

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 5116 of 2017**

MANOJKUMAR BABULAL AGRAWALA....Petitioner(s)

Versus

SECRETORY & 1....Respondent(s)

Appearance:

MR S.N. SOPARKAR, SENIOR COUNSEL WITH MR B S SOPARKAR,
ADVOCATE for the Petitioner(s) No. 1

MR MANISH BHATT, SENIOR COUNSEL WITH MRS MAUNA M BHATT,
ADVOCATE for the Respondent(s) No. 2

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and

HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 13/06/2017

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This petition is filed by the assessee challenging the order dated 30.08.2016 passed by the Income Tax Settlement Commission ('the Commission' for short) under Section 245D(4) of the Income Tax Act, 1961 ('the Act' for short) rejecting the petitioner's settlement application.

2. Brief facts are as under:

2.1 The petitioner is an individual and assessed to tax. The petitioner is engaged in off market commodity transactions. According to the petitioner, such transactions were carried on

his own account as well as as a broker. Search and seizure operations were carried on by the department on the premises of the petitioner and his relatives on 27.09.2012. Of the premises searched, one of them was that of the nephew of the petitioner, one Ritesh Agrawal. During such search, several documents including a rough note book containing references to various transactions of off market commodities were seized. The petitioner filed return of income in response to notices issued by the department under Section 153A of the Act. During the pendency of such assessment proceedings, the petitioner filed a settlement application as provided under Section 245C(1) of the Act on 19.02.2015. Such application covered the period of assessment years 2007-2008 to 2013-2014. The Settlement Commission on such application passed an order on 24.02.2015 and allowed the application to proceed further. The Commission made the following observations:

“7. We have carefully considered the applications filed before us and have also heard the applicants’ representatives. The applicants have declared the additional income before us, which has not been disclosed before the Assessing Officer earlier. The applicants have also paid the additional tax and interest payable with reference to the additional income disclosed before us and the additional tax paid by them exceeds the threshold limit. The filing fees of Rs.500/- each have been paid and evidence filed. Intimations in Form 34BA have been given to the Assessing Officer on the same day when the applications were filed before us in both the cases. The manner of earning the additional income has been explained during the course of hearing and also in the S.O.F. filed before the Commission. As regards the issue of true and full disclosure, we are of the opinion that, at present, there is no material in our possession which warrants the conclusion

that true and full disclosure has not been made by the applicants. We, therefore, hold that true and full disclosure of income has been made by the applicants.

8. In view of the above, we allow both the applications to be proceeded with further.”

2.2 In response to notice issued, the department appeared before the Settlement Commission and opposed the disclosures made by the petitioner in the settlement application as not being true and full disclosures. Of the many transactions contained in the rough diary seized by the department during the search operations, according to the petitioner, 29 names or codes represented the direct transactions carried on by the petitioner himself or through his relatives and the rest were as a broker. It was on this basis that the assessee had declared the additional income in the settlement application of a sum of Rs. 21.91 crores (rounded off). According to the department, this theory of splitting up of transactions into those directly entered into by the assessee on his own account and those as a broker was not a correct one and the entire unaccounted income from off market commodity trading on the basis of the seized diary which works out to Rs.81.14 crores represented the unaccounted income of the assessee. The assessee obviously resisted this objection of the department. The Commission passed order dated 13.04.2015 under Section 245D(2C) of the Act allowing the application for settlement to proceed further. The Commission made the following observations

“7. We have carefully considered the submissions made by the CIT(DR) and the applicants’ AR. We have also examined the factual and technical issues involved in these cases. The applicants have

effectively countered the arguments made by the CIT and have satisfactorily explained the manner of deriving the undisclosed income offered in the settlement applications, in the SOF as well as during the course of the present proceedings before us. No clinching, cogent and direct evidence has been placed on record by the department before us to come to the conclusion that the above applicants have not made true and full disclosure of their income in the settlement applications. We have no adverse material/information in our possession at this stage to hold otherwise. The technical requirements, such as, pendency of proceedings, disclosure of additional income not disclosed before the A.O., due compliance of the threshold limit of tax, payment of additional tax and interest thereon, payment of filing fee and intimation to the A.O. under Section 245C(4) have all been fully complied with. Under the circumstances, we are of the opinion that the above settlement applications cannot be held to be 'invalid'. Accordingly, we allow the applications to be proceeded with further within the meaning of Section 245D(2C) of the Act."

2.3 The department persisted with its opposition of the petitioner's stand that only some of the transactions were entered into directly by the petitioner. The department filed a detailed report as envisaged in Rule 9 of the Income Tax Rules, 1961. Various objections were raised. To meet with such contentions, the assessee referred to the names of four brokers with whom the assessee had entered into all brokering transactions. The petitioner also produced their affidavits all dated 18.06.2016 in which these deponents owned up the transactions referred to in the seized diary.

2.4 The department thereupon filed a further report dated 12.07.2016 and inter alia contended as under:

“(6) The assessee has claimed transactions of Rs. 36.67 crs. were on account of main broker namely Mr. Sanjiv. Assessee has filed confirmations from certain people who were stated to be brokers discussed on pages 12 to 25, sub-brokers in para 5.2 of Report. Only general discussion is done with respect to the same. Further evidences to prove the non-genuineness of these confirmations need to be filed on this issue.”

2.5 The petitioner filed application dated 19.07.2016 before the Settlement Commission and pointed out that the petitioner has filed affidavits of the said sub-brokers and the claim of the assessee that these transactions were as a broker cannot be brushed aside without carrying out inquiries or verification by the department from such sub-brokers. It was, therefore, prayed that the Settlement Commission should direct the department to carry out verification as to the ownership of the transactions carried out by the assessee on brokerage basis.

2.6 The Settlement Commission heard both sides at length and passed impugned order rejecting the petitioner's application for settlement primarily on the ground that the petitioner had not made true and full disclosures of the unaccounted income. In the process, the Commission rejected the petitioner's theory of the assessee earning income in two different manners, (1) through direct off market transactions and (2) as a broker of such transactions. It is this order the petitioner has challenged in the present petition. The main prayer of course is for setting aside the order of the Settlement Commission and acceptance of the petitioner's offer for settlement. However, as an alternative prayer which

was argued with greater emphasis before us, the petitioner has prayed for restoring the proceedings before the Settlement Commission for further consideration. The main grievance of the petitioner projected before us by his counsel was that the Settlement Commission has discarded the affidavits produced by the petitioner of four persons who confirmed that the transactions referred to in the seized diary were those in which they were the sub-brokers and the petitioner had acted as a broker. According to the petitioner, further and proper inquiry had to be made before discarding such affidavits.

3. Appearing for the petitioner, Senior Counsel Shri Soparkar took us extensively through the documents on record. He drew our attention to the various orders passed by the Settlement Commission including the final order rejecting the application of the petitioner. He submitted that the petitioner had produced materials on record to substantiate his theory that all the transactions mentioned in the seized diary did not represent his own trading in the commodities. To the extent 29 names/entities represented his direct dealings, the petitioner had offered the entire amount to tax in the settlement application itself. In the remaining transactions the petitioner had acted only as a broker and received 0.4% brokerage on the value of the transactions. The Settlement Commission committed a serious error in rejecting such a contention though the same was duly supported by reliable evidence on record. In particular, counsel for the petitioner would place heavy reliance on the four affidavits all dated 18.06.2016 which the petitioner produced before the Settlement Commission sworn by four

persons who confirmed that the transactions in question were supplied by them to the petitioner and the petitioner had merely acted as a broker and they were the sub-brokers. Main thrust of the counsel's contention was that all such materials were discarded by the Settlement Commission without proper inquiries. If at all such affidavits were to be disbelieved, least that was needed was to cross examine such deponents and to make further inquiries. The counsel would also rely on the observations made by the Settlement Commission in the earlier orders allowing the settlement applications to proceed further. According to him, the Settlement Commission found no adverse material at that stage to reject the application of the petitioner. No further material was brought on record by the department thereafter to enable the Settlement Commission to reject the application at the stage of passing order under Section 245D(4) of the Act.

3.1 Counsel relied on a decision of the Supreme Court in case of **Mehta Parikh & Co. vs. Commissioner of Income-tax reported in [1956] 30 ITR 181 (SC)** to contend that the affidavits filed by the assessee before the Settlement Commission could not be even rejected without cross examination of the deponents. For the same purpose reliance was also placed on a decision of the Division Bench of this Court in case of **Glass Lines Equipments Co. Ltd. vs. Commissioner of Income-tax reported in [2002] 253 ITR 454 (Gujarat).**

4. On the other hand, learned Senior Counsel Mr. Manish Bhatt for the department opposed the petition contending that

the assessee's theory of his having entered into transactions in two different categories, one on his own account and another as a broker was not supported by any evidence on record. Mere affidavits by four persons supporting such a stand of the petitioner would not be conclusive proof. The department had pointed out a number of inconsistencies in such a theory. On the basis of evidence on record, the Commission having examined the said aspects had come to factual findings. Such findings are supported by reasons recorded by the Commission. These findings are not perverse. This Court in exercise of writ jurisdiction would not interfere with the factual conclusions of the Settlement Commission when there is nothing on record to suggest that the same were perverse or not supported by any evidence on record. In this regard, counsel relied on the decision of this Court in case of **Vishnubhai Mafatlal Patel vs. Assistant Commissioner of Income-tax reported in [2013] 31 taxmann.com 99 (Gujarat)**. Counsel further submitted that requirement of making true and full disclosure of the unaccounted income is a basic requirement to sustain an application for settlement which flows from sub-section (1) of Section 245C of the Act and such requirement would run through the entire life of the settlement proceedings. Earlier orders passed by the Settlement Commission allowing the settlement proceedings to proceed further were only tentative in nature and would not preclude the Settlement Commission from rejecting the application at a later stage if it is found that the applicant had not made true and full disclosures of the unaccounted income. In this regard, the counsel would rely on the decision of the Supreme Court in case of **Ajmera Housing Corporation vs. Commissioner of Income-tax**

reported in [2010] 326 ITR 642(SC).

5. As noted, the controversy is narrow. The assessee's premises were subjected to search operations during which certain documents and loose materials were collected. In the application for settlement filed by the petitioner, his case is that the seized diary represented off market commodity transactions entered into by the petitioner in his personal capacity as well as a broker. The department hotly disputed this stand of the petitioner. The Settlement Commission accepted the stand of the department and rejected the application for settlement on the ground that true and full disclosures were not made.

6. At the threshold, we may note that the earlier orders passed by the Settlement Commission allowing the settlement to proceed further would not in any manner curtail the jurisdiction of the Commission to examine the application of the petitioner including on the anvil of true and full disclosures. The first order passed on 24.02.2015 was an *ex-parte* order at which stage the department had no role to play. The subsequent order even after notice to the revenue passed on 13.04.2015 under Section 245D(2C) of the Act was in the nature of a summary proceeding. It was, if we understand correctly, not even the contention of the counsel for the petitioner that passing of these orders or the contents thereof in any manner curtailed the jurisdiction of the Commission to examine the issues presented before it of the correctness of the declarations made by the petitioner while passing final order under Section 245D(4) of the Act.

7. With this background we may refer to the findings of the Commission in the impugned order. The Commission noted that during the search conducted on 17.09.2012 certain documents were seized from the residence of Shri Ritesh Agrawal, the nephew of the petitioner. His statement was recorded on 27.09.2012 in which he had stated that the transactions recorded in the said diary were as per the instructions given by the petitioner. There is nothing in the diary to suggest that some of the transactions were executed in the capacity of a broker. The petitioner's statement was recorded on 12.10.2012 in which he admitted that the diary seized from the residence of Shri Ritesh Agrawal contained the records of off market trading transactions/hedging transactions carried out by his group and that there was no chance that these transactions would have been recorded in the regular books of accounts. The petitioner also agreed to draw the Profit and Loss account in respect of transactions recorded in the said seized diary within 7 days. Though the copies of the entries from the seized diary were supplied to the petitioner, he did not furnish any explanation with regard to the said entries. It was only in the course of his statement under section 132(4) recorded on 5th and 6th of November, 2012, he took a stand that the transactions relating to 29 names were in respect of off market commodity trading done by his group and the remaining entries represented his involvement as a broker. He was asked to give the names, addresses and other details of the persons in respect of whom he had executed such brokerage transactions. He promised to provide such details within ten days but did not do so. The Commission noted that in case of one person namely Sanjeev Kumar, the transactions involved a profit of Rs.36.67 crores

during the period between 09.01.2012 to 21.03.2012 despite which the assessee had not given his name or address. It was only after a gap of nearly two years that the petitioner revealed the identity of the said sub-broker while filing settlement application. The Commission noted that the assessee had disclosed the identity of one Bharat Dahyalal Thakkar without showing any connection with the recorded names of Sanjiv/Sanjeev/Sonuji if they happened to be code names.

7.1 The Commission further noted that similar facts were involved with respect to the remaining three sub-brokers also. It was noticed that all these sub-brokers had filed the returns for the assessment years 2012-13 and 2013-14 on a single date i.e. 31.03.2014 and from the same IP address. The returns were not filed within the due dates. In case of Bharat Dahyalal Thakkar, the return for the assessment year 2012-13 was filed on 21.12.2012 i.e. after the date of search and even after the date of statement by the petitioner under section 132(4) of the Act. Shri Bharat Dahyalal Thakkar had shown income of Rs. 4.32 lakhs and Rs. 4.43 lakhs for the assessment years 2012-13 and 2013-14 respectively. The Commission also noted that all the affidavits filed by the said so-called sub-brokers were identically worded. The Commission also examined minutely the dummy or the code names used in the seized diary allegedly representing one or the other of the four sub-brokers but did not find any connection. It was noticed that the details filed along with the confirmations of the four sub-brokers as well as their affidavits dated 18.06.2016 did not contain any details of payments of brokerage income to them. The statement supplied by the

petitioner showing the brokerage paid to Shri Bharat Thakkar was not confirmed by him. The Commission also noticed similarity of transactions of those admittedly executed by the assessee on his own account and those in which according to him he had acted as a sub-broker. The Commission observed that during the search nothing was found to connect the code names Sanjiv/Sanjeev/Sonuji with Bharat Thakkar. On the basis of such materials noticed by the Commission, the claim of the petitioner was rejected making following observations:

“37. We have examined the applicant’s contentions in detail in the preceding paras. On the basis of the discussion, we conclude that the applicant’s claim that the transactions recorded in Annexure A2 seized from the residence of Shri Ritesh Agrawal also relate to transactions carried out in the capacity of broker is not substantiated and the confirmations and affidavits of the four claimed sub brokers are only self-serving evidence. Therefore, the applicant’s request for directions to the department to carry out verification as to the ownership to the transactions carried out to the applicant on brokerage basis cannot be accepted. The applicant has relied on Mehta Parikh and Co. 30 IT 181 (SC). It is respectfully submitted that in Smt. Gunwantibai Ratilal v/s. CIT 146 ITR 140 (MP) special leave petition dismissed by the Supreme Court 156 ITR (St. 43) SC it was held that the Mehta Parikh and Co. case cannot be construed to lay down the proposition that unless the deponent is cross-examined, the affidavit cannot be rejected. That decision lays down that if there is no material whatsoever on record for doubting the veracity of the statements made in the affidavit and if the deponent has also not been subjected to cross examination for bring out the falsity of its statement, then the Tribunal will not be justified in doubting the correctness of the statements made by the deponent in the affidavit. In the case before the Hon’ble MP High Court, it was held that the statement made by a deponent can be held to be

unreliable either on the basis of cross examination of the deponent or by reference to other material on record leading to the inference that the statement made in the affidavit cannot be held to be true. In the present case the material on record leads to the inference that the statements made by the sub brokers and the applicant in the affidavit cannot be held to be true inasmuch as the claim of transactions of off market commodity futures were made on behalf of sub brokers. It is respectfully submitted that the relied upon case of L.Sohanlal Gupta V/s CIT 33 ITR 786 (All.) is similarly distinguishable. It is also added that the applicant has inter alia relied on Glass Lines Equipments Co. Ltd. V/s CIT 119 Taxman 813 (Guj.). In that case, a portion of the affidavit was ignored. However, in the present case, no cognizance is being taken of the entire affidavit of the four sub brokers. The applicant has stated that he has filled up various deficiencies and incompleteness and removed incorrectness in the seized documents through statements and affidavit including his affidavit. The seized material clearly shows that the transactions recorded therein are in the nature of own transactions and not transactions carried out in the capacity of broker and the acceptance by the applicant of only 29 code names transactions of off market commodity futures is without any basis."

8. It can thus be seen that the Commission had taken into account the documents and evidence on record and rejected the petitioner's theory of having entered into off market transactions in two different capacities. These findings of the Commission are based on consideration of relevant materials presented before the Commission by both sides. The findings cannot be stated to be perverse in any manner. The scope of judicial review against an order passed by the Settlement Commission has been discussed by various decisions of this Court as well as Supreme Court. Referring to some of these decisions in case of **Vishnubhai Mafatlal Patel (supra)**, the

Court made the following observations:

“16. Question is should such conclusion of the Commission be interfered in exercise of writ jurisdiction? The scope of judicial review in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India while examining the validity of an order of the Settlement Commission has come up for consideration before various Courts in the past. In case of **Jyotendrasinhji**(supra), the Apex Court held and observed that the sole overall limitation upon the Commission appears to be that it should act in accordance with the provisions of the Act. The scope of inquiry whether by the High Court under Article 226 or by the Supreme Court under Article 136 is also the same namely, whether the order of the Commission is contrary to any of the provisions of the Act and if so, has it prejudiced the petitioner apart from the ground of bias, fraud and malice, which, of course, constitute a separate and independent category.

17. This view has been reiterated in various later decisions by the Apex Court. It is true that such decisions pertain to the final adjudication of an application for settlement by the Commission. However, limitations recognized by the Courts in exercising powers of judicial review against the orders of the Settlement Commission, in our opinion, would not be of much difference even where an order of the Settlement Commission passed at the interim stage is called in question. Settlement Commission is a special body created and constituted for a special purpose. The order that the Settlement Commission may pass though is binding between the parties, does not lay down a ratio or a precedent.

18. In case of **Saurashtra Cement Ltd. And ors. v. Commissioner of Customs and anr.** reported in 2012(3) G.L.H. 235, scope of judicial review by the Supreme Court against the order of Settlement Commission was examined in light of

various decisions of the Apex Court and following observations were made :

“15. It is well settled that no finality clause in a statute would oust the jurisdiction of the High Court under Article 226 of the Constitution or that of the Supreme court under Article 32 or 136 of the Constitution. Nevertheless, the parameters of judicial intervention in a decision rendered by an administrative tribunal are well recognised and well laid down. Ordinarily, the court would interfere if the Tribunal has acted without jurisdiction or failed to exercise jurisdiction vested in it or the decision of the Tribunal is wholly arbitrary or perverse or malafide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations.

16. When examining the scope of judicial review in relation to a decision of Settlement Commission, we must further bear in mind that the Settlement Commission is set up under the statute for settlement of revenue claims. Its decision is given finality and it also has power to grant immunity from prosecution, of course, subject to satisfaction of certain conditions. The scope of court's inquiry against the decision of the Settlement Commission, therefore, is necessarily very narrow. The Apex Court in the case of State of U.P. And Another vs. Johri Mal reported in (2004) 4 SCC 714 observed that the scope and extent of power of judicial review of the High Court under Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. It was observed that the power of judicial review is not intended to assume a supervisory role. The power is not

intended either to review governance under the rule of law nor for the courts to step into the areas exclusively reserved by the supreme lex to the other organs of the State. The court observed that the limited scope of judicial review is

(i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies;

(ii) A petition for a judicial review would lie only on certain well-defined grounds

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a judge should not be invoked as a substitute for the judgment of the legislative bodies. (See *Ira Munn v. State of Illinois*.)

17. Despite such narrow confines of judicial review of the decision of the Settlement Commission, it is undeniable that the jurisdiction under Article 226 of the Constitution is not totally ousted. In a given situation if the Settlement Commission has taken into consideration irrelevant facts and such consideration has gone into its decision-making process resulting into grave injustice

and prejudice to the party then within the narrow confines of the judicial review, interference would still be open.

19. When the Settlement Commission examines an application in terms of statutory powers and finds that such application does not satisfy the legal requirements, as contained in section 245C(1) of the Act, in our view, unless such decision of the Commission is contrary to the statutory provisions contained in the Act, interference in exercise of writ jurisdiction under Article 226 of the Constitution of India would not be warranted. The counsel for the petitioners, as recorded earlier, made strenuous efforts to convince us that the Commission ought not to have summarily dismissed the application. We are afraid this cannot be the ground on which we would reverse the Commission's order. If on the basis of material on record, the Commission could have come to the conclusion that application was not valid, it had every authority to reject the same even at the stage of first screening under section 245D(1) of the Act. We are not convinced with the petitioners' contention that if such application was allowed to be proceeded, the petitioners would have produced additional materials in support of the requirement that the petitioner made true and full disclosure of undisclosed income and the manner of deriving the same. The petitioners were required to make an application and make such declarations as required under section 245C(1) of the Act. They could not have hoped for or insisted upon a second innings to do so beyond the stage of section 245D(1) of the Act. If otherwise such requirements of the Act were not fulfilled, the Commission was well within the powers to terminate such application without any further addo."

9. The petitioner did produce the affidavits of four persons who claimed that they were the sub-brokers for whom the petitioner had acted as a broker in respect of certain entries made in the seized diary. However, this by itself cannot be

clinging evidence, nor can the petitioner contend that such factor cannot be discarded without cross examination of the deponents. The affidavits of such persons would certainly be a relevant factor to be taken into account by the Commission but can neither be sole nor a conclusive factor. The Commission was duty bound to take into account all the evidences and documents on record and evaluate for itself the contents of affidavits produced by the petitioner. If on basis of existing materials itself the contention of the petitioner and the contents of the affidavits are found to be unreliable it would always be open for the Commission to adopt such a course. To cause further inquiry including offering such deponents for cross examination at the hands of the department would certainly be one of the options before the Commission. However, it cannot be stated that even if there is reliable, weighty, contrary evidence, the Commission cannot go against the contents of such affidavits without cross examination of the deponents. In case of **Mehta Parikh & Co. (supra)**, the assessee had produced affidavits of three persons before the Appellate Commissioner showing that the assessee had received certain amounts from these persons in high denomination currency. When the department did not accept such a stand, the Supreme Court observed as under:

“It has to be noted, however, that beyond there 82 634 calculations of figures, no further scrutiny was made by the Income-tax Officer or the Appellate Assistant Commissioner of the entries in the cash book of the appellants. The cash book of the appellants was accepted and the entries therein were not challenged. No further documents or vouchers in relation to those entries were called for, nor was the presence of the deponents of the three affidavits considered necessary by either party. The appellants took it that the affidavits of

these parties were enough and neither the Appellate Assistant Commissioner, nor the Income tax Officer, who was present at the hearing of the appeal before the Appellate Assistant Commissioner, considered it necessary to call for them in order to cross-examine them with reference to the statements made by them in their affidavits. Under these circumstances it was not open to the Revenue to challenge the correctness of the cash book entries or the statements made by those deponents in their affidavits.

This being the position, the state of affairs, as it obtained on 12th January 1946, had got to be appreciated, having regard to those entries in the cash books and the affidavits filed before the Appellate Assistant Commissioner, taking them at their face value. The entries in the cash books disclosed that, taking the number of high denomination notes at 18 on 2nd January 1946, there came in the custody or possession of the appellants after 2nd January 1946 and up to 12th January 1946, 49 further notes of that high denomination, making 67 such notes in the aggregate, out of which 61 such notes could be encashed by the appellants on 18th January 1946 through the Eastern Bank. A mere calculation of the nature indulged in by the Income tax Officer or the Appellate Assistant Commissioner was not enough, without any further scrutiny, to dislodge the position taken up by the appellants, supported as it was, by the entries in the cash book and the affidavits put in by the appellants before the Appellate Assistant Commissioner. “

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10. It can thus be seen that the case stood on peculiar facts. The court did not lay down any proposition that such affidavits are to be accepted unless the deponents were cross examined. Gujarat High Court in case of **Glass Lines Equipments Co. Ltd. (supra)** referred to the decision in case of **Mehta Parikh & Co..** It was observed that the appellate authority had misdirected itself by taking into consideration the

affidavit filed by the Director of the company by relying upon one portion of the affidavit ignoring the rest.

11. In the present case the Commission, as noted earlier, has taken into account all the relevant factors and given cogent reasons to hold that the petitioner's theory that he had acted as a broker in certain transactions was not correct. We find the reasons are quite convincing. It was precisely to demonstrate this that we have taken note of various facts and circumstances taken into account by the Commission. For example, Commission noted that though Bharat Thakkar, according to the petitioner, was a sub-broker in majority of these transactions, the petitioner had not disclosed his identity in his statement under Section 132(4) recorded two months after the search and did so for the first time while filing settlement application nearly two years later.

11. In the result, we find no substance in the petition. The same is therefore dismissed.

THE HIGH COURT
OF GUJARAT

(AKIL KURESHI, J.)

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(BIREN VAISHNAV, J.)

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