

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI RAVISH SOOD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 860/MUM/2014  
Assessment Year: 2005-06**

Trupti R. Parekh 1/701, Vishal Apts, 7 <sup>th</sup> Floor, Soni Wadi, Borivali (W), Mumbai-400092	Vs.	Income Tax Office- 25(2)(2), Mumbai.
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**PAN No. AHLPP2502N**

**Appellant**

**Respondent**

Assessee by	: None
Revenue by	: Mr. V. Justin, DR

Date of Hearing	: 21/02/2018
Date of pronouncement	: 11/04/2018

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2005-06. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-35, Mumbai [in short CIT(A)] and arises out of the assessment completed u/s 143 (3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

Though the case was fixed for hearing on 21.07.2015, 19.07.2016, 21.02.2017, 11.07.2017, 12.12.2017 and 21.02.2018, neither the assessee nor the authorized representative appeared on the above dates before the Tribunal. Therefore, we proceed to decide the case on merits.

2. The grounds raised by the assessee in this appeal read as under:

1. The Ld. CIT(A) erred in confirming the order of the AO treating Rs.3,08,724/- as income from undisclosed sources.
2. The Ld. CIT(A) failed to appreciate that the impugned sale transaction was duly recorded in the books of accounts and supported by contract note. Hence, the said amount cannot be assessed as income from undisclosed sources, when the purchase transaction was accepted as genuine.
3. The Ld. CIT(A) failed to appreciate that the addition on account of commission of Rs.15,436/- is based on mere conjecture especially when M/s Alliance Intermediaries & Network Private Ltd. has not filed returns declaring to be engaged in the business as entry provider.

3. Briefly stated, the facts of the case are that there was a search and seizure action u/s 132 of the Act conducted by the Revenue on Mahasagar Securities Pvt. Ltd. During the search, it was discovered that Shri Mukesh M. Choksi, a CA by profession had floated some 34 companies from his office and two of these companies were M/s Talent Infoway Ltd. and M/s Buniyad Chemicals Ltd. There was no genuine business being carried on by any of these concerns, and they were all engaged in the business of issuing bogus bills for providing long term capital gains/loss, speculation profit or loss. On the basis of this information, the Assessing Officer (AO) reopened the assessment. The AO found that the assessee had contract note of Rs.3,08,724/- through one of the concerns of Shri Choksi which is M/s Alliance Intermediaries & Network Pvt. Ltd. The AO on the basis of the admission of accommodation entries being given by Shri Choksi and also in view of the fact that National Stock Exchange (NSE) itself has denied any such

purchase transaction having taken place in the stock exchange, added back the said amount as income from undisclosed sources. Thus the AO made an addition of Rs.3,08,724/-. Further, the AO estimated commission payable on such accommodation entries @ 5% and it comes to Rs.15,436/-. Accordingly, the AO made an addition of Rs.15,436/- u/s 69C of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) held that (i) Shri Choksi has admitted that he is engaged in the process of providing accommodation bills and earning commission income thereon through all his entities including M/s Alliance Intermediaries Pvt. Ltd. The onus is on the assessee to provide necessary evidence to substantiate that the transaction is not a share transaction, (ii) the assessee cannot take recourse to the argument that Shri Choksi has made a self-serving statement and that she during her own assessment is not bound to provide independent evidence to support her claim, (iii) the assessee has nowhere been able to show any independent evidence to contradict the findings of the search wherein Shri Choksi has accepted that he is engaged in the process of providing accommodation entries, (iv) the assessee does not have a running demat account with M/s Alliance Intermediaries Pvt. Ltd., (v) the transaction is not evidence by account payee cheque, (vi) it is just a stand alone transaction having predictable pattern as suspected in the findings in the search of Mukesh Choksi Group.

In view of the above, the Ld. CIT(A) confirmed the order of the AO bringing to tax Rs.3,08,741/- as undisclosed income and dismissed the appeal filed by the assessee.

5. As mentioned hereinbefore, neither the assessee nor her authorized representative appeared before the Tribunal on 21.07.2015, 19.07.2016, 21.02.2017, 11.07.2017, 12.12.2017 and 21.02.2018 fixed for hearing.

6. The Ld. DR strongly supports the order passed by the Ld. CIT(A).

7. We have heard the Ld. DR and perused the relevant materials on record. In the instant case Shri Choksi has admitted that he is engaged in the process of providing accommodation bills and earning commission income thereon through all his entities including M/s Alliance Intermediaries Pvt. Ltd. The transaction is not evidenced by account payee cheque. The assessee was not having at the relevant period a demat account with M/s Alliance Intermediaries Pvt. Ltd. We also find that NSE has also denied any such purchase transaction taking place in the stock exchange.

In view of the above, we confirm the order of the Ld. CIT(A) upholding the addition of Rs.3,08,741/- made by the AO as undisclosed income.

7.1 However, there is no objective basis in making an addition of Rs.15,436/- u/s 69C by making an estimation @ 5% on Rs.3,08,724/-. Hence, the addition of Rs.15,436/- is deleted.

8. To sum up the addition of Rs.3,08,724/- made as income from undisclosed sources is confirmed whereas the addition of Rs.15,436/- made as unexplained expenditure is deleted.

9. In the result, the appeal is partly allowed.

**Order pronounced in the open Court on 11/04/2018**

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 11/04/2018

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

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