

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "एच" मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI**  
**BEFORE S/SHRI B.R.BASKARAN, AM AND PAWAN SINGH, JM**

आयकर अपील सं./I.T.A. No.2541 and 2542/Mum/ 2014  
(निर्धारण वर्ष / Assessment Year: 2008-09)

Dy.Commissioner of Income Tax -9(2), Room No.218, 2 <sup>nd</sup> floor, Aayakar Bhavan, M K Road, Mumbai-400020	<b>बनाम/</b> Vs.	M/s Heenal Security System (Ind), Pvt.Ltd., G-15, Gundecha Ind. Complex, Patankarwadi, Akurli road, Kandivali (E), Mumbai-4000101.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN. :AABCH5432P

अपीलार्थी ओर से / Revenue by	Shri Abhishekh Sharma
प्रत्यर्थी की ओर से/Assessee by	Shri Bhupendra Shah

सुनवाई की तारीख / Date of Hearing : 21.1.2016  
घोषणा की तारीख /Date of Pronouncement: 03. 2.2016

**आदेश / ORDER**

**Per B R Baskaran, AM:**

Both the appeals filed by the Revenue are directed against the two separate orders passed by the Id. CIT(A)-20, Mumbai and they relate to the assessment year 2008-09.

2. Appeal No.2541/Mum/2014 relates to the quantum assessment proceedings and other appeal relates to penalty proceedings.

3. We shall first take up the appeal relating to quantum assessment proceedings. The addition of Rs.29.78 lakhs made under section 68 of the

Income Tax Act, 1961 and disallowance of expenses of Rs.57.19 lakhs, having been deleted by the Id.CIT(A), the Revenue has filed this appeal.

3.1 The Revenue has submitted that the Id.CIT(A) has violated the provisions of Rule 46A of the Income Tax Rules, 1962.

4. We have heard the parties and perused the record. The assessment under consideration was completed by the AO to the best of his judgment under section 144 of the Act. The AO noticed that the share capital of the assessee was increased by Rs.4.00 lakhs and unsecured loan has increased by 25.78 lakhs. Hence, the AO assessed income of Rs.29.78 lakhs as unexplained cash credits under section 68 of the Act. The AO further noticed that the assessee had claimed a loss of Rs.57.19 lakhs. Since the assessee failed to furnish the details of expenses, the AO disallowed the claim of loss.

5. In the appellate proceedings, the assessee appears to have filed certain details before the Id.CIT(A). Hence, the Id.CIT(A) called for the remand report from the AO. The AO objected to the admission of additional evidences under Rule 46A of the Rules on the ground that the assessee has failed to show that the conditions prescribed under Rule 46A for admission of additional evidence was fulfilled by it. Hence, the Id. CIT(A) proceeded to examine the additions on his own. With regard to the addition made under section 68 of the Act, the Id.CIT(A) noticed that the assessee has received share application money and unsecured loans from its Directors only. Accordingly, the Id. CIT(A) took the view that the assessee has discharged the primary responsibility placed upon it under section 68 of the Act and accordingly, deleted the said addition. With regard to the disallowance of loss claimed by the assessee, the Id.CIT(A)

took the view that the AO has failed to provide an opportunity to the assessee to substantiate the claim and further the AO did not bring any evidence on record to support the disallowance. Accordingly, he directed the AO to accept the loss returned by the assessee.

6. We are unable to agree with the view taken by the Id. CIT(A) in respect of cash credits. It is a well settled proposition of law that initial burden to prove the cash credit is placed upon the assessee u/s 68 of the Act, i.e. the assessee is required to establish three main ingredients, viz., Identity of the Creditors, Genuineness of the Transactions and Creditworthiness of the Creditors. In the instance case, the Id.CIT(A) has discussed about Identity of the Creditors since the loan as well as share capital was given by the Director of the assessee-company. With regard to the Genuineness of the Transaction it appears that the assessee had received the amount through banking channels. However, we notice that the Id.CIT(A) has failed to discuss anything about the creditworthiness of the creditors. It is not also clear as to whether the assessee furnished evidences or materials to support the credit worthiness of the creditors. Hence, we are of the view that the Id. CIT(A) was not justified in deleting the addition without examining the creditworthiness of the creditors. Accordingly, we set aside the order of Id. CIT(A) on this issue and restore the same to the file of the AO for making fresh examination of the same.

7. With regard to the disallowance of loss, we notice that the Id. CIT(A) has not examined the details of expenditure at all. Even though the assessee has failed to co-operate with the AO which forced him to pass the assessment order to the best of his judgment under section 144 of the Act, yet we notice that the Id. CIT(A) has found fault with the AO in not providing opportunity to the assessee and also in not bringing any material

to support the disallowance. In our view, the AO was forced to take adverse view only because the assessee has failed to co-operate with him. Hence, in our view the Id. CIT(A) was not justified in finding fault with the AO. However, in the interest of justice, we are of the view that the assessee should be given one more opportunity to substantiate its claim. Accordingly, we restore this issue to the file of the AO for fresh examination.

8. In the set aside proceedings, the assessee is directed to extend full co-operation to the AO by furnishing all the information and explanation that may be called for by the AO.

9. The next appeal relates to the penalty levied by the AO. Since all the issues, which gave rise to penalty, have been restored to the file of the AO, the impugned penalty order shall not survive on its own. Accordingly the order of Ld CIT(A) is liable to be set aside. We order accordingly. However, in the set aside proceedings, the AO is free to initiate penalty proceedings, if it is found necessary by him.

10. In the result, both the appeals filed by the revenue are treated as allowed for statistical purpose.

Pronounced accordingly on 3<sup>rd</sup> Feb. , 2016.

घोषणा खुले न्यायालय में दिनांक: 3<sup>rd</sup> Feb. 2016 को की गई ।

Sd

sd

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**( B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

मुंबई Mumbai: 3<sup>rd</sup> Feb., 2016.

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.

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आदेशानुसार/ BY ORDER,

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