

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE SHRI VIKAS AWASHTY, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3240/Mum/2018  
(A.Y. 2009-10)**

Income Tax Officer- 21(3)(2), R. No. 203, 2 <sup>nd</sup> Floor, Piramal Chambers, Lalbaug, Mumbai – 400012	Vs.	Shri Satish Kumar Kundanmalji Porwal D-23, 1 <sup>st</sup> Floor, Zia Masum Chawl, N.M. Joshi Marg, Lower Parel, Mumbai- 400013
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADPP9461D		
Appellant	..	Respondent

Appellant by :	Hemant Kumar Chimanlal
Respondent by :	None

Date of Hearing	19.04.2022
Date of Pronouncement	26.05.2022

आदेश / O R D E R

**PER AMARJIT SINGH, AM:**

The present appeal filed by the revenue and directed against the order passed by the Id. CIT(A)-33, Mumbai, which in turn arises from the order passed by the A.O. u/s 143(3) r.w.s 147 & 144 of the Income Tax Act, 1961, for A.Y. 2009-10. The revenue has assailed the impugned order on the following grounds before us:

- “1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition made on account of

*unexplained cash credits amounting to Rs.64,94,63,636/- [(total addition Rs.65,47,79,471/-) less (sustained addition RsRs.53,15,835/-), merely Based on the statement of the assessee that he was earning commission income without appreciating the fact that the assessee's statement was neither corroborated by nor substantiated with any evidence?"*

2. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in admitting additional evidence and relying upon the same for deciding the appeal, without remanding the matter before the AO as required under Rule 46A of the Income Tax Rules, 1962?*
3. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in adopting the peak of balances in the account without appreciating the fact that it was never established by the assessee that the same money has circulated through multiple transactions and rather it was established that fresh funds were constantly introduced into the bank account from various entities and were transferred to various other entities?"*
4. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in computing the commission of the assessee @ 0.002 per Rupee on the said unexplained cash credits of Rs.73,56,84,191/- in the two bank accounts without appreciating the fact that there was neither any evidence regarding the receipt of any commission by the assessee nor was there any evidence regarding the rate of commission received by the assessee?*
5. *The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the assessing officer be restored.*
6. *The appellant carves leave to amend or to alter any ground or add a new ground, which may be necessary."*

2. The fact in brief is that return of income declaring total income of Rs.6,94,800/- was filed on 26.11.2009. The assessment u/s 143(3) of the Act was completed on 31.12.2011 assessing the total income of the assessee at Rs.8,78,660/-. Subsequently, the case of the assessee was reopened by issuing of a notice u/s 148 of the Act on 28.03.2016. The AO received information from the DDIT(Inv.), Mumbai, that the bank accounts statements of the assessee in Union Bank of India Gowalia Tank Branch, Mumbai, bearing a/c No. 352201010036046 and 352204010032021 reflected total credit entries to the amount of

Rs.72,51,79,719/- and Rs.1,05,04,472/- respectively. However, the assessee had declared income in the return income of Rs.809,04,720/- only and there was reasons to believe that the credit entries of Rs.65,47,79,471/- were from undisclosed sources. During the course of assessment proceedings the A.O has issued notices u/s 143(2) and 142(1) of the Act calling relevant supporting detail to explain the credit amount reflected in the assessee's aforesaid two bank accounts. However, the assessee has not made any compliance to the notices issued by the A.O. To enforce the attendance of the assessee, 271(1)(b) of the Act, the A.O has also issued notices u/s 271(1b) and summon u/s 131 of the Act. However, the assessee has not made any compliance. Consequently, the A.O has completed the assessment ex-parte us/ 144 of the Act and total income of the assessee was assessed at Rs.65,63,93,860/-.

3. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) restricted the addition on account of unaccounted amount to Rs.36,02,436/- up to the peak of the credit amount considering the details and submission filed by the assessee before the ld. CIT(A). The ld. CIT(A) held that during the year, the assessee had carried out the cheque discounting business to the amount of Rs.73,50,84,191/- and treated the amount of Rs.14,71,368/- being commission income of the assessee earned on cheque discounting business on the basis of information and detail filed by the assessee before the ld. CIT(A). Similarly, the ld. CIT(A) has also treated Rs.242,031/- pertaining to other bank account as unaccounted money and interest income of Rs.6,35,735/- received by the assessee on the basis of detail and information filed by the assessee before ld. CIT(A).

4. The ld.CIT(A) has also commented that A.O has not carried out any verification to ascertain the nature of amount credited in the bank account of the assessee. In this regard, we find that ld. CIT(A) has not considered the material fact that during the course of assessment proceedings in spite of issuing a number of notices, summons and notices u/s 271(1)(b) of the Act, the assessee has not made any compliance. Therefore, we consider that ld. CIT(A) should have given opportunity to the A.O by calling remand report to examine and verifying the relevant evidences submitted before him. Since, the ld. CIT(A) has admitted the fresh evidences which has not been confronted to the A.O for his rebuttal etc, therefore, we consider it appropriate to restore this case to the file of the ld. CIT(A) for adjudicating afresh after calling remand report from the A.O. Accordingly, the appeal of the revenue is allowed for statistical purposes.

5. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 26.05.2022

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Mumbai, Dated 26.05.2022  
PS: Rohit

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,  
सत्यापित प्रति //True Copy//

(Asst. Registrar)  
ITAT, Mumbai