

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

**BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 3449/MUM/2016  
Assessment Year: 2006-07**

Madhura Manoj Joshi, Karvana House, Near Cotton Green Railway Station, Cotton Green, Mumbai - 400033  PAN: ADYPJ5131C	<b>Vs.</b>	The ITO - 17 (3)-3, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Mandar Vaidya (AR)  
Revenue by : Shri V. Justin (DR)

Date of Hearing: 09/11/2017  
Date of Pronouncement: 30/11/2017

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against order dated 01/02/2016 passed by the Ld. Commissioner of Income Tax (Appeals)-32, Mumbai, for the assessment year 2006-07, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) read with section 147 of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee an individual having income from business and other sources, filed its return of income for the assessment year 2006-07 declaring the total income of Rs. 2,82,683/-. The return was processed u/s 143 (1) of the Act. Subsequently, the case was reopened and notice u/s 148 was issued to verify the source of cash deposited of Rs. 16,00,000/- in the Savings Bank Account. In response thereof the assessee

filed copy of return of income already filed along with its enclosures and submitted that the return may be treated as return filed in response to notice u/s 148 of the Act. Thereafter, notices u/s 143 (2) and 142 (1) were issued. Accordingly, the authorized representative of the assessee appeared and submitted the details called for by the AO. As per the AIR information, the assessee had deposited cash of Rs. 16,00,000/- in his SB Account maintained with Axis Bank. Accordingly, the assessee was asked to explain the source of the said deposit. The assessee submitted that she had deposited net cash of Rs. 7,20,000/- (gross Rs. 16,00,000 less Rs. 8,80,000/- withdrawn from the Bank) which was utilized for depositing money in Mutual Funds. The AO did not accept the contention of the assessee and added the said amount to the income of the assessee and determined the income at Rs. 18,82,680/-.

3. In appeal, the Ld. CIT (A) dismissed the appeal of the assessee and confirmed the addition made by the AO. The assessee is in appeal before the Tribunal against the impugned order passed by the Ld. CIT (A).

4. Aggrieved by the order of Ld. CIT (A), the assessee has preferred this appeal before the Tribunal on the following effective ground:-

1. *The Ld. CIT (A) erred in confirming the addition of Rs. 16,00,000/- cash deposits in bank, as 'undisclosed income' of the Appellant/assessee.*
2. *The Ld. CIT (A) erred in declining to consider the additional evidence in form of loan confirmations which carried the address & PAN nos. of the creditors.*
3. *The Ld. CIT (A) was not justified in confirming the addition without issuing notice to the creditors whose confirmations were submitted.*

4. *Without prejudice, the Ld. CIT (A) fell in error of law in adding the entire amount and not confining the addition to the peak amount.”*

5. Before us, the Ld. counsel for the assessee submitted that the cash deposited in the Axis Bank Account was not included in the balance sheet of the firm. Money deposited was received from friends and relative as friendly loans. The assessee has produced confirmations from various parties which substantiate the contention of the assessee. The amount each of these loans is of Rs. 20,000/-. Therefore, the Ld. CIT (A) has wrongly confirmed the addition made by the AO. Without prejudice the Ld. Counsel submitted that the Ld. CIT (A) has erred in making addition of adding of the entire amount instead of confirming the addition of the peak credit.

6. On the other hand, the Ld. DR submitted that the plea taken by the assessee is afterthought and the Ld. CIT (A) has rightly confirmed the addition of entire amount of Rs. 16,00,000/- to the income of the assessee. Hence, there is no infirmity in the impugned order to interfere with.

7. We have heard the rival submissions and also perused the material on record. The grievance of the assessee is that the Ld. CIT (A) has wrongly confirmed the addition made by the AO and without prejudice the assessee has further contended that the CIT (A) ought to have confirmed the addition of peak credit. We notice that the assessee has taken the plea that the amounts deposited in her SB Account was not included in the firms balance sheet as the money was received from clients, friends and relatives. The assessee has also produced confirmation from various parties in support of her claim. The Ld. CIT (A) has rejected her contention holding that the assessee has been able to produce proof of only Rs. 8,40,000/- out of the total amount of Rs. 16,00,000/- in question. We

notice that the assessee was having withdrawals from the bank while depositing amount in the bank. Under these circumstances, the entire amount in question cannot be added to the total income of the assessee. Therefore we are of the considered view that AO should work out the peak credit on the basis of the statements of Bank Account furnished by the assessee for the period 01/04/2005 to 31/03/2006 and make addition to the income of the assessee. We accordingly set aside the order of the Ld. CIT (A) in the interest of justice and remit the file to the AO with the direction to work out the peak credit and add the same to the income of the assessee.

In the result, appeal filed by the assessee for assessment year 2006-2007 is partly allowed for statistical purposes.

Order pronounced in the open court on 30<sup>th</sup>.November, 2017.

Sd/-  
(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 30 /11/2017

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

Alindra, PS

**आदेश 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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