

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI B. R. BASKARAN, AM

आयकर अपील सं./I.T.A. Nos. 655 & 3889/Mum/2008
(निर्धारण वर्ष / Assessment Years: 1996-97 & 1995-96)

Kalpesh K. Shah Prop. Sheetal Pharma 3 rd Floor, Shantivan Tower, Devidas lane, Borivali (W), Mumbai	बनाम/ Vs.	ITO-25(2)(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACPS 4907 Q		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri S. Ravichandran

सुनवाई की तारीख / Date of Hearing	:	30.8.2016
घोषणा की तारीख / Date of Pronouncement	:	30.8.2016

आदेश / ORDER

Per Mahavir Singh, JM:

These two Appeals by the Assessee are arising out of the Order by the Commissioner of Income Tax (Appeals)-25, Mumbai ('CIT(A)' for short) in Appeal No. CIT(A)/XXV/ITO-25(2)(1)/IT-317 & 316/06-07 dated 30.11.2007 and 28.3.2008. Assessments were framed by ITO, Ward-25(2)(1), Mumbai for the assessment years (A.Ys.) 1995-96 and 1996-97 u/s. 143(3) r/w s. 254 of the Income Tax Act, 1961 ('the Act' hereinafter) vide his orders of common date 29.12.2006.

2. The only common issue in these appeals of the assessee is against the order of CIT(A) confirming the addition of unsecured loan received from Shri Y. J. Choksi

amounting to Rs.2,50,000/- in the A.Y. 1995-96 and Rs.15 lacs in A.Y. 1996-97 and consequent disallowance of interest on these two unsecured loans. The facts and circumstances are exactly identical in both the years, hence, we will take up an issue from lead year, i.e., A.Y. 1996-97 and will decide the issue in both the years.

3. Brief facts to the above issue are that the Assessing Officer (A.O.) in the original assessment order dated 31.1.2003 made an addition of unsecured deposit of Rs.15 lacs from Shri Y. J. Choksi and also consequential interest of Rs.1,50,784/-. The CIT(A) deleted the addition vide order dated 11.7.2003 and on further appeal of Revenue, the ITAT remanded the matter back to the file of the A.O. for fresh adjudication after giving opportunity to the assessee of cross examination of Shri Y. J. Choksi vide the order dated 30.1.2006. In consequent to the tribunal's order, the A.O. framed the assessment and made the addition of above deposit again. The CIT(A) also confirmed the action of the A.O. by observing in paras 10 and 11 as under:

'10. There is no dispute that the appellant has shown loan of Rs.15,00,000/- in his books of accounts form Shri Y. J. Choksi. There is also no dispute that Shri Y. J. Choksi has denied' of giving any loan to the appellant. So far as cross examination of Shri Y. J. Choksi is concerned, when department asked alleged depositor to appear before the department for cross examination by Shri Kalpesh K. Shah, he showed his physical inability due to serious illness but at the same time sent his affidavit dated 8.8.98, copy of statement dated 16.6.98 recorded before ADIT (Inv.) Unit VI(3), copy of statement u/s. 132(4) dated 19.6.98 and copy of statement u/s. 131 dated 18.8.98 before ADIT (Inv.). Above details sent by Shri Y. J. Choksi clearly prove that he sticks to his statement recorded on various occasions. Thus he fulfils his part of duty of cross examination.

11. Moreover, appellant did not seem to be serious in cross examination. AO informed appellant about enforcing the attendance of Shri Y. J. Choksi on 28.12.06 and 29.12.06 but appellant was not present and left Mumbai on 27.12.06. This shows that appellant was trying to make mockery of law by enforcing cross examination on one hand but not making himself present on the date fixed for cross examination. Had he been sincere for cross examination it could have been done even in hospital. Shri Y. J. Choksi is now expired and thus there cannot be cross examination. His statement on 3 different occasions on oath and his affidavit on oath is sufficient to prove that credit of Rs.15,00,000/- shown deposit in its books of accounts is not genuine. Onus is casted on appellant to prove genuineness of transaction but appellant failed to do so. Department recorded statement of alleged depositor on 3 different occasions and he denied of giving loan. He confirmed it in his affidavit too. Even when he was asked to be present for cross examination he sent copies of his statements and affidavit in this regard. This

shows his truthfulness and sincerity towards duty but his illness prevented him to appear before the department. Considering the above, it is clear that loan of Rs.15,00,000/- in the books of accounts is not genuine transaction but entry taken from Shri Y. J. Choksi.'

Aggrieved, now the assessee is in appeal before the Tribunal.

4. We find that this appeal was filed before the tribunal on 28.11.2008 but since then the appeal was fixed for hearing atleast for 20 times. None represented on behalf of the assessee. Accordingly, we are deciding these appeals *ex parte* qua assessee. From the order of CIT(A), we find that despite numerous opportunities, the assessee is not coming forward for cross examination of Shri Y. J. Choksi and, by now he is expired. We find that the CIT(A) has recorded the finding of fact that the alleged depositor on three different occasions have denied giving any loan/deposit to the assessee. Now before us, there is nobody to controvert this finding of fact recorded by the CIT(A). In term of the above, we are of the view that, from records, we cannot reach to a conclusion that this deposit is explained. In the absence of the same, we are of the view that this is unexplained deposit and, accordingly, we confirm the same.

5. Similar are the facts in other year, i.e., 1995-96, hence taking a consistent view, we confirm the addition in that year also.

6. In the result, both the assessee's appeals are dismissed.
परिणामतः निर्धारिती की अपीलें खारिज की जाती है ।

Order pronounced in the open court on August 30, 2016

Sd/-
(B. R. Baskaran)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 30.08.2016

व.नि.स./Roshani, Sr. PS

Sd/-
(Mahavir Singh)

न्यायिक सदस्य / Judicial Member

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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**