

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

आयकर अपील सं./I.T.A. Nos. 1859 to 1864/Mum/2016

(निर्धारण वर्ष / Assessment Years: 2007-08 to 2012-13)

Mr. Shivanand Komal Singh, Room No.123-979, Motilal Nagar No.1, Goregaon (W), Mumbai-400104	बनाम/ Vs.	DCIT, Central Circle-6 Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AVFPS0644A		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri B.N. Rao-AR
प्रत्यर्थी की ओर से/Respondent by	:	Shri V. Justin-DR
सुनवाई की तारीख /Date of Hearing	:	07/02/2018
घोषणा की तारीख /Date of Pronouncement	:	11/04/2018

आदेश / ORDER

Per Bench.:

This bunch of six appeals is by the assessee against the common order of Ld. CIT(A)-47, Mumbai, dated 21/12/2015, pertaining to the above said assessment years. The issues are common and connected and these are being disposed of by this common order.

2. The grounds of appeal read as under:

1. *The Ld. Commissioner of Income Tax (Appeals) erred in upholding the addition to the extent of 85% by giving relief only to the extent of 0.15% from the assessed 1% commission on the bogus bills provided by the appellant.*

2. *The Assessing Officer erred in invoking provisions of section 153C of the I.T. Act, 1961, which is ab-initio void an bad in law.*

3. At the outset learned counsel of the assessee submitted that he shall not be pressing for ground number two. Hence ground number two is dismissed as not pressed.

4. The brief facts of all the years under appeal, are that a search was conducted on 29.04.2011 in the case of M/s Arya Group of companies and M/s Tirupati Group of companies. During the search it was found that the appellant was involved in giving accommodation entries/bogus billing to several business concerns including entities belonging to the Arya Group and Tirupati Group of companies. Notices u/s 153C were issued to the appellant consequent to the search action and in response for the A.Y. 2007-08 the appellant filed his return declaring total income of Rs.3,04,070/-. In the impugned order, the AO noted that the bogus billing was carried out through Chanchal Tube Corporation, Asian Steel and Siddhivinayak Steel controlled by the appellant, Shri Suresh Komal Singh, Shri Dushyant Singh and Shri Pramod Kumar Singh. The AO observed that the modus operandi of the business was described in the statement recorded from Shri Pramod Kumar Singh on 28.02.2011 u/s 131 of the I.T.Act as under:

"The statement was recorded in Hindi Language. However, for passing an assessment order, the same is being converted into English Language and translation of the said is being reproduced as hereunder"

"Q.5. Please explain in detail the modus operandi of the source of income from profession of provision of bogus purchase accommodation entry.

Ans. I am in the steel trading business and sell the steel material to the steel merchants by the purchasing the same from the steel market. Many needy parties

approach me so as to procure the bogus bills from me. I provide them with the bogus purchase bills as per their requirements. The bills provided to these parties are given in the name of the firms belonging to me. These parties give me bank cheques in exchange of the bogus purchase accommodation bills. The cheques given by the so-called parties are drawn in the name of the firm which has given the so-called accommodation bill. I deposit the said cheques in the respective account of the firm. It takes round about 3 days to clear and be passed the said cheque. Subsequently, I return the cash after deducting my commission to the party which has taken the bogus accommodation entry from me

Q.6. Kindly answer as to whether the parties who have taken the bogus accommodation entries from you, have actually bought the steel material from you, in real terms.

Ans. I would like to clarify this that I along with all of my above mentioned firms, for example, M/s Siddhivinayak Steel and Asian Steel, provide only bogus accommodation entries. I along with all of the firms floated by me do not transact in any kind of exchange of steel materials of whatsoever nature. No materials of any kind are exchanged in actual terms with these parties.

Q.7. Please explain, that who determines the quantum, description and specification in respect of the bills provided to these parties.

Ans. The requisitioning / needy parties inform me about the quantum, description and specification as per their respective requirements. Accordingly, I provide them with the bills as per the members, as asked for by them.

Q.8 Do you know M/s Arya Group of companies such as, Arya Ship Breaking Corporation, Arya Ship Breaking Company Pvt. Ltd., N.T.Recycling Company Pvt. Ltd. And M.P.Recycling Company Pvt. Ltd. and also explain the nature of

business transactions / relationship with these companies / concerns? Who did introduce you to these concerns?

Ans. Yes. I know the above mentioned group of companies such as Arya Ship Breaking Corporation, Arya Ship Breaking Company Pvt. Ltd., N.T.Recycling Company Pvt. Ltd. And M.P.Recycling Company Pvt. Ltd. I do provide accommodation entries (bills) through Siddhivinayak Steels and Asian Steels to these concerns. I had provided accommodation entries/bills to these concerns through Siddhivinayak Steels and Asian Steels, the details of which are as under:

No.	Name of the beneficiary/ concern	Name of the biller	F.Y.	Amount in Rs.
1	Arya Ship Breaking Corporation	Asian Steel	2007-08	2,21,07,955
2	Arya Ship Breaking Corporation	Siddhivinayak Steel	2007-08	3,76,67,359
3	N.T, Company Pvt. Ltd.	Siddhivinayak Steel	2007-08	97,74,278
4	N.T. Company Pvt. Ltd.	Asian Steel	2007-08	1,00,08,983
5	M. P. Company Pvt Ltd	Siddhivinayak Steel	2008-09	66,56,675
6	M. P. Company Pvt Ltd.	Asian Steel	2008-09	61,14,049
7	Arya Ship Breaking Co. Pvt. Ltd.	Siddhivinayak Steel	2007-08	43,39,763
8	Arya Ship Breaking Co. Pvt. Ltd.	Asian Steel	2007-08	41,79,451
9	Total :-			10,08,48,513

I had transaction with the above mentioned company with help of Shri O.M. Prakash Singh.

Q.9 Please explain the motive of giving accommodation entries (bills) to the above mentioned Arya Group of companies.

Ans. I provide the bogus bills to M/s Arya Group of Companies so as to earn commission income out of them. I provide bogus accommodation bills to M/s Arya Ship Breaking Corporation, Arya Ship Breaking Co. Pvt. Ltd., NT Recycling Co. Pvt. Ltd. And M.P. Recycling Co. Pvt. Ltd., and earn commission income from them, in exchange of the provision of the bogus accommodation bills to their concerns.

Apart from the above mentioned 4 concerns belonging to M/s Ary Group of Companies, I have provided bogus accommodation bills to other companies belonging to M/s Arya Companies, too. The names of these concerns are M/s Tirupati Iron Impex Pvt. Ltd. Situated at Prabhadevi, Mumbai and M/s Sona Enterprises, whose particulars can be found out from the bank accounts.

Q.12 Please explain the name and modus operand! of the parties for which you are providing accommodation entries.

Ans. I provide accommodation entries to different parties. I do not remember the name of each and every party. However, there is one company whose name is M/s Sky Enterprises situated at Pancharatna Complex, Opera House, Mumbai. I do not know anything beyond this. I will provide further details after verifying the records.

I do not know the complete modus operand!. As far as I know, I remain as a creditor in the books of accounts of the parties because I provide RTGS entries. These parties are doing official purchases from different other parties and to settle my creditors account, they take the sales bills from my firms and are showing in the books. Subsequently, the bills in the name of my firms are torn off and in this way, I do not get any bill. The list of banks which have been provided to you are being used for giving accommodation entries."

Further details of the bogus billing operation emerged when the following statement was recorded from Shri Pramod Kumar Singh on 29.04.2011:

"Q.10 Please explain the modus operandi of your business.

Ans. Basically I do iron trading and trading in iron and steel material besides this I used to provide accommodation bills / bogus bills to various parties as per this requirement.

Q 11. Do you know M/s. Arya Ship Breaking Co. P. Ltd and other Arya Group Companies.

Ans. Yes I know various Arya Group Cos.

Q.12 Have you ever provided bogus bills to this group, if so, please quantify the total sales.

Ans Yes I have provided bogus bills to ARya Group to the tune of Rs.10 crores during the financial year 2008-09.

Did the company contact you directly (Arya Group of Cos.)?

Ans Mr. Om Prakash Singh, a broker / middleman contacted me on behalf of the Arya Group and requested to provide bogus / accommodation bills.

Q.14 How much commission did you pay to this middleman Mr. Om Prakash Singh for these transactions.

Ans. I neither paid any commission nor brokerage for these transactions of Rs.10 crores. He told me that he would receive the appropriate commission from the Arya Group

Q15 Please state the quantum of commission/ for charged by you for providing accommodation bills/ bogus bills co Arya Group,

Ans. I used to charge 0.15% on the amount of bills.

Q.16 Please state how these transactions takes place.

Ans. I prepare bills and send them to the respective parties or middleman. Then the parties / middleman submit cheques against those bills. When these cheques get cleared I after deducting my due commission /fee @ 0.15% of return the balance amount to the respective parties representative/ middleman.

Q.17 Please name the companies to whom you have provided accommodation bills from Arya Group Concerns.

Ans. I provided accommodation bills to

1. Arya Ship Breaking Co P Ltd
2. Arya Ship Breaking Corporation
3. M P Recycling P Ltd
4. N T Recycling Co.

Q.18 Do you know Tirupati Impex Pvt Ltd.?

Ans. Yes I know Tirupati Impex Pvt. Ltd. Mr. Om Prakash Singh, Broker, introduced me to this group.

Q.19 Have you ever issued accommodation bills / bogus bills to M/s. Tirupati Impex Pvt Ltd.?

Ans. Yes, I have provided accommodation / bogus bills to M/s. Tirupati Impex Pvt Ltd. To the tune of Rs.15 crores during the FY 09-10 under the name of Asian Steel and Siddhivina yak Steel.

Q.20 Please quantify the amount of bills raised by Asian Steel and Siddhivinayak Separately?

Ans. Each proprietorship concern namely Siddhivinayak and Asian Steel "provided bogus bills worth Rs. 7.5 crore each, to Tirupati Impex Pvt Ltd.

During 'the Financial Year 2009-10. These bills were provided through Mr. Om Prakash Singh, Broker."

A joint affidavit testifying to the above modus operandi was also executed by the appellant, Shri Suresh Komal Singh, Shri Dushyant Singh and Shri Pramodkumar Singh on 18.04.2011. The AO accordingly considered the facts and asked the appellant as to why the books of account should not be rejected as the appellant had never done any actual business and had incorrectly claimed expenses? The appellant's main response was that he had filed return of income for A.Y.200708 with Audit Report in Form 3CD and that the said books were subsequently seized by the Sales Tax Department. Accordingly, the books of accounts should not be rejected. The appellant also relied on the decision of ITAT Mumbai in the case of ACIT v ITD Cementation (36 taxmann.com 74).

5. However the assessing officer was not convinced. He held as under;

"13. I have gone through the detailed reply of the Ld. AR of the assessee and the contention of Ld. AR of assessee is not accepted on the basis of the following reasons:

- a. The assessee despite registered as trader in Iron and Steel and instead of doing the sale and purchase of actual goods, he used to issue only TAX INVOICES without actual involvement of goods. He used to provide the invoices as per the requirement of clients. The nature of goods, its value and amount were mentioned on the invoices according to the demand of the clients asking for the bogus TAX INVOICES. The clients have paid the bogus bills amount through banking channels to the assessee. Out of this amount, the assessee has deducted some percent as his commission / fees and balance amount given back to the clients.
- b. The statement of the assessee was recorded during the Survey operation u/s. 133A, wherein he has explained the modus operandi of business. In this statement, he replied that he used to provide accommodation bills / bogus bills to various parties as per the requirement of parties. From this, it is crystal clear that the assessee has issued bogus bills accommodation bills to the assessee company during the year under consideration and not done any

- actual transactions. Hence, he is involved in doing "SHAM Transactions". Further, from this statement, it is very much clear that the assessee has provided bogus bills accommodation bills to Arya Group and Tirupati Group.
- c. From the perusals of the above various statements of the assessee, it is crystal clear that, he has only doing the business of issuing the bills / accommodation entries to various parties like Arya Grop of Concerns, Tirupati Group of concerns, etc., without actually delivery / supply of the goods. From this he is getting only commission income as confessed by him. Therefore, it proves here that, he is only doing the business of commission agent However, from perusal of the audited Profit and Loss Account, it is seen that, the assessee has claimed various expenses such as Business Promotion Expenses, Discount on Sales, Loading and Unloading, Repairs and Maintenance, Sundry Expenses, Transportation Paid, etc. Looking to the business and current scenario of the assessee's case, the assessee has wrongly /bogus claimed of all these expenses in the books of accounts, as the question of Loading & Unloading Expenses, Transportation Charges Paid, never comes in a picture as the assessee has only given the bogus bills / accommodation entries. In nutshell, the assessee has manipulated his books of accounts by claiming hanky panky expenses /entries in the books of accounts.
- d. The above mentioned fact about assessee's involvement in bogus activities is also proved by the information received from the Sales Tax Department Maharashtra. As per this information also the assessee is involved in giving bogus purchases bills / accommoda ion entries without doing any actual involvement of goods. The assessee has also submitted "AFFIDAVIT" and different statements in this regards before Sales Tax Department confirming about the SHAM Transactions done by him. The Affidavit is attached to this order as Annexure-1.
- e. Therefore, I am very much satisfied that, the assessee has prepared false financial statement in the eyes of laws. Hence, I hereby reject the books of accounts maintained by the assessee.
- f. During the course of assessment proceedings, the Ld. AR of the assessee has submitted the bank statements. From these bank statements, it is seen that, the assessee has issued a bogus bills / accommodation entries to the tune of Rs. 28,99,09,929/- for the year under consideration. Hence, the same is hereby treated as Turnover of the assessee for this year.

Generally, as per the market practices the billers / mediators are charging commission / fees ranging between 0.50% to 2% of the transaction value as commission / fees to give bogus bills / accommodation entries. Looking to the prevailing market rate for this, I am satisfied that the assessee has received commission /fees at the rate 1% on the bogus bills / accommodation entries, as income. Considering to this, in the case of assessee, Rs. 28,99,099/- (1% of Rs. 28,99,09,929/-) is added to the total income of the assessee, for the year under the consideration. The penalty proceedings have been initiated u/s 271(1)(c) of the IT Act, 1961, separately for concealing the particulars of total

income and filing inaccurate particulars of income.

6. Against above order assessee appealed before the learned CIT-A. Principally the learned CIT-A upheld action of the assessing officer and following another ITAT decision granted some relief to the assessee. He held as under:-

"4.1.2. On careful consideration of the facts on record, I find that the statements recorded during survey and search operations leave no room for doubt that the appellant along with Shri Suresh Komal Singh, Shri Dushyant Singh and Shri Pramod Kumar Singh were running a sham business which only served to provide bogus bills. No actual transaction was done. The said statements were never retracted. In fact a combined affidavit was also executed on 18.04.2011 by the appellant, Shri Dushyant Singh, Shri Suresh Singh and Shri Pramod Kumar Singh stating that the no regular business was done and that only tax invoices/bills were issued to interested parties. The appellant has not been able to provide any proof of genuine business activities. The reliance of the appellant on the decision in the case of ACIT v ITD Cementation (cited supra) does not support the case of the appellant as in that case, the appellant had been able to successfully substantiate the accounts in remand proceedings and the same were accepted by CIT(A) as the effects pointed out by the AO were to do with verification and reconciliation. In the instant case the appellant has not been able to establish that commission received by him was at a rate lower than that determined by the AO.

4.1.3 The issue related to determination of rate of commission in the case of a hawala bill operator in iron and steel was adjudicated upon in the case of M/s. Saroj Anil Steel P. Ltd. vs ITO (ITA Nos. Mum/8932&8933 of 2010 and ITA/Mum/5853 of 2010 order dated 04.04.2014) by the Hon'ble Tribunal as under

"6. In the second appeal, the Tribunal, vide order dated 31st March 2005, directed the Assessing Officer to estimate the income ^{at} 1% of the total turnover and also directed to allow certain administrative expenses therefrom. The relevant observations and the findings of the Tribunal in the first round as given in Page-150 and 151, are as under:- "6. Learned representatives have very fairly agreed that there are no precedents on the issue as to what should constitute reasonable profit from the activity of issuing hawala bills for sale of iron and steel. Shri Bhujle tried to rely upon the Tribunal decision in respect of bill discounting cases, but when it was pointed out to him that bill discounting business and hawala business are not comparable, he fairly did not press the point further. He, however, submitted that not more than 2% net profit can be justified in such a line of activity. On the other hand, Shri Reddy submitted that even hawala commission is taken at 1% not more than 1% to 15% expenses can be justified. It was thus contended that 85% net profit is the least possible net profit from this line of activity. Respective stands were also reiterated before us. We are of the view that all that is required for us is to estimate a reasonable basis on which income from this activity can be computed. The guidance is available from the order of the Assessing Officer himself. The Assessing Officer has observed that the normal rate of hawala commission ranges from 1% to 2%. That means, 1%

hawala commission rate cannot be said to be an unrealistic rate (emphasis supplied). The next question then is as to what should be the expenses deductible from this to arrive at net profit rate. The assessee before us is an artificial juridical person and the assessee has to incur some expenses to have its continued legal existence, and to meet the costs of running the office etc. These expenses should be allowed as a deduction. The assessee has also contended that a deduction should also be allowed in respect of commission that the assessee has to pay to those who get him the business of hawala entries. Since we have already adopted a minimum commission rate of 1 %., we do not consider it necessary to allow further deduction in respect of such a commission. This claim must be declined. In effect, the net income from this business is to be arrived at by reducing from 1% of total turnover, the office expenses and the expenses incurred from continued legal existence of the company (such as filing fees, ROC fees, audit fees and expenses on statutory compliances) and also the directors remuneration in case the assessee has claimed the same. The net profit is to be computed accordingly."

Thus, the Tribunal has upheld the rate of commission of 1% in the area of bogus billing for iron and steel. In the above cited case the Tribunal also considered fit to allow for general office expenses and expenses for statutory compliances as required by a corporate entity. In the instant case, the appellant being an individual would not be incurring expenditure for continued legal existence but would be incurring expenses in the nature of bank charges, office expenses, etc. Keeping in view the above decision and the facts of the instant case, the AO is directed to allow the appellant 15% deduction for expenses from gross commission and assess net commission accordingly for each of the A.Yrs. The addition made by the AO is thus partly upheld and the ground raised by the appellant is partly-allowed for each year "

7. Against above order assessee is in appeal before us. We have heard both the counsel and perused the records. Learned counsel of the assessee submitted that he was placing reliance upon Hon'ble Apex court decision in the case of S kader Khan (25 taxmann.com 413) for the proposition that a statement on survey dehorse cogent materials should not be the basis for addition. He Further placed reliance upon another ITAT decision and requested for further reduction in the addition. Per Contra learned departmental representative placed reliance upon the order's of authorities below.

8. Up on careful consideration we find that facts of the case and the materials found by the Department and the admission of the assessee and its connected persons clearly indicate that assessee has been operating the business of providing

bogus accommodation entries. The books of account financial statement has been found to be falsely maintained. Incriminating materials in this regard were duly found in search. Consequent to which action u/s 153C has been taken in this case. Despite raising a ground challenging the validity of action u/s 153C, the assessee has not pressed the same. In this view of the matter when the assessee is clearly engaged into bogus accommodation entry and there is no dispute to the same; assessee's reliance upon the decision of Hon'ble apex court in the above case of S kader Khan (Supra) cannot oxygenate case of the assessee. In the said decision of the Hon'ble apex court there was retraction within four days and there was no corroborating material found. This is not at all the case in the present case. As regards the claim of reduction in the rate of addition we find that revenue is not in appeal against the reduction granted by the learned CIT-A. In our considered opinion Ld CIT-A has been fairly liberal in granting relief to the assessee. As held by the Hon'ble apex court in the case of leave, Kale Khan H. Mohammed vs CIT 50 ITR 1, when assessee claims that a sum received is not taxable onus is upon him to prove that the same is not exigible to tax. Here we find that assessee has indulged in bogus accommodation entries and has received huge turnover. The learned CIT-A is taxing only 0.85% as profit out of the same. In our considered opinion the assessee has not discharged its onus as per ratio of above Hon'ble Apex Court decision. We find that the order of learned CIT-A is reasonable and does not need any interference on our part.

9. In the result we uphold the order of learned CIT-A, hence these appeals by the assessee stand dismissed.

Sd/-
(Ram Lal Negi)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 11/04/2018

Sd/-
(Shamim Yahya)

लेखा सदस्य / Accountant Member

Shekhar. PS/नि.स.

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

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