

आयकर अपीलीय अधिकरण, 'एक-सदस्य' न्यायपीठ, मुंबई।

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

**श्री जोगिन्दर सिंह, न्यायिक सदस्य, के समक्ष
Before Shri Joginder Singh, Judicial Member,**

**ITA No.2866/Mum/2015
Assessment Year: 2011-12**

Shri Rajendra Jayantilal Shah, C/101, Panchshil Height, Dhanukar Wadi, Mahavir Nagar, Kandivali West, Mumbai-400067	<u>बनाम/</u> Vs.	DCIT, Central Circle-31, Mumbai
निर्धारिती / Assessee		राजस्व / Revenue
P.A. No.AAIPS7082A		

निर्धारिती की ओर से / Assessee by	Shri Vijay C. Kothari
राजस्व की ओर से / Revenue by	Shri V.S. Jadhav-DR

सुनवाई की तारीख / Date of Hearing	14/01/2016
आदेश की तारीख / Date of Order:	18/01/2016

आदेश / ORDER

The assessee is aggrieved by the impugned order dated 06/02/2015 of the Ld. First Appellate Authority, Mumbai. The first ground raised in this appeal pertains to

the addition of Rs.3,75,000/-, as investment in furniture, undisclosed sources.

2. During hearing of this appeal, the ld. counsel for the assessee, Shri Vijay C. Kothari, advanced arguments which is identical to the ground raised by explaining that search and seizure operation u/s 132(1) of the Income Tax Act, 1961, (hereinafter the Act) was carried out on Avon Corporation Group on 04/02/2011 and also at the premises of the assessee. Certain loose papers were seized showing the investment of Rs.3,75,000/- by the assessee for purchasing the furniture, which was added as unexplained investment. My attention was invited to para 3 of the assessment order along with pages 11 & 25. The crux of the argument is that necessary details were duly filed by the assessee. On the other hand, Smt. Sunita Billa, Ld. DR, defended the addition by contending that the assessee could not explain the investment made in the furniture, therefore, the addition was rightly made/upheld.

2.1. I have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee, at the relevant time, was employee of M/s Avon Corporation Ltd., wherein, a search and seizure action u/s 132 was carried out on 04/02/2011 along with the premises of the assessee. Further, certain premises of M/s Avon Group were also covered by a survey, simultaneously, conducted u/s 133A of the Act. The

assessee is also working as a insurance agent for ICICI Prudential Life Insurance Company and earned some commission income. The assessee declared income of Rs.2,84,810/- for the impugned assessment year on 19/12/2012. During the course of search, certain loose papers were searched, which were shown as annexure A-1, showing investment of Rs.3,75,000/- on purchase of furniture. As per the Revenue, no satisfactory explanation with respect to source of investment was furnished by the assessee, therefore, the impugned amount was added as unexplained investment u/s 69 of the Act. I have perused the record and note that as per para 3 of the assessment order, certain incriminating documents were seized suggesting that the assessee was involved in providing accommodation entries to M/s Avon Corporation. It further states that "however, in the instant case, there was no admission of undisclosed income in the hands of the assessee. At page 10 of the assessment order, while replying to question no. 4 with respect to details of firms/proprietary concerns & Companies, the assessee explained that he was having two proprietary concerns namely Jai Chamunda Enterprise and Shri Hari Enterprise and also director in Enosis Mercantile Pvt. Ltd. and further stated that he had no other proprietary concern nor a partner in any firm or a director in any company in the last six years. He explained the incorporation of the proprietary concern. At page 25 of the assessment order, so far as, the

source of investment made in the furniture amounting to Rs.3,75,000/-, the assessee filed letter on 20/03/2013 explained that purchasing of furniture and the addition was made merely on presumption by the department as is oozing out from para 11.2 of the assessment order. The claim of the assessee is further substantiated from para 11.4 of the assessment order as in the documents itself, page no 39 of the documents was explained by the assessee, thus, the totality of facts indicates that the addition was merely based on presumption. Thus, the addition is deleted, consequently, the ground is allowed.

3. The next ground pertains to confirming the addition of Rs.1,82,309/- u/s 69 of the Act. During hearing, the ld. counsel for the assessee, invited my attention to para 11.4 and page 25 of the assessment order by contending that the necessary details were duly submitted before the ld. Assessing Officer. On the other hand, the ld. DR, defended the addition.

3.1. I have considered the rival submissions and perused the material available on record. It is noted that certain handwritten pages were recovered, wherein, at page 39, the amount of Rs.1,82,309/- was found mentioned. It is also observed that during search proceedings, the assessee explained as under:-

“This page is working of rough purchase bills statement of Ambika Industries amounting to Rs.1,82,309/-”

3.2. However, during post search proceedings, the assessee explained that he purchased furniture from Charmi, a furniture dealer for his residence. The assessee also produced a cash memo issued by Charmi. The ld. Assessing Officer was of the view, that it was a cash purchase, thus the source of investment was not explained and added the same from unaccounted sources by treating the same as unexplained investment u/s 69 of the Act. However, it is further noted that the details are explained by the assessee as available in para 11 (page 25 of the assessment order) along with explanation and evidence attached. The assessee enclosed the ledger account, therefore, I find no merit in the addition, therefore, deleted, resultantly, this ground is also allowed.

4. The last ground raised pertains to adding Rs.24,250/- u/s 40A(3) of the Act. The explanation of the ld. counsel for the assessee is that individual bills were submitted before the Assessing Officer which are less than Rs.20,000/-. On the other hand, the ld. DR, defended the addition.

4.1. I have considered the rival submissions and perused the material available on record. I find that on the basis of handwritten noting on page 32 of the loose papers, the addition of Rs.24,450/- was made with respect to certain hardware items. The assessee admitted the same to be cash purchases and no explanation was offered. Even

before this Tribunal, no plausible explanation was adduced; therefore, this ground is rejected.

Finally, the appeal of the assessee is partly allowed.

This order was pronounced in the open in the presence of ld. representative from both sides at the conclusion of the hearing on 14/01/2016.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 18/01/2016

Shekhar, P.S/निजी सचिव

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai