

**आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI**

श्री शमीम याहया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 6717/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2008-09)

Arvind Balkrishna Goregaonkar B-1305, Bhavya Heights, Katrak Road, Near Ram Mandir, Wadala (W), Mumbai-400 031	<b>बनाम/</b> Vs.	I.T.O.-21(2)(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAIPG 6212 A		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Ajay R. Singh
प्रत्यर्थी की ओर से/Respondent by	:	Ms. N. Hemalatha
सुनवाई की तारीख / Date of Hearing	:	11.10.2017
घोषणा की तारीख / Date of Pronouncement	:	03.01.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) dated 29.7.2016 and pertains to the assessment year 2008-09.

2. The grounds of appeal read as under:

1. The Ld. CIT (A) has erred in not considering objections raised for the reopening of case u/s 148. The reasons assigned are against the principal and spirit of law. The objection raised by the assessee may be considered, and order may be quashed.

2. The Ld. CIT (A) has erred in not considering the evidences and a submission made by the assessee and has confirmed the addition of Rs.13,04,274 /- as unexplained. Which is wrong and bad in law hence may be deleted.

3. Opportunity of cross examination of the evidence relied by the department is not extended to the assessee. Which is against the principal of natural justice hence order passed without opportunity of cross examination is may be quashed .

4. The Ld. CIT (A) has given verdict that the addition should be made U/s 68/69, such vague order is liable to be quashed, hence may be quashed.

5. The Ld. CIT (A) erred in treating the genuine share transaction as accommodation transaction hence addition may be deleted.

3. Brief facts of the case are as under:

The return of income in this case was e-filed on 31.07.2008 declaring taxable income at Rs.5,78,720/- which was accepted u/s 143(1) of the Income Tax Act, 1961. In this case information was received from the Chief Commissioner of Income Tax (C)-I, Mumbai that the assessee has obtained accommodation entries for entities managed by Shri Mukesh Choksi & Associates based on the said information the A.O had reasons to believe that the income had escaped assessment and .reopened the assessment by way of issue of notice u/s 148 dated 26.03.2013. Information was received in this case is that assessee has obtained accommodation entries for Rs.15,77,033/- purchases were made through M/s. Allowance Intermediate scrips of M/s. Cable Corp during the F.Y. 2007-08. The assessee was asked to prove the

genuineness of the transactions. The authorized representative submitted details pertaining to the said transactions carried out through M/s. Alliance Intermediates & Net Work Pvt Ltd. On verification of the details it was noticed that the assessee had sold the scrip of M/s. Cable Corporation of India Ltd. throughout the year. However no purchases were made during the year After thorough verification of details submitted by the assessee final show cause was issued vide dated 22.01.2014 to the assessee as under :-

"Sub : Assessment -proceedings 143(3) r.w.s. 147of"IT Act for A.Y. 2008-09 reg.

Please refer to the above.

You are requested to recall the reasons for re-opening of your case for A.Y, 2008-09 i.e. obtained accommodation entries for both purchase and sale of Rs.15,77,033/-. You have denied that you have made any purchase/sale of shares through Mukesh Choksi/his entities.

However, this office has proof/ information that you have obtained accommodation entries from Mukshi Choksi & Associates during A.Y. 2008-09 for Rs.15,77,033/- (copy of said information is attached herewith).

In view of the above facts and the fact is that in his sworn- in statement, Shri Mukesh Choksi identified you as the beneficiary of the accommodation entries provided by him. It is clearly established that you had never purchased any shares through M/s. Alliance Intermediaries & Network Put Ltd an entity managed by Mukesh Choksi and Associates but only obtained accommodation entries from them.

Hence you are requested to furnish any documentary evidence to show that you have not obtained any accommodation entries from M/s. Mukesh Choksi & Associates. In the event of you failing to do so, you are hereby requested to show cause as to why they said transactions should not be disregarded for arriving at the true nature of transactions and income there on. You are requested to furnish your reply before the undersigned by 04.02.2014".

4. In response to the show cause authorized representative vide letter dated 06.02.2014 submitted his explanation as under:-

"With reference to above and under instructions from our above mentioned client and as required by you we would like to state that :

We are very thankful for supplying the details of transactions entered with Alliance Intermediaries and network Pvt Ltd.

Sir we booth are on same note

In the record supplied by your office which also show the capital gain from dealing with alliance is Rs.13,04,274/- and total sale consideration of share sold is Rs.13,63,774/-.

Though in the computation total long term capital gain is Rs. 15,77, 270/- out of which from alliance is Rs.13,04,274/- and the balance is from the investment with M/s Indenture growth and securities ltd for which your honor has no objection.

To conclude, the long term capital gain from alliance is Rs.13,04,274/~ and not Rs.15,77,270/- as earlier communicated by your office.

Please made correction at your end,

We continue stand that all transactions are genuine transactions and through proper baking channels.

5. Considering the above, the Assessing Officer opined that there submission did not substantiate the claim of Rs.13,04,274/- for which assessee is agreed for making addition in place of Rs.15,77,033/- (As per information). An amount of Rs.15,77,033/- is added back to the assessee's total income as undisclosed source.

6. Against the above order, the assessee appealed before the Id. Commissioner of Income Tax (Appeals), challenging both the reopening as well as merits of the addition. The Id. Commissioner of Income Tax (Appeals) confirmed the validity of reopening by holding as under:

4.1.1 So far as the sufficiency of reasons is concerned, what is to be seen at the stage of recording the reasons is existence of belief based on faithful

appreciation of material which has live link to an income escaping assessment, but not the established fact of escapement of income by detailed investigation or legal analysis. In other words, at the point of time of initiating the reassessment proceedings, existence, and not adequacy of reasons, is material. This view is supported by the decision in case of Rajesh Jhaveri Stock Brokers (P) Ltd. 291 ITR 500 (SC), CARTIER SHIPPING CO. LTD. 40 DTR 459 (Mumbai Trib), Praful Chunilal Patel 148 CTR (Guj.). The sufficiency of reasons cannot be looked into by courts and there must be recording of prima facie belief has also been held in cases of Raymond woolen mills 236 ITR 34 (SC), Phool Chand Bjaranglal 203 ITR 456 (SC), K R Sadayappan 63 ITR 219 (SC). In case of Multi Screen Media (P) Ltd. 324 ITR 54 (Bom) the jurisdictional high court after considering the decision in case of CIT vs. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC) has observed as under :

"Where the AO purports to exercise power under s.147 within a period of four years from the end of the relevant assessment year, the condition precedent to the exercise of the power is the existence of a reason to believe that any income chargeable to tax has escaped assessment. The expression 'reason to believe' must obviously be that of a prudent person and it is on the basis of the reasons recorded by the AO that the question as to whether there was a reason to believe that income has escaped assessment, has to be determined. At the same time, the sufficiency of the reasons for reopening an assessment does not fall for determination at the stage of a reopening of assessment. When the Court is concerned with a challenge to a notice under s.148, the issue is not as to whether it can be conclusively demonstrated that income had escaped assessment, but whether as a matter of fact, there was a reason to believe that this was so, to justify a recourse to the power under s.147".

4.1.2 Thus it is clear that the AO had material before him for formation of reasonable belief of escapement which had live nexus with the material in his possession for assuming the valid jurisdiction for reopening u/s. 147. There is difference between reason to believe and reason to suspect. The former is based on some tangible material which has some nexus on the basis of which a prudent person can have a belief whereas in latter case there would be no tangible material at all.

4.1.3 As far as the contention of the appellant that objection was raised by the appellant for the re-opening of the case and the AO has to rebut the objection raised by the appellant, it is observed that the appellant has not raised

any specific grounds of appeal on this ground and therefore it requires no separate adjudication on this ground.

4.1.4 In the case of appellant, by virtue of the detailed facts which was available before the AO, the existence of primary facts indicated that there was sufficient reasons before the AO to arrive at the prima facie belief that the appellant had obtained accommodation entries in the form of income from undisclosed source which had escaped assessment. Hence the claim of Ld.AR that there was no 'escapement of income is not tenable. The case has not been assessed under section 143(3) and therefore this issue had not been examined prior to the issue of notice under section 148. Hence, it cannot be arrived that the re-opening of the assessment has been done on a mere change of opinion. Accordingly, the notice u/s. 148 issued by the AO fulfils the prerequisites required u/s. 147 and hence the legal argument raised by appellant challenging the validity of reopening u/s. 147, is rejected.

7. On merits of the case, the Id. Commissioner of Income Tax (Appeals) passed an elaborate order, confirming the action of the Assessing Officer and held as under:

4.2.1 I have considered the submissions of the Ld AR on merits and perused the assessment order. In the report of the DDIT(Inv) dated 26/3/2010, which has been sent to all officers in Mumbai after the search operation in case of Mukesh Chokshi, which forms the very basis of the reopening, it has been elaborately discussed that Shri Mukesh Chokshi with the 'maize/smoke screen' of several companies floated by him was running the racket of providing accommodation bills. Shri Mukesh Chokshi in his statement during the search on 11.12.2009 had also clearly stated that all transactions carried by his companies were in nature of accommodation bills. The statement of Mukesh Chokshi is not a bald statement but it is supported by the details of modus of operation in his statement recorded by the investigation wing. It has been clearly brought out in the DDITs report that M/s Alliance Intermediates and Network Pvt. Ltd was also one of the entities controlled by Mukesh Chokshi.

4.2.2 Enquiries by investigation wing from main broker M/s Interconnect Stock exchange of India (ISE) who was registered broker of NSE were made by investigation wing. It was informed by them that except M/s Richmond securities Pvt. Ltd again belonging to Mukesh Chokshi group none of the companies belonging to Mukesh Chokshi, had any trading carried though M/s ISE or M/s ISS (subsidiary of M/s ISE1 during the period. Thus the bills issued by M/s Alliance Intermediates and Network Pvt. Ltd claiming to be a sub-

broker was illegal and fraudulent as the transactions have not actually been done through the stock exchange nor they were authorized to do the transactions.

4.2.3 Thus it is not a case of mere admission by Mukesh Chokshi without corroborative evidence. Even if the appellant claims that it was under bonafide belief that M/s Alliance Intermediates and Network Pvt Ltd were genuine brokers registered with stock exchange and that he had no control as to how the brokers conducted themselves but that by itself will not make the transactions of the appellant genuine, are evidences on record to the contrary. Such situation at best, may be helpful for the appellant to seek protection from penal action u/s 14(2) of the SCR Act only but will not change the character of receipt under the Income Tax Act. The claim that the shares of Cable Corporation of India was a listed company and that the transactions have been through the bank accounts are of no consequence when it is clear that the company Cable Corporation of India was also promoted by Mukesh Chokshi which was part and parcel of the 'smoke screen' created by Mukesh Chokshi by manipulating the prices of these shares on the stock exchange. In fact it is to be noted that the transactions have not been done through demat accountants the appellant in the current appellate proceedings himself had admitted that due to his preoccupation there was delay in opening the Demat Account from his side, so till that time the broker has kept shares in his account and as soon as his demat account was opened, the shares were transferred in his demat account and also the fact that Shri Mukesh Chokshi in his statement himself admits that he used to provide accommodation bills for listed companies on prices as per prices for which they were traded on stock exchange, questions arises as to the legality of such transactions. The mere fact that proceeds have come through banking channels does not by itself proves the genuineness of transactions in the background of the serious admissions made by Mukesh Chokshi duly corroborated by independent enquiries made from the main brokers M/s ISE and ISS. This view is supported by decisions in cases of P Mohankala 291 ITR 278(SC), Diza Holdings 255 ITR 573(ker), Precision finance 208 ITR 265(Cal) , 187 ITR 596(Cal) etc, wherein it has been held that mere fact that transactions are through banking channels is of no consequence by itself.

4.2.4 The decision of Mukesh R Marolia 6 SOT 247(Mum) relied by Ld AR is not applicable to the appellant because in that case the primary reason to disbelieve the appellant was earning of huge profit in a short span of time and further there were contradictory statements wherein some brokers admitted that the transactions were genuine. But in the case of the appellant, besides the statement of Mukesh Chokshi explaining the detail modus of accommodation

entries, the admission of the appellant the transactions were not done through the demat account and the admission of appellant that the AO added the entire Rs.15,77,033/- whereas his gains from Alliance Network is Rs.13,04274/- as intimated during the course of assessment proceedings as well proves the contrary to what has been claimed by the appellant. Further as per ground number 2 of the present appeal, the appellant himself has admitted that the figure needs the correction. Thus there has not been any denial on the part of the appellant that he has not done any transactions with Alliance Network and that he has not earned Long-Term Capital Gains on this account on these transactions.

4.2.5 The claim of Ld AR that no addition can be made merely on admission by any third party is also not tenable. The admission by Mukesh Chokshi is not a bald statement. It is backed by findings of the enquiries made by Investigation wing as already mentioned earlier. Moreover all the companies involved in providing accommodation entry to appellant were floated by Mukesh Chokshi only and therefore his statement cannot be brushed aside and his statement cannot be regarded as mere third party statement; rather he is one of the party to the transaction of accommodation entry racket and therefore his statement has great evidentiary value and more so the fact that the case of the appellant is that he has been involved in the transaction of shares \* with Alliance Intermediate and Network Private Limited. It is the claim of appellant that Mukesh Chokshi was not allowed to be cross examined. However no evidence has been placed on record to suggest that a specific request was made by appellant before the AO to cross examine Mukesh Chokshi. In the case of Kusumlata Thakral 327 ITR 424 (P&H) where though assessee had produced the gift deeds, but the donors had disowned to have made the gifts and no opportunity of cross examination was allowed to assessee to examine the donors, the court still held that it would not in any way affect the inference as the donors and assessee were otherwise also having no love and affection. This suggests that if there are sufficient other collateral evidences, then mere not allowing cross examination would not be prejudicial. This view is further supported by the observation of ITAT Delhi in case of Hareesh Win Chadha Vs DDIT([www.itatonline.org](http://www.itatonline.org)), wherein the ITAT Delhi while holding that lack of direct evidence tax evasion can be assessed, has observed as under:

(i) *Unlike criminal proceedings where the charge has to be proved beyond doubt, income-tax proceedings are quasi-Judicial. Tax liability in cases of suspicious transactions has to be assessed on the basis of the material available on record, surrounding circumstances, human conduct and preponderance of probabilities;*

*(it) Rules of evidence do not govern income tax proceedings and the AO is not fettered or bound by technical rules contained in the Indian Evidence Act and is entitled to act on material which may not be accepted as evidence in a court of law;*

*(iii) In clandestine transactions, it is impossible to have direct evidence or demonstrative proof of every move and when the assessee is not forthcoming with proper facts and chooses to be elusive and evasive, the AO has no choice but to take recourse to estimate. The only caveat is that it should be reasonable and based on material available on record. It should not be perverse or based merely on conjectures.*

*(iv) The IT. Dept was carrying out investigations in difficult circumstances ascribable to the sensitive nature of inquiries, their ramification on national politics and public perception. It was very difficult to get information and documents and to examine concerned links due to the premeditated surreptitious cover up of transactions and smokescreen corporate Jugglery;*

*(v) There is no presumption in law that the AO is supposed to discharge an impossible burden to assess the tax liability by direct evidence only and to establish the evasion beyond doubt as in criminal proceedings. He can assessee on consideration of material available on record, surrounding circumstances, human conduct, preponderance of probabilities and nature of incriminating/information/evidence available on record;*

*(vi) Though the original documents were not given to the assessee (despite demand), no inference can be raised that the contents are fabricated or incorrect because the evidence was obtained by lawful means. Questioning their contents or veracity in income tax proceedings will amount to disbelieving the whole system. The assessee has not claimed that the documents are false or fabricated;*

*(vii) As regards the burden of proof, if the AO comes across material indicating accrual or receipt of income in the hands of the assessee, he is empowered to investigate the matter and ask relevant questions. The AO's burden is initial in nature. Thereafter, the assessee has to give a proper explanation and disclose facts which are in his exclusive knowledge. The assessee has no option to remain selective, elusive, evasive or restrained in disclosure. After such explanation, the AO has to ascertain the correctness of the assessee's submissions on the basis of material available on record, the surrounding circumstances, the conduct of the assessee, the preponderance of probabilities and the nature of incriminating information/ evidence available with him.*

- 4.2.6 In view of the above facts and circumstances, the transaction of purchase and sale of shares of Cable Corporation of India through M/s Alliance Intermediates and Network Pvt. Ltd is not a genuine transaction but only a 'colourable device' and the profit credited by the appellant on the alleged bogus sale of shares shall be treated as unexplained cash credits u/s 68/69. When the income is deemed to be an unexplained cash credit/investment under section 68/69, it is in the nature of income from other sources as the correct source is not known. Hence the credit of profits from Alliance Intermediates and Network Private Limited amounting to Rs.15,77,033/- is restricted to Rs.13,04,274/- in the accounts of appellant as being unexplained and the same is liable to be assessed u/s 68/69 of the I. T. Act. The appellant gets relief of Rs.2,72,996/- (Rs. 15,77,033- Rs.13,04,274) as this amount pertains to dealing with other brokers.
8. Against the above order, the assessee is in appeal before the ITAT.
9. I have heard both the counsels and perused the records. The Id. Counsel of the assessee placed reliance upon several case laws from Hon'ble Bombay High Court and ITAT, Mumbai for the proposition that similar additions had been deleted.
10. Per contra, the Id. Departmental Representative also relied upon the several decisions of the ITAT where similar additions have been upheld.
11. Upon careful consideration, I find that in this case cogent and credible information was received that the assessee has obtained accommodation entries from entities managed by Shri Mukesh Choksi and Associates. Shri Mukesh Choksi has admitted that the group was engaged in fraudulent billing activities and giving accommodation entries in order to enable the clients to declare speculation profit/loss, short term capital gain/long term capital gain, profit/loss on account of accommodated trading, introduction of share application money, or introduction of money in the form

of gifts, etc. Information was received that the assessee had obtained accommodation entries and claimed the same as long term capital gain as exempt. In this scenario, the assessment was reopened. It is the settled law that at the time of reopening there should be reasonable cause and the escapement of income need to be proved to hilt at the time of reopening. This proposition is duly supported by the Hon'ble Apex Court decision in the case of *CIT vs. Kelvinator of India Ltd.* [2010] 320 ITR 561(SC). In this case, it was expounded that:

"Where the AO purports to exercise power under s.147 within a period of four years from the end of the relevant assessment year, the condition precedent to the exercise of the power is the existence of a reason to believe that any income chargeable to tax has escaped assessment. The expression 'reason to believe\*' must obviously be that of a prudent person and it is on the basis of the reasons recorded by the AO that the question as to whether there was a reason to believe that income has escaped assessment, has to be determined. At the same time, the sufficiency of the reasons for reopening an assessment does not fall for determination at the stage of a reopening of assessment. When the Court is concerned with a challenge to a notice under s.148, the issue is not as to whether it can be conclusively demonstrated that income had escaped assessment, but whether as a matter of fact, there was a reason to believe that this was so, to justify a recourse to the power under s.147".

12. Considering the present case, on the anvil of aforesaid exposition, it is clear that the Assessing Officer had material before him for formation of reasonable belief of escapement which had live nexus with the material in his possession for assuming the valid jurisdiction for reopening u/s. 147. Thus, in my considered opinion, the Id. Commissioner of Income Tax (Appeals) has passed a reasonable order, confirming the validity of reopening. The case laws relied upon by him are germane and duly support the case of the Revenue that the reopening was valid. Since, the issue has been

decided on the anvil of Hon'ble Apex Court decision duly applicable in the case, other case laws referred by the Id. Counsel of the assessee are not germane here.

13. As regards the merits of the case, we can gainfully refer to the details of long term capital gain claimed by the assessee. Assessee has purchased 34000 shares of Cable Corporation at the cost of Rs.59,738/- on 10.04.2006. These were sold on 22.06.2007 and 20.07.2007 for a total consideration of Rs.13,63,775/-. How can the value of share whose average cost is less than Rs.2 would jump to average sale price of Rs.40/- in such a short term signifying an unimaginable jump of 2000% in case of a little known company with nominal activity has no economic or financial basis. This is further made grave by the following discussion where the revenue has unearthed, that the said company, Cable Corporation was managed by Shri Mukesh Choksi and Associates and the broker in this case namely M/s. Alliance Intermediates and Network Pvt. Ltd. was also managed by Shri Mukesh Choksi.

14. It is further noted that Shri Mukesh Choksi had admitted as mentioned above regarding the entities controlled by him providing accommodation entries in various forms. The entity from which the assessee has transacted namely M/s. Alliance Intermediates and Network Pvt. Ltd. was also one of the entities controlled by Shri Mukesh Choksi. The investigation by the Investigation Wing had established that the bills issued by M/s. Alliance Intermediates and Network Pvt. Ltd. and claiming to be sub broker was illegal and fraudulent as the transaction had not actually been done

through the stock exchange, nor they were authorized to do the transaction. The Investigation Wing had also established that the company Cable Corporation of India was also promoted by Shri Mukesh Choksi which was part and parcel of the 'smoke screen' created by Mukesh Chokshi by manipulating the prices of these shares on the stock exchange. Further, it has been found that the transactions have not been done through demat accounts. In the appellate proceedings before the Id. Commissioner of Income Tax (Appeals), the assessee himself had admitted that due to his preoccupation there was delay in opening the Demat Account from his side, so till that time the broker has kept shares in his account and as soon as his demat account was opened, the shares were transferred in his demat account and also the fact that Shri Mukesh Chokshi in his statement himself admits that he used to provide accommodation bills for listed companies on prices as per prices for which they were traded on stock exchange. Hence, the Id. Commissioner of Income Tax (Appeals) is right in observing that in this scenario question arises as to the legality of such transactions. As rightly held by the Id. Commissioner of Income Tax (Appeals), the mere fact that proceeds have come through banking channels does not by itself prove the genuineness of transactions in the background of the serious admissions made by Mukesh Chokshi duly corroborated by independent enquiries made from the main brokers M/s ISE and ISS. It is further noted that the Assessing Officer have duly issued show cause to the assessee giving all the details of information obtained regarding the accommodation entries from Shri Mukesh Choksi. And Associates.

However, in reply, the assessee has not countered any of the findings given therein, but it has simply mentioned that the long term capital gain from M/s. Alliance Intermediates and Network Pvt. Ltd. was Rs.13,04,274/- and not Rs.15,04,270/-. The assessee has further mentioned that ‘we continue that all the transactions are genuine transactions and through proper banking channels’. Thus, from the above, it is evident that the overwhelming evidence are available with the revenue that the share transactions reflected by the assessee were bogus transaction routed through bogus entities managed by Shri Mukesh Choksi and Associates. The assessee has given no cogent reason to counter the aforesaid findings. The Assessing Officer has clearly mentioned in the show cause that after examining the transactions and after thorough verification of details submitted by the assessee, he was not convinced. In these circumstances, in my considered opinion, it is clear from the factual date noted hereinabove that the assessee has entered into dubious transaction meant to reflect its undisclosed income in the garb of long term capital gain. In such circumstances, as held by Hon’ble Apex Court in the case of *Sumati Dayal vs. CIT* [1995] 214 ITR 801 (SC) and *CIT vs. Durga Prasad More* [1971] 82 ITR 540 (SC), the Revenue authorities are not supposed to put on blinkers but had to look into the surrounding circumstances and the contemporaneous evidence. This proposition also draws support from the Hon'ble Jurisdictional High Court decision in the case of *Sanjay Bimalchand Jain vs. Pr. CIT* order dated 16.12.2017 on identical facts. Hon'ble jurisdictional High Court has expounded as under:

The assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. While so observing, the authorities held that the assessee had not tendered cogent evidence to explain as to how the shares in an unknown company worth Rs.5/- had jumped to Rs.485/ in no time. The Income Tax Appellate Tribunal held that the fantastic sale price was not at all possible as there was no economic or financial basis as to how a share worth Rs.5/- of a little known company would jump from Rs.5/- to Rs.485/-. The findings recorded by the authorities are pure findings of facts based on a proper appreciation of the material on record. While recording the said findings, the authorities have followed the tests laid down by the Hon'ble Supreme Court and this Court in several decisions.

15. Accordingly, in the background of the aforesaid discussion and precedent, I do not find any infirmity in the order of the Id. Commissioner of Income Tax (Appeals).

16. The decisions referred by the Id. Counsel of the assessee are distinguishable inasmuch as they were rendered on the facts of these cases, and the facts in the present case are different.

17. In the result, this appeal by the assessee stands dismissed.  
परिणामतः निर्धारिती की अपील खारिज की जाती है ।

*Order pronounced in the open court on 03.01.2018*

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 03.01.2018

व.नि.स./Roshani, Sr. PS

**आदेश की 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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

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