

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI JASON P. BOAZ, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./ I.T.A. No. 3593/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2009-10)

Shri Vineet Sharma B-303, Garden Estate, Bhagat Singh Nagar, Part-2, Opp. Vibgyor School, Link Road, Goregaon (West), Mumbai-400 062.	बनाम/ Vs.	Income Tax Officer Ward No 24(1)(2), Room No.608, C-13, 6 th Floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra (E) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.		ATLPS 0343N
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Vishwas Mehendale
प्रत्यर्थी की ओर से/Respondent by	:	None

सुनवाई की तारीख / Date of Hearing	:	16/09/2016
घोषणा की तारीख / Date of Pronouncement	:	21/09/2016

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The Present Appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)- 34, dated 24.02.2014 on the grounds of appeal mentioned herein below.

1. *“On the facts and circumstances of the case and in law, Hon’ble CIT(A)-34, has erred in confirming the addition of Rs.11,35,000/- being peak amount, as undisclosed investment u/s 69A by overlooking the fact that, the source of funds was properly explained during the course of appellate proceedings before Hon. CIT-A.”*
2. The brief facts of the case are that the assessee being an individual is a Real Estate Broker and Consultant. During the year under consideration, the assessee derived income from business. The assessee has filed the return of income on 27.07.09 declaring total income of Rs.4,01,260/-. The return was processed u/s 143(1) of the IT Act,1961. Subsequently the case was selected for scrutiny through CASS and after serving statutory notices and receiving reply from the assessee assessment order was passed by AO thereby making additions u/s 69A of the Act,1961 by considering the peak amount of Rs.11,00,000/- of cash sales cheque deposited by the assessee and further addition of Rs.35,000/- was also made on the ground that the assessee failed to prove by way of documentary evidence that said amount of Rs.35,000/- as commission receipt and was forming part of gross receipt.
3. Aggrieved by the order of the AO, assessee filed the appeal before CIT(A) and the CIT(A) after considering the case of the assessee dismissed the appeal of the assessee vide order dated 24.02.2014.

4. Aggrieved by the order of CIT(A), the assessee filed the present appeal before us on the grounds mentioned herein above.

5. The only ground raised before us by the assessee is that he CIT(A) has erred in confirming the addition of Rs.11,35,000/- being peak amount as undisclosed investment u/s 69A by overlooking the fact that, the source of the funds was properly explained during the course of appellate proceedings before the CIT(A).

6. We have heard the counsels for both the parties on this ground and we have also perused the material placed on record as well as the orders passed by the revenue authorities. Ld. AR appearing on behalf of assessee has taken the same arguments which he had submitted before CIT(A) and the same is also reproduced in para no.3 of the CIT(A) order.

“3. During the course of appellate proceedings the appellant has made the following submissions.

The nature of business of the assessee is of real estate agency, wherein he has received his share of commission into his bank directly in form of cash & cheque, from another local broker Ms. Renu Agarwal directly, who was also part of the same deal of property situated outside Mumbai. Her PAN number was already submitted to the assessing officer.

These deposits are already part of the gross receipts credited to the Income & Expenditure Account totaling to Rs. 21,57,960/-. Thus adding them again to the income u/s. 69A of the IT Act, 1961, as undisclosed income will lead to double taxation in the hands of the assessee, causing undue hardships to the assessee, which we request your goodself not to add to the taxable income of the assessee.

To prove commission of Rs. 35,000/- is already included in the income-

The assessee has received Rs. 31,395/- into his bank by cheque from M/s. Infra Dredge on 13/01/2009. This amount is commission of Rs. 35000/- after TDS @ 10.3%. The same is visible in the appellant form 26AS. The same is already included in the gross receipts credited to his income & expenditure account & adding the same again u/s. 69A as undisclosed investment, will lead to double

taxation in the hands of the assessee, thereby causing undue hardships to him, which we request your goodself not to add to the taxable income of the assessee.

We continue with our stand that the learned assessing officer has added again the same income which was already disclosed in his return of income treating it as undisclosed income and investment, basis which we request your goodself not to add the bank deposits into income of the assessee.”

6.1 Ld. CIT(A) has decided this issue in para no.4&5 of its order. The operative para is reproduced herein below for the sake of reference:

“4. I have carefully considered the submissions made by the appellant and the impugned assessment order. The appellant has submitted before the AO that due to the nature of business he had to accept cash deposits and it is not possible to provide any 3rd party confirmations for such cash deposits. He further submitted that he was a part of transaction which was not situated in Mumbai, hence his commission was received by his counterpart in that city and deposited into his ICICI Bank account.

5. Before the Appellate authority the appellant submitted that the sum total of Commission earned by him during the year, both are forming a part of the gross receipts of Rs. 21,53,960/- in Profit & Loss account. Even though the appellant claims that the deposits are part of the income shown, he could not explain satisfactorily before the AO or the CIT(A). In the circumstances the appeal is dismissed.”

6.2 From the co-joint reading of the impugned order as well as arguments raised by assessee we observe that the CIT(A) has rejected the claim of the assessee citing the absence of documentary evidence as well as in the absence of satisfactory explanation. The Id. AR, however, drawn our attention to the paper book filed which contains copy of pass book, bank statement and ledger account etc. Ld. AR has also relied upon the copy of Gross Receipt Summary Partywise submitted by assessee which is at page no. 32 of paper book which were filed before the authorities below.

7. After considering the arguments of both the parties and the submissions documents and evidences filed by the assessee before the authorities below as mentioned in para 6.2 of this order, we observe that the CIT(A)/AO have not examined or considered the documents filed by assessee. We, therefore, considering the interest of justice, equity and fair play, are of the considered view that the orders of the ld. CIT(A) are to be set aside and the matter be restored back to the file of AO to examine and verify the documents filed by assessee and to adjudicate thereon after providing reasonable opportunity to the assessee. Needless to mention here, the views expressed by us could not be taken as an expression on merits of the present case.

8. In the result, the assessee's appeal is allowed for statistical purpose.

Order pronounced in the open court on 21st September , 2016

Sd/-
(Jason P. Boaz)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :21.09.2016
Ps. Ashwini

Sd/-
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai