

आयकर अपीलीय अधिकरण, "सी" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1495/Mum/11
(निर्धारण वर्ष / Assessment Year: 1996-97)

Citi Builders & Developers 211, Thaper Complex, 2 nd Floor, Plot No.51, CBD Belapur, Navi Mumbai - 400614	बनाम/ Vs.	Income Tax Officer Ward 22(3)(1) Tower 6, 3 rd Floor, Vashi Rly. Station, Navi Mumbai - 400703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFC7080N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Dharmesh Shah
Department by:	Shri Akhilendra P. Yadav

सुनवाई की तारीख / Date of Hearing: 17.12.2015
घोषणा की तारीख /Date of Pronouncement: 23.03.2016
आदेश / ORDER

PER AMARJIT SINGH, JM:

This is an appeal against the order dated 28.12.2010 passed by learned Commissioner of Income Tax (Appeals)-33, Mumbai [hereinafter referred to as the "CIT(A)"] for the assessment year 1996-97.

2. The assessee has raised the five grounds in his appeal but effectively the assessee has raised only one ground which is in connection with the disconfirmation of disallowance to the tune of

Rs.36,50,000/- made by the Assessing Officer u/s.68 of the Income Tax Act, 1961(in short “the Act”). The appellant has shown the receipt of loan of the amount to the tune of Rs.36,50,000 from the three parties i.e. M/s. Archies Consultants, M/s. Blue Heaven Builders P. Ltd. & M/s. V.V. Consultants P. Ltd. The said parties were not traced by the Assessing Officer even after issuance of notice u/s. 133(6) of the Act and the said parties are also not produced by the assessee. The learned representative of the assessee has argued that he has produced the confirmation letter of M/s. Archies Consultants which has been produced at page 27 of the paper book and confirmation letter of M/s. Blue Heaven Builders P. Ltd. which has been produced at page 34 of the paper book and confirmation letter of & M/s. V.V. Consultants P. Ltd. which has been produced at page 40 of the paper book and also attached the copy of cheques received from parties which has been produced at page 27 to 45 of the paper book. It is also argued by the learned representative of the assessee that the assessee has given the names of the parties and their PAN Numbers and their addresses and their banks names and account numbers, therefore, in the said circumstances the assessee has discharged the liability and now it is up to the Assessing Officer to reject the claim of the assessee with genuine reason which has not been done by the Assessing Officer therefore the claim of assessee is liable to be allowed in the interest of justice and adducible u/s. 68 of the Act is liable to be deleted. In support of his claim the assessee has placed reliance upon law settled in **[2014] 42 taxmann.com 473**

(Gujarat) in case titled as Commissioner of Income Tax 1 Vs. Apex Therm Packaging (P.) Ltd. and [2012] 21 taxmann.com 159 (Guj.) in case titled as Commissioner of Income Tax Vs. Ranchhod Jivabhai Nakhava and [2009] 121 ITD 525 (ITAT Agra bench) Third Member in case titled as Kalyan Memorial & Charitable Trust Vs. Assistant Commissioner of Income Tax Range 1, Morar. However, learned Departmental Representative has argued that the bank furnished the letter dated 07.10.204 on record which speaks that the above said parties i.e. M/s. Archies Consultants, M/s. Blue Heaven Builders P. Ltd. & M/s. V.V. Consultants P. Ltd. do not have any such accounts in their branch and moreover the assessee has failed to produce the parties, therefore, the learned CIT(A) has rightly passed the order in question hence the appeal of the assessee is liable to be dismissed. Apparently, the claim of the assessee is in connection with the addition made to the tune of Rs.36,50,000/- as unexplained cash credits. The assessee has explained that he has received the said amount to the tune of Rs.36,50,000 from i.e. M/s. Archies Consultants, M/s. Blue Heaven Builders P. Ltd. & M/s. V.V. Consultants P. Ltd. and also filed the confirmation letters as well as copy of the cheque on the paper book at page 27 to 45. The said confirmation and cheque books issued by the State Bank of Travancore, Mulund (W) these documents does seem to be false and fabricant documents. Rather the letters produced by the concerned bank seem doubtful even without proper verification. Hence we are of the view that at the same time the verification of

these documents are necessary in the light of letter produced by the bank. There is no dispute with regard to the law relied by the appellant is concerned but the factual position which has been mentioned above is required to be verified from the concerned bank therefore in the said circumstances we are of the view that the order of learned CIT(A) is wrong against law and facts and is hereby ordered to be set aside with a direction to the Assessing Officer that the transactions which has been mentioned above is liable to be verified again by giving the full opportunity of being heard to the assessee in accordance with law. Accordingly, we remand the case for further verification and appeal of the assessee is hereby allowed accordingly.

3. In the result, **appeal of the Assessee is Allowed.**

Order pronounced in the open court on 23rd March, 2016.

Sd/-

(D.KARUNAKARA RAO)

Sd/-

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 23rd March, 2016

MP

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai