

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./I.T.A. No. 4523/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2008-09)

Shri Chandranand Mishra H-2/10, Jal padma CHS Ltd., Bangur Nagar, Goregaon (W), Mumbai-400 090	बनाम/ Vs.	Dy. CIT, Central Circle-(3), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ACXPC 1741 R		
(Appellant)	:	(Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Rahul Raman
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Naresh Kumar & Shri Yogesh Jojode
सुनवाई की तारीख / Date of Hearing	:	02.11.2017
घोषणा की तारीख / Date of Pronouncement	:	16.01.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order by the Commissioner of Income Tax (Appeals) dated 11.05.2015 and pertains to the assessment year 2008-09.

2. The grounds of appeal read as under:

1. On the facts and circumstances of the case and in law the Hon'ble Commissioner of Income Tax (Appeal) has erred in confirming the addition made by Ld. AO of Rs.1,00,000/- being alleged undisclosed receipt of

Commission in relation to alleged stage performing at Ramee Royal, Dubai, UAE by Ms. Priyanka Chopra on protective basis. An amount of Rs.16,00,000/- including sum of Rs.1,00,000/- is also added in the hands of Ms. Priyanka Chopra for A.Y. 2008-2009.

It is submitted that such addition has been made on the basis of loose paper seized at Page no.118 of Annexure A -7 at the premises of appellant. It is however submitted that during assessment proceedings, it was submitted that Ms. Priyanka Chopra has reached to the said event however, on account of insufficient security reason; no performance has been carried out. It is further submitted that no evidences whatsoever have been found by the Income Tax Search team which indicates performance at such alleged function nor any loose papers have been found during search proceedings which indicates any such receipt of Income in cash and therefore, estimation and receipt of alleged undisclosed Income of Rs.15,00,000/- by Ms. Priyanka Chopra and Rs.1,00,000/- by appellant out of books is unreasonable and unlawful. In view of the above, we would pray your honour to delete such arbitrary addition made by the Ld. AO which is confirmed by the Hon'ble Commissioner of Income Tax (Appeal).

It is submitted that no evidence regarding receipt of cash has been found by search party as well as Ld. AO hence, Income added on assumptions and presumptions is against basic of principles of law and against Natural justice. In view of the above facts, such addition should be deleted.

3. The assessee has also raised additional grounds:

Additional Ground: The assessment order passed u/s. 143(3) r.w. Sec 153A for the assessment year 2008-09 in the case of the appellant is bad-in-law because no document or valuable asset belonging to the appellant was seized. The documents relied upon in the assessment order were impounded during the survey action u/s. 133A.

4. We find that in this case the assessee has filed return of income on 01.09.2008.

Subsequently, this assessment was framed u/s. 153A pursuant to search on 24.01.2011 in the case of Ms. Priyanka Chopra. We find that the Hon'ble jurisdictional High Court in the case of *CIT vs. Continental Warehousing Corporation (Nhava Sheva)*

Ltd. [2015] 58 taxmann.com 78 (Bom), order dated 21.04.2015 has expounded that in case of assessment u/s. 153A, no addition is sustainable *de hors* any incriminating material found in search in case of a abated assessment. Since the issue raised in the additional ground goes to the root of the matter, we admit this ground raised on the anvil of honourable apex court decision in the case of *N.T.P.C. Ltd.* We find that a similar issue was raised in the case of *Ms. Priyanka Chopra* (in ITA No. 2770/Mum/2015 for assessment year 2009-10), related with the same addition. In that case also we had remitted the matter to the file of the assessing officer to consider the issue in accordance with the decision of Hon'ble jurisdictional High Court in the case of *Continental Warehousing Corporation (Nhava Sheva) Ltd.* (supra). Since the present issue is also identical, we remit this issue also to the file of assessing officer. He is directed to consider the issue afresh in accordance with the decision of honourable jurisdictional High Court (supra) after referring to the requisite factual details necessary.

5. In the result, this appeal filed by the assessee stands allowed for statistical purposes

Order pronounced in the open court on 16.01.2018

Sd/-
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 16.01.2018

व.नि.स./Roshani, Sr. PS

Sd/-
(Shamim Yahya)

लेखा सदस्य / Accountant Member

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**