IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.361/SRT/2018

(निर्धारणवर्ष / Assessment Year: (2010-11)

(Virtual Court Hearing)

The Income Tax Officer, Ward-1(3)(1), Surat.	**V s.**	Shri Deepak Vithaldas Suchak, 202, Krishna Awas, 55-Kirandep Society, Behind Richie Rich Hotel, Parle Point, Surat – 395007.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ALLPS 9195 A**		
(Assessee)		**(Respondent)**

Cross Objection No.02/SRT/2021

(arising out of ITA No.361/SRT/2018)

(निर्धारणवर्ष / Assessment Year: (2010-11)

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स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ALLPS 9195 A**		
(Assessee)		**(Respondent)**

Assessee by : Shri Uday P. Nanavati - CA

Respondent by : Shri O.P.Vaishnav – CIT(DR)

सुनवाईकीतारीख/ Date of Hearing : 05/07/2021

घोषणाकीतारीख/Date of Pronouncement: 30/07/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue and Cross objection filed by the assessee pertaining to Assessment Year 2010-11, are directed against the order passed by the ld.Commissioner of Income Tax(Appeals)-2, Surat [Ld.CIT(A)], dated 15.03.2018, which in turn arise out of an assessment order passed by the Assessing Officer under section 144 r.w.s 147 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], dated 22.11.2017.

2. First, we shall take Revenue`s appeal in ITA No.361/SRT/2018, for assessment year 2010-11. The Grounds of appeal raised by the Revenue are as follows:

> *"1. Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by the Assessing Officer of Rs.98,22,26,712/- u/s 69 of the IT Act without appreciating the facts that the assessee failed to provide details of credit entries in his bank accounts?*
>
> *2. On the facts and circumstances of the case, the Ld. CIT(A) ought to have upheld the order of the assessing officer.*
>
> *3. It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of assessing office may be restored to the above extent."*

3. Brief facts of the issue in dispute are stated as under. During the course of assessment proceedings, on perusal of the records, it was noticed by the assessing officer that below mentioned credits/deposits were made in the various bank accounts maintained by the assessee with Union bank of India during Financial Year 2009-10 relevant to assessment year 2010- 11 through cheque/transfer/cash. The details of the deposits/credits in the bank account of the assessee are as under:-

Sr. No.	Name of assessee's proprietary concern	Name of the Bank	A/c Nos.	Total amount credited during 01.04.2009 to 31.03.2010 (Rs.)
1	M/s Shri Ganesh Enterprise	Union Bank of India	311001010055354	94,44,50,719/-
2	M/s Om Vinayak Enterprise	Union Bank of India	311001010055355	30,32,097/-
3	M/s Om Riddhi Enterprises	Union Bank of India	311001010055356	23,71,332/-
4	M/s Kaushal Corporation	Union Bank of India	311001010055357	3,23,72,564/-
			Total	98,22,26,712/-

The assessing officer noted that assessee has not furnished any details and evidences including source of above mentioned credits/deposits in his bank accounts during the year under consideration. Thus, on perusal of the records, it was found by assessing officer that there are deposits/credits of Rs. 98,22,26,712/-

in the bank accounts of the assessee maintained with the Union Bank of India, bearing account No. 311001010055354, 31100101005355, 311001010055356 & 31100101005357 through cash/cheque/transfer during FY 2009-10 relevant to AY 2010-11. However, assessee has neither furnished any details/explanation/supporting evidences in respect of source of the above mentioned deposits in his bank accounts nor filed his return of income for the year under consideration and thus source of above mentioned deposits in the bank accounts of assessee remains unexplained. Therefore, above mentioned amount of Rs. 98,22,26,712/- was treated by assessing officer, as unexplained investment of the assessee for the year under consideration as per provisions of section 69 of the Income Tax Act, 1961.

4. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld.CIT(A) who has partly deleted the addition made by the Assessing Officer. The ld CIT(A) noticed that assessee has been using these bank accounts for the cheque discounting business as held by the assessing officer in the A.Y. 2009-10 also. The report of the Investigation Wing on which the assessing officer has relied upon also mentions about the assessee's cheque discounting business. The contention of the assessee that AO has taken incorrect figures of total turnover in the four bank accounts in AY 2010-11 is incorrect, as the AO has verified it during the remand report proceedings.
In view of the above fact and circumstances, the ld CIT(A) held that assessee is doing the business of cheque discounting and has been showing commission income in the return of income. The ld CIT(A) also held that assessing officer has made error by making an addition of the entire turnover as undisclosed investment of Rs. 98,22,26,712/-. Therefore, ld CIT(A) deleted the addition made by the AO of Rs. 98,22,26,712/-, and directed the assessing officer to calculate @Rs. 50 per lacs on the total turnover of the Rs. 98,22,26,712/-.

5. Aggrieved by the order of the Ld.CIT(A), the Revenue is in appeal before us and assessee has also filed cross objections before us.

6. Learned Departmental Representative (ld DR) for the Revenue submitted that in the assessee's case, it was found from the enquiry report of the Investigation Wing that assessee did not produce any proof regarding credit entries or turnover during the course of enquiry/verification proceedings. Further, assessee did not produce any details/evidence in respect of source of credit entries in his bank account or turnover or any other called for details during the course of assessment proceedings. Further, assessee did not furnish any proof regarding turnover and cheque discounting business during the course of appellate proceedings. The Ld CIT(A) failed to appreciate that every assessment year is a different assessment year and assessee failed to establish that he is engaged in business of cheques discounting or not. The Ld CIT(A) also failed to appreciate that the assessee is to explain each credit entry if the AO doubts genuineness of amount credited in his bank accounts. The ld DR further submitted that assessee has deposited cash in bank and cheque in his bank account during the assessment year under consideration. The total amount of cash and cheques deposited by the assessee comes to Rs.98,22,26,712/-. The Assessing Officer had made the disallowances to the tune of Rs.98,22,26,712/-. However, the Ld.CIT(A) has deleted the substantial addition by holding that assessee is engaged in the business of cheque discounting and calculated the commission at the rate of Rs.50 per lakh on the cheque discounting business, which is not justified, as the assessee is owner of all the transactions, therefore, addition made by the assessing officer should be sustained.

7. On the other hand, the Ld.Counsel for the assessee submitted that assessee is doing business of cheque discounting. The *modus-operandi* of cheque discounting business, as explained by the assessee, is that customers who received third party cheques comes to him for getting the same discounted and he accepts the said cheques and deposit in his accounts and after the same is cleared on the third day, he pays back the money either by cash or cheque after deducting commission @ Rs.30 to 40 per lakh. The ld.Counsel also pointed out that assessee has been using these bank accounts for the cheque discounting business and the assessing officer

in the A.Y. 2009-10 allowed the claim of the assessee treating cheque discounting business, this way, ld Counsel defended the order passed by the ld CIT(A).

8. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld CIT(A) and other materials brought on record. We note that in assessee`s case an enquiry report was received from the Dy. Director of Income Tax (Inv.)-III, Surat regarding huge credits in the bank account of the assessee during the year under consideration. From the enquiry, the Assessing Officer gathered that the assessee has four bank accounts and total credit entry in the bank accounts are of Rs. 98,22,26,712/-. The Assessing Officer treated Rs. 98,22,26,712/- as unexplained investment and treated income at Rs. 98,22,26,712/- for the year under consideration by passing order u/s 144 r.w.s 147 of the IT Act. On appeal, ld CIT(A) directed the assessing officer to calculate the commission @Rs. 50 per lacs on the total turnover of Rs. 98,22,26,712/-.

We note that investigation Wing, Surat, reported after examining the assessee and recording his statement on oath u/s 131 of the Act, that the assessee was engaged in the business of cheque discounting business and was using 18 bank accounts. The AO in the A.Y. 2009-10 had completed the assessment order dated 25.11.2016 holding that the assessee had earned commission income @Rs. 50 per lacs on the turnover of Rs. 29,84,17,709/- and had made addition of Rs. 14,92,088/-. Therefore, we note that in previous year the Department has accepted the claim of the assessee that assessee had earned commission income @Rs. 50 per lacs on the turnover of Rs. 29,84,17,709/-.

It is a well settled legal position that factual matters which permeate through more than one assessment year, if the Revenue has accepted a particular's view or proposition in the past, it is not open for the Revenue to take a entirely contrary or different stand in a later year on the same issue, involving identical facts unless and until a cogent case is made out by the Assessing Officer on the basis of change in

facts. For that we rely on the order of the Hon'ble Supreme Court in RadhasoamiSatsang vs. CIT 193 ITR 321 (SC), wherein it was held as follows:

"We are aware of the fact that, strictly speaking, res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasoning, in the absence of any material change justifying the Revenue to take a different view of the matter - and, if there was no change, it was in support of the assessee – we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of lncome-tax in the earlier proceedings, a different and contradictory stand should have been taken."

We are of the view that the above cited precedent on principle of consistency are squarely applicable to the assessee under consideration, therefore, we hold that assessee is engaged in cheque discounting business. However, considering the time value of money, we note that rate of @Rs. 50 per lacs, is lower side, therefore we direct the assessing officer to compute the disallowance @ Rs. 75 per lacs.

9. Before parting, we would like to make it clear that principle of consistency are applicable to the assessee on cheque discounting business and not on the rate of Rs. 50 per lacs, therefore, considering the time value of money, we have directed the assessing officer to compute the disallowance @ Rs. 75 per lacs.

10. In the result, appeal of the Revenue is partly allowed.

11. The Cross objections filed by the assessee is supportive to the order of ld CIT(A). However, during the course of hearing, ld Counsel informs the Bench that assessee does not wish to press the cross objections, therefore, we dismiss the cross objections filed by the assessee, as not pressed.

12. In the result, appeal filed by the Revenue is partly allowed, whereas cross objections filed by the assessee are dismissed as not pressed.

Order is pronounced on 30/07/2021 by placing result on Notice Board.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat /दिनांक/ Date: 30/07/2021 /*sgr*

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat