

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "ए" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE HON'BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.546/Mum/2014
(निर्धारण वर्ष / Assessment Year :2005-06)

Asstt. Commissioner of Income Tax, Central circle-20, 401, 4 th floor, Aayakar Bhavan, M K Road, Mumbai-400020.	बनाम/ Vs.	Shri Amarjit D Negi, 5-A, Sangam Building, Near HDFC bank, Juhu Versova Link road, Andheri (W), Mumbai-400053
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN No. :AAMPN1956A

अपीलार्थी ओर से / Appellant by:	Ms Anupama Shukla
प्रत्यर्थी की ओर से/Respondent by	Shri D A Shetty

सुनवाई की तारीख / Date of Hearing : 21.7.2016

घोषणा की तारीख /Date of Pronouncement : 6.10.2016

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal filed by the revenue and is directed against the order of the Ld. CIT(A)-9, Mumbai dated 7.11.2013 pertaining to A.Y.2005-06.

2. The issue raised in the first grounds of appeal is against the deletion of addition by the Id. CIT(A) as made by the AO on account of unaccounted

sales which was made by the AO on the basis of entries in the diary seized during the search action.

3. Facts of the case are that there was a search action under section 132(1) of the Income Tax act, 1961 on Nagi Group on 30.5.2008 to which the assessee was connected. A notice under section 153A was issued on 5.9.2008 and served upon the assessee which was complied by him by filing the return of income on 30.8.2010 declaring an income of Rs.1,30,774/- which was the same as declared by the assessee in the original return filed on 12.12.2005. Thereafter statutory notices u/s 143(2) and 142(1) were issued and served upon the assessee. Certain documents were seized during the course of search proceedings marked as A-2 and A-3 from the residential premises of the Mrs.Chandra A Nagi and Mr. Amarjet Nagi, 1001, A Patliputra, Four Bangalow, Andheri (W), Mumbai. Vide order sheet entry dated 12.11.2010, the assessee was asked to give page-wise comments on A-2 and A-3 and also asked as to why the amount of entries as contained in these annexure should not be added to the total income of the assessee. The assessee replied to the show cause notice which was rejected by the AO and as a result added interalia a sum of Rs.61,58,704/- on account of unaccounted sales as stated in para 4.1 to 4.3 of the assessment order by framing the assessment under section 143(3) read with section 153A of the Act vide order dated 30.12.2010 by assessing the total income at Rs.77,97,240/-. Aggrieved by the order of AO, the

assessee preferred an appeal before the Id. CIT(A) who deleted the addition made by the AO by observing as under :

"5.2 I have very carefully considered the matter. I have examined the order of the A.O and the submissions of the appellant. I have also scrutinized the copies of the seized material as are available on record and also considered the paper book submitted by the appellant. The A.O noticed that there are certain financial entries in the diary seized during the search operations and assuming the same as unaccounted sales in the books of the appellant. The appellant, on its part has submitted detailed working for the purpose of explaining the entries, and has explained that the entries are not actual sales, but or estimates made in pursuant to enquiries made by one of its customers. It also observed from the order of assessment that the entries as seen in the diary have only been assumed by the A.O that it represent sales. The appellant is the business of dealing in paintings and arts -arid interior decoration etc. It quite plausible that the customers would be making enquiries with regard rates, estimated cost of various projects with different permutations and combinations which need to be worked out. Therefore, each and every entry the personal diary of the appellant cannot be the sales of the appellant particularly when there is no evidence of any amount received by the appellant with respect to such entries. The AO has simply relied on the entries made in the diary of the appellant, presuming them to be sales, without bringing any evidence on record. There is no corroborative evidence with the AO to hold that sales have actually taken place, or that any amount in respect of such sales has been actually received by the appellant either through cheque or cash that any expenditure has been incurred by the appellant in this behalf. Hence it is clear that the AO could not substantiate with corroborative evidence that the evidence that the entries made in the diary are not merely estimates but are actual sales. On the contrary, the appellant during the course of appellate proceedings has explained these entries in detail. The appellant, with detailed working of different permutations/ combinations has been able to explain that the entries are merely projections related to sales enquiry and no actual sale has taken place in respect of such entries. There is no evidence to prove otherwise and in the said event it is held that the entries as observed in A2 are but cost estimations for different permutations and combinations. Hence the addition as made the A.O assuming the financial entries as sales not recorded in the books and thereby making additions on unaccounted sales of Rs.1597,783, Rs.13,12,877. Rs.16,72,413/ and Rs.15,75,631/- stand deleted "

Aggrieved by the order of AO, the revenue preferred an appeal before us.

4. The Id. AR submitted before us that the entries seized during the course of search operation did not represent any unaccounted sales as alleged by the AO but only were estimates made in pursuance of enquiries by the customers which was wrongly presumed by the AO to be unaccounted sales. Since the assessee is in the business of dealing in painting, arts and interior decoration etc he has to work out the estimates as and when there are enquiries from the customers. The Id AR further submitted that no further evidence was found during the course search which corroborate these calculation to be sales of the assessee and heavily relied on the order of Id.CIT(A) who has taken correct view in the matter by reversing the order of AO.

5. Per contra, the Id. DR submitted before us that the sales entries found in the diary during the course of search action represented uncounted sales and rightly added by the AO to the income of the assessee. The Id. DR prayed for that the order of Id.CIT(A) be set aside and that of AO be restored.

7. We have considered the rival submissions and perused the material placed before us including the orders of the authorities below. The made additions for unaccounted sales on the basis of entries in the diary found during the course of search which was deleted by the CIT(A) as having no basis and corroborating materials after giving detailed findings as given above. We are in agreement of the observations of the Id.CIT(A) that each

and every entry in the diary seized during the course of search proceedings could not be treated as unaccounted sales especially when the assessee has duly explained each and every entry in the diary as estimates worked out with respect to various customers" queries by the assessee as he is in the business of painting, art work and interior decoration work. Moreover, there is no other materials found by the search team which corroborate the entries to be unaccounted sales. Therefore, we are not inclined to interfere with the order of Id.CIT(A) as it does not contain any infirmity of law or facts. Accordingly, we upheld the order of the Id.CIT(A) by dismissing the appeal of the revenue.

8. In the result, the appeal of the revenue is dismissed.

The above order was pronounced in the open court on 6th Oct, 2016.

घोषणा खुले न्यायालय में दिनांक: 6th Oct,2016 को की गई ।

Sd
(JOGINDER SINGH)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 6th Oct, 2016.

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अद्येषित/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,

True copy

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