal.”

Assessment year 2013-14:

“The learned CIT(A)-11, Ahmedabad has erred in law and on facts in:

Sl. No.	Grounds of Appeal	Tax Effect relating to each Ground of appeal
<i>1</i>	<i>Confirming the addition of Rs. 795,01,69,553/- originally made by the AO by arbitrarily invoking the provisions of section 69 of the Act. He confirmed this addition by disregarding the nature of business activity carried out by the Appellant, as cross-verifiable inter alia from various documentary evidences found and impounded/seized during the course of survey/search, from the contents of various statements recorded and from the written submissions filed from time to time. He further erred in confirming the said addition which was made by the AO by treating the aggregate deposits appearing in the bank accounts as unexplained credit deposits while ignoring the rest of the evidences, including the transactions appearing on the withdrawal side of the same banking accounts.</i>	<i>Rs. 245,64,83,404/- (excluding interest)</i>
Total Tax Effect		Rs. 245,64,83,404/-

The appellant craves to add, amend, delete or alter one or more grounds of appeal.”

Assessment year 2012-13

“The learned CIT(A)-11, Ahmedabad has erred in law and on facts in:

Sl. No.	Grounds of Appeal	Tax Effect relating to each Ground of appeal
1	<i>Confirming the addition of Rs. 471,88,38,440/- originally made by the AO by arbitrarily invoking the provisions of section 69 of the Act. He confirmed this addition by disregarding the nature of business activity carried out by the Appellant, as cross-verifiable inter alia from various documentary evidences found and impounded/seized during the course of survey/search, from the contents of various statements recorded and from the written submissions filed from time to time. He further erred in confirming the said addition which was made by the AO by treating the aggregate deposits appearing in the bank accounts as unexplained credit deposits while ignoring the rest of the evidences, including the transactions appearing on the withdrawal side of the same banking accounts.</i>	<i>Rs. 145,80,60,066/- (excluding interest)</i>
Total Tax Effect		Rs. 145,80,60,066/-

The appellant craves to add, amend, delete or alter one or more grounds of appeal.”

Assessment year 2011-12:

“The learned CIT(A)-11, Ahmedabad has erred in law and on facts in:

Sl. No.	Grounds of Appeal	Tax Effect relating to each Ground of appeal
1	<i>Confirming the addition of Rs. 399,32,17,604/- originally made by the AO by arbitrarily invoking the provisions of section 69 of the Act. He confirmed this addition by disregarding the nature of business activity carried out by the Appellant, as cross-</i>	<i>Rs. 123,38,75,040/- (excluding interest)</i>

	<i>verifiable inter alia from various documentary evidences found and impounded/seized during the course of survey/search, from the contents of various statements recorded and from the written submissions filed from time to time. He further erred in confirming the said addition which was made by the AO by treating the aggregate deposits appearing in the bank accounts as unexplained credit deposits while ignoring the rest of the evidences, including the transactions appearing on the withdrawal side of the same banking accounts.</i>	
Total Tax Effect		Rs. 123,38,75,040/-

The appellant craves to add, amend, delete or alter one or more grounds of appeal.”

4. The brief facts of the case are that a survey was conducted at the assessee's proprietary concern M/s Samir Corporation at Revdi Bazaar, Ahmedabad on 17-11-2016. During the course of survey, cash of ₹ 28.3 lakhs was found and hence the survey was converted into search under section 132 of the Act by issuing a warrant of authorisation dated 18-11-2016. The assessee was also found to be a proprietor of various other concerns like Maruti Corporation, Deep Collection, Shri Creation, Sankalp Corporation and Samit Traders. During the course of search, statement of the assessee was recorded under section 132(4) of the Act, in which he admitted that he was in the business of “cheque discounting” and accepting cash in lieu of cheques from the parties and also giving cheques for cash. The assessee also admitted that is proprietor of Maruti Corporation and SM Corporation. During the course of search proceedings, several vouchers and other documents were found which contained details of cheques received and cash payment made in lieu of cheques received or vice versa. Such

documents also contained details of commission income earned by the assessee on such transactions. During the course of assessment proceedings, the assessee filed an affidavit before the AO stating that there were other concerns namely Navkar Corporation, Shri Padma Corporation, Samkit Corporation, Samay Corporation which are proprietary concern of Shri Sunilbhai Desai who is an employee of the assessee for a monthly salary of ₹ 14,000. The assessee stated that all these transactions made by the three concerns were actually made by him and he is responsible for all such transactions. The affidavit dated 27-12-2018 is part of the assessment order at pages 15-16. The proprietor of such concerns also submitted that they were working on behalf of the assessee and income earned on such transactions actually belongs to the assessee. To verify the beneficiary of assessee's cheque discounting business, the AO issued summons to 6 persons on test to check basis. Out of the total six parties to whom summons were issued, summons could be served only in case of two parties at the given address namely Shri Rasiklal and Company and G K Agencies. In response to the aforesaid summons, Shri Sanjay Lal Jain, proprietor of GK Agencies attended and statement was recorded on 27-12-2018, wherein he stated that he is brokered/middlemen and not the beneficiary party. On this basis, the assessing officer held that in spite of giving several opportunities, the assessee did not submit all the details of beneficiaries with name, address, PAN, amount of transaction etc. to discharge the onus cast upon the assessee. As the assessee could not discharge his onus by identifying the beneficiaries with complete details, the Department could not initiate proceedings against those beneficiaries. The AO accordingly made addition of the total amount credited in the bank accounts of all these concerns as

income of the assessee by relying upon the order of the honourable Delhi High Court in the case of **CIT v. D K Garg 250 taxmann 104**. The assessing officer mentioned details of concerns and year -wise amount deposited and withdrawn from all these bank accounts at page numbers 34 to 37 of the assessment order. The assessing Officer made summary of these deposits in chart given at paragraph 7.3 and 7.4 of the assessment order, which is reproduced below for ready reference:

“7.3 As the all bank transactions in the various concerns standing in the names of the employees Sh.sunil Dessai , Urvil Desai and Gautarn Patel have owned up by Sh.Chintan N Bhandari all these trasactions are taken of as transactions carried out by Sh. Chintan Bhandari. The year wise break up of the same is as under:-

<i>AY</i>	<i>Amount</i>
<i>2011-12</i>	<i>3993217604</i>
<i>2012-13</i>	<i>4718838440</i>
<i>2013-14</i>	<i>7950169553</i>
<i>2014-15</i>	<i>11259709837</i>
<i>2015-16</i>	<i>7950193883</i>
<i>2016-17</i>	<i>6158250749</i>
<i>2017-18</i>	<i>2935997361</i>

7.4 Besides, the above deposits does not include the bank deposits of Samit Traders. One Shri Kishansingh Chiman Singh, the employee of the assessee had opened four bank accounts in the name of Samit Traders. Since the assessee has owned up entire bank deposits, vide submission dated.21.12.2018 and affidavit dated.20.12.2018, the same are added in the hands of the assessee.

<i>AY</i>	<i>Amount</i>
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2011-12	3993217604
2012-13	4718838440
2013-14	7950169553
2014-15	11259709837
2015-16	7950193883
2016-17	6158250749
2017-18	2935997361
2017-18 Samit traders	19632807
Total	44985810232

[Addition Rs 295,56,30,1681”

4.1 For the year under consideration, the total amount deposited in the bank account is ₹ 295,56,30,168/- and hence the assessing officer made addition of the aforesaid amount in the hands of the assessee.

5. In appeal before Ld. CIT(Appeals), the assessee submitted that he is in “cheque discounting” business and he received only commission income on these transactions. He stated that he is registered as a commission agent with Ahmedabad Municipal Corporation and has license under Bombay Stock and Establishment Act issued by AMC declaring the assessee to be a commission agent. The assessee also stated that the Department has issued notice under section 148 of the Act in case of several beneficiaries and hence additions on total deposits are not justified. The assessee further submitted that during the course of search, no such assets or investments

commensurate to the income determined by the AO was found during the course of search. The Ld. CIT(Appeals) however dismissed the assessee's appeal with the following observations:

"5.2 Facts of the case have been considered carefully. There is no dispute about the fact that the appellant run several concerns in the name of himself and in the name of other persons which were engaged in the activities of taking cheques & cash and deposited the same in their bank accounts. The appellant's contention that he is merely a commission agent is not acceptable for the reason that he could not identify- the beneficiaries with complete details in spite of the opportunities provided to the appellant by the A.O. Even during the course of appellate proceedings,- the appellant could not produce the complete details of beneficiaries with their names, complete address, PAN and other details of transactions. The contention of the appellant that notice u/s.148 of the Act were issued to some of the beneficiaries is not supported by any documentary evidence, hence it is rejected. As the appellant could not produce any evidence showing the complete details of beneficiaries at the assessment stage and at appellate stage also, in such situation it cannot be considered that the appellant was a commission agent and engaged in the activities of cheque discounting. Merely having licence from AMC as commission agent can not justify his claim that all the deposits made in his account are only related to commission agent business. For carrying out business of cheque discounting which is called as "Sarafi Licence" (shroff licence) & the appellant failed to provide copy of such licence from concerned government authorities. With such facts, the appellant cannot be considered as mere commission agent and only commission income cannot be taxed in his hands. Therefore, Assessing Officer is justified in making addition in the hands of the appellant considering the total credits of these bank accounts as income of the appellant. The appellant's case is squarely found covered by the binding judgment of Hon'ble Delhi High Court in the case of CIT Vs. D.K, Garg (250 Taxman 104). in the aforementioned case, the-Hon'ble High Court has held that the assessee had to make a clean breast of all the facts within his knowledge concerning the credit entries in the accounts. He has to explain with sufficient details of the source of all the deposits in his accounts and he should be able to show-that money has been transferred through banking channels from the bank accounts of appellant (including the concerns controlled by him). The assessee has to discharge the primary onus of disclosure in this regard. Failure of the assessee to explain each of the sources of deposits and corresponding destination of the payments justify the additions made by the Assessing Officer. Keeping in view of the facts stated above and binding judgment of Hon'ble Delhi High Court, the addition made by the Assessing Officer are justified and hence confirmed. The ground of appeal is dismissed.

6. Next ground of appeal is against the additions of Rs.28.30,100/- made by the AO considering cash found during the course of search as unexplained. The appellant could not explain the source of cash found, hence addition made by the A.O. are confirmed. This ground of appeal is dismissed. However, the contention of the appellant that the cash found may be considered as application of income and telescoping-effect may be given is found acceptable. Thus, the appellant is allowed telescoping benefit & no separate addition is required to be made for the cash found. The A.O. may take note of the same.”

6. The assessee is in appeal before us against the aforesaid additions confirmed by Ld. CIT(Appeals). During the course of hearing, the counsel for the assessee submitted that the AO has proceeded to add the entire amount of deposits found in the assessee's bank account and other bank accounts operated by him as its undisclosed income. The argument of the counsel for the assessee is that once the AO has himself accepted in the assessment order that the assessee is engaged in the business of “cheque discounting” and has also made a specific note of the mode and the manner in which the business was being carried out, then, only the income earned by way of commission on such “cheque discounting” business can be subject to tax in the hands of the assessee and not the entire cash deposits. He submitted that various High Court and Tribunal decision support the view that in case of “cheque discounting business” only the real income/commission income which the assessee has earned could be subject to tax in its hand and not the entire deposits. During the course of hearing, as directed, counsel for the assessee also filed an affidavit in support of the assets held by the assessee during the years under consideration. The assessee drew our attention to page 18 of the paper book-II and submitted that even before the Service Tax Authorities the assessee has submitted that he is in the business of “cheque discounting” which fact has been accepted

by the Service Tax Authorities. The counsel for the assessee invited our attention to page 6 onwards of the assessment order and submitted that once the AO has himself stated in the order that the assessee was engaged in the business of “cheque discounting”, then it was not justified to tax the entire cash deposits in the hands of the assessee as its income. The counsel for the assessee invited our attention to page 15 of the paper book and submitted that the Department had prepared a list of parties/beneficiaries wherein in 116 cases, PAN number had been identified and it also had a list of 4085 parties (Annexure-C) where the rest of beneficiaries were identified. Accordingly, it was not the case that the money so deposited in the bank account was the assessee’s own undisclosed income and therefore, it would not be justified to add the entire income as its undisclosed income. The counsel for the assessee also submitted that it was also eligible for deduction of “secret commission” paid to other agents/middlemen who assisted the assessee in obtaining the business of “cheque discounting”. The counsel for the assessee relied upon the several case laws in support of the contention that in the instant facts only the “real income/commission income” was taxable in his hands and the total deposits could not be taxed as undisclosed income of the assessee.

7. In response, the DR relied upon the assessment order and the order passed by Ld. CIT(Appeals). He submitted that the assessee had only 2 to 3 employees and literally no expenses were incurred to earn the above income. Further so far as the payment of “secret commission” is concerned, the onus is on the assessee to prove what types of services were provided to the assessee and the legitimate amount which is deductible. Since the assessee

has no supporting documents/evidence to prove whether in fact any expenses were incurred and what supporting services were provided in respect of such “secret commission” and further there is nothing which the assessee could show to substantiate that any Commissioner such was paid and what was the quantum of such commission, the same cannot be allowed considering the facts of the case. In response, the counsel for the assessee submitted that if such “secret commission” is not paid, why would any other middlemen/broker provide any business to the assessee.

8. We have heard the rival contentions and perused the material on record. On a perusal of the facts placed on record and various judicial precedents on the subject, we are of the considered view that in the instant set of facts, it would not be fair to treat the entire cash deposits as the undisclosed income of the assessee. We observe that AO himself, on the basis of documents unearthed during the course of search, has observed that the assessee is engaged in the business of “cheque discounting” and in the assessment order, the AO has also on sample basis given a finding as to the quantum of commission earned by the assessee on such “cheque discounting” on sample basis. While, we are not commenting upon the sanctity of such loose papers found in the search and neither are we commenting upon whether the amount so disclosed in such loose papers can be an authoritative proof of the correct amount of commission income earned by the assessee, however, such documents do indicate that the entire deposits in the assessee’s bank account do not represent its undisclosed income. Further, even before the Service Tax Department, the assessee had submitted that it is in the “cheque discounting” business and it has been also

been accepted that the assessee is engaged in the business of “cheque discounting” in order to earn commission income. Therefore, in the instant set of facts, it would not be correct to bring to tax the entire cash deposits as the assessee’s undisclosed income.

8.1 At the same time, we also agree with Ld. CIT(Appeals) that since the assessee has been unable to identify the beneficiaries, which onus was cast upon him, then the assessee’s version of quantum of commission income earned in respect of the “cheque discounting business” cannot be completely relied upon. The assessee is not maintaining complete records of the commission earned, has given incomplete details of beneficiaries, the “middlemen” whose name the assessee has furnished are not traceable and no details to whom “secret commission” paid or other ancillary expenses incurred by the assessee have been maintained by the assessee. In the case of **D.K. Garg [2017] 84 taxmann.com 257 (Delhi)**, the honourable Delhi High Court has held that where assessee, an accommodation entry provider, was unable to explain all sources of deposits and corresponding payments, he would not be entitled to benefit of peak credit. In the case of **JRD Stock Brokers (P.) Ltd [2020] 113 taxmann.com 453 (Delhi)**, Delhi High Court held that where assessee accepted that it was providing accommodation entries to various parties for which it had opened a fictitious bank account in which amounts were deposited and later on transferred to an assessee's concern, and further, assessee could not explain or establish identity, genuineness (of credit transaction), or creditworthiness of parties, merely because these amounts were included in total turnover would not ipso facto shut out an inquiry into credits, thus, addition of peak credit under section 68

was justified. However, in the case of **Shree Sidhnath Enterprise [2016] 71 taxmann.com 55 (Gujarat)**, the Gujarat High Court held that where business of assessee was to receive cash and issue cheques in lieu of commission, in absence of any material to show that cash travelled back to assessee, cash amount would not be undisclosed income of assessee; resultantly, Assessing Officer could not have formed belief that income chargeable to tax had escaped assessment. In the case of **Gold Star Finvest (P.) Ltd [2013] 33 taxmann.com 129 (Mumbai - Trib.)** where assessee, a share broker, earned commission on providing accommodation entries to its customers, it was only said commission which could be added to assessee's taxable income and not entire amount representing value of transaction. In this case, the assessee was engaged in business of dealing in shares and securities and investment as brokers. The Assessing Officer noted that assessee received certain amount in cash from customers which was deposited in bank and, in return, cheques were issued to them. The Assessing Officer, however, treated cash deposits as well as deposit by way of transfer and clearing made into accounts with bank as income of assessee from undisclosed sources. He accordingly, made an addition of Rs. 26.59 crore. The ITAT held that since assessee was concerned with commission earned on providing accommodation entries, it was only amount of commission that could be added to assessee's taxable income and not entire amount of transaction. Therefore, impugned addition made by Assessing Officer was to be reduced accordingly. In the case of **Alag Securities (P.) Ltd. [2020] 117 taxmann.com 292 (Bombay)**, the assessee was engaged in providing accommodation entries to its customers. It received cash amount from customers/beneficiaries and issued them cheques of slightly lower

amount after charging its commission. In course of assessment, Assessing Officer brought entire amount of cash received from customers to tax in assessee's hands. The Tribunal, however, held that only amount of commission received by assessee from its customers was liable to be added to assessee's taxable income. In appeal, the High Court held that on facts, since cash amount deposited by customers/beneficiaries **had been accounted for in assessment orders of those beneficiaries**, question of adding such cash credits to income of assessee did not arise particularly when assessee was only concerned with commission earned on providing accommodation entries to its customers.

8.2 Now coming to the instant facts, we observe that the assessee has been running several concerns in the name of himself and in the name of other persons who are engaged in the activities of taking cheques and cash and deposited the same in their bank accounts. The assessee's contention is that he is merely acted as a commission agent and hence only the commission amount should be subject to tax in its hands. However, the Department has observed that the assessee could not produce that complete details of beneficiaries with their names, complete addresses, PAN and other details of transactions. In the instant case, there are approximately more than 7000 beneficiaries and only in the case of 116 beneficiaries, the PAN has been identified. For 2752 entries, PAN has not been identified. For balance entries, only part details are available. If the assessee is submitting that he is liable to be taxed only on the commission income so earned, then the onus is on the assessee to provide the basis as to how such commission income has been arrived at and list of beneficiaries and other details so that whether the

correct amount of “commission income” has been offered to tax may be verified by the Department. The Department cannot be expected to find out the details of all beneficiaries itself and cannot accept whatever income or expenses are offered/claimed by the assessee, without the assessee providing any methodology of arriving at the same along-with supporting evidence viz. details of beneficiaries, details of middlemen, basis of arriving at commission etc. In the instant facts, the assessee has submitted that he was operating through middlemen and does not know the name of beneficiaries in most of cases. However, most times, even the middlemen could not be contacted by the Department, since notices could not be served upon them as they were not available. Accordingly, in absence of details forthcoming from the assessee, a reasonable percentage may be arrived at, in the instant facts to arrive at the “commission” income earned by the assessee. In our view, looking into the totality of facts, it would be reasonable to take 0.25% of total deposits in the bank accounts owned/ operated by the assessee (₹ 295,56,30,168 for assessment year 2017-18), as commission income of the assessee for the assessment year under consideration.

8.3 Another issue for consideration before us is the assessee’s claim of “secret commission” paid to other middlemen. The assessee submitted that he paid certain “secret commission” to certain middlemen and agents who bring in cheque/cash of multiple beneficiaries in order to obtain cheque/cash. However, the assessee has submitted on several occasions before the Department (refer relevant pages of Department Paper-Book) that he has not maintained any records of such hidden expenses in the form of discount charges to other persons/ parties. In the case of **T. Lakhamshi Ladha & Co.**

[2016] 70 taxmann.com 10 (Bombay), the Bombay High Court held that Secret commission allegedly paid by assessee to employees of its clients as per trade practice in order to approve assessee's contract, rates and help in quick payment from clients, could not be allowed as deduction where assessee had not provided any evidence establishing such trade practice and name of recipients of such commission. In the case of **D.B. Taraporevala Sons & Co. (P.) Ltd. [2005] 1 SOT 123 (MUM.)**, ITAT held that in absence of basic details, that to whom secret commission was paid, in respect of which sale those amounts were paid, such expenditure could not be said to have been incurred wholly and exclusively for purposes of assessee's business and, therefore, entire expenditure claimed by assessee on account of secret commission was to be disallowed under section 37(1). In the case of **Tarini Terpuline Productions [2002] 124 TAXMAN 876 (ORI.)**, the assessee paid secret commission to agents and claimed it as deduction but declined to disclose identities of agents or correlate payments with orders procured or sales effected. The High Court held that in view of Explanation to section 37(1), Tribunal was justified in holding that expenditure claimed by assessee was not an allowable deduction under section 37(1). In the case of **VYAS & CO. [1995] 52 TTJ 398 (AHD.)**, the ITAT held that where assessee's claim for deduction of secret commission paid by it had neither been proved nor disproved, and assessee's claim was found to be on higher side, only 50 per cent of secret commission was to be allowed. In view of the facts of the case, where the assessee has clearly submitted that he has no records of parties to whom such "secret commission", but also considering the fact that the assessee submitted that payment of such commission helped in generating the

“cheque discounting” business, we are directing that 50% of such “secret commission” may be allowed, in the interests of justice.

9. In the result, Grounds of Appeal Number 1 of the assessee’s appeal is partly allowed.

Grounds of Appeal No. 2: Addition of ₹ 28,30, 100/-:

10. The brief facts in relation to this ground of appeal are that cash of ₹ 28,30,100/- was found during the course of search and the assessee could not explain the source of such cash found. The assessee during the course of assessment admitted the same to be his unexplained income and accordingly, the same was added to the income of the assessee. In appeal, Ld. CIT(Appeals) confirmed the addition, however accepted the contention of the assessee that the cash found may be considered as application of income and the effect of telescoping may be given. Thus, Ld. CIT(Appeals) allowed the telescoping benefit in the appellate proceedings.

11. Before us, the contention of the assessee is that while giving the benefit of telescoping, Ld. CIT(Appeals) erred in not giving a specific direction that this telescoping is required to be given against the corresponding income which was offered for taxation partly in the year under consideration and partly in the earlier years. In view of the submission of the counsel for the assessee, we are restoring this issue to the file of Ld. CIT(Appeals) for necessary verification. The DR has also not objected to this issue being restored to the file of Ld. CIT(Appeals).

12. In the result, ground number 2 of the appeal of the assessee is allowed for statistical purposes.

Assessment year 2011-12:

13. Since the facts and issues for consideration are identical for all the years under consideration, in view of the discussion for assessment year 2017-18, we direct that looking into the totality of facts, it would be reasonable to take 0.25% of total deposits in the bank accounts owned/operated by the assessee (₹ 399,32,17,604/-for assessment year 2011-12), as commission income of the assessee for the assessment year under consideration.

14. In the result, appeal of the assessee is partly allowed for assessment years 2011-12.

Assessment year 2012-13:

15. Since the facts and issues for consideration are identical for all the years under consideration, in view of the discussion for assessment year 2017-18, we direct that looking into the totality of facts, it would be reasonable to take 0.25% of total deposits in the bank accounts owned/operated by the assessee (₹ 471,88,38,440/-for assessment year 2012-13), as commission income of the assessee for the assessment year under consideration.

16. In the result, appeal of the assessee is partly allowed for assessment years 2012-13.

Assessment year 2013-14:

17. Since the facts and issues for consideration are identical for all the years under consideration, in view of the discussion for assessment year 2017-18, we direct that looking into the totality of facts, it would be reasonable to take 0.25% of total deposits in the bank accounts owned/operated by the assessee (₹ 795,01,69,553/-for assessment year 2013-14), as commission income of the assessee for the assessment year under consideration.

18. In the result, appeal of the assessee is partly allowed for assessment years 2013-14.

Assessment year 2014-15:

19. Since the facts and issues for consideration are identical for all the years under consideration, in view of the discussion for assessment year 2017-18, we direct that looking into the totality of facts, it would be reasonable to take 0.25% of total deposits in the bank accounts owned/operated by the assessee (₹ 1125,97,09,837/- for assessment year 2014-15), as commission income of the assessee for the assessment year under consideration.

20. In the result, appeal of the assessee is partly allowed for assessment years 2014-15.

Assessment year 2015-16:

21. Since the facts and issues for consideration are identical for all the years under consideration, in view of the discussion for assessment year 2017-18, we direct that looking into the totality of facts, it would be reasonable to take 0.25% of total deposits in the bank accounts owned/operated by the assessee (₹ 795,01,93,883/-for assessment year 2015-16), as commission income of the assessee for the assessment year under consideration.

22. In the result, appeal of the assessee is partly allowed for assessment years 2015-16.

Assessment year 2016-17:

23. Since the facts and issues for consideration are identical for all the years under consideration, in view of the discussion for assessment year 2017-18, we direct that looking into the totality of facts, it would be reasonable to take 0.25% of total deposits in the bank accounts owned/operated by the assessee (₹ 615,82,50,749/-for assessment year 2016-17), as commission income of the assessee for the assessment year under consideration.

24. In the result, appeal of the assessee is partly allowed for assessment years 2017-18.

25. In the combined result, all the appeals of the assessee for assessment years 2011-12 to 2016-17 are partly allowed and appeal for assessment year 2017-18 is partly allowed for statistical purposes.

Order pronounced in the open court on 29-11-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 29/11/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद