

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, ए.मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Ramit Kochar, Accountant Member**

**ITA No.1163 /Mum/2013
Assessment Year: 2006-07**

Kiran Maganlal Shah, C/o- Mr. H.S. Nandu, Advocate, 228-A/3, Leela Bhavan, Near Kolwada Railway Station, Sion(East), Mumbai-400022	बनाम/ Vs.	Income Tax Officer-22(1)(3), 4 th Floor, Tower No.6, Vashi Railway Station Complex, Vashi, Navi Mumbai
(निर्धारिती / Assessee)		(राजस्व /Revenue)
PAN. No. AAKPS6654G		

निर्धारिती की ओर से / Assessee by	Shri Vimal Punmiya
राजस्व की ओर से / Revenue by	Shri Rajesh Kumar Yadav-DR

सुनवाई की तारीख / Date of Hearing :	19/09/2017
आदेश की तारीख /Date of Order:	25/09/2017

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 19/11/2012 of the ld. First Appellate Authority, Mumbai. The assessee has filed revised grounds of appeal. The first and second ground pertains to treating the evidence submitted under Rule-46A of the Income Tax Rules, 1962 and consequent addition of ₹ 2 lakhs made u/s 68 of the Income Tax Act, 1961 (hereinafter the Act).

2. During hearing, the ld. counsel for the assessee, Shri Vimal Punmiya, invited our attention to the agreement, (page-9 of the paper book) by claiming that the impugned amount was shown in earlier year and it was repaid, therefore, the Assessing Officer may be directed to examine the genuineness of the claim of the assessee. On the other hand, Shri Rajesh Kumar Yadav, ld. DR, though defended the addition but did not oppose if the matter may be examined afresh.

2.1. We have considered the rival submissions and perused the material available on record. We find that at

pages 9 to 22 of the paper book, there is a deed of assignment made on 05/08/2002 between Bhupatrai Ranchhoddas Gandhi along with heirs/executors and administrator and Naresh Maganlal Shah/Kiran Maganlal Shah. The Ld. Assessing Officer made disallowance of ₹2,80,000/- by treating the same as cash credit and consequent addition u/s 68 of the Act by opining that no PAN were provided of the loan creditors. The assessee is claiming that she is in a position to substantiate its claim. Considering the totality of facts and the circumstances narrated before us, the assessee is directed to produce the necessary evidence before the Ld. Assessing Officer, which will be examined by him to his satisfaction, thus, this ground of the assessee is allowed for statistical purposes.

3. The next ground pertains to confirming the addition of ₹4,65,000/- as unexplained investment u/s 69 of the Act. It was claimed that the amount was paid through cheque. The assessee has also claimed violation of Rule-46A of the rules.

3.1. We have considered the arguments of both sides and found that while making the addition, the Ld. Assessing Officer observed that, as per the agreement dated 05/08/2002, the assessee along with Shri Naresh Maganlal Shah, acquired a shop at Dadar for a consideration of ₹21 lakh. The assessee is owner of 1/2 part of the shop, which is appearing in the balance sheet of the assessee as on 31/03/2005 and investment of the assessee to the tune of ₹11,55,000/-. As per the Revenue, the assessee had shown the investment of ₹6,90,000/-, therefore, the difference was to be reconciled. Considering the totality of facts and the claim of the assessee that the amount was paid through banking channel, the assessee is directed to produce the necessary evidence for such claim before the Ld. Assessing Officer. The Ld. Assessing Officer is directed to examine the factual matrix and decide in accordance with law. Thus, this ground of the assessee is allowed for statistical purposes.

4. The last ground pertains to ad-hoc addition of ₹25,000/-. This ground was not pressed by the ld. counsel, therefore, it is dismissed as not pressed.

Finally, the appeal of the assessee is partly allowed for statistical purposes.

This order was pronounced in the open court in the presence of the ld. representative from both sides at the conclusion of the hearing on 19/09/2017

Sd/-

(Ramit Kochar)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 25/09/2017

Shekhar, P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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