

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH ‘H’, MUMBAI**

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

**ITA No.4094/M/2015
Assessment Year: 2006-07**

Income Tax Officer- 33(3)(1), 3 rd Floor, C-10, Pratyaksh Kar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051	Vs.	Shri Ratanlal B. Gandhi, Plot No.43, Shop No.2, Yogana CHS Sector-2, Charkop, Kandivali (W), Mumbai – 400 067 PAN: AACPG5776F
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ram Tiwari, Sr. A.R.
Revenue by : Shri Ratanlal B. Gandhi, D.R.

Date of Hearing : 29.08.2017
Date of Pronouncement : 26.10.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 25.03.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2006-07.

2. The short facts of the case are that the assessee has invested in a flat Charkop for Rs.10,97,110/-. In support of the same, the assessee has furnished copy of housing loan certificate with New India Co-op Bank Ltd. in which the loan amount was shown at Rs.7,81,448/-. However, in respect of the remaining amount of

Rs.3,15,662/-, assessee has stated that it is by way of savings for which he has failed to furnish any kind of documentary evidences. Therefore, investment of Rs.3,15,662/- is treated as unexplained investment u/s 69 of the Act.

3. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has allowed the claim by observing as under:

“Ground no.2

a) Unexplained investments in Flat

The appellant has made payments to the seller by account payee cheques, details, of which are placed on record. As regards cash payment of Rs.47,110/-, the same is for stamp duty and registration and is covered by the withdrawals made by the appellant from his bank account. This sub-ground is therefore allowed.

b) Adhoc disallowance of expenses

The appellant has not been able to give any detail of the various expenses incurred alongwith any documentary evidence. In the absence of any such details on record, I am of the view that the AO is justified in making an adhoc disallowance of 50% of the expenditure claimed. This sub-ground is therefore dismissed.

c) Credits in bank

Before the AO, the appellant has submitted the mode in which he carries on his business and also explained how monies are received from friends and relatives as unsecured loans which are used for payments for giving security to seller of the property. The unsecured loans are supported by confirmations and ledgers. Other credits include cash deposits supported by corresponding cash withdrawals, loan from bank/NBFC supported by ledgers and brokerage income. The brokerage income is separately offered as Business Income by the appellant. I have carefully reviewed the submission of the appellant. It is a fact that the balance sheet of the appellant has not reflected the loans taken. It is also on record that all the credits in the bank statement stand explained. I am inclined to give the assessee the benefit of a defective balance sheet made by professionals on whom he relied. In view of the above findings I rule in favour of the assessee and allow this sub-ground of appeal.

Ground no.3

It is noticed from the records available before me that the returned total income of the appellant was Rs.1,37,010/-. I direct the AO to consider the correct returned total income while giving effect to the appeal order. This ground of appeal is allowed on technical ground.

Ground no.5

This ground concerns the levy of Interest u/s 234B, 234C and 234D of the Income Tax Act, 1961. The levy of interest under the said sections are consequential and requires no adjudication.

5. In the result, the appeal is partly Allowed.”

4. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that the Ld. CIT(A) has verified the remand report and deleted the addition on the ground that this investment is reflected in balance sheet and defective profit & loss account prepared by the assessee. Therefore, our interference is not required.

5. The second issue relates to unexplained credits of Rs.55,03,000/- in bank account which was treated by the AO as undisclosed income from undisclosed sources. The AO has made the addition on account of unexplained credits in the assessee's bank account with New India Co-op Bank Ltd. and AO has taken the contention that this is a business income, therefore, it may be treated as business income.

6. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has considered the same and partly allowed by observing as under:

“Ground no.2

b) Unexplained investments in Flat

The appellant has made payments to the seller by account payee cheques, details, of which are placed on record. As regards cash payment of Rs.47,110/-, the same is for stamp duty and registration and is covered by the withdrawals made by the appellant from his bank account. This sub-ground is therefore allowed.

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5. In the result, the appeal is partly Allowed.”

6. The Ld. D.R. could not bring any evidence contrary to the finding of the Ld. CIT(A). Therefore, we endorse the action of the Ld. CIT(A).

7. In the result appeal of the Revenue is dismissed.

Order pronounced in the open court on 26.10.2017.

Sd/-
(**N.K. Pradhan**)
ACCOUNTANT MEMBER

Sd/-
(**D.T. Garasia**)
JUDICIAL MEMBER

Mumbai, Dated: 26.10.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.