

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

**ITA No.2756/Mum/2013  
(A.Y:2004-05)**

<b>Yogesh Jayendra Mehta</b> C/0 M.S. R.B. Shah & CO. CAS, Raja Bahadur Mansion NOP. 32, 2 <sup>nd</sup> Floor, Mumbai Samachar Marg, Near Bombay Stock Exchange, Fort Mumbai-400 023	Vs.	<b>Asst. Commissioner of Income Tax,</b> Circle 16(1) Room No. 203 Matru Mandir, Tardeo Mumbai-07
<b>Appellant</b>	..	<b>Respondent</b>
<b>PAN No. AAHPM1615N</b>		
<b>Assessee by</b>	..	Shri Sanjay Parikh, AR
<b>Revenue by</b>	..	Miss Anupama Sigla, DR
<b>Date of hearing</b>	..	<b>21-03-2017</b>
<b>Date of pronouncement</b>	..	<b>21-03-2017</b>

**ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the assessee is arising out of the order of CIT(A)-27, Mumbai, in appeal No. CIT(A)-27/ACIT 16(1)/359/2011-12 dated 04-01-2013. The Assessment was framed by ACIT Circle 16(1), for the A.Y. 2004-05 vide order dated 28-12-2011 u/s 143(3) of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. The first issue in this appeal of assessee on merits is as regards to the order of CIT(A) confirming the addition made by AO under section 69C of the Act amounting to Rs. 1,93,57,051/- being the amount appearing in seized documents paid for purchase of flat. For this assessee has raised following ground: -

“C) **Addition u/s . 69C –Rs. 1,93,57,051/-**

5) *The learned CIT(A) erred on facts and in law in confirming the addition made by the AO u/s. 69C amounting to Rs.1,93,57,051/-*

6) *The appellant prays that the addition made by the AO u/s. 69C amounting to Rs. 1,93,57,051/- and confirmed by the CIT(A) may be deleted.”*

3. Briefly stated facts are that the assessee is an individual and deriving income of profit from share of partnership firm, trading in share and securities, house properties and other sources. The assessee filed its return of income, which was assessee under section 143(3) of the Act on 20-10-2006. Subsequently, a search was conducted under section 132 of the Act by the department on the business and residential premises of M/s Bharat Shah Group of Cases on 15-03-2008, from where the documents seized during search revealed that the assessee paid unaccounted consideration in cash for purchase a flat in the Project name “Legend”. Accordingly, the assessment was reopened under section 147 of the Act. Verification of loose paper found from the premises of M/s Bharat Shah Group of Cases revealed that page No. 6 of Annexure A-1 which noted the transactions that the assessee has purchased one flat by paying unaccounted income as under: -

13 <sup>th</sup> floor Sea View Yogesh J. Mehta Mine stone		
2550 * 15.000	382.50	
285 parking	<u>10.00</u>	
	392.50	
CHQ	198.98	1,98,92,949
SH to receive	193.52	1,93,57,051
<hr/>		
Q Recd. 10	SH Recd	30.00
50		30.00
<u>15</u>		<u>5.22</u>
75		65.22
<u>16</u>		<u>12.00</u>
91		77.22
		<u>12.78</u>

4. According to AO, the seized material was found at 3<sup>rd</sup> Floor, Plaza Panchsil, 55, Gamdevi, Huges Road, Mumbai-7 Mumbai 7, the premises which were used by M/s Bharat Shah Group of Cases as a site office for construction of

projects including the project “Legend” carried on by Layer Exports (P) Ltd. at Walkeshwar Mumbai. The AO added the amount as undisclosed investment under section 69C of the Act by observing in Para 10 as under: -

*“10. It will be seen from the above that after analyzing the seized papers from M/s Layer Exports (P) Ltd. there is clear cut finding that every buyer has made payment by cheque and also in cash. The denial on the part of the recipient and the payer cannot prevent the Assessing Officer from drawing a logical inference from the surrounding circumstances. Here in this case all the details regarding payment by cheques have been in conformity with the actual payments and therefore, it can safely be inferred that all other details recorded on this page are also true. I therefore reject the assessee submission that 110 cash payment has been made by him towards the purchase of above flat and accordingly add a sum of Rs. 1 931,5 7,0-5 1/- to the assessee s total income towards undisclosed investment u/s 69C of the IT Act 1961 Penalty proceedings u/s 271(1)(c) are separately initiated for furnishing inaccurate particulars of income.”*

Aggrieved assessee preferred the appeal before CIT(A).

5. CIT(A) also confirming the action of the AO by observing in Para 5.10 to 5.11 as under: -

*“5.10 In view of the above discussion and the clear facts brought on record, I am of the considered opinion that the documentary evidence in the form of seized materials and the circumstances surrounding the impugned transaction and its recording in the books vis-à-vis the seized materials would go to show that the*

*consideration in cash, over and above the cheque payment recorded in the books, was made by the appellant and the AO has correctly brought it to tax as unexplained investment.*

*5.11 As regards the appellant's contention that statements recorded during the search were not given to him and an opportunity to cross examine the party rendering the statement was not given, I do not find any merit in the same. In fact the appellant has relied upon at length by quoting the contents of the statements recorded during search which goes to show that he is in the possession of the same. Secondly, the present AO as well as the AO who assessed the case of Layer Exports have discarded the statements relied upon by the appellant that the denial of unrecorded transactions by MIs. Layer Exports / Bharat Shah cannot be accepted in the face of overwhelming evidence in the form of seized documents and the surrounding circumstances, Therefore, appellant's claim that opportunity to cross examine was not given to him is not correct and there appears to be no such need."*

Aggrieved assessee is in second appeal before Tribunal.

6. Before us, the learned Counsel for the assessee filed a copy of Tribunal's order in the case of Layer Exports (P) Ltd. v. ACIT in ITA No. 1927/Mum/2012 for the AY 2004-05 and others dated 31-10-2016, wherein Tribunal after considering the seized documents found from the M/s Bharat Shah Group of Cases had dealt with the issue and held that the loose sheet found is dumped document having no evidentiary value by observing as under: -

*"38. In view of the aforesaid judgments, it is submitted that since the impugned seized papers are undated, have*

*no acceptable narration and do not bear the signature of the assessee or any other party, they are in the nature of dumb documents having no evidentiary value and cannot be taken as a sole basis for determination of undisclosed income of the assessee. When dumb documents like the present loose sheets of papers are recovered and the Revenue wants to make use of it, the onus rests on the Revenue to collect cogent evidence to corroborate the noting therein. The Revenue has failed to corroborate the noting by bringing some cogent material on record to prove conclusively that the noting in the seized papers reveal the unaccounted on-money receipts of the assessee. Further, no circumstantial evidence in the form of any unaccounted cash, jewellery or investments outside the books of account was found in course of search in the case of assessee. Thus, the impugned addition was made by the AO on grossly inadequate material or rather no material at all and as such, deserves to be deleted. Hence, we are of the view that an assessment carried out in pursuance of search, no addition can be made simply on the basis of uncorroborated noting in loose papers found during search because the addition on account of alleged on-money receipts made simply on the basis of uncorroborated noting and scribbling on loose sheets of papers made by some unidentified person and having no evidentiary value, is unsustainable and bad-in-law. As such, the same is deleted. This issue of the assessee's appeal is allowed and that of the Revenue is dismissed."*

7. When this was confronted to learned Sr. DR, she merely relied on the assessment order and the order of CIT(A). Wssse find that the issue is squarely covered in favour of assessee and against the Revenue by Tribunal's decision in

the case of Layer Exports (P) Ltd. (supra), respectfully following the same we allow the appeal of the assessee as the facts and circumstances are exactly identical.

8. **In the result, the appeal of assessee is allowed.**

Order pronounced in the open court on 21-03-2017.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 21-03-2017

*Sudip Sarkar /Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
Assistant Registrar  
**ITAT, MUMBAI**