



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.27193 OF 2023

Naresh Manakchand Jain

...Petitioner

Versus

The Registrar, Income-tax Appellant Tribunal

...Respondent

Mr. J.D.Mistri, Senior Advocate with Mr. Dharan Gandhi i/by Ms Aanchal Vyas for Petitioner.

Mr. Vipul Bajpayee for Respondent-Revenue.

CORAM: K. R. SHRIRAM &
NEELA GOKHALE, JJ.

DATED: 7th October 2023

PC:-

1. Petitioner moved for urgent circulation this morning. On circulation being granted, Petition was taken up at 2.30 p.m.
2. Mr. Bajpayee states that he was served a copy of this Petition only this morning and he has not been able to take instructions.
3. We have perused the impugned order pronounced on 31st August 2023. Assessee/Petitioner was not represented. There are averments in the Petition that the Chartered Accountant, who was instructed to appear in the matter, due to his ill health, did not remain present. Affidavit of the Chartered Accountant - Mr. Jayant Ravishanker Bhatt is also annexed to the Petition in which he has explained the reasons for his inability to attend the hearing.

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4. Stand over to 16th October 2023 for admission.
5. In the meanwhile, until 30th October 2023 ad-interim relief in terms of prayer clause (d) is granted. It reads as under :

“(d) that pending the hearing and final disposal of the present petition, this Hon’ble Court may be pleased to stay the operation of order passed under Section 254(1) of the Act dated 31.08.2023.”

(NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SANDEEP SINGH KARHAIL, JM

ITA No. 1945 & 1946/Mum/2023

(Assessment Year: 2012-13)

Naresh Manakchand Jain
Flat No.2101,
Tower-1, Summer Trinity,
Next to Samna Press,
Prabhadevi Road,
Mumbai-400 025

Vs.

ACIT
Circle 2(1)
804, 8th Floor,
Pratishtha Bhavan,
Old CGO Anexe,
Maharshi Karve Road,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AACPJ9811A

Assessee by : None

Revenue by : Shri S Srinivasu, CIT DR

Date of hearing: 29.08.2023

Date of pronouncement : 31.08.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the two appeals filed by same assessee Mr. Naresh Manakchand Jain, who admittedly in his several statements at several times, is an accommodation entry provider of several hundred crores to almost 32000+ beneficiaries as under :-

- i. in ITA Nos.1945/Mum/2023 & 1946/Mum/2023 filed by the assessee for A.Y. 2012-13 against the appellate order passed by the Commissioner of Income-tax (Appeals)-48, Mumbai [the learned CIT (A)] dated 27th

March, 2023, wherein the appeal filed against the assessment order passed by the Asst. Commissioner of Income Tax, Central Circle, 2(1), Mumbai (the learned Assessing Officer) relevant to A.Y. 2012-13, wherein two orders were passed i.e. order under Section 144 read with section 153A of the Act dated 12th September, 2019 and second order under Section 143(3) read with section 153A of the Act dated 26th April, 2021, was dismissed.

- ii. In ITA No.1945/Mum/2023, the learned Assessing Officer has passed the assessment order for A.Y. 2012-13 under Section 143(3) read with section 143A of the Act

02. Assessee has raised identical grounds of appeal for both the appeals. Therefore, the grounds of appeal in both these appeals are as under:-

"1. Under the facts and circumstances of the case and in law, the CTT (A) has erred in confirming the order passed by the AO being bad in law on various ground in law and in equity and the same should be annulled.

2. Under the facts and circumstances of the case and in law, the CIT (A) has grossly erred in not allowing access to the incriminating material relied upon by AO for the appellant to rebut it and thereby has violated the principles of natural justice and as such order passed should be annulled and or set aside.

3. Under the facts and circumstances of the case and in law the CIT (A) has erred in confirming the estimation made by the AO based on conjecture, surmise and capris without there being any material to suggest that the appellant had ever earned such income and as such addition made by the AO should be deleted.

4. Under the facts and circumstances of the case and in law the CIT (A) has erred in confirming the addition made by the AO mechanically by taking trade value of alleged scripts and that to without bringing on record the role of the appellant in entire alleged trade and thereby addition made by the AO is devoid of laid down law of real income theory and as such the addition made by the AO as confirmed by CIT (A) should be deleted.

5. Under the facts and circumstances of the case and in law the CIT (A) has erred in restoring the matter back to AO in respect of an addition of Rs. 39,80,99,612 and that confirming the addition of Rs. 50,43,02.754 as income of the appellant without there being any incriminating material or either corresponding cash or unexplained assets found to show that the appellant had ever indeed received such income and hence the same should be deleted being merely based on a predisposition to a purported theory for making an addition to income.”

03. In another appeal, assessee is contesting addition of Rs 2.69 of credit cards payments confirmed by CIT (A).

04. Shri Naresh Jain [Assessee] is one of the leading kingpins of providing bogus long term capital gains in connivance with the several directors of the companies whose share prices are rigged, several exit providers who engaged in price rigging and buying shares in fraudulent manners to help several beneficiaries who converted their unaccounted income in to alleged long term capital gain in shares exempt u/s 10 (38) of the Act.
05. Facts stated in Assessment order, which also reproduces his statements, his accomplices statements and several clinching evidences to show the mammoth money laundering activities initiated and concluded by help of several persons for the benefit of more than 30000 beneficiaries. It also displays how blatantly façade is created to evade taxes.
06. For A.Y. 2012-13, assessee filed its original return of income on 24th July, 2012, declaring total income of ₹2,54,830/- [sources of income unknown]. Subsequently, search under Section 132 of the Income-tax Act, 1961 (the Act), was conducted by investigation wing on 20th October, 2016, in connection with one **Ranka Jewellers**. Assessee was also covered in that search. The case of the assessee was centralized at Pune. This centralization was challenged by the assessee before the Hon'ble Bombay High Court, wherein Hon High court vide order dated 15th July, 2019, quashed the order passed under Section 127 of the Act. Subsequent to that, the case of the assessee was retained at Mumbai, pursuance to the direction of Hon'ble High Court, the case was assigned to the learned

Assessing Officer on 26th August, 2019. Meanwhile, Mumbai Investigation Wing conducted another search on the assessee on 19 March 2019. Therefore, notices under Section 143A of the Act was issued on 29 August 2019. In response to that notice on 5th September 2019, assessee submitted that return filed under Section 139 of the Act may be treated as return filed under Section 153A of the Act. The assessee was also issued notice under Section 142(1) of the Income-tax Act, 1961 (the Act) dated 29th September 2019, which assessee did not comply. The assessee was found to be and also admitted on oath in statement under Section 132(4) of the Act, that he is engaged in manipulation of share price of various companies in order to provide bogus entries of long term capital gain, short term capital loss and business loss. The evidences were gathered during the search showing link between the operators, promoters, share brokers, exit providers and intermediaries, who facilitated the sham transactions on stock exchange. The assessee also admitted that he is earning commission of 2 to 3% of the amount.

07. For A.Y. 2012-13, 32855 persons were identified, wherein ₹1,680 crores was found which have been laundered by the assessee in 9 identified scripts. The assessee did not reply to any of the notices and therefore, the learned Assessing Officer passed the order under Section 144 of the Act. The learned Assessing Officer further referred to the statement of the assessee, wherein he named **Mr. Abhinandan Jain**, who was also one of the entities

involved in this modus operandi. The assessee also named **Mr. Bhupesh Rathod, Mr. Bhavesh Pabari, Mr. Hemanth Seth and Mr. Rakesh Shah**, who are the intermediaries arranging this money laundering. Assessee provided their contact number and addresses. Assessee also stated **cash of amount of ₹128 cores plus Ranka family for arranging long-term capital gain through their relative, Mr. Suraj Ramesh Parmar, gave commission of 3% to him**. He also named the company in which the long-term capital gain was arranged for them.

08. The assessee was also investigated by Hyderabad Investigation Wing, wherein it was found that M/s PFL Infotech Limited is the company wherein **Mr. Abhinandan Jain and Mr. Amaresh Punia** are the directors, was also used with their help in providing bogus long term capital gain. He also named **17 exit providers** in search by Mumbai Investigation Wing. He further named 7 entities which are used for providing money-laundering services. The name of the beneficiaries in **Nyssa Corporation Limited** was also given, **Mr. Pritesh Kumar Hasmukhbhai Shah, Hasmukhbhai Manilal Shah, and Asha Sanjay Shah**. In case of **Diamant Infrastructure Limited**, he gave the name of **Jigar Praful Ghoghari, Kiran Bhiku Bhanaes, Jinal Apurva Rawal** for manipulation of **Polytex India Limited, KGN Limited**. Based on this information and in absence of any submission from the side of the assessee, the learned Assessing Officer determined the commission income at

the rate of 3% on ₹1680 crores amounting to ₹50,39,64,081/- as undisclosed income of the assessee.

09. Further, the learned Assessing Officer noted that as per AIR information assessee has incurred credit card expenses of ₹2,60,369/- which was also added. Accordingly, the assessment order under Section 144 read with section 153A of the Act, was passed on 12th September, 2019, determining the total income of the assessee at ₹50,45,57,584/-. This is the impugned order which was decided by the learned CIT (A) and against that order of the learned CIT (A), assessee has filed appeal in ITA No.1946/Mum/2023.

010. In ITA No.1945/Mum/2023, the learned Assessing Officer has passed the assessment order for A.Y. 2012-13 under Section 143(3) read with section 143A of the Act wherein based on the admission of Mr. Naresh Jain, assessee and his allies and other operators it was established that assessee is engaged in rigging the price in **the shares of further 12 companies** in connivance with his various associates entered into prearranged transaction on the stock exchange using various dummy accounts. These prearranged transactions are accommodation entries to various beneficiaries, who brought their unaccounted income into the books of account without paying taxes. Therefore, assessing officer computed the accommodation entries covering all the trade data were made on the stock exchange in those companies. Accordingly, the learned assessing officer found that assessee has provided accommodation entries to the tune of ₹ 1326 crores. On

the entire trade consideration at least 3% commission that was based on the statement of Mr. Naresh Jain, was computed at ₹ 398,099,612. Accordingly, assessment order was passed, which was assessing the total income of the assessee at ₹ 902,657,196.

011. Against both these orders, the assessee went into an appeal before the learned CIT (A). The learned CIT (A) passed a consolidated appellate order on 27 March 2023 wherein several grounds were raised. The learned CIT (A) on the facts and circumstances of the case and based on his appellate order for A.Y. 2013-14 to 2019-20, wherein he has decided the identical issue, he confirmed the commission income of 3%. Thus, assessment order passed by the learned assessing officer was confirmed. There was one more reason for the same because before him also the assessee did not produce any information or make any representation. However, the learned CIT (A) in most judicious manner gave a direction to the learned assessing officer that there should not be double addition of commission income as taxable income of the assessee. Accordingly, the commission income was held to be correctly charged by the learned Assessing Officer as income of the assessee subject to any duplication. With respect to the credit card expenditure of ₹ 260,369/- the learned CIT (A) noted that the assessee has not submitted any explanation or related document and therefore, he confirmed the addition of the same.

012. Despite notice, none appeared before us on behalf of assessee and therefore, these appeals are decided on the facts available on record.
013. The learned Departmental Representative vehemently supported the orders of the learned lower authorities.
014. We have carefully considered and perused the orders of the lower authorities. As per admission made by the assessee, he is engaged in the business of the providing bogus accommodation entries to various persons to convert their unaccounted income as tax-free, long-term capital gain, Business losses, and short-term capital gain by operating several companies through cartel of several persons. The assessee has given names of (i) all the persons to whom the accommodation entries were provided, (ii) the persons who are working along with the assessee in the above money-laundering operation, (iii) names of directors of companies involved in this massive money laundering activities, (iv) and the rate of commission that he used to charge on the same. Based on this, the learned assessing officer has estimated the total turnover of the various companies on the basis of information available on record about the volume of unaccounted income converted into tax-free income of various beneficiaries. On the above sum, the assessee as per his own admission has stated that he used to earn commission income at the rate of 2% to 3 %; the learned assessing officer computed the income of the assessee at the rate of 3% on the above sum. Ld CIT (A) confirmed it. We do not find any infirmity in the order of the lower

authorities so far as the adoption of the rate of 3% as commission income of the assessee. Thus, ground numbers 1 to 5 of the appeal in ITA No. 1946/Mum/2023 and ground numbers 1 to 5 of appeal in ITA No. 1945/Mum/2023 are dismissed.

015. With respect to the credit card expenditure confirmed by the learned CIT (A), we find that when the income of the assessee has been taxed, he has the source of such expenditure available and therefore, making the addition of the above sum once again, is taxing sources and application of income both, and also amounts to double addition in the hands of the assessee. Accordingly, we direct the learned assessing officer to delete the addition of ₹260369/- made in the hands of the assessee as unexplained expenditure under section 69C of the Act. Ground number 6 of the appeal is allowed.

016. The facts stated in Assessment orders, several statements extracted by Id AO, extracted statement of assessee, and modus operandi explained in those statements by assessee and others clearly shows how blatantly and to the extent of several hundred of crores, , all these persons have used stock exchange platform through exit providers, connivance with the brokers, directors of suspicious companies, price rigging through synchronized trade a money laundering exercise involving serious violation of Income tax, Securities law, Corporate Laws, banking laws and several other economic laws. Such activities if treated and dealt with in silos, are ineffective.

017. Therefore, looking at the magnitude of the operation of money laundering carried on by the assessee along with the several other persons and the number of beneficiaries who have availed the services of the assessee in converting that unaccounted income in long-term exempt capital gain, short term capital gain or business losses, [the learned assessing officer has mentioned that there are 32,855 persons who have been identified in several scripts of those listed entities] we are duty-bound to direct the learned assessing officer to pass on this information to various other authorities and regulators. Here we find that assessee is merely an accommodation entry provider as held by the lower authorities. Therefore, the real beneficiaries are the persons who have obtained the exempt long-term capital gain by converting their unaccounted income. It is also categorically held by the lower authorities that assessee has arranged synchronized trade of buy and sale of shares of those companies. Assessee in his statement also mentioned names of some of the directors of those companies who are also engaged and involved in this operation. In view of this, we direct the learned assessing officer to complete below directions within 90 days of the date of receipt of this order :-

- i. Share information of all those persons who are involved in the above racket of money laundering with the concerned Assessing officer to take action in their hands in accordance with the law.

- ii. Cases of all the assessee who are named as beneficiaries such as Ranka Jewellers and its entities, individuals also may be reopened and dealt with according to the decision of Honourable Supreme court in case of **Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC)** and instructions of CBDT. Ld AO may treat it as directions u/s 150 of the Income tax Act. It applies in case of all the beneficiaries and other persons named in assessment order or as per information available with the AO referred to in assessment order.
- iii. Intimate securities and exchange board of India the names of those directors who are involved in these operations.
- iv. Intimate the list of beneficiaries to the securities and Exchange board of India who has earned unaccounted income by way of a synchronized trade through the cartel of these accommodation entry providers.
- v. Intimate to SEBI all the share brokers, Depositories through whom buy and sale transaction of these securities are carried out and did not report to such suspicious transactions to SEBI and RBI.
- vi. To intimate to the board of stock exchanges where these transactions are carried out to show that synchronized trades have happened

in all these companies by all these persons and to take actions against clients, brokers, Demat agencies etc.

- vii. To intimate the above money-laundering activities carried out by all those persons along with the names of the persons, companies and the beneficiaries to the respective authorities for examination of applicability of The Prevention Of Money-Laundering Act, 2002 as per paragraph 11 of schedule of that Act.
- viii. Intimate the name of companies involved whose share prices are rigged on stock exchange supported by fictitious turnover and shell structure to MCA/ Registrar of companies to take necessary action/ inquiry in accordance with the law.

018. In the result, appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 31.08. 2023.

Sd/-
(SANDEEP SINGH KARHAIL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.08. 2023
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai