

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1821/Ahd/2015
Assessment Year 2010-11**

Deputy Commissioner of Income Tax, Circle-2(1)(2), Baroda (Appellant)	Vs	M/s. Nexus Software Ltd. 1, Uma Apptt., Dandia Bazar, Baroda-390007 PAN: AAACN6794K (Respondent)
--	----	--

**Appellant by : Shri Samir Tekriwal, CIT/DR
Respondent by : Shri P.F.Jain, A.R.**

Date of hearing : 04-07-2022
Date of pronouncement : 28-09-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal is filed by the Revenue against the order dated 25.03.2015 passed by the Commissioner of Income Tax (Appeals)-12, Ahmedabad, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2010-11.

2. The Grounds of Appeal raised by the Revenue reads as under:

1 On the facts and in the circumstances of the case, and in law the Ld. C.I.T. (A) erred in relying on question No. 04, while completely disregarding answer to Question No. 05 which says "Yes, the banakhat of this land was made on 28-4-2009. This banakhat was entered between the land owners and our company". Thus the money that is credited is nothing but of the nature of sale proceeds of land that is owned by the assessee company as a consequence of Banakhat.

2. On the facts and in the circumstances of the case, and in law the Ld. C.I.T. (A) had completely failed to appreciate the substance & implications of having had "Banakhat" and ignoring completely the import of that "Banakhat" that should have been taxed as receipts of revenue nature, if not capital.

3. The brief facts of the case is that the assessee claims to derive income from dealing in various type of software & also trading in shares and securities. Later the assessee does not had any significant software business and it is only engaged in providing accommodation entries. For the Assessment Year 2010-11, the assessee filed its Return of Income on 14.10.2010 declaring a loss of Rs. (-) 66,08,845/-. The assessee has shown income from Short Term Capital Gain on sale of land of Rs. 10,22,73,500/- and also claimed business loss of Rs. 10,98,37,024/-. Thus resulting in a net loss of Rs. 66,08,845/-. This claim of loss and Short Term Capital Gain are accepted by the Assessing Officer and the book result has not been rejected by the A.O.

3.1. As per the extract of audited Profit and Loss account under the head of income amount of sales shown is Rs. 13,79,10,600/- which includes the sale consideration received by the assessee as a

confirming party from M/s. Atmiya Developers Pvt. Ltd. of Rs. 3,28,32,402/- During the assessment proceedings, the assessee submitted seven bank accounts wherein deposit of Rs. 88,07,50,048/- has been made and withdrawal of Rs. 88,05,67,045/- was made by the assessee, as an entry provider to various parties. Thus the assessing officer considering the above bank accounts determined the commission income at 0.5% on the withdrawal in the various bank accounts namely Rs. 42,38,673/- as the income of the assessee. The assessee claimed that the sum of Rs. 3,28,32,402/- received from M/s. Atmiya Developers Pvt. Ltd. is also forming part of the above banking transaction, wherein the commission amount of 0.5% determined as profit of the assessee by the Assessing Officer. Again taxing the same amount of Rs. 3,28,32,402/- as business income of the assessee would amounts to double taxation. The above explanation was not accepted by the Assessing Officer and added the sum of Rs. 3,28,32,402/- as the business income and determined the total assessed income as Rs. 3,04,62,230/- after setting off the losses of Rs. 66,08,845/-.

4. Aggrieved against this assessment order, the assessee filed an appeal before the Ld. CIT(A). During the course of appellate proceedings, the assessee field a detailed submissions before the ld. CIT(A) reiterating the stand of the assessee. The Ld. CIT(A) called for a remand report from the Assessing Officer. The Ld. A.O. vide his Remand Report dated 25.10.2013 stated that the Director of the assessee company Shri Jayesh N. Patel has stated in the statement

recorded u/s. 131 of the Act dated 26.03.2013 that the amount of Rs. 3,28,32,402/- received by the company as a confirming party does not belong to the assessee company and that amount was being paid to 15 parties, which includes five land owners and remaining others are said to be the real beneficiaries. However the Assessing Officer had not taken any steps calling for the statement of the third parties who were paid the part consideration by the assessee. Considering the above submissions, the Ld. CIT(A) deleted the addition on account of business income of Rs. 3,28,32,402/- as the same amount suffered to taxes as entry provider at 0.5% as commission income in the hands of the assessee as follows:

8.3 During the appellate proceeding my predecessor on the basis of the assessment order observed that the appellant company is merely an accommodation entry providers and an entity of no means and referred the matter to the AO to find out the real beneficiaries of the total sale of Rs. 13,79,10,600/- as the appellant during the appellate proceeding submitted that all these deposits represent the accommodation entries and only fixed commission was earned on the deposits in the bank.

8.4 The AO sent remand report vide letter dated 25.10.2013 and submitted that as per the statement of Sh. Jayesh Patel, the amount received by the assessee does not belong to the assessee company and was given to several other companies as per the direction of the land owners who have sold the land as per the list of the such sellers.

8.5. The appellant was given the copy of the remand report to submit its comment and in response to that the appellant submitted the reply to the remand report vide letter dated 07.12.2013 and submitted that as per para 2 of the remand report the appellant company is merely a confirming party/and the transaction did not belong to it and the same amount was given to the parties as per the direction of the land owner and the money was transferred to the various real beneficiaries. The remand report is based on the statement given by the director of the company Shri Jayesh Patel.

The all facts discussed above are sufficient to establish that the appellant was an entry provider only. Besides this even in the assessment order in para 1 and 6 the AO has given finding that the appellant is only an entry provider.

8.6 In view of the facts discussed above, confession letter of the appellant and remand report, I am of the view that the appellant is an entry provider only and was involved in accommodation en-try business thus has to be taxed @ 0.5 % for commission income on the deposits made in the bank accounts and accordingly AO is directed to delete the addition on account of business income of Rs.3,28,32,402/- . Thus the grounds of appeal no. 2,3 & 4 are allowed.

5. Aggrieved against the appellate order, the Revenue in in appeal before us on the solitary issue that the consideration received by the assessee as a Confirming Party is in the nature of sale proceeds of land i.e. owned by the assessee company as a consequence of Banakhat made on 28.04.2009 and the same should have been taxed as a revenue receipt, if not capital.

6. The Ld. CIT/DR Mr. Samir Tekriwal appearing for the Revenue supported the order of the Assessing Officer and held that the sum of Rs. 3,28,32,402/- to be treated as the business income of the assessee being the confirming party to the land transaction.

6.1. Per contra Ld. Counsel Mr. P.F. Jain appearing for the assessee submitted before us three sets of Paper Book as well as copies of the English translated copy Banakhat dated 25.08.2009 as well as copy of the Sale Deed dated 11.01.2010 entered between the five land owners with M/s. Atmiya Developers Pvt. Ltd. the purchaser of the property, wherein the assessee company is a

Confirming Party. The Ld. A.R. taken us through page no. 16 of the Paper Book wherein Sales Ledger Account is produced for the sum of Rs. 13,79,10,600/-. At page no. 17, the Ld. A.R. taken us to Ledger Account of M/s. Atmiya Developers Pvt. Ltd. wherein the sum of Rs. 3,28,32,402/- was received on various dates. The ld. A.R. also taken us to page no. 21 of the Paper Book wherein the assessee had made payment of Rs. 3,15,81,000/- to various other parties namely P.K. Corporation, Maruti Corporation and Gujarat Enterprise etc. on the directions of the Land owners. Ld. A.R. thus pleaded the assessee's nature of business as commission charges of 0.5% on providing accommodation entries is being accepted by the Assessing Officer by passing an assessment order u/s. 144 for the previous assessment year 2009-10. Similarly for the current assessment year 2010-11, the A.O. has charged 0.5% commission rate on the total withdrawals of Rs. 88,05,67,045/- in various bank accounts of the assessee and determined the commission income as Rs. 42,38,673/-. Thus the deletion made by the Ld. CIT(A) does not require any interference, assessee having offered the consideration received from M/s. Atmiya Developers Pvt. Ltd. is shown as sales in its book as revenue receipt. Therefore the Grounds raised by the Revenue is devoid of merits and liable to be dismissed.

7. Heard both the parties and perused the materials available on record including the Paper Books filed by the assessee. It is not in dispute that the assessee is shown as a confirming party in the sale transactions between the 5 land owners and purchaser namely

M/s. Atmiya Developers Pvt. Ltd. It is not also in dispute that the assessee received Rs. 3,28,32,402/- on various dates from the buyer of the property. It is seen from page no. 16 of the Paper Book Sales Ledger Account that the above amount was received by the assessee from M/s. Atmiya Developers Pvt. Ltd. Further the assessee offered it as a Revenue income in its sales account of Rs. 13,79,10,600/- and also suffered to tax as an entry provider at 0.5% commission charges on the above transaction. The assessee also further demonstrated before us on the instructions of the land owners, the assessee made payment of Rs. 3,15,81,000/- to various third parties namely P.K. Corporation, Maruti Corporation and Gujarat Enterprise on various dates which is available at page no. 21 of the Paper Book. Thus it is clear that the sale consideration received by the assessee as a confirming party is offered as income and suffered to tax and the same cannot be taxed again as a capital gain as claimed by the revenue in its Grounds of Appeal.

7.1. During the appellate proceedings, the Remand Report received from the Assessing Officer simply confirmed about the payments made by the assessee to the land owners as well as third parties by the assessee. The Assessing Officer has not taken any steps to verify the above details either from the 5 land owners or the remaining 10 third parties it is being suffered taxed in the respective hands. Thus the assessing officer attempted to tax the entire consideration in the hands of the assessee, which is negatived by the ld. CIT(A) after considering the facts in detail.

Therefore we do not find any infirmity in the findings of the ld. CIT(A) that the assessee is an entry provider only and was involved in accommodation entry business and has been rightly taxed at 0.5% for commission income on the deposits in the bank account which includes the sale consideration of Rs. 3,28,32,402/- and directed to delete the above addition on account of business income. Thus the Grounds raised by the Revenue devoid of merits and the same is hereby rejected.

7. In the result, appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 28-09-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER *True Copy*
Ahmedabad : Dated 28/09/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद