

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.7448/Mum/2012
(निर्धारण वर्ष / Assessment Year: 2008-09)

Tejaram Balotia Galli No. 25, Indira Nagar, Thakkar Bappa Colony, Chembur, Mumbai – 400 071	बनाम/ Vs.	Income Tax Officer Ward 15(2)(4) Matru Mandir, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AIFPB1410N		
(□ पीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Smt. Jothilakshmi Nayak	

सुनवाई की तारीख / Date of Hearing: 24.03.2017
घोषणा की तारीख /Date of Pronouncement: 31.03.2017

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 26.11.2012 passed by the Commissioner of Income Tax (Appeals)-26, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2008-09

2. The assessee has raised the following grounds:-

- “1. *Ld. CIT(A) has erred to ignore the submissions of bonafide error on part of appellant about escapement of transactions in Bank Account.*
2. *Ld. CIT(A) has erred to uphold additions of Rs.3,61,750/- inspite of holding that the deposits in bank account not relating to Sales.*
3. *Ld. CIT(A) has erred to disbelieve the claim of expenses against the sale transactions in Bank Account & arbitrarily dismissed the cases cited.*

ADDITIONAL GROUND:-

1. *Appellant prays that his income on undisclosed sales of Rs.12,39,350/- may be determined @ 5% on profit percentage.”*

3. The brief facts of the case are that the assessee filed his return of income on 01.09.2008 declaring total income to the tune of Rs.1,47,663/-. The return was processed u/s.143(1) of the Income Tax Act, 1961 (in short “the Act”). Thereafter, the case was selected for scrutiny under CASS for verification of source of cash deposited of Rs.11,65,950/- in saving bank account in ING Vysya Bank, Chembur. Thereafter, the notice u/s.143(2) of the Act was issued on 11.09.2010 which was duly served upon the assessee. Subsequently, notice u/s.142(1) of the Act dated 04.03.2010 was issued which was returned by the postal authorities by the remark “Intimation posted” on 20.03.2010 and 22.03.2010. Further notices u/s.142(1) of the Act dated 06.08.2010 and 07.10.2010 were also issued which were returned unserved by the post. Finally a show cause letter dated 09.11.2010 was issued on the new address which was duly served upon the assessee. The assessee was an individual and was asked to furnish the source / explanation of the cash deposit of Rs.11,65,950/-. The assessee explained that the assessee failed to show the said amount of his trading business

inadvertently and also requested to calculate the interest @ 5% u/s.44AF of the Act amounting to Rs.58,298/-. The contention of the assessee was not accepted and the deposit to the tune of Rs.11,65,950/- was added to the income of the assessee. On appeal the CIT(A) has arrived at this conclusion that an amount of Rs.3,61,750/- was still unexplained, therefore, the said amount was added to the income of the assessee by allowing the appeal in part. Since the assessee was not satisfied the present appeal has been filed before us.

ADDITIONAL GROUND:-

4. The assessee has pleaded that the additional plea to determine the 5% of the undisclosed sale on profit percentage basis has not been dealt by the Assessing Officer as well as CIT(A), therefore, in the said circumstances the Assessing Officer is liable to be directed to decide the matter afresh in view of the law settled by *Hon'ble Madhya Pradesh High Court [2008] 304 ITR 52 (MP) in case of Man Mohan Sadani Vs. Commissioner of Income Tax dated 31.10.2007* and *Hon'ble Bombay High Court in case of Commissioner of Income Tax – 8 Vs. Shri Hariram Bhamhani in IT No. 313 of 2013 dated 4th February 2015* and *Hon'ble Income Tax Appellate Tribunal, Mumbai bench in ITA No.4618&4580/Mum/2010 dated 25th May 2012*. However, on the other hand learned representative of the department has strongly relied upon the order passed by the CIT(A) in question. On appraisal of the order of the Assessing Officer dated 24.12.2010, it came into the notice that the assessee was taking the plea to treat the retail sale on which the income @ 5% can be calculated u/s.44A of the Act which has not been dealt by the

Assessing Officer as well as CIT(A) in their orders. In brief after finding the entry of Rs.11,65,950/- in the Saving Bank Account of the assessee in the ING Vysya Bank, the Assessing Officer treated the same as unexplained u/s.68 of the Act and the said amount was added to the income of the assessee. However, in the appeal the CIT(A) has arrived at this conclusion that the assessee has explained the deposit to the tune of Rs.8,77,600/-, however, the remaining amount to the tune of Rs.3,61,750/- was still unexplained therefore added the said amount to the income of the assessee. At the cost of repetition it is quite clear that the plea of the assessee to tax the unexplained amount taxable @ 5% in view of the provision u/s.44AF of the Act has not been treated at all. In view of the said circumstances, we set aside the finding of the CIT(A) in question and direct the Assessing Officer to decide the matter afresh in view of the above said law by giving an opportunity of being heard to the assessee. Accordingly this additional ground is decided in favour of the assessee against the revenue.

ISSUE NO.1 TO 3:-

5. Since the additional ground has been decided in favour of the assessee in which the finding of the CIT(A) has been ordered to be set aside and the Assessing Officer has been directed to decide the matter afresh by giving an opportunity of being heard to the assessee, therefore in the said circumstances there is no need to decide these issues which would become only academic in nature.

6. 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 March, 2017.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31st मार्च, 2017

MP.

आदेश की प्रतिलिपि □ त्रेषित/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