

**THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA NO. 185/MUM/2019
(A.Y.2014-15)**

Jayshree Vinit Shah A-8 2 nd Floor, Anamika CHS Ltd. Nagardas Road, Andheri (East) Mumbai-400 069 PAN No. BJLPS3011A	v/s	Income Tax Officer Ward 24 (2) (2) Room No. 514, 5 th Floor, Piramal Chambers, Lalbaug Mumbai-400 013
Appellant		Respondent

Assessee by	Bhupendra Shah
Department by	Ms. Vranda U Matkari, Sr. AR
Date of Hearing	25-07-2022
Date of Pronouncement	21-10-2022

ORDER

PER KAVITHA RAJAGOPAL :-

This appeal has been filed by the assessee as against the order of the learned Commissioner of Income Tax (Appeals)-36, Mumbai [hereinafter referred to as “CIT(A)”] under section 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) pertaining to assessment year 2014-15.

2. The assessee has challenged on various grounds such as challenging the unsigned assessment order/unsigned demand

notice as void *ab initio* and *non est* in law and has also challenged the various additions made u/s 68 and section 69 of the Act.

3. The brief facts are that the assessee filed return of income for AY-2014-15 dated 19.11.2014 declaring total income of Rs.2,15,080/-. The assessee's case was selected for scrutiny for the reason that there was suspicious transaction relating to short term capital loss on shares as per information from Investigation wing and indulgence in penny stock activities. Notice u/s 143(2), dated 18.09.2015 and notice u/s 142 (1) was issued and served on the assessee. Sumons were also issued u/s 131 of the Act and statement on oath was recorded on 17.08.2016. The assessee had submitted in an affidavit that all the transactions were controlled and managed by Mr. Kamlesh Sanghvi and in whose instant the assessee was signing cheques and getting commission as per the rate specified. Consequently, the Assessing Officer (AO) rejected the assessee's contentions and made addition u/s 68 of the Act on the entire loans taken by the assessee to the tune of Rs.4,59,20,000/- as unexplained cash credit in the books of the assessee and also made addition to the tune of Rs.4,23,88,923/- u/s 69 of the Act on account of investment made in NNM Securities Pvt. Ltd. The AO passed an assessment order dated 30.12.2016 by determining the total income at Rs.8,85,24,100/-. The assessee contends that the assessment order as well as demand notice, tax calculation sheet were not signed by the AO. The assessee challenged the assessment order on this ground and also the additions made by the AO before

the learned CIT(A). The learned CIT(A) dismissed this ground of appeal filed by the assessee and confirmed the additions made by the AO. The assessee is in appeal before us as against the order of the learned CIT(A).

4. We would like to adjudicate ground no. 1 raised by the assessee challenging the unsigned assessment order/demand notice to be void *ab initio*, *non est* and bad in law and prayed for quashing/annulling the assessment order on this ground. The learned Authorized Representative (AR) brought our attention to the paper book filed by the assessee referring to page no. 33, 35 and 39 which is a copy of unsigned assessment order, the demand notice, and the tax computation sheet. The learned AR further, submitted that the learned CIT(A) has not considered judicial precedents cited by the assessee and relied on the decision of **Smt. Kilasodevi Burman and others Vs. CIT 219 ITR 214 (SC)**, **CIT Vs. Dhansukhlal J. Gajjar 237 ITR 534 (Guj)** and the Co-ordinate Bench decision in the case of **Vijay Corporation Vs. ITO (ITA No.1511/MUM/2010) order dated 20.01.2012**, **ITO Vs. Parkeen Brothers 45 CCH 498 (Mum. Trib)** wherein, it was held that an unsigned assessment order is held to be invalid assessment. The learned Departmental Representative (DR) relied on the decision of Guwahati Tribunal in the case of **Haroocharai Tea Co. Vs. ITO (1990) 35 ITD 590 (Guwahati)** and contended that the assessee was not misled by the unsigned documents and relied on the decision of the lower authorities.

5. We have heard the rival submissions and perused the materials on record. It is uncontroverted fact that in the present case the assessment order, the demand notice and tax computation sheet are unsigned. It is evident that the AO has made addition u/s 68 & 69 of the Act, amounting to Rs.4,59,20,000/- and Rs.4,23,88,923/- respectively, as unexplained cash credit and investments made by the assessee. The impugned assessment order dated 30.12.2016 has not been signed by the AO and same is the case of demand notice dated 30.12.2016 and tax computation form. We would like to place our reliance on the decision cited by the learned CIT(A) in the case of **Haroocharai Tea Co. Vs. ITO (supra)** wherein, it was held that demand notice issued by the AO in consequence of reassessment made u/s 147B/143(3) does not invalidated merely on the ground that it was unsigned as the assessee was not misled by the same. This decision relied on by the learned DR pertains to reassessment order in which case the original assessment order, the original demand notice were said to be signed by the AO. But, in the present case in hand these facts are distinguishable as the assessment made in assessee's case is original assessment order and not reassessment. We would now place our reliance on the decisions cited by the assessee wherein, the Hon'ble Apex Court in **Smt. Kilosadevi Burman and others** has held that an unsigned assessment order is an invalid assessment were the Revenue has not produced any record to show that there was a signed assessment order nor a signed assessment

form. In this context, the Revenue has also not furnished any record to prove that there was a signed assessment order, demand notice or tax computation sheet, which establishes the fact that there is no evidence to controvert the assessee's contention on this ground. We are not in view with the Revenue's argument that the unsigned assessment order is not fatal and has not misled the assessee. The argument that section 292B of the Act can be invoked in such cases is also not a plausible reason as section 292B does not cover this issue and we find no judicial precedent either, which has dealt with this issue under the said provision. On the other hand, section 143 (3) lays emphasis that the AO shall pass an order of assessment in writing wherein, the signature of the AO implies to be mandatory. We would like to place our reliance on the decision of Co-ordinate Bench in case of **Vijay Corporation Vs. ITO (supra)** where, the relevant extract is cited here under for ease of reference:

Provisions of Section 143 (3) of the Act contemplates that the AO shall pass an order of assessment in writing. The requirement of signature of the AO is therefore a legal requirement. The omission to sign the order of assessment cannot be explained by relying on the provisions of Section 292B of the Act. Tax computation is a ministerial act as observed by the Hon'ble Supreme Court in the case of Kalyankumar Ray (supra) and can be done by the office of the AO if there are indications given in the order assessment. But the notice of demand signed by the office of the AO without the existence of a duly signed order of assessment by the AO, in our view cannot be said to be a omission which was sought to be covered by the provision of Section 292B of the Act. If such a course of is permitted to be followed that

would amount to delegation of power conferred on the AO by the Act. Delegation of powers of the AO u/s 143 (3) of the Act is not the intent and purpose of the Act. An unsigned order of assessment cannot be said to be in substance and effect in conformity with or according to the intent and purpose of the Act. We therefore hold that the order of assessment is invalid.

6. From the above observations and by respectfully following the above judicial decisions, we hold that the impugned assessment order/demand notice to be invalid. The other grounds of appeal raised by the assessee needs no adjudication and become academic in nature.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 21.10.2022.

Sd/-

(PRASHANT MAHARISHI)

ACCOUNTNANT MEMBER

Sd/-

(KAVITHA RAJAGOPAL)

JUDICIAL MEMBER

Mumbai:

Dated: 21/10/2022

MAHESH SONAVANE (P.S)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)

4. Dr, ITAT, Mumbai
5. Guard File.

//True COPY//

BY ORDER,

(Assistant Registrar)

ITAT, Mumbai