

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI RAJENDRA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.5549/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2011-12)

Skate Trade & Agencies P. Ltd. 302, Dev Kripa Bldg. 28 Raichur Street, Mumbai.	बनाम/ Vs.	ITO WD 1(2) (3) Ayakar Bhavan, M.K. Rd. Mumbai Pin: 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJCS3616C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Devdatta Mainkar
Revenue by:	Shri. Dr. A.K. Nayak

सुनवाई की तारीख / Date of Hearing: 21.03.2017

घोषणा की तारीख /Date of Pronouncement: 31.05.2017

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeal against the order dated 24.09.2015 for the A.Y.2011-12 passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the “CIT(A)”].

2. The assessee has raised the following grounds:-

“1. On the facts and in the circumstances of the case and in law, the learned CITA(A) erred in confirming addition of Rs. 28,75,185 to the total income solely on the basis of tax deducted at source by one party wrongly and reflected in AIR information. The learned CIT(A) failed to appreciate that the

said income does not belong to the Appellant on the facts and circumstances of the case.

2. Without prejudice to the Ground no. 1 above, the learned CIT(A) further erred in not accepting title Appellant's contention that at the most 8% of Rs. 28,75,185 i.e. Rs. 2,30,915 is taxable in the hands of the Appellant in terms of section 44AD of the Income Tax Act, 1961."

3. The brief facts of the case are that the Assessee filed its return of income on 01.10.2011 declaring total income as Nil. The intimation u/s 143(1) was passed on 24.01.2012. The case was selected for scrutiny. Notice u/s 143(2) of the I.T. Act, 1961 dated 07.09.2012 was issued and served upon the Assessee. Subsequently, notice u/s 142(1) was issued on 01.10.2012 alongwith questionnaire. The Assessee is engaged in the business of real estate development. On perusal of Schedule-C to the balance-sheet, it was noticed that Assessee Company has received inter corporate loans from various parties during the previous year aggregating to Rs.16.72 crores. The unsecured loans received from body corporates during the previous year 2010-11 are from:-

<i>“(a) Morya Finance Ltd.</i>	<i>Rs. 5,00,000/-</i>
<i>(b) Drive in Tourist Resorts P. Ltd. (DITRPL)</i>	<i>Rs.4,12,00,000/-</i>
<i>(c)Anik Industries Ltd. (Drive in 22)</i>	<i>Rs.7,60,000/-</i>
<i>(d) Anik Industries Ltd. (Jharmari Land)</i>	<i>Rs.4,50,000/-</i>
<i>Total:-</i>	<i>Rs.16,72,00,000/”</i>

4. The Assessee was asked to supply the copy of shareholding of M/s.DITRPL as it was noticed that Shri. Sohanlal Singla is a shareholder in both the companies as per details filed in the case of M/s. DITRPL(Drive in tourist resort (p) Ltd.). The Sohanlal Singla was having share 70,000/- out

of total shares of 4,91,800/- being 14.23%. In respect of the Assessee company, Shri Sohanlal Singla holds 1165/- shares out of 10,000/- shares being 11.65%. Thereafter, in view of the provisions of Section 2(22) (e) of the I.T. Act, 1961 in the case of DITRPL the dividend was assessed to the tune of Rs.6,25,681/- which was added to the income of the Assessee. Further, as per the AIR data, Assessee company has received the following payments in nature of payment covered u/s 194C from the Garrison Engineer, Air force, Airforce Station Hakimpet, Secunderabad.

Sr. No.	Date of Credit	Amount (Rs.)	TDS (Rs.)
1.	28.02.2011	13,84,752	29,270
2.	28.03.2011	14,90,433	33,364
Total		28,75,185	62,634

5. The Assessee was asked to explain this transaction as the same was not reflected in the books of account. The Assessee explained that he did not deal with the said parties. Notice u/s 133(6) was issued to the said parties but nothing was complied. Finding no justifiable evidence an amount of Rs.28,75,185/- was taxed in the hands of the Assessee. The credit for TDS aggregating to Rs.62,634/- was also not granted being the same was not claimed in the return of income. Thereafter, the total income of the Assessee was assessed to the tune of Rs.35,00,870/-. Feeling aggrieved, the Assessee filed an appeal before the CIT(A) who partly allowed the appeal but the assessee was not satisfied, therefore, the present appeal has been filed by raising the raising the issues mentioned above.

ISSUE NO.1:-

6. Under this issue, the Assessee has challenged the addition of Rs.28,75,185/- which was paid to be wrongly reflected in AIR information. In fact the Assessee did not argue the case on merit but raised the contention that the Assessee wanted file the additional evidence i.e. revised form 26AS which is Annual Tax Statement u/s 203AA of the Income Tax Act, 1961(the Act) as on 19th September 2016 of the Appellant Company, which was not produced before the AO and the Ld. CIT(A). This evidence is in connection with the facts that the tax deducted at source by M/s. Garrison Engineer Airforce Hakimpet (TAN: HYGDO261B) of Rs.28,75,185/- which was the basis of the addition in the assessment, was reversed. In view of the, contention raised by the Ld. representative of the Assessee we observed that this piece of evidence was not produced before the AO as well as before the CIT(A). The main reason which has been taken by the Assessee is that the said document was not available within. Anyhow, the additional evidence seems necessary to decide the matter of controversy and in the interest of justice in accordance with law. Therefore, we admit this evidence and set aside the finding of the CIT(A) on the above said issues and direct the AO to re-examined the matter of controversy in the light, of the said additional evidence in accordance with law. Needless to say that an opportunity of being heard would be given to the Assessee before passing the said order.

7. In the result, the appeal filed by the assessee is hereby ordered to be allowed for statistical purpose.

Order pronounced in the open court on 31st May, 2017.

Sd/-

Sd/-

(RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31st May, 2017

V.P.Singh

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