

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

**Before Shri Mahavir Singh, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA No.1285/Mum/2015
Assessment Year: 2010-11**

Nilesh Pranlal Doshi Shop No.1 Dsouza Compound, Chandivali Rd, Near Kamani Oil Mill Andheri (E) Mumbai, Pin 400072	बनाम/ Vs.	ITO 21 (3)(4) Mumbai
(Appellant)		(Respondent)
P.A. No.AACPD6202F		

Appellant by	Shri Suresh Patni (AR)
Revenue by	Shri Suman Kumar(DR)
Date of Hearing:	7/3/2017
Date of Order:	7/3/2017

आदेश / ORDER

Per Ashwani Taneja, A.M:

This appeal has been filed by the assessee against the order of Commissioner of Income-tax (Appeals)-38, Mumbai [hereinafter called CIT(A)] dated 22.12.14 passed against the assessment order dated 14.3.13, u/s 143(3) of the Act for assessment year 2010-11 on the following grounds.

*"The learned CIT(A) erred in upholding the addition made of Rs. 18,00,000/- being loan returned by M/s Mahavir Traders.
The learned CIT(A) erred in confirming the addition of maturity proceeds of bank FD to the extent of Rs. 3,00,000/-.*

The learned CIT(A) failed to understand that once the books of accounts have been rejected u/s 145(3), no reliance should have been made on such books of accounts and assessment has to be made on the basis of third party evidences.

The learned CIT(A) erred in rejecting the third party evidences placed before him by the appellant without any cogent reasons.

The learned CIT(A) failed to differentiate between capital receipts and revenue receipts and wrongly upheld the addition made in respect of capital receipts, which appellant proved by adducing third party evidences.

The learned CIT(A) failed to appreciate that the books of accounts of the appellant contained various mistakes committed by the accountant and as the appellant is not well versed with accounting, the books of accounts should not have been made basis for upholding various additions”.

2. During the course of hearing, it was brought to our notice that this appeal has been filed late by 14 days for which reasons of delay were explained with the help of the affidavit by deposing facts on oath as under:-

“Nilesh P. Doshi, having address at shop No. 1, D’Souza Compound Chandivali Road, Near Kamani Oil Mill, Andheri (East), Mumbai-400072 solemnly affirm and state as under:

That I have personally collected the order passed by Hon'ble CIT (Appeals)-38, Mumbai on 27/12/2014 and accordingly the due date for filing appeal before Hon'ble ITAT was 26/02/2015.

That I have been suffering from High Blood Pressure for last two months.

That because of my high blood pressure, I could not compile all the requisite papers for filing of appeal to Hon'ble Tribunal against the said order passed by Hon'ble CIT(A)-38, Mumbai.

That the delay in filing of appeal before Hon'ble ITAT of 6 days is solely due to the reason of my health problem

That I pray before the Hon'ble Income Tax Appellate Tribunal to kindly condone the delay of 6 days in filing of appeal against the said order of CIT(A)-38, Mumbai.

Solely affirmed at Mumbai on this 2nd day of March, 2015.”

3. The Ld. Counsel also drew our attention on the medical certificate issued by the doctor in support of the aforesaid affidavit. Ld. DR did not raise serious objection for granting condonation of delay.

4. We have gone through the submissions on this aspect and facts and circumstances of the case and find it to be a fit case for granting condonation of delay. Therefore, delay of 14 days in filing this appeal before us is hereby condoned and the appeal is admitted for disposal on merits.

5. During the course of hearing, it was stated by Ld. Counsel of the assessee in this case sufficient opportunity was not given by the Ld. AO, while passing the assessment order and the additions were made by invoking provisions of section 145(2) by estimating the income after rejecting books of account. Before Ld. CIT(A), though remand report was called for, but Ld. AO did not give proper opportunity to the assessee before preparation of remand report and the same was prepared and sent to Ld. CIT(A) in a hurried manner which is evidenced by the fact that Ld. CIT(A) had directed the AO to answer certain queries after making proper examination of facts and evidences, but these were not examined by A.O. He also drew our attention upon the bank statements and the evidences furnished before the lower authorities, which have not been properly examined and addition has been made in highly unjustified manner.

6. Per contra, Ld. DR fairly stated that these issues can be sent back to the AO for proper examination provided assessee extends full cooperation to the AO for submissions of requisite details and evidences.

7. We have gone through the orders passed by the lower authorities and the submissions made by both of the parties before us. It is apparent on perusal of the orders of the authorities below that details and evidences have not been examined properly by the lower authorities before making huge addition in the hands of the assessee; therefore, we send all the grounds raised by the assessee back to the file of the AO for their proper

adjudication afresh. The AO shall give adequate opportunity of hearing to the assessee. The assessee shall extend full cooperation to the AO by filing requisite details and evidences as may be required by the AO time to time, as per law. The AO shall examine all the evidences as may be brought on record by the assessee on objective basis before deciding these issues afresh. With these directions all the grounds of the assessee are sent back to the file of AO and may be treated as allowed, for statistical purpose.

8. As a result, this appeal may be treated as allowed for statistical purpose.

Order pronounced in the open court at the conclusion of hearing.

Sd/-

(MAHAVIR SINGH)

Judicial Member

मुंबई Mumbai; दिनांक Dated : 07.03.2017

V. P. Singh

Sd/-

(ASHWANI TANEJA)

Accountant Member

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.

Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai