

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
AND SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

I.T.A. Nos.912 to 921/KOL/2025
(Assessment Years:2013-14 to 2022-23)

Kailash Kumar Patwari, C/O Subhas Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite – 213, 2 nd Floor, Kolkata - 700069 [PAN:AFPPP0738J] (Appellant)	Vs.	DCIT, Central Circle -4(4), Kolkata (Respondent)
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I.T.A. Nos.1608 to 1611/KOL/2025
(Assessment Years: 2013-14 to 2016-17)

DCIT, Central Circle -4(4), Kolkata (Appellant)	Vs.	Kailash Kumar Patwari, C/O Subhas Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite – 213, 2 nd Floor, Kolkata – 700069 [PAN: AFPPP0738J] (Respondent)
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I.T.A. Nos. 1621 to 1625/KOL/2025
(Assessment Years: 2017-18 to 2021-22)

DCIT, Central Circle -4(4), Kolkata (Appellant)	Vs.	Kailash Kumar Patwari, C/O Subhas Agarwal & Associates, Advocates Siddha Gibson, 1, Gibson Lane, Suite – 213, 2 nd Floor, Kolkata – 700069 [PAN: AFPPP0738J] (Respondent)
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Appellant by :	Shri Siddartha Agarwal, Advocate
Respondent by:	Dr. Anup Biswas, CIT-DR
Date of Hearing	16.04.2026
Date of Pronouncement	16.06.2026

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

These are cross-appeals preferred by the assessee and revenue against the separate orders of the Learned Commissioner of Income Tax (Appeals), Kolkata-27, (hereinafter referred to as the "Ld. CIT(A)"], arising out of separate assessment orders passed by the Assessing Officer (In short, 'AO') for the different Assessment Years (A.Y.). In all these appeals, the facts are common and grounds of appeals raised by the assessee are also similar. Hence all appeals are clubbed and heard together and are decided by the consolidated order for sake of convenience and brevity. We take the appeal in ITANo.912/Kol/2025 for AY.2013-14 as "lead" case.

2. The grounds of appeal raised by the assessee in ITA No.912/Kol/2025 for AY.2013-14 are as under:

"1(i) For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in estimating the alleged commission income of the assessee at 0.15% of the alleged cash turnover from entry operation business and confirming the addition to the extent of Rs.2,00,11,500/- in the hands of the assessee.

(ii) For that the Ld. CIT(A) ought to have deleted the entire addition made by the Ld. AO, made on account of commission income @1.5% on the alleged cash turnover of the entry operation business.

2. For that on the facts in the circumstances of the case, the Ld. CIT(A) ought to have considered the objection raised by the assessee to the

presumption raised under section 132(4A) of the Income Tax Act, 1961, in so far as the incriminating material found from the third-party search did not belong to the appellant assessee.

3. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have quashed the assessment order in its entirety in so far as the Ld. AO was not legally justified in assuming jurisdiction under section 147 of the Income Tax Act, 1961.

4. For that, the appellant assessee craves to leave to add, alter or alter or delete any/all of the Grounds of appeal at the time of hearing of appeal.”

3. The facts in brief are that the assessee filed return of income u/s 139(1) of the Act on 30.09.2013, disclosing income of Rs.1,84,740/-. Thereafter, a search action u/s 132 of the Act was conducted on 08.03.2022 at the following premises of the assessee:

(i) 5th Floor, Room No.501, Todi Mansion, P-15, India Exchange Place, Kolkata – 70007 (Office)

(ii) Flat No.302, 3rd Floor, 71 Metcalfe Street, Esplanade, Kolkata – 700013 (Residence)

(iii) Flat No.5M, Block – 1, Space Town, VIP Road, Kolkata – 700052 (Residence)

(iv) Locker No.4/8, Indian Overseas Bank, Baguihati Branch, VIP Road, Kolkata – 7000159.

4. During the course of search proceedings, various incriminating documents/data were found and seized. The details given by the AO at para 3 of the assessment order. The case of the assessee was re-opened u/s 148 on 02.11.2023 after obtaining approval of the Competent Authority. Thereafter, the assessee filed his return of income for the A.Y. 2013-14 in response to notice u/s 148 of the Act on 31.05.2024, declaring total income of Rs.7,43,819/-. Statutory notices u/s 143(2) and 142(1) of the Act along with questionnaire were issued and served upon the assessee. The assessee

complied with the said notices by filing all the details and evidences before the Assessing Officer (In short, 'AO'). The AO during the assessment proceedings, relied on the tally data, maintained in the name of 'SGJN' allegedly found in a laptop seized from Todi Mansion, 11th Floor, Unit No.1108. According to the assessee, the said premises as well as the laptop neither belonged to him nor were ever owned, possessed, or controlled by the assessee. The alleged data, in fact, pertained to one Mr. Sonu Garg alias Sonu Agarwal. The AO, on the basis of incriminating material, determined the total amount of accommodation entries provided by the assessee during the year at Rs.13,34,10,00,000/- and applied commission @ 1.50% thereby estimated income at Rs.21,82,45,191/- and added the same to the income of the assessee in the assessment framed u/s 144/147 of the Act dated 18.10.2024.

5. In the appellate proceedings, the Ld. CIT(A) partly allowed the appeal by directing the AO to estimate the income by way of commission @0.15% on the total amount of accommodation entries and thus, partly confirmed the addition to the tune of Rs.2,00,11,500/- and deleted the addition to the tune of Rs.19,82,33,691 by observing and holding as under:

"7.2 Discussion and decision:

7.2.1. I have perused the assessment order and material filed by the appellant in the form of paper book along with the statements recorded of the appellant himself as well as his family members, the affidavit retracting the statement. On perusal of the same, it is observed that a search & seizure operation u/s 132 of the Act was conducted at assessee's residential/office premises/locker on 08.03.2022 and subsequent dates. During the course of post search & seizure operation, by analyzing of seized books of accounts/data and in view of assessee's sworn statement u/s 132(4) of the Act dated 08.03.2022, it was found by the AO that the assessee was indulging in providing/arranging accommodation entries in the form of unsecured loans/share capital/share premium to various parties/entities in lieu of commission during the year under consideration. During the said

search action, various documents/data including tally data as mentioned in the para no.3 of the asst. order were found and seized from searched premises. During the post search proceedings, these documents/data including tally data were analyzed by the Investigation Wing. On perusal of the seized tally data, it was found by the Investigation wing and the AO that the assessee used to maintain a separate parallel book of accounts including ledgers of various agents/brokers in the nomenclature of "SGJN" in tally format for recording of the transactions with various agents/brokers for different financial years containing details of both cash components involved in accommodation entry as well as bank entries/transactions. It was also found by the AO that those ledgers were maintained agent/broker wise, where cash is received by one agent/broker and paid to another agent/broker, Simultaneously, corresponding bank entries in the form of RTGS/transfers were also found in the different premises of accommodation units controlled and maintained by the assessee. Further, it was also noticed that the said parallel tally data also contain details of commission income earned by the assessee for the impugned AY 2013-14. On the transactions of accommodation entry, it is also evident that the commission was charged by the assessee and in the ledgers by debiting the account of agents and the corresponding commission income is found to be credited.

7.2.2. From the aforesaid seized documents, the AO noticed that the total turnover of cash entry operations was Rs. 1334.10 Crores. The AO calculated commission @1.5% against the said turnover of Rs.1334.10 Crores and arrived at Rs.20,01,15,000/-. Further, the AO found in tally package of seized material under the head commission (Commission Received in the tally data maintained in name of 'SGJN') of Rs.21,82,45,191/-, The AO has adopted whichever is higher in both the above calculations and adopted the higher one i.e., Rs.21,82,45,191/-.

7.2.3. Further, it had also been observed by the AO that total 641 entities were being controlled and managed by the assessee and all these entities were used for facilitating accommodation entry against cash & providing bogus unsecured loans to different beneficiary entities. Further, during recording of his statement u/s 132(4) of the Act dated 08.03.2022, the assessee has also deposed that the various entities are controlled and managed by him which is on record. The cash trails of the transactions available in the books of "SGJN" have also been prepared during the analysis by the AO and the same is also available on record. Relevant portion of the recorded statements of the assessee is as under:

"Q.7 Please state your sources of income.

Ans. My sources of income are mainly from share trading and investment, financial consultancy, legal advisor and commission income

Q.9 Please explain the nature of business done by you and the sources of funds, invested in your business.

Ans. Sir as I have earlier said that I am involved in share trading in F&O, obligation and investment in quoted shares and unquoted shares. Besides. I also earn commission income by arranging accommodation entries in the form of unsecured loans/share capital/share premium to various parties

The assessee had also deposed in his statement dated 08.03.2022 about the modus operandi in detail and explained how he had provided accommodation entries to the different beneficiaries through the paper/shell companies controlled and managed by him. The relevant portion of his statement in this regard is also reproduced as below:

Q.10 Kindly explain the modus operandi of providing accommodation entries to various beneficiaries through the paper/shell companies controlled and managed by you.

Ans: Sir, mainly accommodation entries are provided by me and my associates in the form of bogus unsecured loan, share capital/share premium and other modes. For this, cash is received from different beneficiaries and the same is returned via RTGS to the beneficiary company via paper/shell companies controlled and managed by me. Also when the company pays the interest for the bogus loan taken, the same is returned in cash to the beneficiary after deducting my commission. When the loan is refunded via banking channel, the same is either returned to the beneficiary in cash or sometimes it is again given as a fresh loan to some other company of the beneficiary. For providing such accommodation entries in the guise of bogus unsecured loan etc., generally commission is charged which is deducted from the interest payment done by the beneficiary."

7.2.4. Further, on perusal of the aforesaid seized documents, cash linked unsecured loan provided by the assessee during the various years through the entities controlled and managed by him to various beneficiaries was also quantified by the AO during the forensic analysis of the tally data found from the premises of the assessee and the same came to Rs.13,34,10,00,000/- for the instant AY. On perusal of the said screen shot of the tally data as seized from the searched premises of the assessee, it was observed by the AO that the assessee had received commission income to the tune of Rs.21,82,45,191/- during the subjected AY which were earned by the assessee on account of providing accommodation entries to the various beneficiaries through the shell entities controlled and managed by him. Hence, the assessee was show-caused by the AO that why the commission income of Rs.21,82,45,191/- should not be treated as undisclosed income and added to total income of the assessee for the AY 2013-14. Further,

during the said search & seizure operation conducted u/s 132 of the Act at the residential office premises of the assessee several documents/data were found and seized as incorporated at para no.3 of the assessment order. From the said documents seized, quantum of accommodation entries provided by the assessee was found by the AO at Rs.1334.10 crores for the current AY. Hence, the assessee was also show-caused by the AO as to why commission income @1.50% to the tune of Rs.20,01,15,000/- [1.50% of Rs.13,34,10,00,000/-] should not be treated as your undisclosed income and added to the total income for the AY 2013-14 as per the provisions of the Act. As the assessee had not replied to either the show-cause notice or the notice u/s 142(1) of the Act, the AO was left with no option but to pass ex-parte order u/s 144 of the Act based on the material available on records treating the commission income of Rs.21.82.45,191/- (higher of Rs.20,01,15,000/-) as the assessee's undisclosed income for the year under consideration.

7.2.5. In the appellate proceedings, the assessee had claimed that the tally data which was derived from the laptop seized from the Premises Todi Mansion, P-15, India Exchange Place, Unit No.1108, 11th Floor, Kolkata -700 073', on which forensic analysis was made and used by the AO in the asst, order for making the aforesaid addition, is not at all owned / hired by him. The assessee had also contended that the AO based on the said forensic analysis arbitrarily alleged that the Assessee was indulged in providing accommodation entries to the tune of Rs.13,34,10,00,000 to various beneficiaries based on forensic analysis of the seized documents/ data including tally data from premises which did not belong to the Assessee as claimed by him. The assessee had also contended that the said forensic analysis of the data was never provided to him by the AO so that the assessee will come to know that how the figure of Rs.13,34,10,00,000/- was arrived by the AO in respect of accommodation entries allegedly provided by the Assessee. The assessee had contested on the issue that the AO can gather materials against him at his back, however, the AO cannot use the same without giving an opportunity to the assessee to rebut the same. In support of such contention, the assessee had placed reliance on several judicial pronouncements where addition without providing opportunity for cross verification was deleted by the Hon'ble Courts. However, in the present case, all the findings of the search action were confronted to the assessee and the statements were recorded from the assessee in respect of the quantum of cash involvement in such entry operation and commission income earned by the assessee from such business. It is admitted that the said statement was later retracted by the assessee on 06.05.2022. However, that doesn't mean that the incriminating evidence seized from the said search action was not confronted to the assessee. Further, the assessee had contended that the tally data as mentioned by the AO which contains the

information of cash involvement in such entry operation of Rs.1334 Crores and commission income earned from the same at Rs.21.82 crores (supra), were found from the laptop of one Sonu Agarwal with whom there is no relation of the assessee. Hence, on the basis of such facts the assessee had claimed that there is no cogent material on record on the basis of which the AO had concluded that the assessee was involved in the business of entry operation and cash involvement was Rs. 1334 Crores and commission income earned was Rs.21.82 crores in the hands of the assessee.

7.2.6. However, the claim of the assessee is not acceptable and totally vague. The assess 10.03.2022 by the investigation wing were retracted before the search party on 06.05.2022, however, any legible reason for such retraction was not submitted by the assessee both in the asst, proceedings and appellate proceedings. The aforesaid seized materials as mentioned at the para no. 3 of the asst, order was found in the business premises of the assessee against warrant issued. Then, the claim of the assessee that the seized data were from laptop of some third person is nothing but a concocted story prepared by the assessee. The assessee had further alleged that the statements were recorded by the investigation officers as per their desire and reply was dictated by them whether wrong or right. Furthermore, no documentary evidence was unearthed during search action or during post search enquiry that the appellant was involved in accommodation transactions apart from the statements of various other persons which was recorded at the back of the appellant. Therefore, the assessee had claimed that as the statements were recorded forcefully as dictated by the investigation officers and are not supported by any corroborative evidence, hence retraction has rightly been made and should have been accepted by the AO. The assessee's retraction is an afterthought. He retracted after 2 months of the statements without valid reason.

7.2.7. Reliance may be placed on the judgment of the Hon'ble Madras High Court in the case of 'CIT Vs MAC Public Charitable Trust 2022 [2022] 144 taxmann.com 54 (Madras)/[2023] 450 ITR 368 (Madras)', where the following was held:

"Statements given to Assessing Officer under section 132(4) have legal force and unless retractions are made within a short span of time, supported by affidavit swearing that contents are incorrect and it was obtained under force, coercion and by lodging a complaint with higher officials, same cannot be treated as retracted."

7.2.7.1. Further, in the case of 'Roshan Lal Sanchiti Vs PCIT 2022 Supreme Court SLP was [2023] 150 taxmann.com 228 (SC)/[2023] 452 ITR 229 (SC)' dismissed by the Hon'ble Apex Court against order of High Court that "retraction of statement recorded under section 132(4) has to be made

within reasonable time or immediately after statement of assessee is recorded and, hence, where retraction of statement recorded under section 132(4) and later confirmed in statement recorded under section 131 had been made by assessee after almost eight months, same was to be discarded."

7.2.7.2. Again, in the case of 'CIT Vs Ashok Logani, Dehi High Court 2011[2011] 11 taxmann.com 208 (Delhi)/[2011] 202 Taxman 201 (Delhi)/[2012] 347 ITR 22 (Delhi)', the following was held by Hon'ble Delhi High Court:

"Whether when, on facts, it was found that there was no proper consideration by Assessing Officer to issue at hand and he left many loose ends, that too in a case where huge cash was found during search most of which was surrendered by giving statement at time of search, though retracted and sought to be explained afterward, it was necessary for Assessing Officer to properly adjudicate upon that issue and assessment order should have at least reflected that he was satisfied with explanation disclosing source of cash found, and that there was a proper and valid retraction."

7.2.7.3. In view of the above judicial pronouncements and facts of the case, the assessee's retraction is not acceptable. It is apposite to mention that such arbitrary retraction should not have any effect in the decisions of the case and should also not move the facts of the case in propinquity of the assessee.

7.2.8. Further, the claims of the assessee are completely without logic and misleading. If the aforesaid incriminating document in the form of tally data was really found from the premises of a third party, then why the assessee had replied in his statements on the said seized documents at the time of search. In both the search and asst. proceedings, nowhere the assessee had stated that these data were not at all associated with his activities. Only in the appellate proceedings, he has come with a different story to mislead the department. Further, the assessee himself had admitted that his main source of income was commission income from entry operation business during the search operation. The same fact was supported by the findings of the search where several bank accounts and cheque books have been found and inventorised as Anx-2 from his premises and also several stamps have been found from this premise. The name of the stamp holders along with the stamp impressions have been inventorised as Annexure 3, evidencing such entry operation business and earning commission income on the same. Further, various DSC Tokens pertaining to several individuals, SIM cards and RTGS Counterfoils had also been found during the search operation. Further, the assessee in his statement recorded u/s 131 of the Act had categorically

admitted that these bank accounts and stamps are associated with his bogus companies floated by him. Hence, his contention that he was not involved in any accommodation entry providing business is not acceptable.

7.2.9. Hence, at the outset, two distinct issues come to play in the present case of the assessee. One issue pertaining to the commission income to the tune of Rs.21,82,45,191/- as found in lodger named 'commission received in seized tally data 'SGJN' and another issue pertains to the commission income calculated by the AO of Rs.20,01,15,000/- by applying 1.50% for total cash linked accommodation entry as found in seized tally data 'SGJN', i.e., Rs.13,34,10,00,000/-. It is also observed that there were similar issues in the other AYs in the case of the assessee Le from A.Y 2015-16 and so on. The AO had adopted whichever is higher among the calculated @1.5% and the amount found as the documents. The AO has not the basis to adopt the commission income of the assessee at Rs.21,82,45,191/- as found from the seized documents for the purpose of tax. In the absence of logical basis, it cannot be treated as a true commission income earned by the assessee. The AO has not given any working of the determination of the said commission income. Neither any cross verification was done with assessee in respect of such commission income nor any logic was provided by the AO. Therefore, such assumption without logic to adopt as commission income is not rational.

7.2.10. The assessee has made huge turnover of Rs.1334.10 Crores in the accommodation entry business. During the course of appellate proceedings, the assessee has stated in his ground no.10 of the appeal that his commission income should be considered at 0.10% to 0.20% instead of 1.5% as alleged by the AO. It indicates that the assessee's involvement in entry operation business is very much palpable from his submission in the appellate proceedings. However, the AO has adopted one of his calculations to arrive commission income of the assessee @1.5% on the turnover of Rs.1334.10 Crores. The appellant had placed reliance on the following judicial decisions in respect of the rate of commission income:

a) The Hon'ble jurisdictional High Court of Calcutta in 'Principal Commissioner of Income, Central-2 v Safeco Projects Private Limited (ITAT No. 32 of 2019)' wherein it has been held the following:

"No question of law is involved in this matter, let alone any substantial? question of law. The questions which have been raised! by the revenue are questions of act. After adducing some intelligible reasons, the Tribunal has come to its findings as follows.

Heard both the parties and perused the record. We find that the Revenue has accepted the submission of assesses in the case of M/ s. Mercantile Pvt Ltd. in an identical situation that the commission of accommodation entries

was Rs.250 per lakh rupees and determined the tax @ 0.25%. Whereas in the present case the assessee itself offered profit rate at 0.26%, accepted by the revenue for the A.Y. 2011-12 and which is more than in the case of M/s. Mercantile Pvt. Ltd., which was also related to Badalia Group of cases. In view of the same, we find that the CIT-A was correct in directing the AO to reduce the addition to Rs.5,67,964/-.

We find no infirmity in the impugned order of the CIT-A and. is it is justified. Therefore, the grounds raised by the revenue are dismissed. in the result, the appeal of the revenue is dismissed.

b) The Hon'ble Bombay High Court in the case of 'PCIT-14, Mumbai vs. M/s. Mihir Agencies Pvt. Ltd. In INCOME TAX APPEAL NO.133 OF 2017' has held as under:-

3. The Assessing Officer adopted the rate of commission of 2% on the total turnover, which order the CIT (A) confirmed. In further Appeal by the Assessee, the Tribunal reduced the rate of commission to 0.15%. The Tribunal referred to its own decision in case of the Assessee's sister concern and held that the appropriate rate of commission should be 0.15% which is also admitted by the Assessee during search.

4. In our opinion, the entire issue is based on facts. The estimation of the rate of commission of the Assessee would always be subject-matter of some guesswork. No precise formula could be applied. The Tribunal having taken into consideration the relevant factors, has arrived at a certain percentage of commission that any such kind of activities could be expected to be derived from. This does not give rise to any substantial question of law.

5. The Revenue also disputes the expenditure allowed by the Tribunal on such activities. Here also, for the same reasons cited above, in our opinion, no question of law arises."

c) The Hon'ble Gujarat High Court in the case of 'The Principal Commissioner of Income Tax-1, Ahmedabad Versus KFC Exports Pvt. Ltd. in R/Tax Appeal No. 569 Of 2023' had held as under:

"12. Therefore, in the given facts of the case, when there was no activity carried out by the assessee except entering into the circular transactions of issuing purchase and sales, we are of the opinion that the CIT (Appeals) and the Tribunal have rightly made addition of the difference between the sales and purchase and also making addition of 0.02% of the sales by dis-allowing the expenses and therefore, no interference is called for in both the matters. We answer the questions in negative re., in favour of the assessee and against the Revenue. Both the Appeals are accordingly dismissed."

d) *The Hon'ble ITAT Kolkata in the case of 'D.C.LT., C.C-4(4), Kolkata Vs. M/s. Sakshi Trade Link Pvt. Ltd in I.T.A No. 2275/Kol/2014' has held as under:*

7. Heard both the parties and perused the record. We find that there is no dispute that the We find that Shri Sumit Sharma, one the directors of the assessee company in his statement u/s. 131 of the Act admitted that the assessee company indulged in the activity of providing the accommodation entries. We find that the facts of the present case are similar to the facts in the case of Safeco Projects Pvt. Ltd in ITA No. 1948/Kol/2014 for the A.Y: 2010-11, since the net profit shown @0.26% was more than the 0.10% to 0.15%, which was admitted by the director of M/s. Safeco Projects Pvt. Ltd in its assessment and the AO accepted the same. Thus, the AO accepted the commission 0.26% We further find the A.Y involved in the case of assessee company is 2011-12 and the same as in the case of Safeco Projects Pvt. Ltd and the assessment u/s. 143(3) u/s 143(3) was made on 27.03.2014. In the present case, the AO estimated the commission @ 0.50%, which is not justified in the facts and circumstances of the case and, therefore, the order of CIT-A directing the AO to recalculate the total assessed income by adopting the rate of commission @ 0.26% of the turnover is justified. We find no infirmity in the impugned order of the CIT-A and is it is justified. Therefore, the grounds raised by the revenue are

8. in the result, the appeal of the revenue is dismissed."

e) *In another case of 'Anand Kumar Sharma Vs Deputy Commissioner of Income Tax, Central Circle-2(1), Kolkata in I.T(SS)A. Nos.169 to 172/Kol/2023', the Hon'ble ITAT Kolkata has held as under-*

16.1. Though we have held that since the revenue authorities have treated the assets and liabilities of the 11 concerns as Nil, the bank balance also being part of the assets, deserves to be treated as Nil. But undisputedly it is a part of the entry providing business of the 11 concerns, allegedly owned, controlled and managed by the assessee as part of the entry providing business. Further we notice that the turnover of accommodation entries routed by the assessee and the concerns controlled by it have already been added up and commission income on such turnover has been estimated and the rate of such commission income has been held by us @0.16%. Now, the alleged sum of Rs.7,79,88,144.85/-which is the total of bank balance of 11 concerns as on 30/05/2011 is also the part of accommodation entry providing business. The assessee has failed to prove that the alleged sum has been considered by the Id. Assessing Officer in the total turnover of accommodation entry providing business. We, therefore, considering that against the alleged sum of bank balances, there has to be some funds received from other sources by the 11 concerns and, therefore, the total of

receipt of the funds and the bank balance totals to Rs.15,59,76,290/- (Rs.7,79,88,144.85/- x 2). Now, treating it to be the turnover, the income at the most can be calculated 0.16% i.e., Rs.2,49,562/- being the commission income which is required to be added in the hands of the assessee as against the alleged addition u/s 69 of the Act.

We accordingly, set aside the finding of the lower authorities and partly allow the Grounds raised by the assessee sustaining the addition at Rs.2,49,562/-. Accordingly, the additional ground raised by the assessee for Assessment Year 2012-13 is partly allowed.

17. Remaining grounds being general and consequential in nature, need no adjudication.

18. In the result, appeals of the assessee are partly allowed."

f) In the case of 'PCIT vs. Alag Securities (ITA No. 1512 of 2017 order dated 12.06.2020)', where the Hon'ble Mumbai High Court had held the following:

"Coming to the percentage of commission, Tribunal had already held 0.1% commission in similar type of transactions to be a reasonable percentage of commission. Therefore, Tribunal accepted the percentage of commission at 0.15% disclosed by the assessee itself. This finding is a plausible one and it cannot be said that the rate of commission was arrived at in an arbitrary manner. The same does not suffer from any error or infirmity to warrant interference, that too, under Section-260A of the Act."

g) The Hon'ble ITAT Kolkata in the case of 'Saanvi Developers & Realtors Pvt. Vs. ITO, Ward-1(3), Kolkata Ltd. In I.T.A. No. 1330/Kol/2023' had held as under:-

"8. I have also gone through the judgment passed by the Hon'ble Bombay High court in the case of PCIT vs Alag Securities Pvt. Ltd placed by the assessee where in the order passed by the ITAT Mumbai Bench "A" was upheld by observing thus-"Tribunal held that the action of the Assessing Officer in treating the entire deposits as unexplained cash credits could not be accepted in the light of the assessment orders in the case of the beneficiaries and also in the light of the facts that the assessee was only concerned with the commission earned on providing accommodation entries.

Therefore, the tribunal took the view that since the assessee had itself declared the commission on turnover at 0.15% which was more than percentage considered to be reasonable by the tribunal, the same should be accepted.

9. In the present case Mr. Sumit Sharma, Director of the appellant company has admitted to have been providing accommodation entries in lieu of admitted commission 0.10% 0.15% of the turnover. The statement given by the Director has been accepted by the AO.

10. Going over the facts of the case, order passed by the CIT (A) in the A.Y.11-12, we are in this view that rate of commission should be 0.15% and not @ 1% Accordingly the case of assessee is allowed and the AO is directed to compute the rate the commission 0.15% and not 1%. In the result, the appeal of the assessee is allowed"

h) In the case of 'ITO -vs.- Shri Pradip Kumar Khetan (ITA No. 385/Kol/2018 order dated 19.06.2019)', where the Hon'ble Kolkata ITAT had held the following:

"The assessee indulged in providing accommodation entries of purchases & sales, must have charged certain percentage as commission. The said commission income earned by the assessee is to be added in the hands of the assessee. Generally, the basic percentage of commission charged in these kinds of transactions, ranges between 0.15% to 0.25% of the transaction value. Thus, commission income @0.25% of Rs.18,03,16,081/-, i.e., Rs.4,50,790/- is treated as the income earned by the assessee. Therefore, the addition is restricted to Rs.4,50,790/-,"

i) In the case of 'Shri Rohit Pravindhndra Panwala vs. ACIT (ITA No. 608 to 612/Ahd/2010 order dated 31.05.2011)', where the Hon'ble ITAT Ahmedabad had held the following:

"Having heard both the parties, we have carefully gone through the orders of the authorities below. It is pertinent to note that at the time of search, the assessee admitted that he was receiving commission and earning income from 0.15% to 0.25%. From this, it is clear that he was earning income by commission @ 0.20%. We are, therefore of the view that the AO is justified in allowing the expenses of 20% which gives the net commission income @ 0.20% especially when the assessee has not maintained any separate voucher for the claim of expenses."

j) In the case of 'Shri Ramesh Kumar Jain -vs.- ACIT (ITA No. 3512/Mum/2013) (order dated 22.04.2015)', where the Hon'ble Mumbai ITAT had held the following:

"The next common issue that arises in AY 2006-07 to 2010-11 relates to the estimation of commission income on providing accommodation bills. We earlier noticed that the assessee had declared the commission income @0.20% in the statement taken from him.

We are of the view that the facts and circumstances of the case warrant that the rate of commission should be adopted @0.25%, in the absence of any other evidence to the contrary. Further the assessee stated that he has shared the commission income with two others. Further it cannot be denied that certain expenses are also required to be incurred. Accordingly, by considering all these relevant factors, we are of the view that the net commission income should be estimated at 0.10% and in our view, the same would meet the ends of justice."

7.2.11. In view of the aforesaid judicial pronouncements as well as the discussion made above, on the entirety of the facts I am of the view that commission income of the assessee for the AY 2013-14 is to be assessed @0.15% instead of @1.5% made by the AO on the total cash turnover of the entry operation business of Rs.1334.10 Crores as found from the aforesaid seized materials which comes to Rs.2,00,11,500/-. Therefore, the AO is directed to delete the addition of Rs.19,82,33,691/- (Rs.21,82,45,191/- minus Rs.2,00,11,500/-). Hence, the addition of Rs.2,00,11,500/- is confirmed and the addition of Rs.19,82,33,691/- is deleted. Consequently, these grounds of appeal raised by the assessee are partly allowed."

6. Before us, the counsel of the assessee vehemently argued that the assessee has not been provided or confronted the materials used by the AO against the assessee in estimating his income and therefore, the same is in violation of principle of natural justice. The Learned Authorized Representative submitted that the statements recorded u/s 132(4) of the Act on 08.03.2022, 09.03.2022 and 10.03.2022, were retracted by way of written retraction dated 06.05.2022 filed before the Investigation Wing, which was prior to the commencement of the assessment proceeding. The Ld. AR submitted that despite repeated requests and communications, the assessing officer neither confronted or furnished the forensic analysis report nor the detailed tally ledgers seized during the course of search which were primarily relied upon by the Assessing Officer for ascertaining the total amount of accommodation entries. The Ld. AR submitted that no incriminating material or documents were found or seized from the assessee's own residential premises as stated above and therefore, the entire

basis of the impugned additions rested solely upon data allegedly retrieved from third-party. The Ld. AR filed detailed written submissions, which are extracted below concerning all three grounds, as under:

"3. Consolidated Submissions on Grounds No. 1, 2 & 3:

The impugned reassessment proceedings as well as the additions made therein are wholly unsustainable both in law and on facts and are liable to be quashed/deleted in entirety on the basis of following submission:-

a) under Section 147 of the Income Tax Act, 1961 is wholly illegal, without jurisdictions. At the outset, it is respectfully submitted that the very assumption of jurisdiction and bad in law. No incriminating material whatsoever belonging to the Assessee was found or seized during the course of search conducted on 08.03.2022. The sole basis on which the reassessment proceedings have been initiated is certain alleged parallel tally data maintained in the name of "SGJN", allegedly found in a laptop seized from Todi Mansion, 11th Floor, Room No.1108, P-15, India Exchange Place, Kolkata-700073. However, the said premises neither belongs to the Assessee nor was ever owned, occupied, possessed, or controlled by him. Similarly, the laptop from which the alleged tally data was recovered never belonged to the Assessee. The data admittedly pertains to one Shri Sonu Garg @ Sonu Agarwal.

b) It is further pertinent to note that no incriminating material whatsoever was found or seized from any of the premises admittedly belonging to or occupied by the Assessee, namely, 5th Floor, Room No.501, Todi Mansion, P-15, India Exchange Place, Kolkata-700073 (Office): Flat No.302, 3rd Floor, 71 Metcalfe Street, Esplanade, Kolkata-700013 (Residence): Flat No.5M, Block-1, Space Town, VIP Road, Kolkata-700052 (Residence); and Locker No.4/8, Indian Overseas Bank, Baguihati Branch, VIP Road. Kolkata-700159 (Bank Locker). Thus, in the complete absence of any incriminating material belonging to the Assessee, there existed no valid "reason to believe" as contemplated under Section 147 of the Act. The entire reassessment proceedings have been initiated merely on the basis of alleged third-party material recovered from third-party premises and third-party devices without any independent corroboration whatsoever linking the same to the Assessee. The Assessing Officer has proceeded entirely on assumptions and borrowed satisfaction without there being any legally sustainable material establishing any nexus between the Assessee and the alleged transactions reflected in the third-party electronic data.

c) *It is respectfully submitted that the presumption contemplated under Section 132(4A) of the Income Tax Act, 1961 is also wholly inapplicable in the facts of the present case. The statutory presumption under Section 132(4A) can arise only in respect of books of account, documents, assets, or materials found from the possession or control of the person searched. In the present case, the alleged tally data "SGJN" was neither found from the possession of the Assessee nor from any premises belonging to him. The same was admittedly recovered from a third-party laptop situated at Todi Mansion, 11th Floor, Room No.1108, which neither belongs to nor was ever under the possession or control of the Assessee. The material allegedly pertains to Shri Sonu Garg @Sonu Agarwal. Therefore, no statutory presumption under Section 132(4A) could legally have been drawn against the present Assessee. The Assessee had specifically and repeatedly raised this fundamental objection before the Learned CIT(A),contending that third-party material recovered from third-party premises cannot automatically be presumed to belong to the Assessee. However, the Learned CIT(A) failed to appreciate and adjudicate this foundational objection in its proper legal perspective. In absence of any valid statutory presumption and in absence of any incriminating material belonging to the Assessee, the entire edifice of the additions collapses and the reassessment proceedings deserve to be quashed in limine.*

d) *Without prejudice to the aforesaid jurisdictional and legal submissions, it is respectfully submitted that even on merits the impugned additions are wholly arbitrary, unsubstantiated, and without evidentiary basis. No incriminating document belonging to the Assessee was found from any of the Assessee's own premises. The entire case of the Revenue is based solely upon alleged third-party electronic data, the authenticity, ownership, correctness, source, and evidentiary value whereof have never been independently established in accordance with law. Further, despite repeated and specific requests made during the course of assessment proceedings, neither the complete forensic analysis report nor the detailed tally ledgers allegedly relied upon by the Department were ever supplied to the Assessee. Thus, the additions have been made in gross violation of the principles of natural justice as the Assessee was denied a proper and effective opportunity to rebut the material relied upon against him.*

e) *It is further submitted that the statements recorded under Section 132(4) on 08.03.2022, 09.03.2022 and 10.03.2022 were duly retracted by the Assessee on 06.05.2022 itself before the Investigation Wing. Once retracted, such statements lose their evidentiary value unless independently corroborated by cogent and independent material evidence. In the present case, there is absolutely no independent corroboration whatsoever. No evidence of actual cash movement has been brought on record. No beneficiary has been examined. No cash trail has been established. No*

independent enquiry has been conducted from any alleged recipient company. No corroborative documentary evidence has been brought on record to substantiate the allegation that the Assessee was engaged in the business of providing accommodation entries. The entire addition is therefore based merely upon assumptions, presumptions, unverified electronic data, and retracted statements without any legally admissible corroboration and hence deserves to be deleted in full.

f) Without prejudice to the Assessee's principal contention that the entire reassessment proceedings and additions are liable to be quashed in toto for lack of jurisdiction and absence of incriminating material, it is respectfully submitted in the alternative that even the allegations contained in the forensic and financial analysis report do not withstand factual scrutiny and stand completely demolished from the Department's own records and the contemporaneous documentary evidences placed in the Paper Book

g) The Paper Book filed by the Assessee contains the assessment orders and/or bank statements of several companies with whom the Assessee had allegedly transacted, inter alia, Wonder Investment Management Pvt. Ltd. [Sl. No.1264, Pg. No.338], Mini Magic Creation Pvt. Ltd. [Sl. No.682, Pg. No.241]. Pritam Niket Pvt. Ltd. (Sl. No.866. Pg. No.272]. Vivek Tradelink Pvt. Ltd. (Sl. No. 1254, Pg. No.337], Kalyan Enterprises Pvt. Ltd. [Sl. No.539, Pg. No.217], Arbitrage Securities Pvt. Ltd. [Sl. No.117, Pg. No.147]. Astha Merchants Pvt. Ltd., Honeydew Distributors Pvt. Ltd., and other similarly placed entities.

h) It is pertinent to state that pursuant to directions issued by the Hon'ble ITAT in the current proceedings, a forensic and financial analysis report was called for and the Ld. Department submitted the said report dated 06.04.2023 before the ADIT, Investigation Wing, Unit-1(3), Kolkata and the DDIT, Investigation Wing. Unit-1(3), Kolkata, wherein categorical allegations were made that accommodation entries had allegedly been provided by the Assessee to the aforesaid companies through its controlled and managed companies. A detailed list, accordingly, of the total quantum allegedly provided in the garb of accommodation entries to the alleged end beneficiaries by the assessee was submitted in the form of a tabular representation in the said forensic report by the department. However, the contemporaneous records placed in the Paper Book themselves completely demolish and falsify the allegations contained in the said forensic report. In the said Paperbook, we have annexed copies of orders u/s. 147 & 148A(3) of such alleged end beneficiaries, wherein, reopening of assessments were initiated post the Search & Seizure operations at the premises of the assessee: however, it is important to point out that the Ld. Department has dropped the said reassessment proceedings in the cases of the above-mentioned companies (alleged as the end beneficiaries) and made no

addition on account of receiving any accommodation entries from the assessee or his allegedly controlled/ operated companies.

i) From the assessment orders of such companies placed in the Paper Book, it is evident that in several cases no adverse inference whatsoever has been drawn and no addition whatsoever has been made or sustained in the hands of such companies on account of any alleged accommodation entries received from the Assessee. Had there been any genuine or corroborated evidence of accommodation entry transactions. corresponding additions, findings, or adverse observations would necessarily have been reflected in the assessments of such alleged beneficiary companies themselves. The complete absence of any such findings in the assessments of those entities goes to the very root of the matter and completely discredits the allegations sought to be raised through the forensic analysis report.

j) Further and more importantly, the bank statements placed on record in the Paper Book do not reveal any such corresponding transactions, layering pattern, fund trail, or entries as alleged in the forensic report submitted by the Ld. Department. The alleged accommodation entry transactions are conspicuously absent from the actual banking records of the alleged beneficiary concerns. Thus, the allegations made in the forensic report are not only unsupported by independent evidence but are directly contradicted by the contemporaneous banking records and assessment records of the alleged beneficiary companies themselves.

k) It is therefore respectfully submitted that the very foundation of the Department's case stands demolished from its own records. The forensic and financial analysis report dated 06.04.2023 cannot override the statutory assessment records and actual banking documents of the alleged beneficiary companies, particularly when such records do not support the allegations levelled therein. The entire allegation of the Assessee being engaged in the business of providing accommodation entries thus stands completely discredited, unsubstantiated, and devoid of any evidentiary basis whatsoever.

l) Without prejudice to the aforesaid submissions and strictly in the alternative, it is respectfully submitted that even assuming, though not admitting, that any part of the forensic analysis report requires further factual verification or reconciliation, the matter may at best be restored/set aside to the file of the Learned Assessing Officer for limited verification and re-computation in light of the numerous discrepancies, inconsistencies, factual errors, absence of corresponding banking entries, and contradictions pointed out hereinabove in the forensic and financial analysis report submitted by the Department.

*However, even in such eventuality and without conceding the validity of the allegations made therein, **no addition beyond the rate of 0.15% as sustained by the Learned CIT(A) could in any circumstances survive**, since the Learned CIT(A) himself, after considering the material on record, had already categorically held that the estimation made by the Assessing Officer at 1.5% was excessive, arbitrary, and unsustainable. Therefore, even if the matter is restored for limited re-computation purposes, the commission rate, if at all any addition is to survive, must necessarily remain restricted to 0.15% only and cannot under any circumstances be enhanced or restored to the rate originally adopted by the Assessing Officer.*

m) It is further respectfully submitted that the Learned CIT(A), despite substantially reducing the additions made by the Assessing Officer from 1.5% to 0.15%, nevertheless sustained additions aggregating to approximately 26,40,29,500 across the assessment years under appeal purely on estimated basis. Once the very foundation of the alleged accommodation entry business remains unproved, no estimation of commission income could legally survive. The Learned CIT(A) himself having accepted that the original estimation made by the Assessing Officer was excessive and arbitrary, there remained no valid basis whatsoever to sustain even the reduced addition at 0.15%. The residual addition sustained by the Learned CIT(A) is equally devoid of any evidentiary basis and deserves to be deleted in full."

7. The Ld. Sr. DR submitted that the assessee was a main entry operator and entered into huge transactions, which were admittedly accommodation entries given to various parties in lieu of commission. The Ld. DR submitted that the assessee was running a very big racket for converting black money into white through a net of shell companies which was admitted by the assessee during the course of search. The Ld. DR argued that it has also been admitted during the search proceedings that the assessee was providing accommodation entries on commission basis. The Ld. Sr. DR submitted that the rate applied by the AO for estimating the commission income of the assessee was based on the admission in the statements recorded during the search proceedings in which the assessee categorically stated that commission on the accommodation entries earned by him was charged @1.50% and therefore, the Ld. DR prayed that the Ld. part

deletion of the addition on account of commission to 0.15% by Id. CIT(A) is without any basis. The Ld. Sr. DR also submitted that the order of Ld. CIT(A) may be set-aside and that of the AO may be restored. For the sake of ready reference, the written submissions filed by the revenue are also extracted below:

"Sir (s),

With profound respect, it is most humbly submitted that the Respondent-cum-Appellant, Sri Kailash Kumar Patwari (hereinafter referred to as "KKP"), in the course of search and seizure proceedings, and in his statement recorded under Section 132(4) of the Income Tax Act, 1961 on 10.03.2022, categorically admitted that he had earned commission income at the rate of 1.5% by providing accommodation entries, either directly to the beneficiaries or through intermediaries, for the benefit of such beneficiaries.

The assessment orders for each of the relevant years, taken individually as well as collectively, clearly reveal that the year-wise commission income earned from the aforesaid activities has been computed at amounts that closely corroborate the findings and conclusions drawn by the Assessing Officer i.e. at the rate of 1.5%, in all the assessment orders passed for the ten consecutive Assessment Years: 2013-14 to 2022-23. The relevant amount for each and every year worked out by the A.O. has been reflected in ledger named "Commission Received in Tally data SGJN duly maintained by the appellant-assessee himself (inventoried during the course of search and seizure) and the desired reference path was KKPO-HD-I/INT HD 2/Partition 3/[root]/D DRIVE DATA/ Data/ALL DOC/ALL PEN-DRIVE BACKUP/PENDRIVE 21/19-20 new/tally/DATA (for the A.Y 2013-14) and year wise, so on.....

However, it is respectfully submitted that a careful and thorough examination of the assessment orders with reference to the statements recorded u/s.132(4) of the Act, it is palpable that the appellant has failed to complain before the higher authority against the recording of said statement as observed by the Hon'ble High Court of Madras in the case of Commissioner of Income-tax v. MAC Public Charitable Trust [2022] 144 taxmann.com 54 (Madras)/[2023] 450 ITR 368 (Madras) [31-10-2022] held categorically while disposing Tax Case Appeal No.(s). 303 to 310 of 2021 & 59, 60, 62 and 63 of 2022 C.M.P. No.(s). 8729 to 8731, 8733, 8734, 8740 and 8755 of 2021 October 31, 2022 that Section 132 of the Income-tax Act, 1961 Search and seizure General (Retraction of statement) -Assessment years 2011-12 to 2014-15 Whether statement recorded under section 132(4) and later,

confirmed in statement recorded under section 131, cannot be discarded simply by observing that assessee has retracted same – Held, yes Whether such retraction is required to be made as soon as possible or immediately after statement of assessee was recorded-Held, yes Whether statements given to Assessing Officer under section 132 (4) have legal force and unless retractions are made within a short span of time, supported by affidavit swearing that contents are incorrect and it was obtained under force, coercion and by lodging a complaint with higher officials, same cannot be treated as retracted-Held, yes [Para 61] [In favor of revenue]

Further, the appellant has failed to deny his own admission or confessions made on oath within any reasonable period as observed by the Hon'ble Rajasthan High Court with logical conclusion, as observed in the case of Principal Commissioner of Income-tax vs. Roshan Lal Sancheti [2023] 150 taxmann.com 227 (Rajasthan) while disposing the Income Tax Appeal No.47 of 2018 had held categorically that Section 132, read with section 69, of the Income-tax Act, 1961 Search and seizure - General (Statement under section 132(4)) Assessment year 2013-14-Whether statement recorded under section 132(4) and later confirmed in statement recorded under section 131, could not be discarded simply by observing that assessee had retracted same because such retraction ought to have been generally made within reasonable time or by filing complaint to superior authorities or otherwise brought to notice of higher officials by filing duly sworn affidavit or statement supported by convincing evidence - Held, yes - Whether such a statement when recorded at two stages could not be discarded summarily in cryptic manner by observing that assessee in a belatedly filed affidavit had retracted from his statement Held, yes Whether such retraction was required to be made as soon as possible or immediately after statement of assessee was recorded Held, yes Whether therefore, where retraction of statement recorded under section 132(4) and later confirmed in statement recorded under section 131 had been made by assessee after almost eight months to be precise, 237 days, same was to be discarded-Held, yes [Para 19] [In favor of revenue]

Later the Hon'ble Apex Court also endorsed the aforesaid/above-mentioned decision by way of dismissing the SLP filed against the department, in the case of Roshan Lal Sancheti v. Principal Commissioner of Income-tax [2023] 150 taxmann.com 228 (SC)/[2023] 292 Taxman 549 (SC)/ [2023] 452 ITR 229 (SC) [28-11-2022] while disposing SLP (Civil) Diary No. (s). 5812 of 2019 on NOVEMBER 28, 2022 has held categorically that SLP dismissed against order of High Court that retraction of statement recorded under section 132(4) has to be made within reasonable time or immediately after statement of assessee is recorded and, hence, where retraction of statement recorded u/s. 132(4) and later confirmed in statement recorded under section 131 had been made by assessee after almost eight months, same

was to be discarded Section 132 of the Income-tax Act, 1961 Search and seizure General (Statement under section 132(4)) - Assessment year 2013-14-High Court by impugned order held that retraction of statement recorded under section 132(4) has to be made within reasonable time or immediately after statement of assessee is recorded and, hence, where retraction of statement recorded under section 132(4) and later confirmed in statement recorded under section 131 had been made by assessee after almost eight months, same was to be discarded - Whether SLP filed by assessee against impugned order of High Court was to be dismissed as views of High Court being agreeable, no case was made out to interfere with impugned order - Held, yes [Paras 2 and 3] [In favor of revenue]

Simultaneously, the appellant has failed to demonstrate why his own admission or confessions made on oath was were incorrect or wrong with any logical evidence as observed by the Hon'ble Telangana High Court with logical conclusion, as observed in the case of Smt. Konda Sanjeeva Rani v. Assistant Commissioner of Income-tax [2024] 169 taxmann.com 591 (Telangana) while disposing ITTA No(s). 205 & 206 of 2007, has held categorically that - A search and seizure operation under section 132 was conducted at residential premises of assessee's husband - During course of search, certain material was found and seized in respect of expenditure incurred for construction of residential-cum shopping complex-Assessee's husband made statements under section 132(4) that total investment in construction was Rs. 15 lakhs whereas only a sum of Rs. 7 lakhs were accounted for Assessing Officer, on basis of admission made under section 132(4) during course of search proceedings, treated difference amount of Rs. 8 lakhs investment and since assessee had 50 per cent share in construction, he treated Rs. 4 lakhs as undisclosed investment for block period in hands of assessee Whether once statements were recorded on oath, statements had an evidentiary value and presumption was that statements made under section 132(4) were true and correct unless assessee plead that statements had been obtained forcibly or by coercion influence Held, yes Whether since assessee had failed to discharge burden to establish that admission made in statements either incorrect or wrong and attempt had been made by assessee to explain such an admission, Tribunal rightly set aside order passed by Commissioner (Appeals) and restored addition in hands of assessee-Held, yes [Paras 16 and 17] [In favor of revenue). unexplained undue

Again, the appellant can't deny the statement recorded on oath was not based on incriminating material fact, as observed by the Hon'ble Madras High Court in the case of B. Kishore Kumar vs. Deputy Commissioner of Income-tax, Central Circle-IV (1), Chennai [2014] 52 taxmann.com 449 (Madras)/[2015] 229 Taxman 614 (Madras) while disposing the Tax Case (Appeal) Nos. 738 to 744 of 2014 on November 3, 2014 has held

categorically that where assessee himself stated in sworn statement during search and seizure about his undisclosed income, same was to be levied tax on basis of admission without scrutinizing documents.

Section 69A, read with sections 143, 153, 153A of the Income-tax Act, 1961 Unexplained moneys (Admission in sworn statement) Assessment years 2001-02 to 2007-08-Assessing Officer made additions undisclosed income on basis of sworn statements of assessee during search and seizure Assessee made out an issue that submissions of certain materials by him were not considered by Assessing Officer - However assessee himself stated in sworn statement that he had separate business income which not included in his returns and outstanding loans were to be recovered with interest, hence that was a clear admission and there was no necessity to scrutinize documents Whether therefore Assessing Officer was justified in bringing to tax undisclosed income-Held, yes [Paras 5,6 & 7] [In favour of revenue]

Later the Hon'ble Apex Court also endorsed the aforesaid/above-mentioned decision by way of dismissing the SLP filed against the department, in the case of B. Kishore Kumar vs. Deputy Commissioner of Income-tax, Chennai [2015] 62 taxmann.com 215 (SC)/[2015] 234 Taxman 771 (SC), disposing the Special Leave to Appeal (C) Nos. 9153 to 9159 of 2015, on 2nd July, 2015 and held categorically that SLP dismissed against High Court's order where it was held that since assessee himself had stated in sworn statement during search and seizure about his undisclosed income, tax was to be levied on basis of admission without scrutinizing documents. Section 69A, read with sections 143, 153 and 153A of the Income-tax Act, 1961 Unexplained moneys (Admission in sworn statement) Assessment years 2001-02 to 2007-08 High Court by impugned order held that since assessee himself had stated in sworn statement during search and seizure about his undisclosed income, tax was to be levied on basis of admission without scrutinizing documents - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [In favour of revenue]

In view of the aforesaid facts, circumstances, the statement of "KKP", recorded on oath u/s.132(4) of the Act, containing relevant data, and legal submissions, it is most humbly prayed that the relief sought by the Respondent on this ground be kindly denied on merits, and the order of the Assessing Officer be upheld to that extent."

8. After hearing the rival parties and perusing the material on record, we observe that the assessee is admittedly engaged in the business of entry provider and have been operating a number of shell companies to give accommodation entries. We note that assessee has recorded huge

transactions during the financial year as stated hereinabove. The AO estimated the income of the assessee on the basis of forensic analysis report and tally data which were admittedly not confronted to the assessee. The AO estimated the income rate of 1.5% of the total amount of accommodation entries and added to the same to the income of the assessee whereas the Id. CIT(A) partly allowed the appeal of the assessee by directing the AO to apply rate of 0.15% only on the amount of total accommodation entries provided by the assessee. Now, the assessee as well as the revenue are in appeal before us, challenging the order of Ld. CIT(A). We have examined the records as placed before us and observe that the order passed by the Ld. CIT(A), so far as it relates to the direction given to the AO to apply the rate of 0.15% is concerned, is reasonable as the Id. CIT(A) has followed a series of decisions as extracted hereinabove. The assessee also relied on the following decisions to support the appellate order so far as the rate of commission is concerned:

(i) PCIT-14, Mumbai vs. M/s Mihir Agencies Pvt. Ltd., Income Tax Appeal No.133 of 2017 (Bombay High Court) – commission rate of 0.15% upheld.

(ii) Saanvi Developers & Realtors Pvt. Ltd. vs. ITO, Ward-1(3), Kolkata, I.T.A. No. 1330/Kol/2023 (ITAT Kolkata) - commission restricted to 0.15%.

(iii) D.C.I.T., C.C-4(4). Kolkata vs. M/s. Sakshi Trade Link Pvt. Ltd., I.T.A No.2275/Kol/2014 (ITAT Kolkata) commission ranging between 0.10% to 0.15% accepted.

(iv) THE PRINCIPAL COMMISSIONER OF INCOME TAX-1, AHMEDABAD VS. KFC Exports Pvt. Ltd., R/TAX APPEAL NO.569 of 2023 (Gujarat High Cour addition sustained only at 0.02% of turnover.

(v) Anand Kumar Sharma vs. Deputy Commissioner of Income Tax, Central Circle 2(1), Kolkata, 1.T(SS)A Nos. 169 to 172/Kol/2023 (ITAT Kolkata) estimated at 0.16% (near identical accommodation entry issue).

9. So far as the re-opening of assessment is concerned, in our considered opinion, the Ld. CIT(A) has rightly upheld the re-opening of assessment u/s 147 of the Act following search on the assessee's premises. Therefore, so far as the re-opening of assessment is concerned, we are in full agreement with the order of Ld. CIT(A) that the same is made validly. As for as the addition on merit is concerned, we find that the Ld. CIT(A) has given a correct direction to the AO to apply the commission @ 0.15% for estimating the income of assessee. However, we are not in agreement with that the part of the order, wherein Ld. CIT(A) justified the basis of addition, i.e., amount of accommodation entries based the tally data/forensic analysis report recovered during the search which were admittedly not confronted to the assessee during the assessment proceedings before making the addition. In our opinion, it constitutes a grave violation of natural justice.

10. Therefore, after taking into account the facts and circumstances of the case, we are of the view that the assessee needs to be given an appropriate opportunity by confronting the tally data well as the forensic analysis report and only after taking into account the submissions of the assessee, the income is to be estimated @0.15%as been held by Ld. CIT(A) to be just and reasonable. Besides it was argued and submitted by the Id. Counsel that there are entities who are alleged beneficiaries of accommodation entries and were subjected to section 147 proceedings post search on the assessee and the departments accepted the transactions as genuine by dropping the 147 proceedings. In our considered opinion the turnover of the assessee needs to be recomputed after taking into account all these aspects at the level of the Assessing Officer. Therefore, we restore the appeal of the assessee to the file of AO with a direction to confront the assessee with the tally data as well as the forensic analysis report and after taking into account the assessee

submission, apply the rate of 0.15% for estimating the income of the assessee. With these observations, we restore the appeal to the file of the AO. The appeal of the assessee is partly allowed for statistical purposes.

ITA Nos. 913 to 921/Kol/2025:

11. The issue raised in all the appeals are substantially similar to one as decided by us in ITA No.912/Kol/2025 for AY 2013-14. Therefore, our decision in ITA No. 912/Kol/2025 (supra) would apply, *mutatis mutandis*, to all these appeals as well. Accordingly, appeals filed by the assessee in ITA Nos.912 to 921/Kol/2025 are also partly allowed for statistical purposes.

ITA Nos.1608 to 1611 & 1621 to 1625/Kol/2025:

12. Since we have upheld the order of Id. CIT(A) as far as the direction of Id. CIT(A) on the rate of 0.15% is concerned, the appeals of the revenue challenging the direction of the Id. CIT(A) become infructuous and are dismissed.

13. In the result the appeals of the assessee are partly allowed for statistical purposes and appeals of the revenue are dismissed.

The orders are pronounced in the open Court on 16/06/2026.

**Sd/-
(Pradip Kumar Choubey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Kolkata, Dated: 16/06/2026

SAMANTA

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. **अपीलार्थी/ The Appellant**
2. **प्रत्यर्थी/ The Respondent.**
3. **संबंधितआयकरआयुक्त/ Concerned CIT**

4. आयकरआयुक्त(अपील) / The CIT(A)-
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, / DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.

// TRUE COPY //

BY ORDER,

Asstt.Registrar, ITAT, Kolkata

P