

**IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH,  
MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL  
MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 448/Mum/2024  
(A.Y.2015-16)**

Shan Exports 1/213, Navjivan Society, Lamington Road, Mumbai-400008	Vs./ बनाम	Central Circle (3)(4), Mumbai Room No. 1915, 19 <sup>th</sup> Floor, Air India Bldg. Nariman Point, Mumbai-400021
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AALFS008B</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Ms. Mona Solanki
Respondent by :	Shri Nagnath Pasale

Date of Hearing	28.05.2024
Date of Pronouncement	05.07.2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-51/ [hereinafter referred to as "CIT(A)"] dated 21.12.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2015-16.

2. The Assessee has raised following grounds of appeal:



1. *“On the facts and in the circumstances of the case and in law, The CIT(A), hereinafter referred to as the Ld. CIT(A) has erred in law in assessing the total income at Rs. 39,78,280/- instead of returned Income of 2,03,280/. The returned Income may please be accepted.*
  2. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in making addition of Rs. 37,75,000/- as unexplained money u/s 68 of the Income Tax Act, 1961. The said Addition is not in accordance with the provisions of the Act and as per the facts of the case.*
  3. *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in changing the section 69A to Section 68 of the Act exercising section 251(1) powers. Your Honor, there is no such power provided by the law that Id. CIT(A) could change the provision of law qua the item of which assessment was made. Kindly delete the addition”*
3. Brief facts of the case are that the assessee firm did not file its return of income for the year under consideration. From the information available with the department, it was noticed by the AO that the assessee had substantial income and also has investments in time deposit during the year under consideration. The information flagged on the INSIGHT portal of the Department in respect of assessee was as under:

<b>Information Description</b>	<b>Source</b>	<b>Count</b>	<b>Amount description</b>	<b>Amount (Rs.)</b>
<i>TDS Statement-Interest other than interest on securities (section 194A)</i>	<i>Bank of Baroda</i>	<i>11</i>	<i>Amount paid or credited</i>	<i>81,450/-</i>
<i>Time deposit exceeding Rs. 2,00,000/- with a banking company</i>	<i>Bank of Baroda</i>	<i>7</i>	<i>Transaction amount</i>	<i>2,31,75,000/-</i>

Accordingly, a notice u/s 148A(b) of the Act was issued to the assessee to show cause as to why the proceedings u/s 148 should not be initiated in his case. As no reply was received against the said notice, the AO issued notice u/s 148 of



the Act on 30.03.2022 after obtaining prior approval from the competent authority. In response to this, the assessee filed its return on 08.04.2022 declaring total income of Rs. 2,03,280/-. The AO issued notice asking the assessee show cause as to why the amount of Rs. 2,31,75,000/- should not be treated as its unexplained income. The assessee submitted that the information is incorrect and that it had not made any FD of such high value in the year under consideration. It was further clarified that the amounts displayed in the bank account statement related to entries from Auto Sweep A/c. Rs. 37,75,000/- was found credited in the bank account of the assessee. However, the AO vide order u/s 143(3) dated 29.03.2023 added the sum of Rs. 37,75,000/- to the income of the assessee u/s 69A of the Act.

4. The Ld. CIT(A) upheld the addition made by the AO, however, while confirming the addition the CIT(A) held the amount to be unexplained cash credit u/s 68 of the Act instead of unexplained money u/s 69A of the Act.

5. Before us, the Ld. AR has filed written submissions clarifying that the sum of Rs. 37,75,000/- was the opening balance as on 01.04.2014 in the flexi-FD account linked to the assessee's current account No. 10950200000243 with Bank of Baroda and that there was no fresh credit of Rs. 37,75,000/- during the year under consideration. A screen shot of the flexi-fixed-deposit account was also submitted to demonstrate that Rs. 37,75,000/- was the opening balance in the account as on 01.04.2014. It has also been submitted by the Ld. AR that the



AO had recorded reasons for reopening on the ground of unexplained transactions amounting to Rs. 231,75,000/- and made addition on a different amount. He contended in view of various judicial pronouncement, that the order of the reassessment was liable to be set aside.

Further, the Ld. CIT(A) while confirming the additions changed the applicable section from 69A to 68. Same has also been challenged by the Ld. AR on the ground that Ld. CIT(A) has no such power to change the provisions of law in respect of the addition made during the assessment.

On the other hand, Ld. DR relied upon the orders of the lower authorities.

6. We have considered the rival submissions. Based on information received by the department, notice regarding deposits in Bank of Baroda (BOB) was issued u/s 148A(d) of the Act. Since no reply was received to the notice, the AO had rightly initiated the proceedings u/s 148 of the Act, as there was prima facie case of escapement of income.

On merits, the assessee has clearly demonstrated through the submissions of bank details that there were no fresh investments/deposits in bank account and Rs. 37,75,000/- was indeed the opening balance in flexi FD account as on 01.04.2014. This amount along with interest has been rotated several times during the year through auto sweep in the current account of the assessee with BOB. Since, no fresh amount has been deposited in the bank account during the year under consideration, the addition made by the AO is not justified. The same



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is, accordingly, deleted. In view of the above, grounds thus become academic in nature, and therefore not being decided.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 05.07.2024.

Sd/-

Sd/-

**NARENDER KUMAR CHOUDHRY**

**RENU JAUHRI**

(न्यायिक सदस्य/JUDICIAL MEMBER)

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 05.07.2024

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

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

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