

आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री जॉसन पीबोज ., लेखा सदस्य एवं श्री पवन सिंह, न्यायिक सदस्य के समक्ष।

Before Shri Jason P. Boaz, AM and Shri Pawan Singh, JM

आयकर अपील सं./ITA No. 4624/Mum/2012

(निर्धारण वर्ष/Assessment Year: 2006-07)

Gazanfer A Shaikh

A-1/308, Old Killedar Apartment

Opp. MTNL, S.V. Road, Jogeshwari (W)

Mumbai 400102

अपीलार्थी/Appellant

बनाम/ Vs.

Income Tax Officer-24(1)(1)

Àayakar Bhavan, M.K. Road

Mumbai 400020

प्रत्यर्थी/Respondent

स्थायी लेखा सं./PAN - AMHPS6152L

अपीलार्थी की ओर से / Appellant by: None

प्रत्यर्थी की ओर से/ Respondent by: Shri Abani Kanta Nayak

सुनवाई की तारीख /Date of Hearing : 26.11.2015

घोषणा की तारीख/Date of Pronouncement : 30.11.2015

आदेश / ORDER

Per Jason P. Boaz, AM

This appeal by the assessee is directed against the order of the CIT(A)-34, Mumbai dated 25.05.2012 for A.Y. 2006-07.

2. From the details on record it is seen that hearings in this case were fixed on 13.08.2013, 05.11.2013, 27.01.2014, 21.04.2014, 07.07.2014, 18.09.2014, 01.12.2014, 04.02.2015, 13.04.2015,

27.03.2015, 24.09.2015 and on these dates while the learned D.R. was present, none appeared on behalf of the assessee. Again today, i.e. on 26.11.2015 when the case was called for hearing none appeared on behalf of the assessee. In view of the opportunities offered and not availed by the assessee, we proceed to dispose off this appeal with the assistance of the learned D.R. for Revenue and the material on record.

3. The facts of the case, briefly, are as under: -

3.1 The assessee, dealing in the business of sale and purchase of old motor cars, filed his return of income for A.Y. 2006-07 on 30.04.2007 declaring income of ₹1,12,430/-. The case was processed under section 143(1) of the Income Tax Act, 1961 (in short, 'the Act') and the case was taken up for scrutiny. The assessment was concluded under section 143(3) of the Act vide order dated 30.12.2008 wherein the income of the assessee was determined at ₹12,71,765/- as against the returned income of ₹1,12,430/- in view of the disallowances/additions on account of excess depreciation claimed, 5% disallowance of expenses claimed, short term capital gains and addition of cash deposits of ₹10,02,800/- in assessee's account with Development Credit Bank.

3.2 Aggrieved by the order of assessment for A.Y. 2006-07 dated 30.12.2008, assessee preferred an appeal before the CIT(A)-34,

Mumbai. The learned CIT(A) dismissed assessee's appeal vide order dated 25.05.2012.

4. Aggrieved by the order of the CIT(A)-34, Mumbai dated 25.02.2012 for A.Y. 2006-07, assessee has preferred this appeal raising the following grounds: -

- "1) The learned CIT(A) erred in rejecting the additional evidence and confirming the addition made by A.O.*
- 2) The Appellant reserves the right to add, to delete and/or amend any of the foregoing ground of appeal."*

4.1 The sole issue raised in this appeal (supra) is directed against the action of the authorities below in rejecting the additional evidences sought to be put forth by the assessee, inter alia, for explaining the cash deposits and withdrawals made by assessee in his bank account with Development Credit Bank, Santa Cruz Branch, Mumbai in the year under consideration.

4.2 From a perusal of the order of assessment, it emanates that in the course of assessment proceedings the Assessing Officer (AO) noticed that assessee had deposited cash amounting to ₹10,02,800/- in his savings bank account No. 026106000000140 with Development Credit Bank, Santa Cruz, Mumbai. The AO required assessee to explain the said cash deposits in excess of ₹50,000/-. The AO observes that assessee initially did not respond and when he did, the explanation put forward was that the cash deposits were out

of receipts from his business of sale and purchase of old cars and cash withdrawals were made for purchasing cars. The AO notes that in spite of opportunities offered, assessee did not furnish any details or proof for the purchases or sales of cars resulting in the cash deposits and withdrawals in the said bank account with Development Credit bank. In this view of the matter, the AO proceeded to treat the cash deposits as undisclosed income of assessee and bring the same to tax in assessee's hands.

4.3 On appeal, assessee submitted before learned CIT(A) that AO's findings in the order of assessment on this issue was very harsh. Assessee submitted that he was ill and therefore could not attend before AO to clarify the matter. It was also contended that assessee's reply was submitted on 12.11.2008, with all necessary documents to explain the said cash deposits and pleaded for an opportunity to establish his claims before AO as he has not considered the material placed on record. It was also submitted that receipts were issued to parties for sale of cars, bearing car numbers, cheque numbers, etc. The learned CIT(A) admitted that a bunch of sale receipts of cars for the entire year was furnished before him with a request to admit the same as additional evidence under Rule 46A of the I.T. Rules, 1962. It was also submitted that similar evidences were furnished before

AO in assessment proceedings for the subsequent A.Y. 2007-08 and the assessment was completed accepting the same.

4.3.1 According to the learned CIT(A), assessee failed to fulfill the conditions laid down to fall within the ambit of Rule 46A. The learned CIT(A) was of the view that assessee failed to afford the opportunities to furnish the details called for by AO and submitted only other details which was general in nature, but not specifically the sale receipts issued by him for sale of cars to various parties. In that view of the matter, the learned CIT(A) dismissed assessee's appeal.

4.4 Before us, the learned D.R. for Revenue took us through the orders of the authorities below. We find from a perusal thereof that the facts that emerge from the record indicate that the AO required assessee to explain the source of the cash deposits of ₹10,02,800/- and withdrawals in his savings bank account with Development Credit Bank. It is seen that between 16.10.208 and 12.12.2008, assessee was afforded three opportunities of being heard in the matter by AO, one of which assessee did not attend and the other in which a copy of the bank statement of the said account of assessee and general details of the expenses was furnished. Subsequent thereto, it is mentioned that assessee had not furnished receipts for sale/purchase

of old cars which were called for and therefore the cash deposits are treated as undisclosed income and brought to tax in his hands. On appeal, the learned CIT(A) did not admit the additional evidence stating that assessee did not fall within the ambit of Rule 46A and consequently dismissed assessee's appeal.

4.4.1 On an appreciation of the material on record, in the orders of the authorities below, we find that assessee's appeal has been dismissed by the CIT(A) without due and proper application of mind. The recorded opportunities afforded to assessee in assessment proceedings, in a period of less than three months, were only three; during which the assessee furnished the extract of the bank account and an explanation in respect of expenses incurred. It is seen that, while AO called for assessee's explanation in respect of both cash deposits and cash withdrawals from assessee's said bank account, he proceeded to make an addition of only the cash deposits of ₹10,02,800/- in the said bank account. What of the cash withdrawals in respect of which, assessee's explanation was called? It is seen that, conveniently, neither the AO nor the CIT(A) has addressed this issue. This leads us to the view that the orders of the authorities below have been passed in haste, without proper application of mind and ignoring the tenets of equity and justice. The purpose of

assessment is to assess and bring to tax the correct income of assessee. In the case on hand, this appears to have been given a go by. In our considered view, on the basis of the facts of the case and the material on record, we are of the opinion that the additional evidence in the form of sale and purchase receipts of cars during the relevant year, admittedly filed by assessee before learned CIT(A), ought to have been admitted by learned CIT(A) under Rule 46A(iv), since sufficient and reasonable opportunity of hearing and to file details/adduce evidence and explanations were not afforded by AO at the time of passing the order of assessment for A.Y. 2006-07 and we hold and direct accordingly. The learned D.R. fairly admitted that he had no objection for the matter of examination and adjudication in respect of cash deposits/withdrawals from assessee's said bank account be restored to the file of AO.

4.4.2 In the light of the factual matrix of the case, as discussed above, we set aside the orders of the authorities below for A.Y. 2007-08 and direct the admission of additional evidence admittedly filed by assessee before the learned CIT(A) on the issue of cash deposits/cash withdrawals in assessee's saving bank account with Development Credit Bank, Santa Cruz Branch, Mumbai and restore the matter for fresh examination to the file of AO in the light of our

observations. Needless to add, AO is directed to afford assessee adequate opportunity of being heard and to file details/ submissions required in this regard. It is accordingly ordered.

5. In the result, assessee's appeal for A.Y. 2006-07 is treated as allowed for statistical purpose.

परिणामतः निर्धारिती की अपील सांख्यिकीय उद्देश्य के लिए स्वीकृत की जाती है।

Order pronounced in the open court on 30th November, 2015.
आदेश की घोषणा खुले न्यायालय में दिनांक: 30.11.2015 को की गई।

Sd/- (Pawan Singh) न्यायिक सदस्य/ Judicial Member	Sd/- (Jason P. Boaz) लेखा सदस्य/ Accountant Member
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मुंबई Mumbai, दिनांक Dated 30th November, 2015

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) - 34, Mumbai
4. आयकर आयुक्त / The CIT - 24, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, "G" Bench ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ By Order

सत्यापित प्रति //True Copy//

सहायक पंजीकार /Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई/ITAT, Mumbai

n.p.