

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं./I.T.A. No. 909/Mum/2016  
(निर्धारण वर्ष / Assessment Year: 2011-12)

Asst. CIT, Palghar Circle, Palghar, Aayakar Bhavan, ITO, BIDCO Road, Palghar, Dist. Palghar-401 404	<b>बनाम/</b> Vs.	Shri Rajendrasingh Rathore Prop. of M/s. Rajendra Enterprises & M/s. Rajshree Transport Company, 807, Naminath, B-Wing, Ostwal Empire, Boisar Taluka, Palghar-401 404
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AHDPR 0416 K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Ram Tiwari
प्रत्यर्थी की ओर से/Respondent by	:	None
सुनवाई की तारीख / Date of Hearing	:	18.01.2018
घोषणा की तारीख / Date of Pronouncement	:	02.04.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order by the Commissioner of Income Tax (Appeals) dated 10.11.2015 and pertains to the assessment year 2011-12.

2. The grounds of appeal read as under:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-3, Thane erred in deleting the addition of Rs.1,78,72,848/- made on account of unexplained cash deposits.

2. The appellant prays that the order of the Ld. CIT(A)-3, Thane, may be set-aside and that of the Assessing Officer be restored.
3. Brief facts of the case are that the assessee is the proprietor of M/s. Rajshree Transport, engaged in transport business and M/s. Rajendra Enterprises, engaged in the business of yarn trading. There is also another proprietor concern by the name M/s. Rajashree Enterprises and the business activity carried out is not disclosed to the Department and unaccounted bank accounts were opened with ICICI Bank & HDFC Bank, which were not disclosed to the Department. This fact has come to the knowledge of the Department on the basis of information received from AIR that there were huge cash deposits in ICICI Bank A/c. No. 00630500424 & HDFC Bank a/c No. 01601000081991. Accordingly the Assessing Officer made the following additions as below:

1.	Unexplained cash deposits	Rs.2,32,11,491
2.	Cash Deposit in Personal a/c	Rs.0,13,51,000
3.	Repairs & maintenance	Rs.0,04,91,915
4.	Cash Deposits	Rs.0,18,43,464
5.	Paymnet to M/s. Samta Enterprises	Rs.0,10,00,000

Apropos addition of entire deposit of unaccounted bank account in ICICI No. 00630500424, proprietor concern of the assessee M/s. Rajshree Enterprises.

4. The Assessing Officer has added the entire deposits, i.e., cash deposit of Rs.1,98,15,357/- as well as other deposit of Rs.33,96,134/- because a) assessee failed to explain the source and failed to produce copy of P & L a/c, balance sheet, audit report, and nature of business of M/s. Rajshree Enterprises b) No response from the

assessee, therefore, the entire deposit, cash as well as cheque, has been added to the total income of the assessee as undisclosed income of the assessee.

5. Before the Id. Commissioner of Income Tax (Appeals), the assessee submitted that in the name of M/s. Rajshree Enterprises, the assessee is engaged in the business of trading in scrap (yarn etc.), which is not recorded in the books of the accounts and the entries in the bank account are the purchase and sale of scraps. The assessee admitted that neither sales bills were issued nor purchase bills were obtained; therefore, the peak credit should only be brought to tax but not the entire deposits.

6. The Id. Commissioner of Income Tax (Appeals) accepted the assessee's submission that the cash deposit represents sale collection. He proceeded to estimate 23% of the total deposit amounting to Rs.2,32,11,491/-, resulting in an amount of Rs.53,38,643/- being added as gross profit to the income of the assessee. Accordingly, the Id. Commissioner of Income Tax (Appeals) granted the relief of Rs.1,78,72,848/- to the assessee.

7. Against this order, the Revenue is in appeal before us.

8. We have heard the Id. Departmental Representative. None appeared on behalf of the assessee. The notice of hearing has been returned unserved. We find that in the present case, the Revenue has unearthed a bank account of the assessee. The details of which were not disclosed to the Revenue. No purchase bills, sale bills, etc. regarding the claim that the said account related to any business has been produced. It is strange

that without any corroboratory evidence whatsoever, the Id. Commissioner of Income Tax (Appeals) has accepted that the said account deals with her regular business. Furthermore, without any comparable instance or whatsoever, the Id. Commissioner of Income Tax (Appeals) has proceeded to estimate 23% of the deposits as profits thereof. Hence, he has granted relief of Rs.1,78,72,848/- to the assessee. In our considered opinion, there is no basis whatsoever for granting the said relief to the assessee. Further we find that the subsequent submission of the assessee before the Id. Commissioner of Income Tax (Appeals) were never before the Assessing Officer, nor the Id. Commissioner of Income Tax (Appeals) has given the Assessing Officer an opportunity to comment upon his view that the same is a business activity of the assessee and it should be accepted that it has resulted in a profit equivalent to 23% of the receipt. Furthermore, as held by the Hon'ble Apex Court in the case of *Kale Khan Mohammad Hanif vs. CIT* [1963] 50 ITR 1 (SC) that when a person claims a particular receipt is not to be subject to tax, the onus is upon him to prove the same. Hence, in our considered opinion, the onus is squarely upon the assessee to prove the receipts deposited in that undisclosed bank account are the proceeds of the genuine business and the profit thereof is only 23%. Since the assessee has completely failed to discharge the onus, we deem it appropriate to remit the issue to the file of the Assessing Officer. The Assessing Officer is directed to consider the issue afresh after giving the assessee an opportunity of being heard. The Assessing Officer shall bear in mind our observation and the case law referred above.

9. In the result, this appeal by the Revenue stands allowed for statistical purposes.

*Order pronounced in the open court on 2.4.2018*

Sd/-  
(Amarjit Singh)

न्यायिक सदस्य / Judicial Member

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 2.4.2018

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**