

**IN THE INCOME-TAX APPELLATE TRIBUNAL“D” BENCH,
MUMBAI**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.3290/MUM/2019
(A.Y. 2011-12)**

M/s Real Time Consultants Pvt. Ltd. Office No. 201, 2 nd Floor, A-2 Wing, Kailas Complex, Bhandup (West), Mumbai 400078, Maharashtra	v/s. बनाम	Income Tax Officer, Ward – 15(3)(1), Room No. 456, 4 th Floor, Aaykar Bhavan, M.K. Road, Mumbai – 400020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFCR0109P		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Rushabh Mehta,AR
Respondent by :	Shri Uma Shankar Prasad,(CIT DR)

Date of Hearing	18.06.2025
Date of Pronouncement	05.09.2025

आदेश / O R D E R

PER PRABHASH SHANKAR [A.M.] :-

The present appeal is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)-24, Mumbai[hereinafter referred to as ‘CIT(A)’] pertaining to assessment order passed u/s. 143(3) r.w.s. 147 of the Income-tax Act, 1961 [hereinafter referred to as “Act “] dated 28.12.2016 for the Assessment Year [A.Y.] 2011-12.



2. The grounds of appeal are as under:-

1. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in sustaining the actions of the Assessing Officer of initiating reassessment proceedings merely on the basis of a statement of one alleged entry operator Sh. Jagdish Purohit, despite the fact that he had already retracted from the said statement before the date of recording of reasons by the Assessing officer.*
2. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in sustaining the actions of the Assessing Officer of initiating proceedings u/s 147 of the Income Tax Act, 1961 ignoring the fact that original assessment had already been framed under section 143(3) of the Act and reassessment proceedings initiated were on a mere change of opinion and should be quashed, as such relying on the decision of Supreme Court in CIT vs. Kelvinator of India 320 ITR 561 (SC).*
3. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in sustaining the actions of the Assessing Officer of disregarding the fact that when original assessment u/s 143(3) was completed on 13.03.2014 and the issue under consideration was examined categorically by the Assessing Officer, the impugned reassessment proceeding is bad in law as there is no failure to disclose fully and truly any material facts necessary for assessment.*
4. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in sustaining the actions of the Assessing Officer of initiating the assessment merely on conjectures and surmises solely on the basis of information received from the investigation wing without any application of mind on the information so received.*
5. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in sustaining the actions of the Assessing Officer of initiating reassessment proceedings for making a 'fishing or roving inquiry' without proper reason to believe that income had escaped assessment.*
6. *In the facts and circumstances of the case and in law, the learned CIT(A) has erred in sustaining the actions of the Assessing Officer of reopening*



the assessment for the reason that the appellant was one of the beneficiary who had taken accommodation entry in the form of security premium amounting to Rs. 68,82,69,800/- and not doubting the amount of share capital of Rs 2,14,52,200/- thereby vaguely concluding that a part of the transaction was genuine and the remaining part of the same transaction was not.

7. In the facts and circumstances of the case and in law, the learned CIT(A) has erred in sustaining the additions made by the Assessing Officer merely based on a statement of one alleged entry operator Sh. Jagdish Purohit, despite the fact that he had retracted from the statement and had categorically denied providing any such entry to the appellant during his cross examination in pursuance to summon u/s 131 during the reassessment proceedings.
8. In the facts and circumstances of the case and in law, the learned CIT(A) has erred in sustaining the actions of the Assessing Officer of completing the reassessment proceedings by arbitrarily adding the share capital of Rs 2,14,52,200/- and security premium amounting to Rs. 68,82,69,800/-, disregarding all evidences on record submitted by the appellant and as gathered by the AO rendering the entire process of issuing notice u/s 133(6) a futile exercise.
9. In the facts and circumstances of the case and in law, the learned CIT(A) has erred in sustaining the actions of the Assessing Officer of travelling beyond the reasons recorded at the time of issue of notice u/s 148 and making roving enquiries.

Additional Grounds of Appeal

1. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in upholding the action of the Ld. Jurisdictional Assessing Officer of initiating the reassessment proceedings u/s 147 instead of issuing notice and conducting the proceedings under section 153C of the Act.
2. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in upholding the action of the Ld. Jurisdictional Assessing



Officer of concluding the reassessment proceedings u/s 147 based on impugned approval of the Additional Commissioner of Income Tax-15(3), Mumbai; under section 151(2)- which was granted mechanically.

3. Brief facts of the case emanating from the assessment order reveal that the assessee, a Private limited company is engaged in the business of financing and dealing in shares. Original assessment order was passed on 13.03.2014 u/s 143(3) of the Act accepting returned loss of Rs 2,854/-. Subsequently, information was received by the AO from the **DDIT(Investigation)-II, Jodhpur, Rajasthan** stating that one **Shri Jagdish Prasad Purohithad** provided them a list of **246 companies which were controlled and managed by him in providing accommodation entries to willing companies in the form of share premium, share capital etc.** Further, it was intimated that the assessee company **M/s Real Time Consultants Pvt. Ltd** which was also controlled and managed by **Shri Jagdish Prasad Purohit** had also received share premium amounting **Rs.68.82 cr.** Therefore, on the basis of the information received, the assessment made earlier was reopened u/s 147 of the Act and reassessment order was passed determining income of **Rs 70.97 cr.**

3.1 According to the assessment order, the above named person retracted his statement which was recorded u/s 132(4) of the Act during



search operation. Subsequent retractions were countered by the Investigation wing on the ground that no coercion was applied and the retracted statement was only self serving. It was also intimated that notices were issued u/s 133(6) of the Act to **nine share applicants which were returned back unserved with the remarks 'Not Known'**. The assessee agitated reopening in view of the retraction of Sri Purohit subsequently. However, the AO rejected the contentions inter alia stating that the **statement recorded on 21.01.2015 was under oath u/s 132(4) of the Act** wherein the said person was specifically reminded of the consequences of any false statement by quoting provisions of section 179, 180 and 181 of CPC and section 277A of the Act. and consequential penal provisions. **His statement was again recorded u/s 132(4) of the Act during some other search in the case of Spectrum Vintrade P. Ltd** wherein also he admitted being engaged in the business of entry operator of share application and loans adding that these companies were not engaged in any business.

3.2 Moreover, the retraction affidavit was filed after a lapse of one month, reasons for which were not explained. Besides, the same was only notarized and not sworn before any Magistrate. The AO found several inconsistencies in the said statement involving coercion which was never raised before any of the authorities. He placed reliance on



various case laws i.e. CIT vs Abdul Razak 20 taxmann.com 48(Ker), Ravindra Kumar Verma 30 Taxmann.com 367(All) etc. Consequently, he held that as the assessee failed to prove the identity, credit worthiness and genuineness of the transactions, the share application money credited in the books of the account of the assessee was liable to be taxed u/s 68 of the Act. Further, share capital amounting Rs. 2,14,52,200/- was also received from companies from whom the share premium was received by the assessee and these companies were found to be paper companies and controlled and managed by Shri Jagdish Prasad Purohit. In view of such facts, he treated the subscription of Share capital amounting to Rs. 2,14,52,200/- and Share Premium received of Rs. 68,82,69,800/- as unexplained cash credit u/s. 68 of the Act and added back to the total income of the assessee.

4. In the subsequent appeal before the CIT(A) by the assessee, it was claimed that during original assessment proceedings, the AO conducted independent enquiries u/s 133(6) of the Act and in response thereof all shareholders had duly affirmed the transactions. Details such as share application form, allotment letter, ITR, Balance sheet and profit and loss account, bank statement were submitted. The Id. CIT(A) called for remand report from the AO who objected to entertaining additional



evidence u/r 46A on the ground that sufficient opportunity was allowed during assessment proceedings. He also rejected the contentions of the assessee that in original order, any notice u/s 133(6) was issued by the then AO. The remand report was sent by the Id. CIT(A) to the assessee vide letter dated 30.1.2019 for comments.

5. In so far as the grounds relating to the validity of reopening u/s 147 of the Act is concerned, we find that pursuant to the search and seizure action u/s 132 of the Act, in the case of **Varaha Infra Group on 12.01.2015, information was passed on that the appellant had taken accommodation entry in the form of share premium from entities controlled by Shri Jagdish Prasad Purohit and his associates.** Various statements recorded and evidences were collected during the course of Search action by the Investigation Wing, Jodhpur and were made the basis for action u/s 148 of the Act. Thus, it is evident that the department was in possession of fresh information which led the AO to arrive at reasons to believe necessary to invoke the provisions of section 147 of the Act. The Hon'ble Delhi High Court in the case of **AGR Investments Ltd. vs. Addl. CIT (Del) 333 ITR 146** held that that where Assessing Officer had specific information from DDIT (Investigation) as regard transactions entered into by assessee company with a number of concerns which had made



accommodation entries and they were not genuine transactions, it could be said that there was material on basis of which notice under section 148 of the Act could be issued. It is further pertinent to mention here that in the case of **CIT vs. Nova Promoters & Finlease (P) Ltd (ITA No. 342 of 2011) dated 15.02.2012**, the Hon'ble Delhi High Court, held that as long as there is a 'live link' between the material which was placed before the AO at the time when reasons for reopening were recorded, proceedings u/s 147 would be valid. The Court also held- *"We are aware of the legal position that at the stage of issuing the notice u/s 148 the merits of the matter is not relevant and the Assessing Officer at that stage is required to form only a prima facie belief or opinion that income chargeable to tax has escaped assessment."*

5.1 As regards the other contention of the assessee that the reopening was done in a mechanical manner without application of mind, we find there is nothing on record to support such a contention. There is a live link between the information which was available with the AO and his formation of belief that income had escaped assessment. Sufficiency of such information cannot be gone into while deciding the issue of validity or reopening. In view of discussed facts of the case and judicial pronouncements on the issue of the reopening of case u/s 147 and issuance of notice u/s 148 of the Act, by the AO, we are of the



considered opinion that the AO had sufficient 'reason to believe' for reopening of the case u/s 147 by issuing notice u/s 148 of the Act. We may place reliance on the case of **Central Provinces Manganese Ore Company Ltd. (191 ITR 662 SC)**, wherein the Apex Court interpreted the word "reason to believe". It was held that, the words "reason" in the phrase "reason to believe" in [section 147](#) of the Act, would mean cause or justification. If the AO has cause or jurisdiction to know or suppose that income has escaped assessment, he can be said to have reason to believe that income has escaped assessment. The expression cannot be read to mean that the assessing officer should have finally ascertained the fact by legal evidence or conclusion. In [Praful Chunilal Patel Vs. M.J.Makwana Vs. CIT, \[236 ITR 832\]](#), the hon'ble court while interpreting the term 'reason to believe', held that, the word "reason to believe" cannot mean that the AO should have finally ascertained the facts by legal evidence. They only mean that he forms a belief from the examination he makes and, if he likes, from any information that he receives. If he discovers or finds or satisfies himself that the taxable income has escaped assessment, it would amount to saying that he had reason to believe that such income had escaped assessment. The justification for his belief is not to be judged from the standards of proof required for coming to a final decision. A belief though justified for the



purpose of initiation of the proceedings under Section 147 of the Act may ultimately stand altered after the hearing and while reaching the final conclusion on the basis of the intervening enquiry. At the stage where he finds a cause or justification to believe that such income has escaped assessment, the AO is not required to base his belief on any final adjudication of the matter". His formation of belief is not a judicial decision but an administrative decision. It does not determine anything at the initial stage, but the AO has a duty to proceed so as to obtain, what the taxpayer was always bound to pay if the increase is justified at all. The decision to initiate the proceedings is not to be preceded by any judicial or quasijudicial enquiry. His reasoning may be the result of official information or his own investigation or may come from any source that he considers reliable. His reason is not to be judged by a Court by the standard of what the ideal man would think. He is the actual man trusted by the legislature and charged with the duty of forming of a belief for the mere purposes of determining whether he should proceed to collect what is strictly due by law, and no other authority can substitute, its standard of sufficient reason in the circumstances, or his opinion or belief for his. Unless the ground or material on which his belief is based, is found to be so irrational as not to be worthy of being called a reason by any honest man, his conclusion



that it constitutes a sufficient reason, cannot be overridden. What is, therefore, to be ascertained is, whether the alleged reason really existed, and if it did, whether it was so irrational as to be outside the limits of his administrative discretion with which the AO is invested so as to be really in disregard of the statutory condition.....".

5.2 In view of the settled principle of law as propounded by the Apex Court as well as by high court and considering the contention of the reasons recorded for reopening and further clarification of the information made by the revenue, we are of the view that, the Assessing Officer himself was satisfied with regard to the information and other materials on record, he formed an opinion that, the income had escaped assessment. Therefore, when the information was specific with regard to transactions of accommodation entries entered into by the assessee and the AO had applied his independent mind to the information and upon due satisfaction, led to form an opinion that, the share application money claimed by the assessee is chargeable to tax has escaped assessment, which facts suggests that, there is live link between the material which suggested escapement of income and information of belief. Under the circumstances, we are satisfied that, there was enough material before the AO to initiate proceedings under [section 147](#) of the Act.



5.3 In view of the foregoing reasons and considering the facts and circumstances of the present case, we have no hesitation to hold that it could not be said that there was no material or grounds before the AO and the assumption of jurisdiction on the part of the AO under [Section 147](#) of the Act to reopen the assessment by issuing impugned notice under [Section 147](#) of the Act is without authority of law, which render into the notice unsustainable. Therefore, the assessee failed to make out a case of invalid assumption jurisdiction u/s 147 of the Act. **Therefore, ground no. 1 to 5 of the appeal are dismissed.**

Additional grounds of appeal no.1 and 2

6. During the hearing, the learned Authorised Representative raised certain additional grounds(supra)claiming that the Id. CIT(A) has erred in upholding the action of the Ld. Jurisdictional Assessing Officer of initiating the reassessment proceedings u/s 147 instead of issuing notice and conducting the proceedings under section 153C of the Act.In the facts and circumstances of the case and in law, he erred in upholding the action of the Assessing Officer of concluding the reassessment proceedings u/s 147 based on impugned approval of the Additional Commissioner of Income Tax-15(3), Mumbai under section 151(2) - which was granted mechanically.



6.1 The ld.AR has contented that that the reassessment proceedings under [section 147](#) of the Act were initiated on the basis of the information received during the course of the search on another entity, and therefore instead of initiating proceedings under [section 147](#) of the Act, the AO should have initiated the proceedings under [section 153C](#) of the Act, in view of the non- obstante clause in [section 153C\(1\)](#) of the Act.

7. The ld.DR has submitted that this ground was raised for the very first time after the passage of considerable time of 08 years and never raised before the AO and the CIT (A). No new evidences were submitted and no reason given for raising this ground after 08 years and nowhere prevented to raise this ground before AO/CIT(A). Therefore, this additional ground should be rejected.

8. Since the issue raised by way of **additional ground no.1** is a legal issue, which goes to the root of the matter and can be decided on the basis of material available on record, the same are admitted and taken up for adjudication along with the revised grounds of appeal in view of the ratio laid down by the Hon'ble Supreme Court in **National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383/157 CTR 249 (SC)**.



8.1 However, as stated above these grounds were never agitated by the authorities below. From a plain reading of the aforesaid provisions, it is evident that for the applicability of the provision, and initiation of proceedings under [section 153C](#) of the Act the following conditions are required to be fulfilled:-

- (a) any money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned;
- (b) the AO is satisfied that the such assets or documents or books of account belongs or pertains or pertain to or any information contained therein relates to a person other than the person referred to in [section 153A](#) of the Act;
- (c) the seized or requisitioned assets or documents or books of account shall be handed over to the AO having jurisdiction over such other person;
- (d) the AO having jurisdiction over such other person is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person;
- (e) the AO having jurisdiction over such other person shall proceed against such other person and issue notice and assess or reassess income of such other person in accordance with the provisions of [section 153A](#).

8.2 The additional ground evidently is having intricate nexus with the facts on record. Therefore, the applicability or otherwise of the provisions of the section 153C of the Act in the present case, needs factual verification by the authorities below. Thus, we consider it appropriate to remit this ground to the file of the AO to examine merits therein and act as per law. **Accordingly, the additional ground no.1 is allowed for statistical purposes.**



8.3 In the **ground no.2 of additional ground**, it is claimed that the ld.PCIT has given a mechanical approval u/s 148 of the Act.However,this ground has not been substantiated in any manner by the ld.AR.Therefore,we do not find any merit therein and is therefore,**dismissed**.

9. The **ground no.6 to 8** pertain to the merits of the addition made by the AO and upheld by the ld.CIT(A). According to the assessment order in this case, information was received from Investigation that Shri Jagdish Prasad Purohit had provided them list of 246 companies which were controlled and managed by him in providing accommodation entries to willing companies in the form of share premium, share capital assets etc. Further, in the letter it was mentioned that the assessee company which was controlled and managed by Shri Purohit had also received share premium amounting Rs.68,82,69,800/- .The assessee failed to explain the source of this amount and also failed to prove the genuineness and creditworthiness of the persons from whom such sum was received. The information received mentioned that a search and seizure action u/s 132 of Act was carried out in the case of Varaha Infra Group of Jodhpur on 21.01.2015. Main allegation against the company was that it had rotated its unaccounted money in form of share premium through various paper companies based at Kolkata,



Mumbai, Indore and Jodhpur. Main bogus entry provider was Jagdish Prasad Purohit and his associates based at Kolkata and Mumbai. His residence along with residences of his associates namely, Eknath Mandavkar, Raj Kumar Kanodia and family members Sushil Kumar Purohit, Anil Kumar Purohit and Kailash Prasad Purohit were covered u/s 132 of the Act. His associates were working as dummy directors in the companies managed by Jagdish Prasad Purohit. They accepted during the search operation that they were directors for namesake only and all the affairs were being managed by Jagdish Prasad Purohit. He himself accepted that he was an entry provider engaged in providing accommodation entries to willing companies in form of share capital, share premium, bogus bills, unsecured loans etc. in lieu of commission. He provided a list of large number of allegedly sham companies which were controlled and managed by him for this purpose and these companies had shown receipt of security premium amount in their return of income and the assessee was alleged to be one of the beneficiaries. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who dismissed the appeal of the assessee as the appellant failed to prove the credits in its books of account in the guise of Share Capital and Share Premium. Reliance was placed the decision of the Hon'ble Supreme Court in the case of **Pr.CIT Central-1**



Vs. NRA Iron & Steel (P) Ltd. [2019] 103 taxmann.com 48 (SC)

wherein it has held as follows:-

"The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.

14. The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.

15. On the facts of the present case, clearly the Assessee Company Respondent failed to discharge the onus required under [Section 68](#) of the Act, the Assessing Officer was justified in adding back the amounts to the Assessee's income.

16. The Appeal filed by the Appellant - Revenue is allowed. In the aforesaid facts and circumstances, and the law laid down above, the judgment of the High Court, the ITAT, and the CIT are hereby set-aside. The Order passed by the AO is restored."

9.1 The assessee being a private limited company, the share investment being made only by friends, relatives and acquaintances, it should have produced them before AO to establish their credentials. The Id.DR in the course of hearing before us has emphasised that Jagdish Prasad Purohit is a highly qualified person with B.Com and Law graduate and fully aware of legal knowledge and procedure and also ramifications of admission on oath recorded u/s 132(4) of the Act. Retraction taken on the ground of threat and coercion had no merit as it was not a case that the department ever forced him to give any



confession and he is an advocate, so question of confession under threat doesnot arise. No evidence or anything was brought on record to deviate from his statement u/s 132(4) of the Act. Therefore, retraction of statement hadno merit and case should be decided on merit.

9.2 In so far as the merits of the case are concerned, it is further submitted that **all are Kolkata based companies to whom shares were allotted at a premium of Rs.509/- per share.** Many of such companies had common addresses and they were either filing NIL or loss income and no business activity were carried out. Besides, the assessee company previously was doing no business, this being the first year of operation and had filed loss return. Therefore, question of valuation of the value of share premium of Rs.509/- having face value of Re.1/ did not arise. No prudent company will invest in loss making company having no business activity and being its first year of operation at such a huge premium. Also summons issued to these companies had no response and service through post remained un-served. The appellant also failed to discharge its onus regarding credit worthiness of the parties except filing confirmations during proceedings u/s 143(3) of the Act. Where the identity is established but not the creditworthiness, such cash credit could be treated as income u/s 68 of the Act, since law places a burden of establishing creditworthiness on such assessee. It was so



decided by the High Court in **Riddhi Promoters P. Ltd. vs CIT [2015] 377 ITR 641 (Delhi)**. The Hon'ble Supreme Court in the decision dated 25.03.2019 in the case of **NRA Iron & Steel Pvt. Limited 412 ITR 161 (SC)**, after discussing a number of decisions held that *the practice of conversion of unaccounted money through the cloak of share capital/share premium must be subjected to careful scrutiny to ascertain whether the transaction is genuine other are bogus entries name-lenders*. The Hon'ble Supreme Court has also held that if the enquiries and investigation reveal that the identity of creditor is dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction cannot be said to have been established. In such a case, the assessee would not have discharged the primary onus contemplated by section 68 of the Act. It further observed that if during the field enquiry, the creditor is found non-existence, the onus regarding the establishing of identity would not be considered discharged by the assessee. In the present case, it is seen that the Kolkata based companies to whom shares were allotted at unreasonably high premium were not even traceable at the given addresses. Therefore, the observations of Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd. (supra) are squarely applicable to the present case.



9.3 It was also contented that merely for the reason that the transactions were made through banking channel, it did not prove the creditworthiness of the lender and genuineness of the transaction. Furthermore, it is apparent that Mr. Jagdish Purohit is the director of the assessee company as also large number of such companies engaged in providing accommodation entries. On more than one occasion in sworn statement u/s 132(4) of the Act, he admitted to be actively engaged in such activity notwithstanding his retraction and denial subsequently that too on flimsy grounds of coercion which itself is unsubstantiated.

9.4 Before us, the Id.AR vehemently agitated the action of the Id.CIT(A) by submitting that the assessee by filing all relevant evidences during all previous proceedings had duly discharged the primary onus. Therefore, the impugned credits could not be considered as unexplained credit in terms of section 68 of the Act. Moreover, he also placed reliance on the retracted statement of Sri Purohit whereby he had already disowned his earlier statement categorically.

10. We have carefully considered all the relevant fact of the case, perused records and heard rival submissions. On plain reading of the provisions of [section 68](#) of the Act, it is evident that nature and source



of the credit is required to be explained by the assessee when the same is found to be credited in the books of account. The assessee on the basis of independent evidence is required to prove the creditworthiness and genuineness of the transaction. In this case, the assessee was directed to produce the lenders but no efforts were made by the assessee to produce them. Thus, the necessary enquiry by the AO to ascertain the reality was prevented by the assessee. In a recent decision in the case of **Buniyad Chemicals in ITA No.1796 of 2018 dated 17/03/2025**, the **hon'ble Bombay High Court** dealt with a similar case of a well known accommodation entry provider involving the provisions of section 68 of the Act, coming down heavily on such a practice, upheld the conclusion drawn by the Id.CIT(A) in favour of revenue and set aside the order of the Tribunal. Relevant parts of the order are extracted below:

“ . Section 68 requires an assessee to explain the credits by providing the identity, creditworthiness and genuineness of the credits. It was incumbent upon the respondent-assessee to give the details of these credits because unless the details of these credits are provided, it cannot be ascertained as to whether the credits appearing belong to the customer of the respondent-assessee. Merely because the respondent-assessee states that he is only an accommodation entry provider and therefore the credits in the respondent-assessee's bank accounts belong to the customers to whom the accommodation entries were given cannot absolve the respondent-assessee from its obligation to provide the details. It is one thing to boldly and even proudly admit that a racket for providing accommodation entries was being operated but quite another to evade statutory liability or taxes based upon such assertion.



18. In our view, even in the absence of provisions of Section 68 (the said section being only enabling provision), credits appearing in the bank accounts of an assessee could be added as unexplained income of such an assessee if such assessee fails to explain the details of the source from where such deposits are made. The submission of the respondent-assessee that in case of many deposits, he does not know the customer who has deposited money in its bank account is a submission which has to be rejected at the outset. Any law does not support such a contention and cannot appeal to the conscience of the Court.

19. Before the Assessing Officer, the respondent-assessee has not made any submissions backed by any document to show that the credits appearing in the bank account for AY 2009-10 have been assessed in the hands of the beneficiaries and, therefore, no addition should be made. If that be the case, we cannot accept the submission of the respondent-assessee that the amount added is included in the assessment of the beneficiaries and, therefore, same cannot be added once again in the hands of the respondent-assessee. There is no basis for such a submission made by the respondent-assessee, nor is it stated so before the Assessing Officer or the Appellate Authorities. Such a factual submission for the first time before this Court in a third appeal by oral argument across the bar cannot be permitted.

20. The CIT(A) has adopted a fair approach by stating that if the respondent-assessee identifies the beneficiaries, then the rate of commission adopted should 0.37% of such identified beneficiaries and if the respondent-assessee fails to identify the beneficiaries, then in that case, the sum credited in the bank accounts would stand confirmed under Section 68 of the Act. In our view, the Tribunal was not justified in directing 0.15% of the total deposits (explained and unexplained) appearing in the bank accounts as income. The Tribunal has not given any reason as to why the directions of the CIT (A) in para 4.3 of the CIT appeal's order are wrong or erroneous. In our view, the Tribunal did not consider the issue from the proper perspective. The addition is made by the AO and confirmed by CIT (A) under section 68 of the Act as 'income from other sources' and under section 68 the unexplained credit in books is treated as income.

21. Although it was the case of the respondent-assessee that they are only accommodation entry providers and only certain percentage should be taxed as income, in the assessment order the addition is made that since the respondent-assessee failed to explain the credits appearing in its bank account. **The Assessing Officer never accepted in the assessment**



order that only certain percentage of such credit should be assessed as income. Even the CIT(A) directed to adopt commission rate only qua identified beneficiaries and not all the beneficiaries. In any case, taxation of commission income and taxation of unexplained credits are two different things. Therefore, the same cannot be mixed to contend that only commission income should be taxed, not unexplained cash credits.

22. The Tribunal has not given any reasons as to if the respondent-assessee does not explain the beneficiary's identity, then why the whole amount should not be added under Section 68, but only 0.15% of the said deposit. In our view, therefore, the Tribunal has adopted a very casual approach to such a serious matter of rampant tax evasion by merely saying issue is covered. In our view, in such cases Tribunal should not go by the concession of the counsel before them but it was their duty to examine the issue in proper perspective since Tribunal is a final fact finding authority under the Act. We say so because of the admission made by the respondent-assessee in the statement of its director recorded under Section 131 of the Act on which heavy reliance is placed by the counsel for the respondent-assessee was not even considered by the Tribunal. We now propose to deal with that statement.

23. In question No.2, **Shri. Mukesh Choksi has admitted that he is the director of the respondent-assessee, and therefore, the statement is made in that capacity.** In the said question, the respondent-assessee has admitted that they are engaged in the business of providing accommodation entries by charging a commission of 0.15%. In answer to question No.7, the respondent-assessee admitted that in so far as 3321 cases are concerned, they do not have the details of the customers. Thereby, the respondent-assessee has admitted that they are not able to explain the source of credits appearing in its bank statements. It is important to note that the respondent-assessee has executed transactions of crores of rupees to accommodate various parties. Still, many of these beneficiaries' details are unknown to the respondent-assessee. This is something which this Court cannot accept.

24. In our view, such an explanation cannot be accepted more so from the respondent-assessee company who is claiming to have been engaged in the business of providing accommodation entries where crores of rupees are deposited and withdrawn. **If the respondent-assessee does not have the details of the beneficiaries, then we fail to understand how the money were deposited in the bank accounts of the respondent-**



assessee and withdrawn from such bank accounts without respondent assessee knowing the details of these beneficiaries. The only person who can operate these bank account would be the respondent-assessee, who, at least at the time of withdrawing, would know to whom the amount withdrawn is given. In the absence of any details of such beneficiaries, we cannot accept the submissions of the respondent-assessee that even if the credits are not explained or details are not given, still such credits cannot be added in the hands of the respondent-assessee.

25. Mr. Sharma learned counsel for the respondent-assessee relied upon the decision in the case of group concern of the respondent-assessee in the case of Alag Securities Pvt.Ltd(Supra) and defended the order of the Tribunal. In para 20 of the said order, the Co-ordinate Bench of this Court has recorded a finding that the amount deposited by the customers, i.e. beneficiaries, had been accounted for in the assessment orders of these beneficiaries and, therefore, the question of adding such cash credit to the income of the assessee does not arise.

26. In our view, this finding is absent in the present case before us, and no material has been shown to us by the respondent-assessee that the sum added by the Assessing Officer in its case has been added in the assessment order of various beneficiaries. On the contrary, the respondent-assessee has failed to even identify the beneficiaries in the present case. Therefore, this decision cannot assist the respondent-assessee since the said is distinguishable on facts.

27. In fact, the CIT (A) in para 4.3 has given an express finding that, if the respondent-assessee identifies the beneficiaries, then same would not be added as income of the respondent-assessee but if the respondent fails to identify the beneficiaries, then same would be confirmed as unexplained cash credit. In the instant case before us, the respondent-assessee has not pleaded anywhere before the Assessing Officer and appellate authorities, nor any evidence has been laid to that effect that amount to Rs.10,73,52,550/- is added in the assessment of the beneficiaries. Therefore, this decision could not come to the rescue of the respondent-assessee.

37. We do not accept the submissions of the respondent-assessee that because he is engaged in the business of providing accommodation entry, revenue cannot assess the credits appearing in its bank account which are the money deposited by its customers. The respondent-assessee, to succeed in this



submission, must give verifiable details of these customers; only then can the revenue verify whether the credits appearing belong to such customers. The CIT (A), therefore, gave the relief in para 4.3 by observing that an estimate of income will be made only in case of identified beneficiaries and balance credits would be assessed under Section 68 of the Act.

38. The respondent-assessee cannot contend that they will not give details of beneficiaries, but at the same time, credits cannot be assessed in its hands. We wonder how the revenue can find out to whom the credits belong to under unaccounted income. The respondent-assessee cannot act as a shield for beneficiaries by making such a submission and at the same time refuse to pay taxes for the unexplained amounts in its bank accounts.

39. If the submissions made by the counsel for the respondent-assessee that since they are engaged in providing accommodation entry and therefore, the credits appearing in the bank cannot be assessed in its hands has to be accepted without the respondent-assessee giving details of the beneficiaries which they have flatly refused as recorded in the statement referred to herein above then the consequence would be that such unaccounted sum can never be brought to tax under the Act by the revenue authorities in the hands of none of the assessee/persons to whom such unaccounted sum belongs to. In the absence of any details provided by the respondent-assessee of the beneficiaries, the revenue will not be able to verify whether such credits really belong to those beneficiaries, in which case provisions of Section 68 get attracted in the hands of the respondent-assessee. Any interpretation which would make admitted unaccounted income tax free based on the denial by the assessee/persons to give details has to be rejected.

40. Before we conclude, we will be failing in our duty as a Court of law if we do not comment on the accommodation entry provider, Mr. Mukesh Choksi through his web of shell companies and various admissions made by the counsel for the respondent-assessee. It is also important to note that Mr. Mukesh Choksi, director of the respondent-assessee in his answer to question No.14 of the statement has admitted that he was a practicing Chartered Accountant but has surrendered the Certificate of Practice (COP) in 1993 and thereafter is only engaged in the business of providing accommodation entries. He has also stated that search action has been taken against him/his companies more than once.

41. We are rather surprised that a Chartered Accountant who may not be holding a COP but, if involved in illegal activities, as to whether any action is or can be taken by the Institute of the Chartered Accountants of India against



such a person. Suppose no action is taken against such a person. In that case, we hereby direct the Institute of Chartered Accountants of India to inquire whether such a person is liable for any professional misconduct as per the Chartered Accountant's Act, 1949.

42. In answer to question no.15, Shri Mukesh Choksi through the respondent-assessee company has admitted that the bills / vouchers and other documents given for providing accommodation entries are not genuine. This would mean that Shri Choksi has admitted that he was engaged in the offence of commission of 'fraud'. If so, and based on such fraud, it is necessary to enquire whether he has committed an offence under the Indian Penal Code/BNS, 2023. We, therefore, direct that a necessary investigation be conducted by the concerned police station against Shri Mehul Choksi to ascertain the offence, if any, committed under Indian Penal Code and the consequent action.

43. Shri Choksi, in this statement, has also admitted that he has abetted in evasion of tax by various beneficiaries. He has also admitted that he cannot give details of the beneficiaries. Mr. Choksi has also admitted that by engaging in accommodation entry, he has engaged in the laundering of money. Therefore, in our view, the authorities under the Prevention of Money Laundering Act, 2002 should also investigate Shri Choksi on these activities.

48. Insofar as question (b) is concerned, the CIT (A) in its order in paragraph 4.3 directed the AO to adopt the rate of commission at 0.37% if the beneficiaries are identified by the respondent-assessee. The revenue has not challenged the said rate of 0.37% by filing an appeal to the Tribunal. However, the respondent-assessee did challenge the adoption of this rate of 0.37%. It was the contention of the respondent-assessee that the appropriate rate should be 0.15%. The Tribunal followed its earlier order and opined 0.15% to be applied as commission.

49. In our view, what rate should be adopted as commission would be a pure question of fact and therefore, insofar as the rate of commission with respect to those credits which are identified by the respondent-assessee is concerned same should be taken at 0.15%.

50. To conclude, we answer question (a) in favour of the appellant-revenue and against the respondent-assessee. In so far as question (b) is concerned,



we answer the same against the appellant-revenue and in favour of the respondent-assessee. Consequently, we reverse the Tribunal's order and restore para 4.3 of the CIT (A)'s order dated 4 October 2012 subject to retaining the rate of commission at 0.15 % as adopted by the Tribunal.

10.1 It is quite apparent that the facts and the circumstances of the instant case and those in the case of **Buniyad Chemical(supra)** are almost identical in as much as a certain individual, an ex-Chartered Accountant had floated large number of companies with doubtful credentials for the sole purposes of providing accommodation entries. The directors could not be examined on account of non production before the authorities concerned leading to similar addition u/s 68 of the Act. The ld. CIT(A) took a view that the main person Sri Choksi had floated these companies was basically an entry provider and was beneficiary to the extent of commission only. However, taking a fair and judicious approach duly appreciated by the hon'ble Bombay High court that primary onus u/s 68 of the Act was indeed not discharged fully, he directed the AO to examine the creditors etc. and that the assessee was required to make necessary cooperation in this regard. **When the onus is discharged, only commission could be taxed in assessee's hands. However, in case of failure to establish, the entire cash credit addition u/s 68 of the Act would stand affirmed.**



10.2 The decision of the hon'ble Bombay High Court (supra) categorically lays down that assessee is duty bound to explain the identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. **Moreover, in the instant case, onus is much more on the assessee company in view of the admission of the director Sri Purohit himself that he floated as many as 246 companies for the purposes of providing accommodation entries in the form of share application, loans etc.** Mere retraction of sworn statements subsequently by him is nothing more than looking for escape route.

10.3 In view of above discussion, we restore this appeal back to the file of the AO with a direction to the assessee to produce the directors of the share applicant companies before the AO who may examine the same and after necessary enquiry decide the issue about the genuineness of such credits. The AO is also directed to not to get swayed by the statement of confession and subsequent retraction of several accommodation entry provider but to independently examine the impugned transactions according to the parameters of [section 68](#) of the Act. Once the assessee successfully discharges the onus, the AO would adopt a reasonable amount as commission based on the facts and the



circumstances of the case. However, in case of its failure to do so the addition made u/s 68 of the Act as unexplained credit would stand upheld.

11. In the result, the appeal filed by the assessee is **allowed for statistical purposes.**

Order pronounced in the open court on 05.09.2025.

Sd/-

PAWAN SINGH

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई / Mumbai

दिनांक / Date 05.09.2025

Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.



ITA No. 3290/Mum/2019
A.Y. 2011-12
M/s Real Time Consultants Pvt. Ltd.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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

