



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"H" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.1736/Mum./2015  
(Assessment Year : 2005-06)

Shri Hemant Sevantil Shah  
C/o Shri Prakash Jhunjhunwala  
5, Jolly Bhawan no.2, Gr. Floor  
7, New Marine Lines, Churchgate  
Mumbai 400 020  
PAN AALPS8106Q

..... Appellant

v/s

Income Tax Officer  
Ward-16(3)(1), Mumbai

..... Respondent

Assessee by : Shri Prakash G. Jhunjhunwala  
Revenue by : Shri Shrikant Namdeo

Date of Hearing - 15.11.2016

Date of Order - 25.11.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Aforesaid appeal at the instance of the assessee is directed against the order dated 11<sup>th</sup> October 2012, passed by the learned Commissioner (Appeals)-27, Mumbai, for assessment year 2005-06.

2. There is a delay of 798 days in filing the appeal. The assessee has filed a petition being supporting by an affidavit seeking condonation of delay. Explaining the cause of delay, the learned Authorised Representative submitted that the order passed by the learned Commissioner (Appeals) was not served on the assessee. He

submitted, on enquiry made with the learned Commissioner (Appeals) as well as the postal authorities, it was ascertained, though, the order was dispatched from the office of the learned Commissioner (Appeals) through speed post but there is no proof of delivery of the postal cover on the assessee. He submitted, probably the envelop carrying the order could not be served due to wrong postal address mentioned therein. He further submitted, even assuming that the order might have been served by the postal authorities, however, the assessee never received it. Further explaining, it was submitted, earlier the assessee along with his brother was staying in a residential house the address of which was mentioned in Form no.35, filed before the learned Commissioner (Appeals). However, due to family dispute and bitter relationship with his brother assessee was forced to leave that house and move to a new house located at Andheri (E), Mumbai. In this context, he referred to the family settlement deed dated 31<sup>st</sup> October 2012. He submitted, possibly due to strained relationship and since the assessee had left his house his brother either might have refused to accept the appeal order from the postal authorities or having accepted it did not handover the same to the assessee. He submitted, due to this reason, the assessee could not file the appeal in proper time. The Id. Authorised Representative submitted, the delay

caused since was due to a bonafide reason, the same may be condoned.

3. The learned Departmental Representative, however, opposed the condonation of the delay.

4. We have considered the submissions of the parties and perused the material available on record. From the documents submitted before us, we have found that the assessee had made enquiries both with the learned Commissioner (Appeals) as well as the postal authorities to ascertain service of the order. However, there is no conclusive proof available either with the learned Commissioner (Appeals) or with the postal authorities that the order sent through speed post was duly serviced on the assessee. Further, as it appears from the deed of settlement, there was dispute between the assessee who and his brother who were staying together in the address mentioned in Form no.35. However, the assessee was forced to leave the said house due to family dispute. Therefore, the contention of the assessee that if at all the order was served in the old address his brother may not have handed over the same to the assessee appears to be reasonable. We may further observe, by not filing the appeal on time, the assessee was not going to gain anything or benefited in any manner. On the contrary, by not filing the appeal assessee was

exposing himself to confirmation of the addition and consequent demand. Therefore, in our considered opinion, delay in filing of appeal is for bonafide reasons. We, therefore, condone the delay and admit the appeal for hearing on merit.

5. The only issue in dispute in the present appeal is in relation to addition of an amount of ₹ 1,72,26,730.

6. Brief facts are, the assessee an individual filed his return of income for the impugned assessment year on 31<sup>st</sup> March 2007, declaring total income of ₹ 98,682. During the assessment proceedings, from the information available on record, the Assessing Officer found that the assessee had made three cash deposits aggregating to ₹ 1,72,26,730 on 31<sup>st</sup> March 2005 in a saving bank account held with Mandvi Co-operative Bank Ltd., 110/111, Vyapar Bhawan, 49, P. D'melo Road, Mumbai 400 009. Alleging that in spite of specific query raised by him to prove the cash deposits, the assessee had failed to comply by furnishing any explanation, the Assessing Officer treated the amount of ₹ 1,72,26,730 as income from undisclosed sources and added to the income of the assessee. Though, the assessee challenged the addition before the learned Commissioner (Appeals), he also sustained the addition rejecting the contention of the assessee.

7. Learned Authorised Representative reiterating the stand taken before the Departmental Authorities submitted, the accounts where cash deposits of ₹ 1,72,26,730 were found to have been made are joint accounts held by the assessee with Shri Mitesh K. Shah. He submitted, quantum of cash deposits taken at ₹ 1,72,26,730, is also not correct as the Assessing Officer has considered deposit of ₹ 71,41,190, made on 31<sup>st</sup> March 2005 twice. Further, he submitted, Shri Mitesh K. Shah, in the course of his own appeal proceedings before the learned Commissioner (Appeals) against the very same addition made at his hands by the Assessing Officer has accepted the deposits made in the said joint account in Mandvi Co-operative Bank Ltd. as his own. Accordingly, the learned Commissioner (Appeals) has confirmed the addition at his hand. He, therefore, submitted the same amount again cannot be added at the hands of the assessee.

8. Learned Departmental Representative on the other hand, submitted neither before the Assessing Officer nor before the learned Commissioner (Appeals) assessee has produced any evidence to establish the fact that cash deposits found by the Assessing Officer in case of assessee are the very same accounts claimed to have been jointly held with Shri Mitesh K. Shah, and which according to the assessee has been owned up by Shri Mitesh K. Shah, in his income tax

proceedings. He, therefore, submitted, in the absence of any evidence furnished by the assessee addition was justified.

9. We have considered the submissions of the parties and perused the material available on record. Undisputedly, as per the information available with the Assessing Officer, cash deposits of ₹ 1,72,26,730, though, the figure has been disputed by the assessee, was found to have been made in a savings bank account held with Mandvi Co-operative Bank Ltd., 110/111, Vyapar Bhawan, 49, P. D'melo Road, Mumbai 400 009. It is the claim of the assessee that the said account has been held jointly with one Shri Mitesh K. Shah. The assessee has further submitted that addition of identical amount has also been made at the hands of the said person and in the course of appellate proceedings challenging the said addition Shri Mitesh K. Shah, has owned up the deposits made in the said joint account to be his own. However, on a perusal of the impugned assessment order, as well as order of the first appellate authority, we have noticed, though, the Assessing Officer has mentioned that savings bank account is held with Mandvi Co-operative Bank Ltd., however, there is no mention of the account number. Similarly, there is no finding by the Assessing Officer that it is a joint account. The finding of the learned Commissioner (Appeals) is also in the similar line. It is further evident from the order dated 14<sup>th</sup> November 2008 of the first appellate authority in case of

Shri Mitesh K. Shah, for the assessment year 2005–06, a copy of which has been placed at Page–5 of the paper book, though, out of five bank accounts maintained by Shri Mitesh K. Shah, in Mandvi Co-operative Bank Ltd., four were found to be joint account, however, nowhere in the order there is any finding that the joint accounts were held by Shri Mitesh K. Shah with the assessee. The assessee has not produced before us any documentary evidence to demonstrate that the cash deposits found in the bank account referred to by the Assessing Officer is jointly held with Shri Mitesh K. Shah, or are same accounts as have been referred to in the appeal order passed in the case of Shri Mitesh K. Shah, for the assessment year 2005–06. Therefore, in the absence of any documentary evidence to conclusively establish the fact that the cash deposits referred to in the bank account mentioned in the case of Shri Mitesh K. Shah, are the very same bank accounts, the cash deposits made wherein were considered for addition at the hands of the assessee, his claim that the addition should be deleted as Shri Mitesh K. Shah, has owned up such deposits is not acceptable. Therefore, we cannot delete the addition in the absence of any corroborative evidence and only on the basis of pleading of the assessee. However, it appears from record certain figures of cash deposits and the bank where such deposits have been made in both the cases, to certain extent, are matching. Keeping this

in view, we are of the opinion that the assessee deserves an opportunity to establish the fact that the bank accounts wherein the cash deposits have been made were jointly held with Shri Mitesh K. Shah, and he has owned up such deposits to be his own income. If the assessee is able to establish such facts by bringing clinching evidence on record, the Assessing Officer has to consider the issue of addition keeping in view the principle that the same deposits found in a common account cannot be added at the hands of two persons on substantive basis. With the aforesaid observations, we restore the matter back to the file of the Assessing Officer for deciding afresh after due opportunity of being heard to the assessee.

10. In the result, appeal stands allowed for statistical purposes.

Order pronounced in the open Court on 25.11.2016

**Sd/-**  
**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

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

**MUMBAI, DATED: 25.11.2016**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai