

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI**

BEFORE SHRI B.R. BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5124/MUM/2016
Assessment Year: 2011-12**

Shri SudhirAjit Jain, Prop of M/s Jayna Auto Agencies, Shop No. 1/5, Sumer Nagar CHS Ltd., S V Road, Borivali (W), Mumbai - 400092 PAN: ADDPJ9670M	Vs.	The ITO 32(3)(4), Mumbai
(Appellant)		(Respondent)

Assessee by : Shri VimalPunmiya (CA)
Revenue by : Shri V. Vidhyadhar (DR)

Date of Hearing: 17/07/2018
Date of Pronouncement: 10/08/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 21.06.2016 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-44, Mumbai, for the assessment year 2011-12, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee engaged in the business of spare parts and booking of two wheelers on behalf of the authorized dealer/distributor in the name and style of M/s Jayna Auto Agency, filed its return of income declaring the total income of Rs. 3,99,740/-. Since, the case was selected for scrutiny, notices u/s 143 (2) and 142 (1) were issued by the AO and served upon the assessee. In response to the said notices, the authorized representative (AR) of the assessee appeared and submitted the details called

for. It was noticed that during the Financial Year relevant to the assessment year under consideration, the assessee had made cash deposit of Rs. 3,70,70,000/- in saving bank account maintained with IDBI Bank. In order to verify the AIR information notice u/s 133(6) of the Act was issued by IDBI bank calling for all bank details and deposits in the name of the assessee. In compliance thereof the bank furnished the statements of account in the name of the assessee. The assessee was confronted with the said details and asked to explain the source of deposit of Rs. 3,70,70,000/ and further asked to explain as to why the transaction made was not shown in the balance sheet. The assessee was further asked to show cause as to why the transaction should not be treated as unexplained transaction. The AR made written submissions stating that the assessee is engaged in the business of booking of two wheelers and sale of spare parts of two wheelers. The booking of two wheelers is being done on behalf of the distributor or dealer. As a matter of practice the persons booking two wheelers through assessee used to make advance payment in cash and the assessee used to deposit the same in his saving bank account. The AR further furnished the list of persons from whom, the assessee received booking amount for two wheelers. It was further contended that cash so deposited in the saving bank has been transferred to the account of Jayna Auto Agency, a proprietor concern of the assessee to the extent of Rs. 2,78,06,875/- and Rs. 85,99,372 were paid to the concerned dealer/distributor. The AR further contended that since, the said transaction has been reflected in the balance sheet and profit and loss account of M/s Jayna Auto agency, the assessee did not mention the same in his return of income. The AO rejecting the contention of the assessee made addition of the entire amount of Rs. 3,70,70,000/- to the account of the assessee and determined the total income at Rs. 3,76,91,140/-.

3. In the first appeal, the Ld. CIT (A) dismissed the appeal of the assessee and confirmed the addition made by the AO holding that the AO has rightly made the addition of said amount as unexplained income.

4. Aggrieved by the order of Ld. CIT (Appeals), the assessee has preferred this appeal before the Tribunal on the following effective grounds:-

1. *“On the facts and circumstances of the case and law, the Ld. CIT (A) erred in confirming the addition of Rs. 3,70,70,000/- as undisclosed income.*
2. *On the facts and circumstances of the case and law, the Ld. CIT (A) failed to appreciate that:-*
 - (a) *Entire deposit in bank account was used for business purpose.*
 - (b) *Entire deposit cannot be termed as Income. Because 100% gross profit is not possible.*
 - (c) *Details filed by the appellant were not taken into consideration which is against the principal of natural justice.*
 - (d) *Section 68 does not apply on bank entries reported in bank statement.”*

5. Before us, the ld. counsel for the assessee submitted that from the statement of bank account of the assessee, it is clear that the assessee has transferred the total amount of Rs. 2,73,03,875/- to M/s Jayna Auto agency, a proprietary concern of the appellant and Rs. 85,99,372 was paid to the dealer of two wheelers. AO has not conducted any enquiry to find out as to whether the aforesaid amount have been shown in the books of accounts of Jayna Auto Agency and wrongly made addition of the amount in question. Since, the AO has not made any enquiry the Ld. CIT (A) ought to have deleted the addition made by the AO.

6. On the other hand, the Ld. Departmental Representative (DR) relying on the findings of the authorities below submitted that since the assessee failed to reflect the amount deposited in his account in return of income, the Ld.CIT (A) has rightly confirmed the addition in question, therefore, there is no merit in the appeal of the assessee.

7. We have heard the rival submissions and perused the relevant material on record. The only grievance of the assessee is that the Ld. CIT(A) has wrongly confirmed the addition made by the AO. We notice that the assessee has

contended before the authorities below that he has transferred a sum of Rs.2,73,03,875/- to his proprietary concern Jayna Auto Agencies and an amount of Rs.8,35,677/- directly paid to dealers from the Saving Bank account. The assessee has further contended that an amount of Rs. 83,48,875/- was transferred temporarily to the Mr. Tarun Jain (son) and Mrs. Heena Jain (wife), which was paid by them directly to dealers on behalf of the assessee.

8. We further notice that the assessee has made the aforesaid submissions before the AO and also submitted the list of persons from whom he received cash amount in connection with booking of two wheelers. Perusal of assessment order would reveal that AO has made addition of the amount in question without conducting any enquiry. In our considered view, the AO should have conducted enquiry in the light of the contentions of the assessee before arriving at the conclusion that the amount in question is the unexplained income of the assessee. We further notice that even during the appellate proceedings, the Ld. CIT(A) did not obtain remand report from the AO. The authorities below have not verified whether the assessee has reflected the said amount in the books of account of his proprietary concern. Hence, without going into the merits of the case we, set aside the issue to the file of AO to decide the same afresh after taking into consideration the contentions of the assessee.

In the result, appeal filed by the assessee for assessment year 2011-2012 is allowed for statistical purposes.

Order pronounced in the open court on 10th August, 2018.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 10/08/2018

Alindra, PS

आदेशप्रतिलिपिअग्रेषित/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**