

**IN THE INCOME TAX APPELLATE TRIBUNAL " C", BENCH
MUMBAI**

**BEFORE SHRI RAVISH SOOD, JM
&
SHRI N.K.PRADHAN, AM**

ITA Nos.83 to 89/Mum/2018

(Assessment Years : 2007-08 to 2013-2014)

DCIT, Central Circle-2(4), Mumbai	Vs.	Shri Paresh K. Shah, Central Circle-2(4), Mumbai-400020
PAN No.ANMPS 0582 L		
(Appellant)	..	(Respondent)

AND

ITA Nos.7374 to 7380/Mum/2017

(Assessment Years : 2007-08 to 2013-2014)

Shri Paresh K. Shah, Central Circle-2(4), Mumbai-400020	Vs.	DCIT, Central Circle-2(4), Mumbai
PAN No.ANMPS 0582 L		
(Appellant)	..	(Respondent)

Revenue by	Shri Awangshi Gimson, CIT D.R.
Assessee by	Shri Ashok Bansal, A.R
Date of Hearing	10/05/2019
Date of Pronouncement	28/05/2019

आदेश / ORDER

PER BENCH :

The above mentioned cross appeals filed by the assessee and the revenue are directed against a common order passed by the CIT(A)-48, Mumbai, dated 16.10.2017 for the assessment years 2007-2008 to 2013-2014. As the issues involved in all these appeals are identical, except for in the case of A.Y 2008-08 where the assessee has also assailed by way of an additional ground of appeal the validity of the jurisdiction assumed by the A.O for framing the assessment u/s 153C r.w.s 143(3) of the Income-tax Act, 1961 (for short "I-T Act"), therefore, the

said appeals are being disposed off by way of a consolidated order. For the sake of convenience, first we shall take up the appeal of the assessee for the assessment year 2007-2008 in ITA No.7374/Mum/2017. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal :-

- “1. The authorities below have erred in initiating and completing assessment/ upholding such initiation and completion; under Section 153C in the absence of any incriminating material found or seized, without any factual or legal basis, without mentioning or establishing any relationship between the searched person and the appellant and without making due enquiries.
2. The authorities below have erred in passing the assessment order / upholding the order on the basis of information gathered from Sales Tax Department in respect of parties whose details are included in para 4(3)(v) and list B of the assessment order but without communicating anything to the appellant in this regard.
3. The authorities below have erred in assessing the income/ upholding the assessment without specifying the section or head of the Income Tax Act, 1961 under which it is taxable.
4. The authorities below have erred in taxing the short term capital gain/upholding the same at normal rates instead of the prescribed rate of 10%.”

2. Further, the assessee has also raised an additional ground of appeal for the year under consideration viz. A.Y 2007-08, which reads as under :-

“The above appeal was slated to be heard on 01.04.2019 and after part hearing it was adjourned to 04.04.2019. Now it is to be heard on 10.05.2019. The appellant requests the Hon. Bench to admit the enclosed additional ground of appeal.”

3. As the assessee by raising the aforementioned additional ground of appeal has assailed the validity of the jurisdiction assumed by the A.O u/s.153C of the Income-tax act, 1961 (for short “I-T Act”), therefore, the same being purely a legal issue, is admitted in the backdrop of the

judgment of the Hon'ble Supreme Court in the case of CIT Vs. National Thermal Power Corporation (1998) 229 ITR 383 (SC).

4. Briefly stated, the assessee had filed his return of income for A.Y 2007-2008 on 31.07.2007, declaring total income at Rs.1,75,010/-. Search and seizure proceedings u/s.132 of the I-T Act were conducted on 08-11-2012 by the ADIT(Inv.), Unit-IV, Mumbai in the case of M/s Patel Ashokkumar Mohanlal Ni Co.(Proprietor Shri Ashokkumar Mohanbhai Patel). Simultaneously, search and seizure action was also carried out in the case of M/s Gold Sukh Safety Vaults Ltd, a concern which was engaged in the business of providing lockers on rent. In the course of search & seizure proceedings, it was revealed that M/s Gold Sukh Safety Vaults Ltd. was providing lockers without verification of KYC details. As a matter of practice, though the lockers were assigned in the name of first holder, however, the same could also be operated by three more persons whose names would be incorporated in the agreement. It was observed during the course of search proceedings that no KYC details were obtained for the additional operators of the locker. In the course of post search proceedings, it was gathered that the aforementioned concern viz. M/s Gold Sukh Safety Vaults Ltd. was making the lockers available to hawala operators who were engaged in illegal transfer of cash.

5. During the course of search and seizure action in the case of M/s Patel Ashokkumar Mohanlal Ni Co. (Proprietor Shri Ashokkumar Mohanbhai Patel), the followings premises were covered :-

- a) Juna Angadia, 1st Floor, 142 F Block, Lalbaba Haveli, Bhuleshwar, Mumbai-400002(Warrant No.8472); and
- b) Locker No.596 at M/s Gold Sukh Safety Vaults Ltd., 65, Vithalwadi, Mumbai-400020 (Warrant No.8473).

6. In the course of search proceedings, cash amounting to Rs.11,00,000/- and silver weighing 11.2 Kg. valuing Rs.7,23,060/-, alongwith certain incriminating documents viz. 'loose paper files' containing the income-tax and sales tax related documents of third parties, were found and seized from the aforementioned locker No.596 and inventorised as Annexure A/1 to A/4 of Panchanama, dated 20.11.2012. As was discernible from the records of M/s Gold Sukh Safety Vaults Ltd., the authorization in respect of locker was though issued in the name of M/s Patel Ashokkumar Mohanlal Ni Co., however, the locker was found to be allotted in the name of the assessee. In the backdrop of the aforesaid facts the statement of the assessee was recorded u/s. 132(4) of the I-T Act on 20.11.2012. Initially, the assessee in his statement distanced himself from the aforementioned concern viz. M/s Patel Ashokkumar Mohanlal Ni Co. and claimed that he was not aware of any such entity. However, at the same time, the assessee stated that the cash of Rs.11,00,000/- and silver valued at Rs.7,23,060/- that was found and seized from the aforesaid locker No. 596 belonged to him. On the basis of the incriminating material and the valuables found and seized from the locker, proceedings u/s.153C of the I.T Act were initiated in the case of the assessee. In compliance to the notice issued to the assessee u/s.153C r.w.s.153A of the Act, the assessee filed a copy of his 'Original'

return of income for the year under consideration viz. A.Y.2007-2008, that was earlier filed by him u/s 139(1) on 31.07.2007.

7. During the course of assessment proceedings, it was observed by the A.O that though the assessee had initially in his 'statement' recorded u/s.132(4) of the I-T Act stated that the contents of the locker No.596 belonged to him, however, in the post search proceedings, he changed his stand and in reply to question No.4 & 5 of his statement recorded u/s.131 of the I-T Act, dated 02.02.2013 stated that the seized documents viz. Annexure-A/1 to A/4 did not belong to him. On a perusal of the seized documents as were found and seized from locker No.596 viz. Annexure-A/1 to A/4, it was noticed by the A.O that the same were the income tax and sales tax related documents of a number of concerns. On the basis of certain details gathered by the A.O, it came to his notice that names of number of concerns, whose documents were found from the aforesaid locker figured in the list of the accommodation entry providers published by the Sales Tax Department, Govt. of Maharashtra. In the backdrop of the aforesaid facts, the A.O issued a 'Show cause' letter, dated 02.03.2015 to the assessee and called upon him to explain as to why it may not be inferred that the above mentioned hawala parties, which were engaged in the business of providing accommodation entries were being controlled by him. It was also brought to the notice of the assessee that in the absence of any plausible reply, it shall be inferred that he was getting commission on such bogus transactions. Apart there from, it was made

clear to the assessee that as per the provisions of Section 132(4A) of the I-T Act, it was to be presumed that the documents found and seized from his locker belonged to him.

8. As no details as regards the turnover of the entities whose documents were found from the locker of the assessee were made available to the A.O, therefore, he obtained the requisite details from the Economics Intelligence Unit of Sales Tax Department, Mumbai, as under:-

SR. NO	Name of Company	F.Y. 2006-07	F.Y. 2007-08	F.Y. 2008-09	F.Y. 2009-10	F.Y. 2010-11	F.Y. 2011-12	F.Y. 2012-13
1	SAMPARK STEEL	Nil	210915427	308130732	484214832	161544074	27339849	Nil
2	SANDESH SALES PVT LTD	Nil	337148300	512806204	105531057	Nil	Nil	Nil
3	HETA SALES PVT LTD	Nil	Nil	59232	630304	Nil	Nil	Nil
4	MANGO TRADING PVT LTD	Nil	12540771	20942006	910341	Nil	Nil	Nil
5	AMBAJI ENTERPRISES	Nil	123854968	156170972	2261033	Nil	Nil	Nil
6	MORWAD TRADING PVT LTD	Nil	Nil	Nil	333799868	156859278	Nil	Nil
7	RAMANAND SALES PVT LTD	Nil	Nil	Nil	259643414	Nil	Nil	Nil
8	UNNATI TRADING CO.	Nil	Nil	48616789	Nil	Nil	Nil	Nil
9	SAVITA INTERNATIONAL	Nil	Nil	407036	Nil	Nil	Nil	Nil
10	NIDHI SALES CORPORATION	Nil	Nil	Nil	Nil	Nil	Nil	Nil
11	TISHA ENTERPRISES	Nil	Nil	Nil	3836326	Nil	Nil	Nil
12	DONNIES TRADING PVT.LTD	Nil	Nil	Nil	Nil	64925942	Nil	Nil
13	BHAVIKH STEELS PVT LTD	Nil	245491821	390411529	1485751	Nil	Nil	Nil
14	BALI STEELS PVT LTD	Nil	35832602	48007265	166924827	232706081	Nil	Nil
15	DHANDEEP TRADING P LTD	Nil	Nil	6945007	Nil	Nil	Nil	Nil
16	TULSIANI RADING P LTD	Nil	Nil	5344991	115018462	48256686	Nil	Nil
17	SHREEJI TRADERS	Nil	138609475	141184372	120464834	Nil	Nil	Nil
18	SHRADHA SABURI MERCHANTS LTD	38332752	97596901	22657601	Nil	Nil	Nil	Nil
19	BHAGWATI TRADING CO	Nil	71531676	202470633	458397773	187716900	60311390	Nil
20	MURPHY METALS PVT LTD	Nil	243063799	360685359	1269650	Nil	Nil	Nil
21	RAJESHWARI TRADING PVT LTD	10905149	11872152	4243677	13680134	47641	Nil	Nil
22	SAILEELA	Nil	56457510	4902344	75365288	18643335	Nil	Nil

	TRADING PVT LTD							
23	SIDDHI ENTERPRISES	Nil	1824205	11428325	11122127	682201586	Nil	Nil
24	JAI MATA DI TRADING CO.	Nil	1782778	36968272	36058093	7403453	Nil	Nil
25	DINESH STEEL INDIA	Nil	12889651	Nil	Nil	Nil	Nil	Nil
26	MATESHWARI METALS	Nil	Nil	Nil	2282075	3477326	Nil	Nil
27	KOTSONS IMPEX PVT LTD	Nil	4682997	48603476	64162232	155191222	Nil	Nil
28	MUMBAI METAL CORPORATION	Nil	55566195	66188643	162218214	Nil	Nil	Nil
29	SUDAMA SALES CORPORATION	Nil	Nil	Nil	184744098	81014920	Nil	Nil
30	SHANKHESHWAR SALES CORPORATION	Nil	151195014	185423360	739739	Nil	Nil	Nil
31	PARSHWA MADHUWANI TRADING PVT LTD	Nil	Nil	Nil	12086021	1300000	Nil	Nil
32	PADMAWATI CORPORATION	Nil	32299062	140787043	402342	Nil	Nil	Nil
33	UMIYA SALES AGENCY PVT LTD	Nil	75999137	75999137	377403384	12556919	Nil	Nil
34	J B SHAH & CO.	Nil	Nil	1509992	3557983	5671128	5863054	4458878
35	DHARAM TRADERS PVT LTD	Nil	Nil	Nil	Nil	63362787	Nil	Nil
36	SHREE ENTERPRISES	Nil	144067746	289615412	108178762	Nil	Nil	Nil
37	KUMAR SAMIR SHAH TRADING P. LTD	Nil	Nil	Nil	Nil	Nil	Nil	Nil
	TOTAL	49237901	2065222187	3090509409	3106388964	1882879278	93514293	4458878

9. On the basis of aforesaid details made available by the Sales Tax Department, Government of Maharashtra, it was observed by the A.O that the names of a number of concerns mentioned in the aforesaid list figured in the list of the accommodation entry providers which was provided by the department. In reply to the query raised by the A.O as to why the commission income on the bogus turnover of the aforementioned hawala entries may not be brought to tax in his hands, the assessee, vide his letter dated 09.03.2015 once again tried to distance himself from the

documents which were found and seized from his locker during the course of the above stated search and seizure proceedings. In sum and substance, the assessee on account of multiple grounds had tried to impress upon the A.O that no adverse inferences on the basis of the documents which were found and seized from locker No.596 during the course of the search proceedings were liable to be drawn in his hands. The assessee in the course of the assessment proceedings tried to persuade the A.O that no estimation of commission income in his hands could be made on the basis of the aforesaid documents for certain reasons viz (i) that, it could not be substantiated that the assessee had any connection with the parties whose documents were seized from his locker No.596; (ii) that, no reference as regards the fate of the notices issued u/s.133(6) of the I-T Act to the aforementioned parties by the department was conveyed to him; (iii) that, as the papers found in the locker No.596 were the photocopies of returns, challans etc., hence, no adverse inferences on the basis of the same could validly be drawn; and (iv) that, the aforesaid seized documents in no way established that the assessee was either a proprietor/partner or director of the concerns therein mentioned. However, the A.O after deliberating on the contentions advanced by the assessee was not persuaded to accept the same. It was noticed by the A.O that the assessee in his reply to a specific Question No.43 that was raised in context of the ownership of the contents lying in the locker no. 596, had in the course of recording of his statement

u/s.132(4) of the I-T Act, dated 20.11.2012 categorically admitted that the same belonged to him. As such, the A.O held a strong conviction that the assessee by twisting his own words was trying to distance himself from the incriminating documents that were found and seized during the course of the search proceedings from his locker no. 596. As regards the statement recorded by the assessee u/s.131 of the Act on 04.02.2013 was concerned, wherein, he had tried to impress upon the A.O that he was in no way connected with the documents which were found and seized from his locker No.596, the A.O was of the view that in the backdrop of the substantial time gap, it could safely be concluded that the same was a tutored retraction on his part. In fact, it was observed by the A.O that the assessee in his statement recorded u/s.132(4) of the I-T Act, on being confronted with the 'documents' which were found and seized from his locker No.596 viz. Annexure-A/1 to A/4, had specifically stated that the same were relating to his business of commission agent of cloth items. Apart from that, the assessee had at no stage during the course of the search proceedings claimed that the documents were not related to him. It was further observed by the A.O that on being confronted with the seized documents, it was specifically stated by the assessee that the detailed explanation in respect of each page of the respective Annexures viz. A/1 to A/4 would thereafter be provided by him. As such, the A.O declined to accept the claim of the assessee that he was in no way connected with the documents which were found and seized from his

locker No.596 in the course of search proceedings. As regards, the contention of the assessee that the revenue as per the information gathered on the basis of enquiries carried out u/s. 133(6) had failed to establish any nexus between him and the aforementioned parties, it was observed by the A.O that as 90% (approx) of the letters issued to the said parties were returned unserved by the postal authorities, thus, there was no occasion for confronting any such information to the assessee. It was also observed by the A.O that all the efforts to locate the aforementioned parties had also gone in vain. On the basis of his aforesaid deliberations, the A.O was of the view that the claim of the assessee that as he was not the proprietor/partner or director in either of the aforementioned concerns, therefore, no adverse inferences as regards the documents pertaining to the said parties was liable to be drawn in his hands did not merit acceptance.

10. The A.O in the course of assessment proceedings, called for the requisite details from the Economic Intelligence Unit, Sales Tax Department, Maharashtra as regards 45 parties whose documents were found and seized from the locker No. 596 of the assessee during the course of the search proceedings. In reply, the Sales Tax Department furnished the details as regards 37 parties, which were tabulated by the A.O as "List A". Insofar the remaining 8 parties were concerned, it was stated by the Sales Tax Department that either their details could not be found, or their registration certificates had been cancelled. Further, the

A.O on the basis of details as were discernible from the 'seized material' tabulated the turnover of 16 parties under the head "List B". In nutshell, the A.O on the basis of his aforesaid deliberations prepared a consolidated chart of the turnover of 53 parties [37 parties (+) 16 parties] for the assessment years 2007-08 to 2013-14. The A.O holding a conviction that the assessee in the garb of the aforementioned 53 concerns had carried out the business of accommodation entry provider, thus, estimated his income @3% of the aggregate turnover for the said respective assessment years as under:-

AY	Turnover as per List A	Turnover as per List B	Total Turnover	Commission @ 3%
2007-08	49237901	144249696	193487597	5804628
2008-09	2065222187	8159937	2073382124	62201464
2009-10	3090509409	15263901	3105773310	93173199
2010-11	3106388964	0	3106388964	93191669
2011-12	1882879278	0	1882879278	56486378
2012-13	93514293	0	93514293	2805429
2013-14	4458878	0	4458878	133766

11. Aggrieved, the assessee carried the matter before the CIT(A). Insofar the observations of the A.O that the assessee was providing accommodation entries through its aforementioned 53 bogus entities was concerned, the CIT(A) was not persuaded to subscribe to the same. The CIT(A) was of the view that as substantial infrastructure would have been required by the assessee for carrying on the business of an accommodation entry provider as an owner of the aforementioned 53 bogus concerns, which however was not the case, therefore, in the totality

of the facts it could safely be concluded that he had rendered his services as a facilitator for the accommodation entry providers and had earned commission income therefrom. It was further observed by the CIT(A), that the commission income of the assessee could safely be taken @0.05% of the aggregate of the turnovers of the said 53 concerns during the respective years. In sum and substance, the CIT(A) was of the view that the assessee had merely acted as a facilitator in the aforesaid business of providing accommodation entries. On the basis of his aforesaid deliberations, the CIT(A) though upheld the view taken by the A.O that the assessee was engaged in the business of providing bogus accommodation entries to 3rd parties, however, he held a conviction that the assessee was merely a facilitator and not the owner of the said bogus concerns. As such, the CIT(A) backed by his aforesaid conviction restricted the addition in the hands of the assessee by adopting the rate of commission @ 0.05% of the aggregate of the turnovers of the aforesaid parties during the respective years.

12. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorised Representative (for short "A.R") of the assessee, at the very outset of the hearing of the appeal assailed the validity of the jurisdiction assumed by the A.O for framing the assessment u/s.153C of the I-T Act. It was submitted by the Id. A.R, that as per the mandate of Sec. 153C the assessments/reassessments for six assessment years in the case of the

assessee was to be reckoned from the date of handing over of assets/documents by the A.O of the searched person to the A.O of the assessee i.e the person other than the searched person. Apart there from, it was averred by him that in case where the A.O of the person in respect of whom search was conducted, as well as that of the other person is one and the same, then the date on which 'satisfaction' of the A.O of the assessee is recorded, would be the date on which the A.O is to be assumed to have taken possession of seized assets/documents in his capacity as that of the A.O of the person other than the one in respect of whom search has been conducted. In sum and substance, it was the contention of the Id. A.R that as per the 'first proviso' of sub-section (1) to Sec. 153C of the I-T Act, the period of six assessment years have to be reckoned from the date of receiving the book of accounts or documents or assets seized or requisitioned by the A.O having jurisdiction over such other person. The Id. A.R in order to fortify his aforesaid contention took us through the 'first proviso' of sub-section (1) to Section 153C of the I-T Act. It was, thus, the contention of Id. A.R that the period of 6 years for framing assessment under section 153C was differently placed as against that envisaged in section 153A of the I-T Act. As such, it was submitted by him that a conjoint perusal of the 'first proviso' of sub-section (1) of Sec. 153C and sub-section (1) of Sec. 153A, therein revealed that unlike as in Section 153A where the period of six assessment years is to be reckoned on the basis of the date on which search proceedings were initiated under

section 132 of the I.T Act, in a case where an assessment is to be framed under section 153C, the said period has to be reckoned from the date of receiving of the 'books of accounts' or documents or assets seized by the A.O having jurisdiction over such other person. In support of the aforesaid contention, the Id. A.R relied on the judgment of the Hon'be High Court of Delhi in the case of CIT Vs. RRJ Securities Ltd., (2016) 380 ITR 612 (Delhi). In the backdrop of the aforesaid settled position of law, it was submitted by the Id. A.R that as the 'satisfaction' in the case of the present assessee i.e the person other than the searched person was recorded on 15.01.2014, therefore, the year under consideration viz. A.Y.2007-08 clearly fell beyond the sweep of the period of six preceding years from the said relevant date. It was submitted by the Id. A.R that the assessment framed by the A.O u/s.153C r.w.s.143(3) for the year under consideration being devoid and bereft of any force of law, thus, could not be sustained and was liable to be vacated on the said count itself.

13. The Ld. A.R further adverting to the merits of the case, submitted, that the A.O/CIT(A) had whimsically stamped the assessee as an accommodation entry provider. It was submitted by the Id. A.R that as neither any conclusive evidence had surfaced in the course of the search and seizure proceedings which would irrefutably prove that the assessee was engaged in providing accommodation entries, nor the same could be established in the course of assessment proceedings, therefore, the adverse inferences which were drawn by the lower authorities on the

basis of assumptions, presumptions, surmises and conjectures, could not be sustained and were liable to be vacated. In order to buttress his aforesaid contention, it was contended by the Id. A.R that the lower authorities had lost sight of the fact that the locker No.596 could be operated not only by the assessee, but also by three other persons. Apart there from, it was submitted by him that the key of the locker was also not found from the assessee but was recovered from Shri Ashokkumar Mohanbhai Patel. As regards the 'statement' of the assessee which was recorded u/s 132(4) during the course of search operation on 20.11.2012, wherein he had owned the contents of the locker, it was submitted by the Id. A.R that the said 'statement' was thereafter retracted by the assessee on 02.02.2013. The Ld. A.R in order to drive home his contention that no adverse inferences on the basis of the documents found and seized from locker No.596 could validly be drawn in the hands of the assessee, submitted, that a perusal of the so called incriminating documents revealed that the same were merely photocopies of the PAN Cards, VAT details, Aadhaar Cards etc. of certain parties, which could not be pressed into service for drawing adverse inference against the assessee. The Ld. A.R submitted that merely on the basis of the aforementioned standalone documents found in the course of search and seizure proceedings that the A.O had whimsically concluded that of all the companies to whom the said documents pertained were providing accommodation entries at the behest of the assessee. It was further submitted by the Id. A.R, that the

A.O in the course of the assessment proceedings while seeking the details as regards 45 parties from the Sales Tax Department, Maharashtra, vide his letter dated 22.01.2015, had though specifically enquired as to whether the said companies/firms were genuine or not, but the reply received from the Sales tax department only provided the details as regards the turnovers of 37 concerns, and there was no whisper as regards the genuineness or otherwise of the said entities. In nutshell, it was submitted by Id. A.R that despite the fact that there was no material before the A.O for concluding that the companies were involved in the business of providing accommodation entries, the A.O had most arbitrarily so assumed and had drawn self-suiting adverse inferences in the hands of the assessee on the basis of the seized documents. Further, it was submitted by Id. A.R that even the details filed by the Sales Tax Department was only in context of 37 parties. As regards the remaining 16 parties, it was submitted by Id. A.R that the basis for compilation of the details by the A.O as regards the said parties under the head "List B" remains a mystery till date. It was submitted by Id. A.R that the CIT(A) failing to appreciate the facts of the case in the right perspective, had thus most arbitrarily concluded that the assessee was providing his services as a facilitator in the accommodation entry providing business carried out by the aforementioned concerns.

14. In order to verify the correct factual position, the Id. AR in the course of hearing of the appeal was directed to substantiate his claim that

all the 53 parties under consideration were not involved in the business of providing accommodation entries by placing on record the list of non-genuine dealers/parties as were blacklisted by the Sales Tax Department, Govt. of Maharashtra and support the same by way of an "affidavit" under Rule 10 of the Appellate Tribunal Rules, 1963. In compliance, the assessee had subsequently filed copies of two such lists of hawala dealers/non-genuine dealers comprising of 1552 parties and 2393 parties, respectively. Further, the assessee along with an "affidavit" had in reference to 37 parties forming part of the list "A" that was prepared by the AO, therein claimed that names of 13 parties in the said list did not figure in the list of suspicious dealers which were blacklisted by the Sales Tax Department, Govt. of Maharashtra in the month of March, 2013. Apart therefrom, the assessee had also given details as regard the respective turnovers of the said parties. As such, it is the claim of the assessee that as against the aggregate turnover of Rs.1029,22,10,910/- of the aforementioned 37 parties spread over the period A.Y.2007-2008 to A.Y.2013-2014 turnover of Rs.216,31,83,843/- pertained to the aforementioned 13 parties whose names did not figure in the aforementioned list of suspicious dealers.

15. Per Contra, the Id. Departmental representative (for short 'D.R') relied on the orders of the lower authorities. Insofar the validity of the jurisdiction assumed by the A.O u/s.153C of the Act was concerned, it was submitted by the Id. D.R that the date of receiving the books of

accounts or documents or assets seized or requisitioned by the A.O having jurisdiction over such other person, as stated in the 'first proviso' of sub-section (1) to Section 153C was only in context of the 'second proviso' to sub-section (1) of Section 153A. In sum and substance, it was the claim of the Id. D.R that it was only in the context of construing the period of six assessment years pending on the date of initiation of search u/s.132 which would stand abated as envisaged in the 'second proviso' to sub-section (1) of Section 153A, that a reference to the said effect was made in the 'first proviso' to sub-section (1) of Section 153C. As such, it was vehemently submitted by the Id. D.R that the period of six years referred in the 'first proviso' to sub-section (1) of Section 153C was only for the purpose of construing the period i.e. the assessment years for which the pending assessments were to stand abated. It was submitted by the Id. D.R, that going by the rule of strict literal interpretation, the 'first proviso' of sub-section (1) of Sec. 153C has to be construed as such, and no words howsoever meaningful they may so appear, unless specifically provided for, can therein be read into the said statutory provision. On merits, it was submitted by Id. D.R that the assessee in his 'statement' recorded u/s.132(4) of the I.T Act, had categorically admitted that the documents lying in his locker No.596 belonged to him. It was submitted by Id. D.R that the assessee on being confronted with the said documents had categorically admitted that the same pertained to his business of commission agent of cloth items. The Ld. D.R submitted that though the

assessee on being confronted with the 'documents' which were found and seized from his locker No.596 viz. Annexure-A/1 to A/4, had asked for some further time to explain each and every paper of the said seized documents, however, at no stage he had ever claimed that the same did not belong to him. It was submitted by the Id. D.R, that the subsequent 'statement' of the assessee which was recorded u/s.131 on 02.02.2013 was a clearly tutored retraction on his part. It was further submitted by him that now when the aforesaid incriminating documents pertaining to third parties were found lying in the locker of the assessee, therefore, a very heavy onus was cast upon him to explain as to what was the purpose of keeping the said documents with him. The Ld. D.R in order to buttress his aforesaid contention, took us through the relevant extract of the orders of the lower authorities. Further, it was submitted by the Id. D.R that the CIT(A) had most whimsically without giving any reasoning reduced the commission rate of 3% as adopted by the A.O for estimating the income of the assessee, to an arbitrary rate of 0.05%. It was submitted by Id D.R that the order passed by the CIT(A) may be 'set aside' and that of the A.O be restored.

16. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities, material available on record and the judicial pronouncements relied upon by them. We shall first advert to the contention of Id. A.R wherein he has assailed the validity of jurisdiction assumed by the A.O for framing the assessment u/s.153C of

the I.T Act for the year under consideration i.e. A.Y 2007-2008. We have deliberated at length on the issue under consideration and find substantial force in the contentions advanced by the Id. A.R, that as per the 'first proviso' of sub-section (1) of Section 153C, the date of initiation of search u/s.132 of the Act for the purpose of framing of an assessment u/s.153C has to be construed as the date of receiving the books of accounts or documents or assets seized or requisitioned by the A.O having jurisdiction over such other person, from the A.O of the searched person. On a careful perusal of the 'first proviso' to sub-section (1) of Sec. 153C, we find that the same provides that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the 'second proviso' to section 153A "shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person." As such, in the income tax proceedings u/s.153C, the reference to the date of initiation of the search in the 'second proviso' to Section 153A, has to be construed as the date on which the A.O receives the books of accounts or documents or assets from the A.O of the searched person. Accordingly, in our considered view, it would mean that six assessment years for which the assessments or reassessments could be made u/s.153C would have to be reckoned with reference to the date of handing over of the books of accounts or documents or assets by the A.O of the searched person, to

the A.O of the assessee i.e. the person other than the searched person. In sum and substance, in case of an assessee other than the searched person, the period of six assessment years will have to be reckoned from the date on which the books of accounts or documents or assets seized are received by the A.O having jurisdiction over such other person. We find that the aforesaid contention averred by the Id. A.R is also supported by the fact that the legislature in all its wisdom, had vide the Finance Act, 2017 w.e.f. 01.04.2017 came up with an amendment in Section 153C, to the effect that the block period for the person in respect of whom search was conducted, as well as the "other person" would be the same six assessment years immediately preceding the year of search. In our considered view, as the said amendment is prospective in nature, hence, the same would not be applicable to the case of the assessee i.e. for the A.Y 2007-2008. Our aforesaid view is also fortified by the judgment of the Hon'ble High Court of Delhi in the case of CIT Vs. RRJ Securities Pvt. Ltd., (2016) 380 ITR 612 (Delhi). Apart there from, we find that the aforesaid view was once again affirmed by the Hon'ble High Court in the case of PCIT Vs. Sarwar Agency (P.) Ltd. [2017] 397 ITR 400 (Delhi), wherein it was observed as under:

5. In terms of Section 153 A(1) (b) of the Act, the AO shall assess or re-assess the total income of six AYs immediately preceding the AY relevant to the previous year in which the search was conducted. The second proviso to sub-section (1) of Section 153 A of the Act, states that assessment or re-assessment relating to any AY falling within the period of six AYs referred to in the said sub-section pending on the date of initiation of the search under Section 132, would abate.

6. The case of the Revenue is that the first proviso to Section 153 C refers only to the second proviso to Section 153 A(1) of the Act, which only indicates that any assessment relating to any AY falling within the period of six AYs which is pending as of the initiation of search shall abate. Therefore, the second proviso to Section 153 C is also concerned only with the aspect of abatement of pending assessments. According to the Revenue, this makes no difference to the computation of the block of six years preceding the AY relevant to the previous year /in which the search was conducted. In other words, according to the Revenue, the block period for both the searched person and the 'other person' would remain the same notwithstanding that there may be some delay in transmitting the documents recovered during the search which belong or pertain to the 'other person' to the AO of such other person.

7. The case of the Assessee, on the other hand, is that since in the case of the 'other person' the AO issues notice only subsequent to the notices issued under Section 153 A to the searched person, the starting point for computation of the block period would be the date on which, based on the seized documents, notice is issued to the 'other person' under Section 153 C of the Act. Thus in the present case, the six year period prior to AY 2012-13 i.e. AY 2007-08 to AY 2012-13. Thus no notice could be issued under Section 153 C of the Act to reopen the Assessee's assessment for AY 2006-07. Reliance is placed on the decision of this Court in *Commissioner of Income-tax-7 v. RRJ Securities Ltd. [2016] 380 ITR 612 (Del)* where this very question was examined and answered in favour of the Assessee and against the Revenue.

8. In *RRJ Securities (supra)*, the Court after noticing the decision in *SSP Aviation Ltd. v. Deputy CIT [2012] 346 ITR 177 (Del)*, held as follows:

"21. As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the noticee to furnish returns of income in respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any

income that may have remained undisclosed in the relevant assessment years.....

24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee."

9. The said decision in *RRJ Securities (supra)* has been followed by this Court subsequently in *ARN Infrastructure India Ltd. v. Assistant Commissioner of Income-tax, Central Circule-28, New Delhi [2017] 394 ITR 569 (Del.)*.

10. Mr. Salil Aggarwal, learned counsel for the Assessee, has drawn the attention of the Court to the recent amendment made in Section 153 C of the Act by the Finance Act, 2017 with effect from 1st April 2017. This amendment in effect states that the block period for the searched person as well as the 'other person' would be the same six AYs immediately preceding the year of search. This amendment is prospective.

11. Mr. Ashok Manchanda, learned Senior Standing counsel for the Appellant, sought to pursue this Court to reconsider its view in *RRJ Securities (supra)*. The Court declines to do so for more than one reason. First, for reasons best known to it, the Revenue has not challenged the decision of this Court in *RRJ Securities (supra)* in the Supreme Court. The said decision has been consistently followed by the authorities under this Court as well as by this court. Thirdly, the recent amendment to Section 153 C(1) of the Act states for the first time that for both the searched person and the other person the period of reassessment would be six AYs preceding the year of search. The said amendment is prospective.

12. Consequently, no substantial question of law arises from the impugned order of the ITAT. The appeal is, accordingly, dismissed."

17. We shall now in the backdrop of the aforesaid settled position of law, deliberate on the facts before us. As stated by the Id. A.R, the 'satisfaction' of the A.O of the assessee i.e the person other than the searched person was recorded on 15.01.2014. As such, the period of six years was to be reckoned from the date of recording of such 'satisfaction',

which would thus take within its sweep the period relevant to Assessment Years: 2008-2009 to 2013-2014. Accordingly, as per the Id. A.R, the case of the assessee for the year under consideration i.e. A.Y.2007-2008 would not fall within the scope and gamut of the period for which assessment proceedings u/s153C could be framed. As per the facts stated by the Id. A.R before us, we find substantial force in his contention that the year under consideration viz. A.Y 2007-08 does not fall within the period for which assessment u/s 153C could be framed. Accordingly, we direct the A.O to verify the factual position as regards the date on which the books of accounts or documents or assets seized during the course of search proceedings were delivered by the A.O of the searched person to the A.O of the assessee i.e the person other than the searched person. Apart there from, in case the A.O of the searched person and that of the assessee is the same person, then the date of recording of 'satisfaction' by the A.O in the file of the assessee i.e the person other than the searched person, shall be taken as the relevant date for reckoning the period of six assessment years for which assessments could have been framed u/s 153C. In case, the claim of the assessee that the year under consideration vis. A.Y.2007-2008 falls beyond the scope of six assessment years from the aforementioned date of recording of satisfaction or receiving of documents or assets seized or books of accounts by the A.O of the assessee, as the case may be, then the assessment framed by the A.O shall stand vacated. The "Additional

Ground of appeal” raised by the assessee is allowed in terms of our aforesaid observations.

18. We shall now for the sake of completeness advert to the merits of the case. Admittedly, the locker No.596 with M/s Gold Sukh Safety Vaults Ltd., 65 Vithalwadi, Mumbai-400002, was allotted in the name of the assessee. It is also not disputed that the aforementioned concern viz. M/s Gold Sukh Safety Vaults Ltd. as a matter of practice, was allotting the lockers without complete verification of the KYC details of the joint operators of the lockers. Apart there from, as is discernible from the orders of the lower authorities, the lockers would though be allotted in the name of one person, however, the same could also be operated by three other persons by incorporating their names in the ‘agreement’.

19. We find that the assessee in his ‘statement’ which was initially recorded during the course of the search & seizure proceedings u/s.132(4), dated 20.11.2012, had specifically stated that the contents lying in the locker were belonging to him. In fact, a perusal of the assessment order reveals, that the assessee on being confronted with the aforesaid documents viz. Annexure-A/1 to A/4 had specifically admitted that the same were required by him in the course of his business to get orders from the customers to prove the genuinenity of the supplier parties. The fact that the assessee had categorically admitted that the aforesaid seized documents viz Annexure-A/1 to A/4 belonged to him can safely be

gathered from his 'statement' which was recorded during the course of the search proceedings u/s.132(4) of the Act on 20.11.2012, the relevant extract of which is reproduced as under :-

"Q.50. . I am showing you the loose papers found and seized from your locker No. 596 maintained with Gold Sukh Safety Vaults Ltd., Kalbadevi, Mumbai containing written pages 1 to 145. The same is marked as loose paper folder Annexure. A-1 in the List / Inventory of A/c. Books etc., found /seized dt.20-11-2012. Please confirm that the same have been found and seized from your locker. Please explain the contents thereof of each page.

Ans. I confirm that the above referred pages 1 to 145 have been found from my locker No: 596 maintained with Gold Sukh Safety Vaults Ltd. Kalbadevi. Mumbai. To the best of my knowledge, page number 1 to 145 are photocopies of Income Tax and Sales Tax Return and related documents of those parties for which I have become brokerage, These documents are generally required to get orders from customers to prove the genuinity of the supplier party.

I am not in a position to give the detailed explanation of each page at this point in time. However I shall give the same as and when required.

Q.51 I am showing you the loose papers found and seized from your locker No.596 maintained with Gold Sukh Safety Vaults Ltd., Kalbadevi, Mumbai containing written pages.1 to 157. The same is marked as loose paper folder Annexure A-2 in the List / Inventory of A/c. Books etc., found / seized dt.20-11-20 12. Please confirm that the same have been found and seized from your locker. Please explain the contents thereof of each page.

Ans. I confirm that the above referred pages 1 to 157 have been found from my locker No. 596 maintained with Gold Sukh Safety Vaults Ltd., Kalbadevi, Mumbai. To the best of my knowledge, page number 1. to 157 are the copies of confirmation along with supporting documents required by purchase parties from various suppliers.

I am not in a position to give the detailed explanation of each page at this point in time. However I shall give the same as and when required.

Q:52 I am showing you the loose papers found and seized from your locker No. 596 maintained with Gold Sukh Safety Vaults Ltd., Kalbadevi, Mumbai containing written pages 1 to 182. The same is marked as loose paper folder Annexure A-3 in the List I Inventory of

Alc. Books etc., found I seized dt.20-11-20 12. Please confirm that the same have been found and seized from your locker. Please explain the contents, thereof of each page.

Ans. I confirm that the above .referred pages 1 to 182 have been found from my locker No. 596 maintained with Gold Sukh Safety Vaults Ltd Kalbadevi, Mumbai. To the best of my knowledge, page num.ber 1 to 182 are copies of payment of VAT by various supplier parties; audit report of various supplier parties.

I am not in a position to give the detailed explanation of each page at this point in time. However I shall give the same as and when required.

Q.53 I am showing you the loose papers found and seized from your locker No. 596 maintained with Gold Sukh Safety Vaults Ltd., Kalbadevi, Mumbai containing written pages 1 to 154. The same is marked as loose paper folder Annexure A-4 in the List / Inventory of A/c. Books etc., found /seized dt. 20-11-2012. Please confirm that the same have been found arid seized from your locker. Please explain the contents thereof of each page.

Ans. I confirm that the above referred pages 1 to 154 have been found from my locker No. 596 maintained with Gold Sukh Safety Vaults .Ltd., Kalbadevi Mumbai. To the best of my knowledge, the pages are copies of VAT challans and PAN card photocopies.

I am not in a position to give the detailed explanation of each page at this point in time. However I shall give the same as and when required.

Q.54 In response to Q.No. 52 and Q. No. 53 you have stated that these are photocopies of VAT challans and PAN card copies. You are asked as to why the photocopy of VAT Challans and PAN card copies of other firms/entities are kept in your locker.

Ans. These documents are generally required to get orders from customers to prove the genuinenity of the supplier and purchase party.”

20. On a perusal of the aforesaid specific replies to the queries as regards the seized documents viz Annexure-A/1 to A/4, it can safely or rather inescapably be concluded that the said documents belonged to the assessee. As such, we are not inclined to accept the contention of the Id.A.R that the assessee was in no way connected with the documents

which were found and seized during the course of search proceedings from his locker No.596 with M/s Gold Sukh Safety Vaults Ltd., 65 Vithalwadi, Mumbai-400002.

21. We shall now deliberate on the nature of the documents and the contents thereof, and in the backdrop of the same, the maintainability of the view taken by the lower authorities. As is discernible from the orders of the lower authorities, the A.O in the course of assessment proceedings, had vide his letter dated 22.01.2015 sought information from the Jt. Commissioner of Sales Tax, Economic Intelligence Unit, Mumbai, as regards 45 concerns, documents pertaining to whom were recovered from the aforementioned locker No.596 of the assessee. In the said query letter the A.O had categorically requested the Sales Tax Department to furnish the year wise sales/turnover of the said concerns, and had also sought a finding as to whether the same were genuine concerns or not. We find that the Sales Tax Department, Maharashtra, had vide its reply dated 26.02.2012 furnished details as regards the sales/turnover of 37 parties, as regards whom details were available with them. Insofar the remaining 8 parties were concerned, it was stated by the department that as either the information pertaining to them was not available or their registration certificates have been cancelled, therefore, no details as regards the turnover of the said concerns could be furnished. We further find that the A.O on his own, had on the basis of the 'seized material' is stated to have arrived at the respective turnovers of 16 other parties, which was

tabulated by him under the head "List B". On the basis of the aforesaid deliberations, the A.O prepared a consolidated year-wise chart for the period A.Y.2007-2008 to A.Y 2013-2014 of the turnovers of the aforementioned companies and worked out the commission income of the assessee @3% of the aggregate of the turnovers of such companies in the said respective years.

22. We have perused the order of the A.O and find that the basis for computing the commission income of the assessee @3% of the aggregate of the turnovers of the respective 53 concerns by him, is not backed by any logical basis or reasoning. As is discernible from the order of the A.O, he had justified the adoption of commission rate of 3% on the ground that the same was the rate which was prevailing in the market in such type of transactions. However, the said view so taken by the A.O is shorn of any basis which could have persuaded us to subscribe to the same.

23. On appeal, the CIT(A) though principally agreed with the A.O that the assessee was involved in the business of providing accommodation entries, but in the totality of the facts he confined the activities of the assessee only to that of a facilitator, and not as the owner of the aforesaid concerns. As observed hereinabove, the CIT(A) after so concluding restricted the income of the assessee to 0.05% of the total turnover of the aforesaid concerns in the aforementioned respective years.

24. We have given a thoughtful consideration to the issue before us in the backdrop of the observations of the lower authorities, and are persuaded to subscribe to the view taken by them, that in the totality of the facts, it can safely be concluded that the assessee was involved in the business of providing/arranging accommodation entries for third parties. In our considered view, the very fact that PAN Nos, VAT details, Aadhaar cards etc of certain tainted parties were found in the possession of the assessee, in itself supports the view taken by the lower authorities that the assessee was a part of a chain which facilitated providing of accommodation entries. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT, (1995) 214 ITR 801(SC), as per which the principle of preponderance of human probability can be put into service by a fact finding authority for arriving at the true state of affairs in a given case. In fact, the admission by the assessee in his 'statement' recorded u/s.132(4) on 20.11.2012 that the documents pertaining to the aforementioned parties belonged to him, clearly speaks for itself and establishes the nexus of the assessee with the said documents. Apart from that, the specific replies given by the assessee in his statement recorded u/s.132(4), dated 20.11.2012, on being confronted with the seized documents viz. Annexure-A/1 to A/4 as have purposively been culled out by us hereinabove, therein clearly establishes a clear nexus of the assessee with the said documents, as well as the fact that the same were being used by him for earning

brokerage income. In sum and substance, we are of the considered view that the clear nexus of the aforesaid seized documents viz. Annexure-A/1 to A/4 and the affairs of the assessee stands established beyond any scope of doubt. However, at the same time, we also cannot remain oblivious of the fact that the estimation of the commission income of the assessee @3%/0.05% of the aggregate of the turnovers of the 53 concerns by the A.O/CIT(A) is not backed by any supporting material or logical reasoning. Infact, the reasoning given by the A.O that the commission income of 3% on the aggregate turnovers of the said concerns, for the respective years, was being worked out at the rate which was prevailing in the market is bereft of any supporting material, and thus cannot be summarily accepted on the very face of it. Apart there from, we find that the CIT(A) while disposing off the appeal, had merely gone by the reply given by the assessee to Question No.31 of his statement recorded u/s 132(4) on 20.11.2012, wherein he had stated that the seized documents viz. Annexure-A/1 to A/4 were required by him to secure orders from the customers and average commission of 0.05% on such transactions was being earned by him. We find that the CIT(A) after concluding that the assessee in the absence of substantial infrastructure could not be held to be a bogus entry provider himself, but was facilitating the business of such bogus entry provider concerns, had restricted the commission income to 0.05% instead of 3% that was adopted by the AO.

Again, we find that no basis for adopting the commission rate of 0.05% has been given by the CIT(A).

25. Apart there from, we are of the considered view, that no serious efforts had been put up by the lower authorities for concluding on the basis of any supporting evidence that all the 53 concerns, details/documents of whom were found and seized from the locker No.596 of the assessee during the course of the search & seizure proceedings, were in fact involved in the business of providing accommodation entries. Admittedly, though the entire state of affairs and the documents relating to the aforementioned parties found lying in the locker No.596 of the assessee raises serious doubts as regards the purpose for which the same were retained by him, however, the same on the said standalone basis could not have justified drawing of an assumption that all the said concerns were involved in the business of providing accommodation entries. Our aforesaid view is further fortified from the fact that though the A.O had raised a specific query vide his letter dated 22.01.2015 addressed to the Jt. Commissioner Sales Tax Department, Economic Intelligence Unit, Mumbai, as regards the fact as to whether the 45 parties, details as regards which were sought were genuine or not, however, the said query was returned unanswered by the Sales tax department in its reply dated 26.02.2015 (copy placed on record). As a matter of fact, no material has been placed on our record which could substantiate the very basis for estimation of the commission

income of the assessee. Rather, a perusal of the orders of the lower authorities does not point out any such evidence which could prove to the hilt that all the aforementioned 53 parties were accommodation entry providers, which, thus, would have justified working out the commission income of the assessee on the respective turnovers of all of the said concerns for the years under consideration. As observed hereinabove, there is merely a general observation of the A.O that the names of various concerns whose documents were found from the locker No.596 of the assessee had figured in the list of accommodation entry providers that was published by the Sales Tax Department, Maharashtra. We may herein observe that the said observation of the A.O is not backed by any 'material' which could substantiate the said fact. Insofar, the observation drawn by the AO that 90% (approx) of the notices sent to the parties u/s.133(6) of the I-T Act were returned unserved, would though suffice to raise doubts, but the same cannot conclusively lead to drawing of inferences to the effect that all of the said concerns had provided accommodation entries to third parties. In our considered view, the A.O before concluding that all of the aforementioned 53 parties were involved in the business of providing accommodation entries ought to have placed on record certain documentary evidence which would have supported his view that the names of the said parties had figured in the list of the accommodation entry providers.

26. We, thus, in terms of our aforesaid observations, are of the considered view that the lower authorities have failed to prove on the basis of any irrefutable documentary evidence that all the 53 parties on whose turnovers for the respective years the commission income of the assessee as a facilitator/bogus entry provider had been worked out were involved in the business of providing accommodation entries. Thus, the very basis for working out the brokerage income in the hands of the assessee cannot be accepted on the very face of it. Further, as observed by us hereinabove, as the basis for working the commission @3%/0.05% by the AO/CIT(A), is also not backed by any supporting material, therefore, the same does not inspire much of confidence as regards the estimation of the commission income of the assessee, and thus cannot be summarily accepted on the very face of it. In our considered view, the matter has not been appreciated by the lower authorities in the right perspective. Admittedly, we though are in agreement with the observations of the lower authorities that the assessee was engaged in the business of facilitating/providing of accommodation entries, however, the very basis for quantifying the estimation of such commission income does not find favour with us. Be that as it may, in our considered view, the matter requires to be restored to the file of the A.O with certain specific directions viz:-

- i) that, the AO shall make necessary verifications from the Sales Tax Department, Government of Maharashtra and

therein place on record 'material' which would substantiate that the names of the aforementioned 53 parties whose documents were found lying in locker No.596 of the assessee had figured in the list of the accommodation entry providers published by the Sales Tax Department;

- ii) that, the fate of the notices which were issued to the aforementioned parties u/s.133(6) of the I-T Act shall be brought to the notice of the assessee, with an opportunity to him to produce the said parties in order to substantiate its claim that it had not rendered any services as an accommodation entry provider/facilitator;
- iii) that, the copies of the statements of the parties which had responded to the notices issued by the AO u/s.133(6) of the I-T Act shall be made available to the assessee; and
- iv) that, the very basis as per which the 16 parties tabulated in "List B" alongwith their respective turnovers had been worked out by the A.O as per the details stated to have been gathered by him from the 'seized material' be made available to the assessee.

27. Before parting, we may herein observe that the assessee had placed on record an "affidavit" under rule 10 of the Appellate Tribunal

Rules, 1963, along with details of certain parties whose names as claimed by him had figured in the list of the hawala dealers/non-genuine dealers which were blacklisted by the Sales Tax Department, Govt. of Maharashtra. As observed by us hereinabove, the assessee referring to the 37 parties figuring in the "List A" compiled by the AO in the course of assessment proceedings, had claimed that the names of 13 parties having an aggregate turnover of Rs.216,31,83,843/- does not figure in the list of the hawala dealers/non-genuine dealers as hosted by the Sales Tax Department, Govt. of Maharashtra. Accordingly, the assessee has claimed that the turnover of the aforementioned 13 parties may be excluded from the total turnover of 37 parties for the period A.Y.2007-2008 to 2013-2014 while computing the commission income for the respective years. We have given our thoughtful consideration to the aforesaid material placed on record by the assessee along with an "affidavit" under rule 10 of the Appellate Tribunal Rules, 1963. In our considered view, the aforesaid claim of the assessee requires verification and cannot be accepted on the very face of it. We, thus, in terms of our aforesaid observations, direct the AO to consider the material filed by the assessee before us in the course of the set aside proceedings. Accordingly, the commission income of the assessee as regards the turnover of the parties which on the basis of verifications carried out by the A.O in the course of the 'set aside' proceedings are found to be engaged in the business of providing accommodation entries or a part of

such network, shall be worked out on an estimate basis, along with a logical reasoning justifying such estimation.

28. We may herein observe, that in case the facts averred by the Id. A.R as regards the date of handing over of the documents or books of accounts or assets by the A.O of the searched person to the A.O of the assessee; or the recording of the 'satisfaction' by the A.O of the assessee in case the A.O of the searched person and the assessee are the same, is found to be in order, then the assessment shall stand quashed and our observations as regards the merits of the case would be rendered as merely academic in nature. Otherwise, the matter on merits shall be restored to the file of the A.O, in terms of our aforesaid observations. With the aforesaid directions, the appeal of the assessee for the assessment year 2007-08 in ITA No.7374/Mum/2017 is allowed.

**ITA No.7375 to 7378/Mum/2017
(AY : 2008-2009 to 2011-2012)**

29. As the issue on merits involved in the present appeals is similar to that which was there before us in the appeal of the assessee for the A.Y 2007-08 in ITA No.7374/Mum/2017, wherein we have given our findings on merits, therefore, we restore the matter involved in the captioned appeals in terms of our observations recorded while disposing off the aforementioned appeal of the assessee for A.Y 2007-08 on merits. As such, the observations and findings given by us on merits in the aforesaid appeal for A.Y 2007-08 viz. ITA No. 7374/Mum/2017, shall also apply

mutatis mutandis to the present appeals of the assessee for A.Y 2008-09 to A.Y 2011-12 viz. ITA No. 7375 – 7378/Mum/2017. Accordingly, the aforementioned appeals viz. ITA Nos.7375 to 7378/Mum/2017 for the assessment years 2008-2009 to 2011-2012 are allowed for statistical purposes.

ITA No.7379/Mum/2017
(AY : 2012-2013)

30. As the issue involved in the present appeal is similar to the appeal of the assessee on merits for the assessment 2007-08 in ITA No.7374/Mum/2017, therefore, the observations and findings given by us in the appeal of the assessee for A.Y 2007-08 on merits, shall also apply *mutatis mutandis* to the present appeal.

31. The assessee has further assailed before us the orders of CIT(A), on the ground, that he has erred in taxing the long term capital gain at normal rates instead of the prescribed rate of 20%. On perusal of the order of CIT(A), we find that the said ground was dismissed by him, as no addition on the said aspect was made by the AO. We find that the Id. A.R in the course of hearing of the appeal has not brought to our notice as to on what basis the aforesaid ground of appeal emanates from the order of the lower authorities. We, thus, finding no infirmity in the order of CIT(A), dismiss the **Ground No.4** raised by the assessee. Accordingly, the appeal of the assessee viz. ITA No.7379/Mum/2017 for the assessment year 2012-2013 is partly allowed for statistical purposes.

**ITA No.7380/Mum/2017
(AY : 2013-2014) :**

32. Insofar the grounds of appeal No.1 to 3 raised by the assessee in the present appeal as regards the merits of the case are concerned, the same, we find are similar to those which were raised by him in his appeal for the assessment 2007-08 in ITA No.7374/Mum/2017. As such, our observations and findings given in the aforesaid appeal for A.Y 2007-08 on merits shall also apply *mutatis mutandis* to the present appeal.

33. The assessee has also assailed before us the addition of Rs.18,23,060/- made by the A.O on account of undisclosed silver weighing 11.2 Kgs (Rs. 7,23,060/-) and cash (Rs. 11,00,000/-), without appreciating that the source of such seized cash and silver would stand explained by the additions made by the A.O towards the undisclosed income of the assessee for the previous six assessment years. Apart there from, the assessee had also assailed the upholding by the CIT(A) of the value of seized silver at Rs.7,23,060/-, without giving any basis for arriving at such valuation.

34. We have deliberated at length on the issue under consideration and find substantial force in the aforesaid contentions of the Id A.R. As a matter of fact, the Id. A.R by raising the aforesaid contention has sought telescoping of the addition made by the A.O on account of undisclosed silver and cash aggregating to Rs.18,23,060/- against its 'undisclosed

income' assessed for the preceding six assessment years. As we have restored the issue as regards the quantification of the 'undisclosed income' of the assessee to the file of A.O for fresh adjudication for the year under consideration and the preceding years, therefore, in all fairness the said issue is also restored to his file for adjudicating the same afresh. In case, the assessee is able to substantiate in the course of 'set aside' proceedings that he had sufficient funds available with to explain the investment made towards the value of 11.2 kg of silver jewellery and the cash of Rs.11,00,000/- found from his locker no. 596 during the course of the search proceedings, then the addition to the said extent towards unexplained investment shall stand deleted. However, we do not find favour with the claim of the Id. A.R that the lower authorities had not given any basis for taking the value/upholding the value of the seized silver at Rs.7,23,060/-. Rather, as is discernible from the records, we find that the assessee had categorically stated in his statement recorded during the course of the search proceedings that the 11.2 kg of silver jewellery that was found and seized from his locker No. 596 during the course of the search proceedings, was of a value of Rs. 7,23,060/-. We thus reject the contention of the Id. A.R that there is no basis for taking the value of the aforesaid 11.2 kg of silver jewellery by the A.O at Rs. 7,23,060/-. Accordingly, the present appeal of the assessee for the assessment year 2013-2014 is partly allowed for statistical purposes.

ITA Nos.83 to 89/Mum/2018
A.Y(s) 2007-2008 to 2013-2014
(REVENUES APPEALS)

35. Now, we shall take up the appeals of the revenue for the assessment years 2007-2008 to 2013-2014 in ITA Nos.83 to 89/Mum/2018, wherein similar grounds have been raised by the revenue in all the captioned assessment years under consideration, as under :-

"i. On the facts and circumstances of the case and in law, the Ld. CIT(A), has erred in directing the Assessing Officer to adopt 0.05% of the total turnover as unaccounted commission, as against 3% adopted by the Assessing Officer, which is based on the admission and averment by the assessee in his statement during the course of action u/s. 132(4) of the Income Tax Act, 1961."

ii. "On the facts and circumstances of the case and in law, the Ld. CIT(A), has erred in restricting the commission/brokerage income earned by the assessee from 3% to 0.05% of the total turnover, without appreciating the fact that the assessee has not maintained any books of account and commission/brokerage income of 3% of the total turnover, was fixed on the prevailing market rate of the commission/brokerage business."

iii. On the facts and circumstances of the case and in law, the Ld. CIT (A), has erred in restricting the commission/brokerage income earned by the assessee from 3% to 0.05% of the of the total turnover, relying upon the seized scribbling which were unsigned and rough papers, without correlating such commission/brokerage income with the prevailing market rates in absence of any authentic and audited books of accounts."

2. The Appellant craves leave to add, to amend and I or to alter any of the grounds of appeal, if need be.

3. The Appellant, therefore, prays that on the grounds stated above, the order of the CIT(A)-48, Mumbai may be set aside and that of the Assessing Officer restored.

36. We find that the only grievance of the revenue is that the CIT(A) had erred in reducing the commission/brokerage income of the assessee from 3% to 0.05% of the total turnover. As we have on the basis of our

extensive deliberations in the appeals of the assessee for the assessment years 2007-2008 to 2013-2014, restored the matter on the said aspect to the file of A.O for fresh adjudication in terms of our aforesaid observations, therefore, on the same terms, the aforesaid appeals of the revenue are also being restored to the file of A.O. The A.O shall after quantifying the turnover of the tainted parties, which are found to be involved in the business of providing accommodation entries, therein in terms of our aforesaid observations, on the basis of a logical reasoning work out the commission income of the assessee. Accordingly, all the appeals of the revenue for the assessment years 2007-2008 to 2013-2014 viz. ITA Nos.83 to 89/Mum/2018 are allowed for statistical purposes.

37. In the result, appeal of the assessee for A.Y 2007-08 in ITA No.7374/Mum/2017 is allowed, and those for A.Ys 2008-09 to 2013-14 in ITA Nos.7375/Mum/2017 to 7379/Mum/2017 are allowed/partly allowed for statistical purposes in terms of our aforesaid observations. The appeals of the revenue in ITA Nos.83 to 89/Mum/2018 are allowed for statistical purposes.

Order pronounced in the open court on 28/05/2019

**Sd/-
(N.K.PRADHAN)
ACCOUNTANT MEMBER**

Mumbai; Dated 28/05/2019
Prakash Kumar Mishra, Sr.PS

**Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER**

Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai