

आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JM AND SHRI N. K. PRADHAN, AM

आयकर अपील सं./I.T.A. No.5476/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2010-11)

Income Tax Officer-20(1)-4, R. No. 112, Piramal Chambers, 1 st Floor, Parel, Mumbai-400 012	बनाम/ Vs.	Smt. Farida Kauser Merchant 7, Mustafa Manzil, 2 nd Peerkhan Street, Nagpada, Mumbai-400 008
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ANLPM 0965 A		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Saurabh Deshpande
प्रत्यर्थी की ओर से/Respondent by	:	Shri Rajesh S. Shah

सुनवाई की तारीख / Date of Hearing	:	09.05.2018
घोषणा की तारीख / Date of Pronouncement	:	13.06.2018

आदेश / ORDER

Per Saktijit Dey, J. M.:

This is an appeal by the Department against order dated 07.06.2016 passed by the Id. Commissioner of Income Tax (Appeals) – 32, Mumbai for the assessment year 2010-11.

2. The only effective ground raised by the Department reads as under:

1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in admitting additional evidences and not giving specific opportunity to the Assessing Officer as required under Rule 46A of the Income Tax Rules.

3. Briefly the facts are that the assessee is an individual. For the assessment year under dispute the assessee did not filed any return of income under section section 139(1) of the Act. On the basis of information available on AIR data base, the Assessing Officer came to know that the assessee has dealt in transactions of multi commodity exchange amounting to Rs.23,17,29,400/-. He also found that the assessee has dealt in credit card bills amounting to Rs.4,41,570/-. On the basis of the afore-said information, the Assessing Officer reopened the assessment u/s. 147 of the Act by issuing a notice to the assessee u/s. 148 of the Act on 27.11.2013. During the assessment proceeding, the Assessing Officer called upon the assessee to furnish the details relating to credit card and multi commodity exchange transactions. As observed by the Assessing Officer, since, the assessee did not furnish the necessary details, he proceeded to complete the assessment on the basis of material available on record and accordingly estimated income @ 2.5% of Rs.23,17,29,400/- representing multi commodity exchange transaction. As regards the credit card transaction of Rs.4,48,570/-, the Assessing Officer added the whole amount alleging that the assessee did not provide the source of the credit card bills paid. Accordingly, the Assessing Officer made total additions of Rs.62,34,805/-.

4. Being aggrieved of the additions made by the Assessing Officer, the assessee preferred an appeal before the Id. Commissioner of Income Tax (Appeals).

5. The Id. Commissioner of Income Tax (Appeals) after considering the submissions of the assessee and examining the facts and materials placed before him found that as per the statement of purchase and sale of multi commodity exchange transaction undertaken by the assessee and certified by the broker, the Share Khan Ltd., the assessee has earned profit of Rs.2,96,238/-. He observed that the Assessing Officer has not mentioned any reason for adopting the profit rate of 2.5% of the total turnover. Accordingly, he directed the Assessing Officer to assess the income at RS.2,96,238/- on account of income derived from multi commodity exchange transaction. As regards the credit card related transaction, he found that as per the credit card bills, there is an amount of Rs.1,90,000/- which is a wrong debit in the credit card and has subsequently been reversed. On verifying the statement of credit card bills Id. Commissioner of Income Tax (Appeals) directed the Assessing Officer to restrict the addition on account of credit card bills to Rs.2,51,570/-.

6. The Id. Departmental Representative submitted that in the course of hearing of appeal before the first appellate authority, the assessee has produced certain documentary evidences which were never produced before the Assessing Officer. He submitted, without giving any opportunity to the Assessing Officer to verify those evidences, Id. Commissioner of Income Tax (Appeals) has granted relief to the

assessee on the basis of those evidences. Therefore, there is violation of Rule 46A of the I. T. Rules.

7. The Id. Authorized Representative submitted that the power of the Id. Commissioner of Income Tax (Appeals) being co-terminus with that of the Assessing Officer, he is empowered to call for and examine the evidences or make such further enquiry for enabling him to dispose of the appeal. He submitted, Rule 46A(4) also empowers the Id. Commissioner of Income Tax (Appeals) to conduct enquiry or call for evidence for disposal of the appeal. He submitted, in the present case the Id. Commissioner of Income Tax (Appeals) has simply exercised his power under the statute to verify the authenticity of assessee's claim. He submitted, from the evidences brought on record, the Id. Commissioner of Income Tax (Appeals) having found that as per the confirmation of the broker the assessee has a profit of Rs.2,96,238/- from multi commodity exchange transaction has directed the Assessing Officer to restrict the income of the assessee to that amount. He submitted, even in respect of credit card bills, on verification of materials on record, Id. Commissioner of Income Tax (Appeals) has found that an amount of Rs.1,90,000/- was not actually paid by the assessee as the said transaction was subsequently reversed. He submitted, since the afore-said finding of fact are after proper enquiry and examination of facts on record, there is no valuation of Rule 46A and nothing more could have been achieved or happened if the matter was remanded to the Assessing Officer. He, therefore

submitted, the order of Id. Commissioner of Income Tax (Appeals) calls for no interference.

8. We have considered rival submissions and perused the materials on record. From the grounds raised before us it is absolutely clear that the department is challenging the decision of the Id. Commissioner of Income Tax (Appeals) purely from a technical angle and not on merits. As could be seen from the material on record, before the Assessing Officer the assessee, for whatever may be the reason, the assessee was unable to produce the details called for. As a result, the Assessing Officer estimated income in respect of multi commodity transaction exchange transaction @ 2.5% of the total turnover. However, he has not provided the basis for adopting the rate of 2.5%. Similarly, in the absence of any details, the Assessing Officer added the entire credit card bill of Rs.4,41,570/-. However, in the appellate proceeding, the first appellate authority has called upon the assessee to produce the necessary details and after verifying the details produced by the assessee has found that as per the statement of purchase and sales of multi commodity exchange transactions certified by the broker Share Khan Ltd., the assessee has earned a profit of Rs.2,96,238/-. Therefore, he asked the Assessing Officer to restrict the addition to that amount. Similarly, in respect of credit card transaction, he has found that as per the credit cards bills an amount of Rs.1,90,000/-, though, was debited to the card on 24.04.2009, it was reversed on 05.05.2009. Thus, taking note of such factual position

he has directed the Assessing Officer to restrict the addition to an amount of Rs.2,51,570/-. From the afore-said facts it becomes clear that the conclusion drawn by the Id. Commissioner of Income Tax (Appeals) is after verifying the material brought on record. Therefore, the Commissioner (Appeals) on the basis of facts and materials brought on record having come to his conclusion the same cannot be called into question simply because in department's view, the evidences brought on record should have been sent for examination by the Assessing Officer. Even, assuming that the evidences produced are in the nature of additional evidence, but, certainly they are not of so complex in nature to require a detailed enquiry which could only have been made by the Assessing Officer, thereby, requiring a remand to him. The Department has not been able to convince us as to how a different conclusion could have been reached if the evidences were examined by the Assessing Officer on remand. Thus, it is clear that nothing much would have turned if the evidences would have been sent for examination of the Assessing Officer. It is pertinent to observe, section 250(4) of the Act empowers the Commissioner (Appeals) to make further enquiry as deemed fit by him to dispose of the appeal. Since, Id. Commissioner of Income Tax (Appeals) after making such enquiry and properly examining the evidences on record has given a factual finding, which the department except raising a technical objection has not proved to be incorrect, we do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals). The ground raised is dismissed.

9. In the result, the department's appeal is dismissed.
परिणामतः राजस्व की अपील खारिज की जाती है ।

Order pronounced in the open court on 13.06.2018

Sd/-

Sd/-

(N. K. Pradhan)

(Saktijit Dey)

लेखा सदस्य / Accountant Member

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 13.06.2018

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