



ITA.No.4292/Mum/2016
Chaitanya Kiran Shantaram
Assessment Year 2011-12

**आयकर अपीलीय अधिकरण “सी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
**BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 4292/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Income Tax Officer 16(1)(1) Room No.436(A),4 th Floor Aaykar Bhavan, M.K.Marg Mumbai – 400 020	बनाम/ Vs.	Chaitanya Kiran Shantaram 3,Grosvenor House Peddar Road, Mahalaxmi Mumbai-400 026
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AOWPS-2801-K		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Dev Mane Girajdar, Ld. AR
Revenue by	:	Rajat Mittal, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	25/01/2018
घोषणा की तारीख / Date of Pronouncement	:	31/01/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by revenue for Assessment Year [AY] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-4 [CIT(A)], Mumbai, *Appeal No.CIT(A)-4/Tr.347/Appeal-(3)/ITO-11(1)(4)/2014-15* dated 16/03/2016. The assessment for impugned AY was framed by *Ld. Income Tax Officer 11(1)(4), Mumbai [AO] u/s 143(3)*



of the Income Tax Act, 1961 on 26/03/2014. The revenue has raised the following effective Grounds of Appeal:-

1. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) was justified in directing to delete the addition of Rs.1 Crore made u/s.68 of Income-tax Act,1961 by admitting additional evidence in course of the appellate proceedings without granting an opportunity to the Assessing Officer, which is in violation of Rule 46A of the Income-tax Rules,1962.
2. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Office be restored.

2. Fact, in brief, are that the assessee being *resident individual* engaged as *event organizer* was assessed at Rs.103.48 Lacs as against returned loss of Rs.2.44 Lacs *e-filed* by the assessee on 30/03/2013. During assessment proceedings, it was noted that the assessee received advance of Rs.1 Crores from an entity namely *Naisha & Co.* and subsequently paid an advance tax of Rs.20 Lacs on various dates out of the said advance. It was further noted that the assessee utilized the advance partly for purchase of motorcar and partly towards advancement of certain loan. To confirm the advance, notice u/s 133(6) was issued to the lender but no satisfactory reply was received against the same. Accordingly, the said advance was treated as unexplained cash credit u/s 68 and added to the income of the assessee.

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 16/03/2016 where the assessee pointed out that the said advance was received by the assessee against production of a Marathi Film titled as '*Diary*' which could not be produced due to enhancement of the cost. Satisfied with assessee's explanation, Ld. CIT(A) deleted the impugned addition. Aggrieved, the revenue is in further appeal before us.



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4. The Ld. Departmental Representative [DR] drawing our attention to the grounds of appeal pointed out that no satisfactory details etc. of the advance was submitted by the assessee during proceedings before Ld. AO and Ld. CIT(A) erred in appreciating the additional evidences without confronting the same to Ld. AO in violation of Rule 46A. It was further contended that the assessee failed to prove the said loan transaction beyond doubt even before Ld. CIT(A). Per *Contra*, Ld. Authorised Representative [AR] relied on the order of Ld. CIT(A).

5. Upon perusal of material on record, we find that the assessee could not demonstrate fulfillment of three primary conditions *viz. identity, creditworthiness and genuineness* to substantiate his claim regarding cash credit before Ld. AO. It appears from *para-5* of the impugned order that the assessee filed few documents like *Balance Sheet, Partnership Deed, Agreement etc.* before Ld. CIT(A) which were never produced by the assessee before Ld. AO. Further, the assessee is not able to explain the transactions including payment of advance tax etc. carried out by him subsequently. Therefore, concurring with the stand of revenue, the matter is remitted back to the file of Ld. AO in terms of Rule 46A with a direction to the assessee to explain the said cash credit with documentary evidences, failing which Ld. AO shall be at liberty to adjudicate the same on the basis of material available on record.

6. Resultantly, the revenue's appeal stands allowed.

Order pronounced in the open court on 31st January, 2018



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Sd/-
(Mahavir Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 31.01.2018
Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि ँ त्रेषित/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