

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "जी" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL " G" BENCH,**  
**MUMBAI**

**BEFORE HON'BLE S/SHRI SAKTIJIT DEY (JM), AND ASHWANI TANEJA (AM)**

आयकर अपील सं./I.T.A. No.1343 and 1344/Mum/2014  
(निर्धारण वर्ष / Assessment Year:2005-06 & 2006-07)

Asstt.Commissioner of Income Tax, CC 43, Room No.659, 6 <sup>th</sup> floor, Aayakar Bhavan, M K Road, Mumbai-400020	<b>बनाम/</b> Vs.	Mr. Waize M Ali, Kennedy House, 2 <sup>nd</sup> floor, Goregaonkar Road, Nana Chowk, Mumbai
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN. :AIQPA6270N

अपीलार्थी ओर से / Appellant by	Shri Vachaspati Tripathi
प्रत्यर्थी की ओर से/Respondent by	Shri Shri N R Agrawal

सुनवाई की तारीख / Date of Hearing :14.10.2015  
घोषणा की तारीख /Date of Pronouncement:04. 12.2015

**आदेश / O R D E R**

**Per ASHWANI TANEJA, AM:**

These two appeals by the Revenue are directed against the common order dated 20.12.2013 passed by the Ld.CIT(A)-37, Mumbai, decided against the assessment order passed u/s 143 r.w.s. 147 of the Income Tax Act, 1961 for the assessment years 2005-06 & 2006-07. Since, these appeals are directed against

the same assessee, these appeals were heard together and for the sake of convenience disposed of by this consolidated order.

2. Since grounds taken by the revenue are common in both the appeals, for the sake of brevity, we are reproducing grounds taken by the assessee for the assessment year 2005-06.

“1” On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made on protective basis in the hands of the assessee in respect of amounts deposited in the joint bank account with Ms Chandbibi Zaidi; without appreciating the fact that the assessee is a student studying outside India, with no independent source of income.

2. "On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made on protective basis in the hands of the assessee respect of amounts deposited in the joint bank account, jointly held with Chandbibi Zaidi, by incorrectly interpreting the remand report of the Assessing Officer and arriving at the wrong conclusion that there are no unexplained credits found in the said joint bank account"

3. Brief facts of the case are that a search action was conducted u/s 132(1) of the Income Tax Act, 1961 (the Act) in the premises of Chandbibi Zaidi group of cases on 20.8.2009. During the course of search, a bank account in the joint name of assessee and Chandbibi Zaidi with Nova Scotia Bank, Nariman Point Branch, Mumbai was found. The assessee is son of sister of Chandbibi Zaidi. At the time of

search, a deposit of Rs.53,32,113/- including interest in FY-2004-05 was found in the bank account of the assessee. This amount was not offered to tax. Therefore, the case was reopened u/s 147. The assessee was issued show cause notice calling upon him to show cause as to why these deposits should not be treated as unexplained investment u/s 69B of the Act. The assessee replied the said notice and also filed details, the AO was not satisfied and added a sum of Rs.20,85,614/- to the total income of the assessee as unexplained investment u/s 69B of the Act. Aggrieved by this, the assessee contested the matter before the Ld. CIT(A).

4. Before the Id. CIT(A), the assessee filed details and contended that the interest in the bank account, for which the addition has been made, were made either in the earlier years or these have been explained with the help of documentary evidence. The Id. CIT(A) called for the remand report from the AO. The Id. CIT(A) considered the remand report in the case of Ms Chandbibi Zaidi and after considering the remand report and the submissions of the assessee and the material placed by the assessee, he deleted the addition made by the AO in both years. Being aggrieved, the revenue is in appeal before the Tribunal.

5. At the time of hearing before us, Ld. AR submitted that the Id. CIT(A) had passed common order for the three assessment years i.e. AYs 2005-06 to 2007-08 and the appeal filed by the department for the assessment year 2007-08 has been decided in favour of the assessee by dismissing the appeal filed by the Revenue. The Ld.

Counsel for the assessee placed a copy of order passed by the Tribunal assessee's own case for AY 2007-08 in ITA No.1345/Mum/2014 dated 10.6.2015. It was further submitted that the Ld. CIT(A) has considered the remand report given in the case of Ms Chandbibi Zaidi dated 28.11.2013, wherein the AO had mentioned that the request for verification has been made by him with respect to the claim of the assessee about the sources of deposits made in the bank account and nothing wrong has been reported by the AO in the remand report. The Ld. CIT(A) has rightly considered the remand report and deleted the addition.

6. On the other hand, the Ld. DR relied upon the assessment order.

7. We have considered the rival contentions, gone through the orders of authorities below, considered the remand report in the cases of assessee as well as Ms Chandbibi Zaidi and also the other material placed before us during the course of hearing. We find that the Ld. CIT(A) has decided the appeals of assessee for three assessment years i.e. 2005-06 to 2007-08 by common order and the appeal of the assessee for the assessment year 2007-08 has already been decided by the Tribunal in favour of the assessee by dismissing the appeal of the Revenue. We find that the issue before us and in the decision of Tribunal for AY 2007-08 are identical and nothing contrary to the findings of the Tribunal or Ld. CIT(A) has been placed by the Ld. DR to deviate from the finding of the Ld. CIT(A) or the Tribunal.

8. Further, we find that the remand report dated 28.11.2013 in the case of Ms Chamndbibi Zaidi has also been considered by the Ld. CIT(A) while deciding the issue in favour of the assessee. On perusal of the remand report, we find that the AO had made verification of all the amounts for which the additions were made by him in the assessment order, and nothing wrong has been reported by the AO in his remand report. It was alleged by the AO in the assessment order that the impugned amounts for which the addition had been made in the hands of the assessee, actually belonged to Ms. Chandbibi Zaidi. Thus, as per the AO's own assertion, these amounts did not belong to the assessee. Thus, no addition deserves to be made in the hands of the assessee, in any case. Thus, viewed from any angle and keeping in view the complete facts and circumstances of the case as well as the order of the Tribunal for the assessment year 2007-08, we find that the addition was wrongly made by the AO in the hands of the assessee and the same has rightly been deleted by the Id. CIT(A). Therefore, no interference is called for in the order of Ld. CIT(A). Grounds raised by the Revenue for both the years are rejected.

9. In the result, the appeals filed by the revenue are dismissed.

Pronounced accordingly on 4<sup>th</sup> Dec, 2015.

घोषणा खुले न्यायालय में दिनांक: 4<sup>th</sup> Dec, 2015 को की गई ।

**Sd/-**  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(ASHWANI TANEJA)**  
**ACCOUNTANT MEMBER**

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मुंबई Mumbai: 4<sup>th</sup> Dec, 2015.

व.नि.स./ SRL , Sr. PS

**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)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई  
/  
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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