

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI  
BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM**

**I.T.A. No.1070/M/2012  
Assessment Year: 2002-03**

Ashish B. Nagpal, B-1/A, Juhu Apartment, Juhu Lane, opposite SNTD College, Santacruz (W), Mumbai-54	Vs.	ACIT, CC-40, Aayakar Bhawan, M.K. Road, Mumbai-400021
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : AACPNZ804P		
<b>(Appellant)</b>	..	<b>(Respondent)</b>
Assessee by:		NONE
Department by:		Shri R.P. Meena(DR)

**Date of Hearing:** 28.02.2018  
**Date of Pronouncement:** 04.05.2018

**ORDER**

**PER AMARJIT SINGH, JM:**

The present appeal has been filed by the assessee against the order dated 05.12.2011 passed by the Commissioner of Income Tax (Appeals)-38, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2002-03.

**2.** The assessee has raised the following grounds: -

*1) The Ld. CIT(A) has erred in dismissing the appellant's grounds of appeal regarding validity of search conducted by the Department on 30/05/2007 at the residential as well as business premises of the appellant as well as the validity of the assessment orders including the assessment order for A.Y, 2002-03 completed in pursuance of said search. Thus, the search action deserves he declared invalid and assessment orders passed in pursuance of the*

*said search for all the Assessment years including for the A.Y. 2002-03 deserves to be declared Null and Void.*

*2) The Ld. CIT(A) failed to appreciate that when the search was carried out without proper search warrant in the name of the appellant, the whole search operation as well as the consequential assessment u/s 153A became void ab-inito.*

*3) The Ld. CIT(A) has erred in sustaining the addition of Rs.15,55,580/- as unaccounted receipts from Tele serial production being approximately 50% of the total receipts of Rs.31,60,884,- Credited in the account of an Extra Ordinaire by Zee Entertainment Enterprises Limited in their books of account whereas there were losses in this project without appreciating the facts of the case.*

*4) The Ld. CIT(A) has failed to appreciate that total amount credited by M/s. Zee Entertainment Enterprises Limited also induced an opening balance of Rs .2,75,884/- which was to be excluded while considering the income from the project for this year. Thus the Ld. CIT (A) has erred in considering [he said amount as income for A Y. 2002-03.*

*5) The Ld. CIT(A) has erred in sustaining the addition of Rs.5,40,000/- on account of inadequate drawings without appreciating the facts of the case. Without prejudice the learned CIT also fails to give credit of undisclosed income if any added in to appellant income while making disallowance of low household withdraw*

*6) The Ld. CIT (A) has levied tax liability as well 35 interest U/s 234 B and U/s 234C of IT. Act totaling at Rs15,63,482/- which is highly excessive and deserves to be reduced to the extent as shown by the assessee in his return of income for this year.*

*7) The Appellate order passed by the Ld. CIT (A) being erroneous, bad-in-law, unjust, without any basis and which is against the natural justice deserves to be set aside and the income as shown by the assessee deserves to be accepted,*

*8) The appellant craves to after, amend, add, delete or modify any of the above grounds of appeal as noted above.”*

**3.** The brief facts of the case are that the assessee was a dealer of paintings and art works. The appellant owns one art gallery namely Ashish Balram Nagpal Galleries having two branches one at

Santacruz and the other at Colaba in Mumbai. The appellant was dealing with the art works of many a famous Indian artists of past including the legendary Raja Ravi Verma and contemporary artists like Shri M. F. Hussain and Smt. Anjolie Ela Menon. A search & seizure action u/s 132(1) of the Act was carried out on 30.05.2007. Consequent to the search & seizure action, proceedings u/s 153A of the Act were initiated for A.Ys. 2002-03 to A.Y. 2008-09. The assessments u/s 143(3) r.w.s. 153A of the Act was completed for the said year assessing the income to the tune of Rs.22,61,805/-. Therefore, the assessee filed an appeal before the CIT(A) who partly allowed the claim of the assessee but the assessee was not satisfied on the grounds mentioned above, therefore, the assessee filed the present appeal before us.

**ISSUE NOS. 1 & 2:-**

4. Under these issues the assessee has challenged the validity of order u/s 153A of the Act. The assessee did not appear before us. No any material of any kind was produced to which it can be assumed that the order passed u/s 153A of the Act is void-ab-initio. Therefore, the said circumstances, we decide these issues in favour of the revenue against the assessee.

**ISSUE NO 3:-**

5. Issue no. 3 is in connection with the sustaining the addition of Rs.15,55,580/-. The said amount was added on the basis credited amount by the Zee Entertainment Enterprises Ltd. in the assessee's accounts. The assessee nowhere produced any evidence to substantiate his claim, therefore, the said amount was added by the AO in his income nor at the time of the appeal before the AO as well as before us adduced any evidence to substantiate the claim of the assessee in this regard. Therefore, in the said circumstances, we uphold the finding of the CIT(A) on this issue and decide this issue in favour of the revenue against the assessee.

**ISSUE NO 4:-**

6. Under this issue the assessee has challenged the addition of Rs.12,75,884/-. The said addition was raised by the AO on considering the credited entry by M/s. Zee Entertainment Enterprises Limited. The contention of the assessee is that the said amount included the opening balance. Therefore, the same is not liable to be included in the income of the assessee but no material of any kind has been produced before the AO as well as before CIT(A) and before us. Therefore, the said circumstances, we are of the view that the CIT(A) has rightly upheld the addition of Rs.12,75,884/- in accordance with law. Therefore, in the said circumstances, we uphold the finding of the CIT(A) on this issue and decide this issue in favour of revenue against the assessee.

**ISSUE NO 5:-**

7. Issue no. 5 is in connection with the sustaining addition of Rs.5,40,000/- on account of inadequate drawings. The Assessing Officer on seeing the family members and property and status of the assessee assessed the annual drawing 60,0000/- per annum. The assessee declared the drawing of rs.60,000/- per annum which was not adequate in view of the statement made by the assessee in which she declared her expenses on house hold between 50,000/- to 1,00,000/-. The assessing officer assessed the monthly expenses @ 40,000/- per month and also estimated the expenses upon the maintenance of mother in law @ 10,000/- per month. The annual drawing was assessed to the tune of Rs.6,00,000/-. The assessee has declared the drawing @ 60,000/- per annum, therefore, the differences to the tune Rs.5,40,000/- per annum was added to the income of the assessee. The assessment was based on minimum possible expenses of the assessee on seeing the age, status and property of the family. The facts are not distinguishable at this stage. No distinguishable material has been produced before us. Even the assessee did not appear despite notice. Therefore, we are of the view that the finding of the CIT(A) is quite correct hence the finding of the CIT(A) is not liable to be disturbed. Therefore, we uphold the finding of the CIT(A) on this issue and decide this issue in favour of the revenue against the assessee.

**ISSUE NO 6:-**

8. Issue no. 6 is in connection with the interest liability of the assessee u/s 234B and u/s 234C of the I.T. Act in which the interest to the tune of Rs.15,63,482/- is payable. This liability is consequential in view of the provisions u/s 234B and u/s 234C of the Act. Nothing came into notice that the interest was charged by flouting the provision of the law. Accordingly, we decide this issue in favour of the revenue against the assessee.

**ISSUE NO 7 & 8:-**

9. Issue no. 7 & 8 are formal in nature which nowhere required for adjudication.

10. In result, appeal filed by the assessee is hereby ordered to be dismissed.

Order pronounced in the open court on 04.05.2018.

Sd/-

(R. C. SHARMA)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 04.05.2018

*v.p. singh*

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापितप्रति //True Copy//

**उप/सहायकपंजीकार** (Dy./Asstt.Registrar)

**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai**