

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

**[Coram: Justice P P Bhatt (President) and
Pramod Kumar (Vice President)]**

ITA No. 7623/Mum/2016
Assessment year: 2011-12

Nimmi K ChhabariaAppellant
*802 B, Surya Apartments
Bhulabhai Desai Road, Mumbai 400026
[PAN:AAAPC6121G]*

Vs

Deputy Commissioner of Income Tax
Central Circle 47, MumbaiRespondent

Appearances by

Mayur Kisnadwala *for the appellant*
Awungshi Gimson *for the respondent*

Date of concluding the hearing: : February 19th, 2020
Date of pronouncement : May 27th, 2020

O R D E R

Per Bench:

1. This appeal, filed by the assessee, is directed against the order dated 21st September 2016 passed by the CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2011-12.
2. Grievance raised by the appellant are as follows:

1. Learned CIT(A) erred in not deleting entirely the two additions of Rs 1,75,000 and Rs 1,56,150 in respect of cash sales entries from page 11 and page 34 of the seized papers respectively, aggregating to Rs 3,31,500 made by the Assessing Officer, but sustaining the two additions to the extent of R 1,56,150 and Rs 1,10,000 aggregating to Rs 2,66,150

2. Learned CIT(A) failed to appreciate that the typed entries were made by Jayantilal in a paper left behind by him and the appellant had not made any such entries.

3. Without prejudice, if at all the said figure of Rs 2,66,150 is to be considered, the entire amount may not be added but addition may be limited only to profit element embedded therein.

3. The assessee before us is an individual and she is engaged in the business of furniture making and interior decoration. As a part of search and seizure operation carried out on Rohan Group related entities, the assessee was also subjected to a search and seizure operation on 26th May 2011. In the proceedings which followed, the assessee filed an income tax return disclosing an income of Rs 3,93,30,526. While examining this return in 3. the scrutiny assessment proceedings, the Assessing Officer noticed that seized papers disclose cash receipts of Rs 1,75,000 and Rs 1,56,150 which are not reconciled with the books of accounts. He thus proceed to add the aggregate of these amounts, i.e. Rs 3,31,150 to the income returned by the assessee. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without complete success. He gave partial relief of Rs 65,000. The assessee is not satisfied and in further appeal before us.

4. Having heard the rival contentions and having perused the material on record, we are of the considered view that further partial relief is warranted on the facts and in the circumstances of the case. We have noted that in the assessment order, the difference has been added by observing that "unaccounted cash has been received by the assessee against the sale" (Page 2 of the assessment order; para 5 b) and as "cash receipt against the sale amounting to Rs 1,56,000 (Page 3 of the assessment order; second paragraph from top). Clearly thus the additions were made, at the assessment stage, as unaccounted sales. In these circumstances, and having regard to the fact that no specific notice was at any stage put by the CIT(A) for changing the nature of addition, we are of the view that what can be added to income is only profit element in the sales. When we asked learned representatives as to what could be reasonable profit element, looking to the smallness of amount, the matter was entirely left to us. We estimate the profit @ 10% and, accordingly, confirm the addition to the extent of Rs 26,650. The balance amount is thus deleted. The assessee gets the relief accordingly.

5. In the result the appeal is partly allowed. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
Justice P P Bhatt
(President)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 27th day of May 2020

Copies to:

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai