

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "J", MUMBAI**  
**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND**  
**SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No.3223/Mum/2016 (Assessment Year- 2005-06)**

ITO 29(3)(5), Room No. 211, 2 <sup>nd</sup> Floor, C-10, Bldg., Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra(E), Mumbai-400051.	<b>Vs.</b>	Shri Vinod B. Singh, 203, Casablanca Bldg., Skyline Oasis, Vidyavihar (West), Mumbai-400086. <b>PAN: AMKPS2385Q</b>
(Appellant)		(Respondent)

Revenue by : Shri Aarju Garodia (DR)

Assessee by : Shri Mehul Shah (AR)

Date of hearing : 10.01.2018

Date of Pronouncement : 09.02.2018

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by revenue under section 253 of Income Tax Act is directed against the order of Id. Commissioner of Income-Tax (Appeals)-40, [CIT(A)] Mumbai dated 04.02.2016 for Assessment Year 2005-06. The Revenue has raised the following grounds of appeal:

1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 33,00,000/- on account of unaccounted capital introduced in the business"

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 50,03,133/- on account of net profit estimated at 8% of gross receipts of Rs. 6.66 crores"

3. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions without appreciating the fact that out of 996 borrowers, the assessee has furnished evidence only in the case of S parties"

4. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that even during remand proceedings, the assessee merely furnished that the borrowers have repaid the loans and hence their accounts have been closed"

5. "The appellant craves leave to add, to amend, alter, substitute or modify any of the above ground or add a fresh ground as and when found necessary either before or at the time of hearing".

2. Brief facts of the case are that assessee is an individual, filed return of income for relevant AY on 30.03.2006 declaring total income at Rs. 2,17,940/-. On the basis of information received from AIR that a cash of Rs. 1,30,09,965/- was deposited in the Bank account of assessee on 23.06.2004, the assessment was reopened. A notice under section 148 was sent to the assessee as per the address mentioned in the AIR information. The assessee was not allegedly available on the said address. Therefore, a notice under section 148 was served by affixation. (No date is mentioned in assessment order or in First appellant order when such notice was served ). The assessee was allegedly served a notice under section 142(1), when he was traced. The assessee participated in the re-assessment proceeding and furnished necessary details about his business activities as required by AO. The AO during re-assessment proceeding noted that during the relevant period, there was cash receipt/deposit of Rs. 6.66 Crore in the bank accounts of assessee. The assessee was asked to explain the credit entry, party wise details of deposit. The assessee made his submission and contended that assessee is running a brokerage and commission business in the name of Jain Bholenath Auto Gas and the assessee has small trading

business of sale of CNG kits. The assessee also contended that he provided services as Finance Arranger for arranging loan from Bank, to the borrower, who are Auto Rickshaw to owners or buyers. The amount credited in his account as per agreement with the Shramik Sahakari Bank. The assessee further contended that he has received only loan processing fees of Rs. 9.22 Lakhs against the total receipt/credit in his bank account of around Rs. 6.66 Crore. The contention of the assessee was not accepted by AO. The AO estimate the profit @ 5% of total turnover (credit in the bank account) as unaccounted capital introduced by assessee and thus worked out Rs. 33 Lakhs as income of the assessee and added the same under section 68 of the Act. The AO also took his view that assessee has shown the sales of Rs. 5,12,500/- and loan processing fees of Rs. 9,21,952/- total of Rs. 14,34,452/- whereas the actual sale is of Rs. 6.66 Crore. Therefore, the AO estimated the Net Profit @ 8% of Rs. 6.50 Croer (Rs. 6.66 Crore – 14,34,452/-) and worked out profit of Rs. 52,13,243/-. Since the assessee has shown Net Profit of Rs. 2,10,110/-. Hence, difference of Rs. 50,03,133/- was added. On appeal before the Id. CIT(A), both the addition was deleted. Thus, aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before us.

3. We have heard the rival submission of the parties and perused the material available on record. The Id. DR for the Revenue supported the order of AO. The Id. DR for the Revenue submits that the assessee has huge credit in his

bank accounts. The assessee himself has shown income from processing charges as well as in the business of sale of CNG kits. The Id. CIT(A) totally ignored the fact and deleted the entire addition. On the contrary, the Id. AR of the assessee supported the order of Id. CIT(A). The Id. AR of the assessee submits that assessee entered into a tripartite agreement with the bank and the borrowers. The assessee introduced all the borrowers for financing of their Auto Rickshaw or for fitting of CNG kits. The assessee has charged loan processing fees varying from .75% to 1.2% of the sanctioned loan. The AO has not appreciated the fact properly and made the addition on the basis of his assumption and presumption. The Id. CIT(A) considered the material placed on record including the copy of agreement between the bank assessee and the borrowers and granted appropriate relief.

4. We have considered the rival submission of the parties and gone through the orders of authorities below. During the assessment, the AO noted that there was credit entry of Rs. 6.66 Crore in the bank accounts of the assessee. The assessee has shown the sales of Rs. 5.2 Lakh only and loan processing fees of Rs. 9.22 Lakhs. The assessee was asked to furnish partywise details of loan processing fees. The assessee vide his reply dated 28.03.2013 contended that the assessee is a commission agent/broker, the income is earned in the form of commission and not the entire sale proceeds. The entire sale can never be treated as income, there is always a

corresponding purchase and only G.P. can be taxed. The assessee's income consistent only on loan processing charges or in other way the commission income earned by assessee. The amount of loan borrowed does not below to him. The amount was temporarily routed through his bank as per agreement with the bank. The reply of assessee was not accepted by AO. The AO treated the amount of Rs. 6.66 Crore as undisclosed capital. The AO estimated the income of assessee @ 5% of total credit of Rs. 6.66 Crore and worked out Rs. 33 Lakhs as income of the assessee and added under section 68 of the Act. The AO further took his view that assessee has shown sale of Rs. 5,12,500/- and loan processing fees of Rs. 9,21,952/- total of Rs. 14,34,452/- whereas the actual sale is of Rs. 6.66 Crore. Hence, the amount credited in the bank account was treated as total sale. The AO worked the suppressed sale for Rs. 6,51,65,548/- (Rs. 6,66,00,000/- - Rs. 14,34,452/-). Therefore, income on gross receipt of Rs. 6,66,00,000/-, @ Net Profit of 8% of gross receipt, which was worked to Rs. 52,13,243/- was estimated as profit. Hence, a difference of Rs. 50,03,133/- (Rs.52,23,243 - Rs. 2,10,110) was taken as profit not disclosed and made addition accordingly.

5. The Id. CIT(A) deleted both the additions. While deleting the addition the Id. CIT(A) observed that the entire confusion has arisen because the bank has routed the money through assessee's bank account. As per clause-4 of the agreement between the assessee, bank and the borrower, first the

amount was to be disbursed to the borrowers. The Id. CIT(A) further observed that the bank vide its letter dated 30.03.2013 and 11.10.2014 has also confirmed this arrangement. The bank has clearly mentioned in its reply that the money was given to the assessee and letter disbursed to the borrowers. In our view, the observation of Id. CIT(A) is not correct. We have noted that the loan disbursed to the individual borrower's Saving Account by the Bank and the same was transferred by way of Bank advice or cash deposit in the Saving/Current Account of the assessee. The Id. CIT(A) on his observation that assessee was a finance broker and earned commission income and deleted both the addition made by AO.

6. We have noted that the Id. CIT(A) have ignored the fact that assessee has shown commission income of Rs. 9,21,952/-. The assessee further himself admitted that loan processing charge used to vary from .75% to 1.25% of the sanctioned loan. On the contrary, the Id. CIT(A) instead of sustaining a reasonable percentage of commission income deleted the entire addition. In our view, the assessee was working as finance arranger/facilitator and arranged finance for 996 borrowers. We have noted that the assessee has not fully discharged his owns to explain as to how much amount was ultimately disbursed to the borrower, no cash flow statement is placed on record. Keeping in view, the facts and circumstances of the case, we deem it appropriate to make a lump-sum addition of Rs. 10,00,000/- on account of commission income for arranging loan as a Business Income which

would meet the possibility of revenue leakage and shall meet the end of justice. We order accordingly.

7. In the result, appeal filed by Revenue is partly allowed.

Order pronounced in the open court on this 9<sup>th</sup> day of February, 2018.

Sd/-

**(R.C. SHARMA)**

**ACCOUNTANT MEMBER**

Mumbai; Dated 09/02/2018

S.K.PS

Sd/-

**(PAWAN SINGH)**

**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**