

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai**

**Before Shri P K Bansal, Vice President
and Shri Pawan Singh, Judicial Member**

ITA No.72 /Mum/2014
(Assessment Year: 2009-10)

Shri Manish Kumar Parikh 1001 Shree Tower, Link Road Opp. Sailee Hospital Above Link View Hotel Borivali (W), Mumbai	Vs.	Income Tax Officer-25(2)(2) Mumbai
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PAN – AAFPP9607D

Appellant

Respondent

Appellant by: None
Respondent by: Shri Suman Kumar

Date of Hearing: 12.09.2017
Date of Pronouncement: 12.09.2017

ORDER

Per P.K. Bansal, Vice President

This appeal has been filed by the assessee against the order of the CIT(A)-35, Mumbai dated 24.10.2013 for A.Y. 2009-10.

2. Even though the assessee has taken as many as seven grounds of appeal, in that grounds of appeal there are only two issues involved, one relating to sustaining of the addition of ₹10,34,250/- under section 68 of the Income Tax Act while the other issue relates to the sustaining of addition of ₹4,36,557/- as unexplained cash credit under section 68 of the Act. We noted that this appeal has been fixed several times from 09.06.2015 till today. Every time notice through Registered AD was sent but none appeared on behalf of the assessee. We, therefore, decided to dispose of the appeal on merit after hearing the learned D.R.

3. So far as issue No. 1 relating to sustaining of addition of ₹10,34,250/-, after hearing the learned D.R. and going through the orders of the tax authorities below we noted that the AO received information that

the assessee has deposited a sum of ₹10,34,250/- in his saving bank account with The Saraswat Co-operative Bank Ltd. during the impugned assessment year but since he did not file any details Saraswat Co-operative Bank Ltd. was not part of the regular books of account the AO made addition of ₹10,34,250/- under section 68 of the Income Tax Act. The assessee went before the CIT(A). Before the CIT(A) assessee submitted that there were deposits as well as withdrawals from the said account and if at all addition has to be made that would be made in respect of the peak credit which he has worked out at ₹1,60,000/-. The CIT(A) did not agree with the assessee and even did not give any finding on the peak credit as has been worked by the assessee at ₹1,60,000/- and upheld the addition as made by the AO at ₹10,34,250/-.

4. The learned D.R. vehemently relied on the order of the tax authorities below.

5. We noted that it is a case where addition has been made in respect of the amount deposited in the bank account. It is a fact that there were withdrawals as well as deposits in the said bank account. The AO has not considered the withdrawals while making the addition under section 68. If the withdrawals were made by the assessee prior to the date of deposits the natural inference will be that the source of deposit will be the withdrawal made by the assessee. Under these facts we, in the interest of justice and fair play to both the parties, set aside the order of the CIT(A) and restore this issue to the file of the AO with the direction that the AO shall reduce the addition to the peak credit after verifying the peak credit as worked out by the assessee. The assessee is directed to work out the peak credit and submit the same before the AO. Thus, this ground is allowed for statistical purposes.

6. The second issue relates to the addition of ₹4,36,557/-. After hearing the learned D.R. and going through the orders of tax authorities below we noted that during the course of assessment proceedings the assessee has submitted that the sum of ₹4,36,557/- is an unsecured loan from his

father and the details has been shown in his father's return of income and income statement. There was further submission by the assessee that a deed of assignment was drawn between the father and the assessee which witnessed the handing over the entire business of M/s. Shreeji Traders, a proprietary concern, of the assessee's father. The said deed of assignment is dated 01.04.2008. The assessee paid a consideration of ₹25,000/- and agreed to purchase the entire business of the father and whatever amount was standing credited in father's name the same stand shown as loan in the books of the business of the assessee. Once the running business has been taken over and all the assets and liabilities of the running business will become the assets and liabilities of the assessee. The only inference, in our opinion, is that the capital standing in the name of the father in the books of account of the proprietary concern of the father names M/s. Shreeji Traders will become the liability of the assessee and will go in the books of the assessee as a sum payable to his father. It is not denied that this is a case of taking over of a running proprietary business by the assessee from his father. In view of these facts and the agreement which has been referred to under para 4 of the order of the CIT(A), we are of the view that the assessee has discharged all the onus as relied on him under section 68 of the Income Tax Act, i.e. identity, creditworthiness as well as genuineness of the transaction. Therefore, we delete the addition. Thus, the second issue stands allowed.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12th September, 2017.

Sd/-
(Pawan Singh)
Judicial Member

Sd/-
(P.K. Bansal)
Vice President

Mumbai, Dated: 14th September, 2017

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -35, Mumbai*
4. *The CIT - 25, Mumbai*
5. *The DR, "B" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.