

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI 'G' BENCH, MUMBAI**

**[Coram: Pramod Kumar VP and Saktijit Dey JM]**

ITA No. 3495/Mum/2015  
Assessment year: 2008-09

**Assistant Commissioner of Income Tax  
CEN Circle 8(2), [Erstwhile ACIT, CC-45]  
Mumbai**

..... **Appellant**

*Vs*

**Ms. Reshma J Shetty**  
26, 2<sup>nd</sup> Floor, Sony Apartment, St. Paul Road,  
Bandra (W), Mumbai  
[PAN: AANPS1105K]

..... **Respondent**

**Appearances by**

**Jacinta Zimik Vashai** *for the appellant*  
**Bhupendra Shah** *for the respondent*

Dates of hearing of the appeal : November 26<sup>th</sup>, 2019  
Date of pronouncing this order : February 24<sup>th</sup>, 2020

**O R D E R**

**Per Pramod Kumar, VP:**

[1] By way of this appeal, the Assessing Officer has challenged correctness of learned CIT(A)'s order dated 31<sup>st</sup> March 2015, in the matter of assessment under section 143(3) r.w.s. 153A of the Income Tax Act 1961, for the assessment year 2008-09.

[2] Grievance raised by the Assessing Officer are as follows:

***Whether in the facts and in the circumstances of the case and in law, the ld. CIT(A) is justified in deleting addition of Rs. 1,64,00,000/- on account of unexplained investment in spite of the fact the AO after considering the computer data back up seized from the premise of Mr. Atul Kasbekar Specifically pointed out that the actual share transaction for the purchase of shares was for Rs. 3.1 crores and as the assessee has only offered Rs.1,46,00,000/-; therefore the remaining amount i.e. Rs 1,64,00,000/- was added as income from undisclosed sources."***

[3] To adjudicate on this appeal, only a few material facts need to be taken note of. The assessee before us is a director of Matrix India Entertainment Consultants Pvt. Ltd- a company said to be engaged in business of co-ordinating and providing services of models and celebrities. The assessee was subjected to a search and seizure operation on 24.01.2011. In the course of ensuing assessment proceedings under section 143(3) r.w.s. 153A, the Assessing Officer noted that one of the seized documents found in the premises of the assessee showed certain entries. He accordingly required the assessee to show cause as follows:-

***"On page No.20, 21, 25, 26,27,28 of the Annexure 'A' seized during the search at assessee's premise, share transactions are mentioned.***

***Initial amount            2.95  
Reshma Paid    1.46  
Vivek Paid       1.01  
Art                    47,87,000***

***You are required to give the detail of art work and the shares transferred. You are show caused that why should not be treated as undisclosed settlement of share transfer"***

[4] In reply, the assessee explained the situation as follows:-

***As regards payment for purchase of shares of Matrix India Entertainment Consultant Pvt, Ltd., I submit that I have purchased 4600 equity shares of Matrix. India Entertainment Consultant Pvt. Ltd from Atul Kasbekar on mutually agreed price, of Rs.1,46,00,000/-. the details of payment made to Atul Kasbekar are as under:***

<b><i>Date</i></b>	<b><i>Bank Name</i></b>	<b><i>Cheque No.</i></b>	<b><i>Amount</i></b>
<b><i>13.04.2007</i></b>	<b><i>Kotak Mahindra Bank</i></b>	<b><i>000154</i></b>	<b><i>1,00,00,000/-</i></b>

18.04.2007	Kotak Mahindra Bank	000155	46,00,000/-
		Total	1,46,00,000/-

*I herewith also enclose copies of bank statement with the duly marked entries showing source of payment for purchase of shares. I submit that I have not given any paintings of art for purchase of shares of Matrix India Entertainment Consultant Pvt. Ltd. from Atul Kasbekar. After all discussion and deliberation to resolve the issue the consideration for purchase of 4600 shares of Matrix India Entertainment Consultant Pvt. Ltd. was mutually agreed at Rs.1,46,00,000/- and I have accordingly made the payment of Rs 1,46,00,000/- by cheques drawn on Kotak Mahindra Bank, the details of payment are already given herein above. A copy of unsigned letter given by you to me is not addressed to me. It appears that the said letter by Atul to his friend Jai is discussion of various option and expecting advice from him how to go forward to resolve dispute. I am not aware about it. Therefore it does not warrant any addition to my income.*

[5] The Assessing Officer, however, was not satisfied with the aforesaid explanation. He proceeded to bring to tax an amount of Rs. 1,64,00,000/- by observing as follows:-

*It is very clear with these papers that undisclosed share transfer settle has happened because assessee has paid exactly one same amount mentioned seized paper to buy these shares from Mr. Atul Kasbekar who was a share holder in M/s. Matrix India Entertainment Pvt. Ltd.*

*Apart from this, during the search at the premise of Mr. Atul Kasbekar, computer data backup was seized in which the same share transaction was discussed with his friend in an e-mail communication. In the same communication, Mr. Atul Kasbekar has discussed about the settlement and told about the painting of worth Rs.68 lakhs Which he was offered by Mr. Vivek Kamath (share holder of M/s. Matrix India Entertainment Pvt. Ltd.) in the compensation shares alongwith other consideration amounting upto Rs.3.1 crore.*

*Mr. Vivek Kamath has offered 3.1 crore as compensation against the sale of shares. Now, it is very highly improbable that one amount is offered for anything by the purchaser and deal is settled on the price below to that offered amount. This improbability is supported by some other facts mentioned in the same e-mail in which Mr. Atul Kasbekar has accepted that cash payment is fine to him. In that same e-mail Mr. Vivek Kamath has offered two alternatives to Mr. Atul Kasbekar which both are amounting upto Rs.3.1 crore.*

*In these facts and circumstances, it is very apparent that share deal has been settled at the amount of Rs.3.1 crore but the disclosed and accounted money involved is Rs.1.46 crore only paid by the assessee, remaining amount has been paid by the assessee from her undisclosed source of income and investment. Hence, an amount, of Rs. 1,64,00,000/- (Rs.3,10,00,000 - Rs:1,46,00,000) has been added to the income*

***of the assessee as unexplained investment. Penalty proceedings u/s.271(l)(c) of the I. T. Act is initiated separately for concealment of particulars of income.***

[6] Aggrieved, assessee carried the matter in appeal before the CIT(A) who deleted the aforesaid disallowance by observing as follows:-

***9.3 I have carefully perused the assessment order and appellant's submission especially at para- (c), (d), (e) (f) and (h), It is seen that the AO has erroneously made the addition of Rs.1,64,00,000/- which actually relate to other entities mentioned as "vivek paid", "art" and "initial amount" at page 20 of Annexure A of seized document. The amount of Rs.1.46 crores relating to the appellant and also duly noted as "Reshma paid 1.46" in the seized document has been duly accounted for by the appellant through bank transactions. The copy of the agreement of the appellant with Mr Atul Kasbekar also confirms the same. Thus since the amount of Rs. 1.46 crores has been fully accounted for, there is no other cash payment made by her. The certificate submitted by the CA also is documentary proof and doubly evidences the same. Therefore, this Ground of Appeal is allowed and addition of Rs. 1,64,00,000/- is deleted.***

[7] The Assessing Officer is aggrieved of the relief so granted by the CIT(A) and is in appeal before us.

[8] We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

[9] We have noted that so far as the seized document is concerned it shows that the assessee had paid Rs. 1.46 crores, and that is exactly what the assessee has showed in her books of accounts. There is no infirmity on that point. As far the payment of Rs. 1.01 crores shown to have been made by Vivek and art work of Rs. 47.87 lakhs given to the seller of shares, there is nothing to indicate that this pertains to the assessee. Vivek is an independent person and his transactions have to be reflected in his documents. That leaves us with email found in the course of search and seizure operations in Atul Kasbekar's case. It is an admitted position that neither assessee is a party to the email nor, at any stage, she is confronted with the same. In any case it talks about various transaction format suspicious about a deal under contemplation. Nothing, therefore, turns on this email conclusively. It could have been a good starting point for further probe in the matter but that has not happened. The conclusions arrived at by the learned CIT(A), therefore, are in order.

[10] In view of these discussions, as also bearing in mind entirety of the case, we approve conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

[11] In the result, the appeal is dismissed. Pronounced in the open court today on the 24<sup>th</sup> day of February, 2020.

**Sd/-**  
**Saktijit Dey**  
(Judicial Member)

**Sd/-**  
**Pramod Kumar**  
(Vice President)

**Mumbai, Dated the 24<sup>th</sup> day of February , 2020**

*Copies to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Mumbai benches, Mumbai*

