

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'बी', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI**

**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./ITA No.8053/Mum/2011

(निर्धारण वर्ष / Assessment Year :2002-2003)

Shri Milan B. Dalal, Bhupen Chambers, Ground Floor, Dalal Street, Mumbai-400023	Vs.	DCIT(OSD-II) Centr. Rg.7, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AACPD 0433 C</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Vipul Joshi  
राजस्व की ओर से /Revenue by : Shri Vivek Batra  
सुनवाई की तारीख / Date of Hearing : 16/09/2015  
घोषणा की तारीख/Date of Pronouncement 05/11/2015

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A), dated 17-10-2011 for the assessment year 2002-03, in the matter of order passed u/s.143(3) of the I.T.Act.

2. In this appeal, the assessee is aggrieved for addition of Rs.4,44,64,252/- made on the basis of papers seized from the assessee's premises.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee was earlier holding membership card of Bombay Stock Exchange through its proprietor concern, M/s. S. Ramdas in 1998. The said membership cards was transferred to a company, namely, M/s. Tropical Securities & Investment Pvt. Ltd ("Tropical") in 1998

and Tropical thereafter took over and continued, the business of share broking and allied businesses. The assessee used to receive salary from Tropical. There were hardly any business remained in M/s. S. Ramdas. However, due to huge earlier loan liabilities and consequential heavy interest expenses, the said concern was running into huge losses. For the year under consideration, the assessee filed his Return of Income declaring loss of Rs. 1,48,55,494/-. The assessment was completed u/s.143 (3) of the Income - tax Act, 1961 on 31.03.2005 assessing income at Loss of Rs. 50,89,632/-, making certain disallowances. During the year under consideration the assessee was director of various companies, including Tropical. He was occupying an office at Bombay Mutual Chamber, Fort, Mumbai, from where he was looking after affairs of various concerns. The premise was not owned by the assessee and was owned by M/s. Western Press P. Ltd., in which employees of various companies, including Tropical, were functioning. A search and seizure action u/s. 132 of the Act was carried out at Bombay Mutual Chamber, Fort, Mumbai wherein the assessee was occupying office space, on 30.05.2008. This search was essentially in consequence to the main search carried out against one Mr. Vinod Faria. In the course of the search proceedings, certain documents were seized, one of them being the loose paper seized that was given page no. 208. At the time of search proceeding, the assessee was not in town. However, his statement was recorded u/s. 131 on 21.06.2008 In his statement, the assessee gave replies and explained all the documents, besides explaining many queries

raised by the search party. In so far as the document in dispute, that is, page no. 208 is concerned, only one question was asked about this page (Question 32). For ready reference, the said question and the answer thereto are reproduced herein below :-

*Q.32 I am showing you the page no. 208 of the document in file no. A - 1 seized from your office at Room No. 17, Bombay Mutual Chambers. Please explain the contents thereof*

*Ans. This paper relates to the period prior to 6 - 7 years. This being very old matter, I have to go through the various documents and books of accounts in our office. The contents of this paper are such that a consolidated explanation is required to be furnished so that a proper meaning is derived therefrom. Hence it is not possible to furnish any plausible explanation explaining this paper and you are requested to allow us time to furnish explanation thereof"*

The A.O. issued notice under section 148 of the Act dated 13.03.2009. After reopening the AO made addition of Rs.4,44,64,252/- to the income of the assessee, solely on the ground that name of the assessee was mentioned at one place in the loose paper. While doing so, he made an allegation that the assessee had failed to provide explanation/ evidence in his defense. The assessee procured confirmation from Shashank Patel and his associates, in which Mr. Shashank Patel confirmed that he did not have any transaction with the assessee in his individual capacity but had transactions with Tropical. The AO brushed aside assessee's contention as well as confirmation filed by Shashank Patel and his associate and added the amount of RsAA4 crores in assessee's income.

4. By the impugned order the CIT(A) confirmed the action of the AO, against which the assessee is in further appeal before us.

5. It was contended by Id. AR that the loose paper is a dumb document. In any case, it can be interpreted differently. It is not signed by unaccounted income and, that too, in his individual capacity and further, anybody. Many entries are blank. On a bare reading, it cannot be concluded that the assessee was in receipt of any income, much less that too, during the previous year. He further contended that the 4 cheque entries mentioned in the loose paper were reflected in the regular books of Tropical. Further, the assessee had clearly mentioned that the name of the assessee was not mentioned in the seized paper. As per Id. AR the assessee in the course of the assessment, had clearly established that Mr. Shashank Patel and his associates had regular transactions with Tropical. In this regard, our attention was invited to the copy of accounts of Shashank Pate and his family members in the Books of Accounts of Tropical, which were filed before AO. These accounts were also confirmed by Mr. Shashank Patel and his family members. The assessee, in course of the assessment, had also filed copy of individual client registration applications obtained by Tropical from Shashank Patel and his family members as required by SEBI. These forms were accompanied by the documents establishing identity of these persons and also their addresses. Ld. AR also pointed out that the balances due to these parties were also reflected in the Balance Sheet of Tropical, it was also pointed out that the assessment of Tropical was done under the same charge. As per Id. AR, the AO and the CIT (A) have failed to appreciate that if the receipt of cheques amounting to Rs. 1.30 crores was reflected in the

accounts of Tropical, how could the same amount be added in the hands of the assessee. Further, there is nothing in the seized material to indicate that the assessee was in receipt of such amount. He contended that the CIT (A) rejected confirmation filed of Mr. Shashank Patel and his family members cryptically and out rightly, without making any inquiry. The A.O. and the CIT(A) failed to appreciate that the assessee was not related to Mr. Shashank Patel and, therefore, there was no reason for Mr. Pate, to give any false confirmation for which he could have faced prosecution.

6. In view of the above submission, Id. AR vehemently argued that the addition was made without giving any reason for ignoring the confirmations filed by Shashank Patel.

7. On the other hand, Id. OR relied on the orders of the authorities below and contended that the assessee could not explain the details of entries recorded in the seized loose papers No.208.

8. We have considered rival contentions carefully gone through the orders of the authorities below and deliberated on the judicial pronouncements cited at bar. From the record, we found that immediately on receipt of the notice u/s.148 on 11/10/2009, the assessee clarified that the paper does not belong to him. He had no transaction with Mr. Shashank Patel and his Family. He further clarified that 4 of the entries relating to cheques are reflected in the Books of Accounts of Tropical Investment & Securities Private Limited (Tropical). It was also brought to the notice of AO that Tropical was assessed by the same AO with PAN No.AAACT 1670 N. Again vide letter dated 24/10/2009 it was brought to the notice of the AO

that 4 of the cheques entries are appearing in the regular books of accounts of Tropical. Further vide letter dated 4/11/2009, it was pointed out to the AO that the assessee had no transaction with Shashank Patel. In this letter the assessee had filed copy of accounts of Mr. Shashank Patel and his family members appearing in the books of accounts of Tropical. With this letter also individual client registration forms for KYC compliance obtained by Tropical from above parties at the time of receipt of money were filed with AO. It was also brought out that the above amounts and transactions were reflected in the Books of Accounts of Tropical. During the course of hearing our attention was also drawn on item No.1 of the seized material In the left hand column it is mentioned "Shashank Patel Group (CHEQ) Rs.1 ,20,00,000/- . This Rs.1,20,00,000/- is in respect of following amounts received by Tropical which is reflected in ledger Amount accounts of Tropical for the year ended 31/3/2012. This was filed before the AO vide letter dt.04. 11.09.

Sl. No	Date	Name of the person who has deposited in Tropical	Amount	Pg. No. of PB
1	9/4/2001	Shashank Patel HUF (ARB)	20,00,000	55
2	18/5/2001	Shashank Patel (ARB)	20,00,000	57
3	18/6/2001	Shashank Patel	10,00,000	57
4	9/04/2001	Purnima Patel ARB	15,00,000	60
5	20/04/2001	Purnima Patel ARB	5,00,000	60
6	28/06/2001	Purnima Patel ARB	10,00,000	60
7	9/04/2001	Mrudula Patel ARB	15,00,000	62
8	20/4/2001	Mrudula Patel ARB	5,00,000	62
9	27/04/2001	Chinubhai Patel HUF	20,00,000	64
		Total	1,20,00,000	

9. On the very same seized paper, in the left hand corner there is item "CHEQ REC 18.06.2001 sum of Rs.10,00,000/- is appearing. This is in respect of cheque received from Shashank Patel which is appearing in the party ledger of Tropical for the year ended 31/3/2002. We also found

in the middle column of the seized paper, payments made by Tropical to these parties are appearing on 1/10101 payment made by cheque of Rs.3,00,000/- is appearing. This payment is reflected in party ledger of Tropical. Similarly refer to payment made on 12/01/02 of Rs. 3,50,000/- name of Shashank Patel is appearing. This is reflected in party ledger account of Shashank Patel. It is also not in dispute that all the above details were filed before the AO. The AO has also noted in the assessment order that the above details were filed vide letter dated 04/11/2009. Refer page 5 of the assessment order which reads as under:-

*“The assessee vide letter dated 4/11/2009 claimed that the transactions reflected in the said paper do not pertain to assessee's business. The assessee has no business transaction with Mr. Shashank Patel and his family members and that the said Shashank Patel and his family members have transactions with M/s. Tropical Securities and Investments Pvt Ltd. The assessee has also filed copy of account of the Shashank Patel and his family members with Tropical Securities and Investments Pvt. Ltd. The Balance Sheet of the said assessee i.e. Tropical securities and Investment Pvt Ltd has been filed along with the letter.”*

10. In view of the above documentary evidence, there is no justification for making addition in respect of entries reflected in the books of account of Tropical and given by cheque by Mr. Shashank Patel and his family members. Receipt of the amount by Tropical Investment and Securities Pvt. Ltd. through cheque from Shashank Patel and his family members, cannot be treated as income of the assessee. The fact that Tropical Investment and Securities Pvt. Ltd. was also assessee with the same assessing officer, has not been denied anywhere. All the above facts were brought to the notice of the AO along with the confirmations, however, the AO had brushed aside the same. Accordingly, we direct the

AO to delete the addition of Rs.1,30,00,000/- (Rs.1,20,00,000+Rs.10,00,000/--), being amount received by Tropical Investment and Securities Pvt. Ltd. through account payee cheques from Shashank Patel and his family members.

11. It was the contention of Id. AR that entire transaction was recorded pertains to Shashank Patel, out of which some amount was given by cheque and balance amount in cash, therefore, the revenue have to consider the entire papers and cannot ignore the transaction by Shashank Patel and his family members give otherwise by account payee cheque. In sum and substance, the contention of Id. AR was that the other amount was also given to Tropical Investment and Pvt. Ltd. and without making any enquiry he AO has added the same in assessee's income.

12. In respect of balance amount alleged to be received from Shashank Patel in cash has not been enquired by the AO. In the interest of justice and fair-Play the balance addition of Rs.3,14,16,332/- is restored back to the file of the AO for deciding afresh after making full enquiry from Shashank Patel and M/s Tropical Investment and Securities Pvt. Ltd.. We direct accordingly.

**13. In the result, appeal of the assessee is allowed in part.**

Order pronounced in the open court on this 5/11/2015.

**Sd/-**

**(SANDEEP GOSAIN)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 5/11/2015

प्र.कु.मि/pkm, नि.स/ PS

**Sd/-**

**(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार  
(Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai