

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'आई' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1789/Mum/2011
(निर्धारण वर्ष / Assessment Year: 2006-07)

Income Tax Officer 4(2)(2) R. No.658, 6 th Floor, Aayakar Bhavan, Mumbai	बनाम/ Vs.	Jaihind Synthetics Ltd. 110, Ajanta Square, L.T.Road, Boriwali(W), Mumbai - 400092
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACJ2475R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Mukesh Chokshi
Department by:	Shri Pawan Kumar Beerla

सुनवाई की तारीख / Date of Hearing: 25.05.2016
घोषणा की तारीख /Date of Pronouncement:12.08.2016
आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 02.12.2010 passed by the Commissioner of Income Tax (Appeals) 11, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2006-07.

2. The revenue has raised the following grounds:-

- “1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified in deleting the addition of Rs.25,40,779/- even though the allegations against Mr. Muekesh Choksey about his alleged fraud were not finally proved since the cases were still pending.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified in deleting the addition of Rs.25,40,779/- without appreciating that the addition was made on the basis of documentary evidence showing that M/s.Ultratech Cement had made the payments by account payee cheques in the name of the assessee company after duly deducting tax at source and the same stood deposited in the bank account in the name of the assessee company and that the alleged charges of forgery were not proved.*
3. *On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition of Rs.10,00,000/- made u/s.69B of the Act by holding that Shri Mukesh M. Choksey had fraudulently used the name of the assessee company for providing the bogus capital to M/s.Soumya Trading & Finance Pvt. Ltd. ignoring that the AO had sufficient evidence and material on record to infer that the transaction was an unexplained investment made by the assessee company in M/s.Soumya Trading & Finance Pvt. Ltd.*
4. *On the facts and in the circumstances of the case, and in law, the CIT(A) was not justified in deleting the addition of Rs.20,137/- made on account of interest income from M/s. Goodvalue Stock Trading Pvt. Ltd. by holding that the assessee company was not involved in any of the transaction and the name was merely used by Shri Mukesh Chokshi ignoring that the AO had sufficient material on record to draw reasonable inference.”*

3. The brief facts of the case are that the assessee filed the return of income on 17.10.2006 under provisional acknowledgment No.90005400 declaring total loss to the tune of Rs.(-)16,63,620/-.

The same was processed u/s143(1) of the Income Tax Act, 1961 (in short “the Act”) on 15.10.2007 accepting the return filed. This return was subsequently selected for scrutiny and notice u/s.143(2) of the dated 19.10.2007 was issued and served upon the assessee on 27.10.2007. Thereafter, the notice u/s.143(2) and 142(1) of the Act were also issued and served upon the assessee. Thereafter, Assessing Officer assessed the income to the tune of Rs.38,12,920/- making certain additions mentioned therein. However, the assessee was not satisfied, therefore filed the appeal before the CIT(A) who deleted the addition on account of transactions with M/s. Ultratech Cement and M/s. Soumya Trading & Finance Pvt. Ltd. and on account of interest income received M/s. Goodvalue Stock Trading Pvt. Ltd. Aggrieved by deleting these additions the revenue has filed the appeal before us.

ISSUE NO.1 &2:-

4. Issue no.1 and 2 are interconnected therefore are being taken up together for adjudication. Under these issues, the assessee has challenged the deleting of the addition to the tune of Rs.25,40,779/- which was the transactions of the assessee company with Ultratech Cement. Before going further it is necessary to advert the finding of the CIT(A) on record:-

“3.6. I have carefully gone through the order of the Assessing Officer, his remand reports and report of the Addl. DIT

(Inv.) Unit-I, Mumbai and the submissions of the Authorized Representative of the appellant company. I find that one Shri Mukesh M. Chokshi and Shri Jaytesh Sampat had opened bank accounts in HDFC Bank Khar (West) Branch illegally in the name of the appellant company i.e. M/s. Jaihind Synthetics Ltd. The appellant company had no business connection with M/s.Ultratech Cement Ltd. to be able to earn commission income of Rs.25,40,779/-. Apparently this was an accommodation entry and given by Shri Mukesh M. Chokshi who is indulging in giving bogus accommodation entries to various parties. In this statement before the Addl. DIT(Inv.), Unit-I, Mumbai, Shri Mukesh Chokshi has admitted his wrong doings in no uncertain terms. Therefore, on the facts and the circumstances of the case, action lies against M/s.Ultratech Cement Ltd. for obtaining bogus accommodation entry and against Shri Mukesh M. Chokshi for providing such entry and not against the appellant company which has taken correction action in the matter by filing police complaint against Shri Mukesh M. Chokshi. Since, the name of the appellant company has beenwrongly dragged by Shri Mukesh M. Chokshi to give entry to M/s.Ultratech Cement Ltd., the only remedy available with the

appellant company was to file a police complaint against Shri Mukesh M. Chokshi which has been done by the appellant company to save its reputation. Further, none of the directors of the appellant company were involved in the said transactions of giving bogus entry to M/s.Autratch Cement Ltd. Under these circumstances, the addition made by the Assessing Officer in the hands of the appellant company is directed to be deleted and this ground of appeal is allowed.”

5. No distinguishable facts have been place on record. Shri Mukesh M. Chokshi and Shri Jayesh Sampat had opened bank accounts in HDFC Bank Khar (West) branch illegally in the name of the appellant company. The appellant company had no business connection with M/s.Ultratech Cement Ltd.. No commission of Rs.25,40,779/- was earned. There is no other evidence on record that the said transactions are related to the assessee company. Since the transactions were fake and was not relating to the assessee company, the assessee company was having only one option i.e. to file the complaint before the Police which he had done. Therefore in view of the said circumastances the CIT(A) has rightly dealt the issue which is not required to be interfeared with this appellatte stage.

ISSUE NO.3:-

6. Under this issue the assessee has challenged the deleting of the addition to the tune of Rs.10,00,000/- which was the transactions of the assessee company with M/s. Soumya Trading & Finance Pvt. Ltd.. Before going further it is necessary to advert the finding of the CIT(A) on record:-

“4.2. I have gone through the assessment order, remand reports and report of the Addl. DIT (Inv.) Unit-I, Mumbai and the submissions of the Authorized Representative of the appellant company. I find that the transactions with M/s. Soumya Trading & Finance Private Limited in the name of the appellant company was unauthorizedly carried out by Shri Mukesh M. Chokshi. This was admitted by Shri Mukesh M. Choksi before the Investigation Wing, on 6th April, 2010 in his statement in reply to question No.4 that Shri Mukesh M. Chokshi had provided bogus share capital of Rs.10,00,000/- to M/s. Soumya Trading & Finance Pvt. Ltd. The issue is similar to the ground No.2 as mentioned in para 3 of this appellate order. In view of the admission of guilt by Shri Mukesh M. Chokshi that he had used the name of the appellant company for providing bogus capital to M/s.Soumya Trading & Finance Pvt. Ltd., no addition can be made in the hands

of the appellant company. Consequently, the Assessing Officer is directed to deleted the addition made in this regard.”

7. No distinguishable facts have been place on record. Shri Mukesh M. Chokshi and Shri Jayesh Sampat had opened bank accounts in HDFC Bank Khar (West) branch illegally in the name of the appellant company. The appellant company had no business connection with M/s.M/s. Soumya Trading & Finance Pvt. Ltd... No commission of Rs.10,00,000/- was earned. There is no other evidence on record that the said transactions are related to the assessee company. Since the transactions were fake and were not relating to the assessee company therefore the same could not be treated on account of assessee company. The assessee company was having only one option i.e. to file the complaint before the Police which he had done. Therefore in view of the said circumstances the CIT(A) has rightly dealt the issue which is not required to be interfeared with this appellatte stage

ISSUE NO.4:-

8. Under this issue the assessee has challenged the deleting the addition to the tune of Rs.20,137/- which was the transactions of the assessee company with M/s. Goodvalue Stock Trading Pvt. Ltd...

Before going further it is necessary to advert the finding of the CIT(A) on record:-

“5.2. I have gone through the submission of the Authorized Representative on the above issue. I find that the issue is identical to the issue raised in the grounds of appeal no.2 and 3 above. The evidences placed on record proved beyond out that the appellant company was not involved in any of these transactions and its name was merely used by Shri Mukesh M. Chokshi for his personal benefits. For the similar reasons as given in the foregoing para no.3 and 4, I am of the view that no addition is called for in the hands of the appellant company in respect of the aforesaid interest income. In result, this ground of appeal is allowed.”

9. No distinguishable facts have been place on record. Shri Mukesh M. Chokshi and Shri Jayesh Sampat had opened bank accounts in HDFC Bank Khar (West) branch illegally in the name of the appellant company. The appellant company had no business connection with M/s.Goodvalue Stock Trading Pvt. Ltd. No interest income of Rs.20,137/- was earned. There is no other evidence on record that the said transactions are related to the assessee company. Since the transactions were fake and were not relating to the assessee company, the assessee company was having only one option i.e. to file

the complaint before the Police which he had done. Therefore the same could not be treated on account of assessee company. The assessee company was having only one option i.e. to file the complaint before the Police which he had done. Therefore in view of the said circumstances the CIT(A) has rightly dealt the issue which is not required to be interfere with this appellate stage

10. In the result, the appeal filed by the **revenue is hereby dismissed.**

Order pronounced in the open court on 12th August, 2016.

Sd/-
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 12th August, 2016

MP

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
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**