

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

BEFORE SHRI G.S. PANNU (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 6400/MUM/2016
Assessment Year: 2009-10**

The ITO 1(2)(4), 536, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	Shri Ram Nitesh Kotak, Om Kotak Villa, 36, 3 rd Cross Road, Lokhandwala Complex, Andheri West, Mumbai - 400053 PAN: AEOPK8657D
(Appellant)		(Respondent)

Revenue by : Shri Manoj Kumar Singh (DR)
Assessee by : Shri Mukesh B. Advani (AR)

Date of Hearing: 24/09/2018
Date of Pronouncement: 24/09/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 30.09.2016 passed by the Commissioner of Income Tax (Appeals)-2 (for short 'the CIT(A), Mumbai, for the assessment year 2009-10, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 of the Income Tax Act, 1961 (for short the 'Act').

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

- i. *"Whether on facts and in the circumstances of the case and in law, the Ld. CIT (A) was right in admitting additional evidence during appeal even when no such application under Rule 46*

A has been made, when it is apparent from the assessment order that the assessee had not submitted the relevant details during assessment proceedings and the Assessing Officer had specifically objected admission of such additional evidence in remand report, thus rendering the order passed by Ld. CIT (A) as bad in law and procedure which need to be quashed or set aside?

- ii. *Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was right in accepting deposit of Rs. 45,70,050/- as explained cash deposit in Bank accounts, given the facts that, during the course of assessment proceedings, the assessee failed to explain the source of such cash deposits and also failed to corroborate his claim in respect of the cash deposits with proper evidences?*

3. At the outset, the Ld. counsel for the respondent/assessee pointed out that the tax effect of the relief granted by the Ld. Commissioner of Income Tax (Appeals) is below Rs.20 lacs and as per the CBDT Circular No. 3/2018, F. No. 279/Misc.142/2007-ITJ (Pt) dated 11th July, 2018 issued by Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, the limit fixed by the CBDT for filing appeal before the ITAT is 20 lacs.

4. The Ld. Departmental Representative (DR) fairly conceded that this appeal is not maintainable in light of the above said CBDT Circular. The Ld. DR also did not point out that this appeal falls in any of the exceptions carved out in the above said circular.

5. We have gone through the order of the Ld. Commissioner of Income Tax (Appeals) and the grounds of appeals. We find that the tax effect in the above

referred appeal is less than Rs. 20 lacs. Accordingly, we dismiss the aforesaid appeal filed by the Revenue.

In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open court on 24th September, 2018.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 24/09/2018

Alindra, PS

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai