

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**श्री डी. मन्मोहन, उपाध्यक्ष एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI D. MANMOHAN, VP AND SHRI SANJAY ARORA, AM**

**आयकर अपील सं./I.T.A. Nos. 2807 & 2808/Mum/2010
(निर्धारण वर्ष / Assessment Years: 2004-05 & 2005-06)**

Syed Ahmed Abbas Naqvi 705, Sea Crest No. 2, J. P. Road, Seven Bungalows, Andheri (W), Mumbai-400 061	बनाम/ Vs.	Dy. CIT, Central Circle-2, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ABVPN 7551 K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Rajiv Khandelwal
प्रत्यर्थी की ओर से/Respondent by	:	Shri Girish Dave & Ms.Kadambari Dave
सुनवाई की तारीख / Date of Hearing	:	09.09.2015
घोषणा की तारीख / Date of Pronouncement	:	09.10.2015

आदेश / ORDER

Per Sanjay Arora, A. M.:

The assessee, an individual, is a Mumbai based interior designer. He, along with his wife, Muskan Naqvi, was subject to search action u/s.132 of the Income Tax Act, 1961 ('the Act' hereinafter) by the Investigation Wing (Mumbai) of the Revenue at their residence, on 05.01.2007, as a part of the search operations on Hasan Ali Khan (HAK) Group. The case was subsequently centralized with Central Circle-2, Mumbai on 20.03.2007, and assessment for the different years framed u/s.153A r/w s. 143(3) of the Act. We are in these appeals concerned with the assessments for assessment years (A.Ys.) 2004-05 and 2005-06, made vide assessment orders dated 31.12.2008,

					of it			
17.07.04		1000	June 04 to	120000		36000		
Sept 04		6448	June'05	28328		8500	June 05	27500
			July'05	32156		9646	July'05	37146
			Aug'05	5987		1796	Aug'05	35350
			Sept'05	15844		4753	Sept'05	30597
			Oct'05	4388		1316	Oct'05	31913
Upto Nov'05		32500	Nov'05	65174		19552	Nov'05	51465
			Dec'05	19471		5841	Dec'05	45624
Dec'05		2000	Upto dec'05					
Total =		34500	Taxes & other expenses	16000		4800	Bal till dec	40824

Pg. No. 7 of Annexure A1 (APB pg. 66)

"Munna Capital account as under:

Given			Receipt		
			1.6.04		100000
			3.7.04		50000
			5.10.04		150000
at the time of					
Dhiren's tran					
Given to munna's person		5000			

Munna P/F a/c

Given			Receipt		
			To Pay		
			Up to end of Sep, 04		7448
17.7.04		1000			
Sept, 04		6448			
Upto Nov 05		32500			

:-Company Position:-

Stock : 230000
Credit : 320000
Advance : 30000
Note

Now we will count from June 04 to Dec 05
consolidated a/c & consolidated profits
June 04 to may 05

1,20,000/-
32,156
04,388

		<u>65,174</u>
		2,21,718
Less Losses:		<u>50,159</u>
Upto Nov 05		1,71,559
Less taxes		<u>10,000</u>
		1,61,559
Dec'05	----->	

Proceedings before the Revenue authorities

3. Before the Assessing Officer (A.O.), the assessee's explanation was that the said documents (as also others found and seized along with, viz. pg. 6 of Annexure A-1/APB pg. 65), did not belong to him but to RDC World Wide, New Delhi (a proprietary firm of one, Radhika Devi Choudhary), indicating payments made by the said firm to one, Shri Bharat, a contractor. A certificate to the effect from the said firm that he was working therewith from November, 2003 to November, 2005 (pertaining to A.Ys. 2004-05 to 2006-07) was also produced (APB pgs. 35-36). Before the Id. CIT(A), however, and in fact before the A.O. himself for A.Y. 2005-06, the assessee admitted the said documents, also seeking to explain the same, admitting to only the following incomes, working to a total of Rs.3.41 lacs, for being included (i.e., over and above the returned income), as against an aggregate income of Rs.15.76 lacs, i.e., *qua* the said documents, added and sustained by the Revenue (refer para 2.1):

- a) Unexplained investment of Rs.3,00,000/- for the AY 2005-06
- b) Unaccounted profit in partnership business of Rs.30,000/- for the AY 2005-06
- c) Unaccounted profit in partnership business of Rs.10,824/- for the AY 2006-07

The same did not find favour with the Revenue in-as-much as the assessee gave conflicting statements even before the first appellate authority, so that the additions stood confirmed as such, resulting in the present appeals before us.

Arguments

4. The parties were heard at length. We may at this stage, transcribe pg. 6 of Annexure A1 (APB pg. 65), referred to during hearing, as under:

JT/AC 2 Non-ferrous Scrap

Month	Sale	Add closing Stock	Less Purchase	Adv	Less Expense	Less Reject	Less Comm	Less Opening Stock	Profit	Loss	Final Balance
Dec, 03 to May'05	667810	233408	563018		155200			2484	180516 (*)		
June'05	97787	159982	37335		15354	0	0	233408	0	28328	
July'05	25868	191026			24756	0	0	159982	32156	0	
Aug'05	37170	163095	0		15226	0	0	191026	0	5987	
Sept'05	19028	145640			17417	0	0	163095	0	15844	
Oct'05	14339	146774	0		11085	0	0	145640	4388	0	
Nov'05	63063	230784	62650		19249	0	0	146774	65174	0	
Dec'05											

(*) For Munna bhai's purpose, it will be counted @ 120000 since he invested from June'04

The assessee's case before us was that once the documents found and seized were owned up and sought to be explained by him, the addition/s in law could only be made on that basis. That is, it was not open for the Revenue to not accept the said explanation, i.e., except of-course for cogent reasons. The Revenue's case, on the other hand, was that the explanation advanced is only in the absence of any link between the same and RDC World Wide, i.e., as originally claimed and averred by the assessee, who had thus in fact lied not only before the A.O. but also before the Id. CIT(A). *Falsus in uno, falsus in omnibus*. On merits, i.e., of the explanation, there was nothing to show that the documents or the transactions specified therein belong to a partnership firm, in which the assessee claims to be a partner with 30% share, so that he is liable to tax only on his share. The explanation is again incomplete in-as-much as the assessee has not divulged either the name of the partnership; its address and business, nor the names of the other partners, whereby only the truth of the assessee's explanation, and thus its veracity, could be ascertained. The same is, thus, merely a

make-believe, and the Revenue not obliged to accept the same, so that it, in not doing so, is in the right.

Findings

5. We have heard the parties, and perused the material on record.

5.1 Our first observation in the matter is that the assessee though admitting to a part of the assessed income (refer para 3), yet impugns the entire additions made per his appeal/s, which thus could at best be only partly allowed.

5.2 The Revenue's stand in not accepting the assessee's explanation of the seized documents (or the transactions stated therein) as reflecting payments by RDC World Wide, his 'employer', is tenable in law. There is neither any mention nor an iota of evidence linking the said firm with the documents found, being essentially statements profiling the trading profit/profit. Section 292C of the Act also provides a statutory presumption as to the truth of the contents of such documents, i.e., as found in search or survey. The plea of the same as having been left by some visitor is again untenable, being without any basis in fact or in law. In fact, these explanations are of no consequence in view of the assessee's subsequent acceptance - he admitting the same, seeking to explain the entries therein. Whatever thus may have been the assessee's earlier stand or endeavor, his subsequent explanation cannot be rejected outright merely for the reason that the first one was found as not valid. It is open for the Revenue to adjudicate the same on merits, rejecting the subsequent explanation as well. Reference in this regard may be made to the decision *Prabhavati S. Shah vs. CIT* [1998] 231 ITR 1 (Bom). The legal maxim of *falsus in uno, falsus in omnibus*, as explained by the higher courts, cannot be considered to have the status of a rule of law, much less an inflexible one, but is only a rule of caution. In fact, as explained in *Ugar Ahir vs. State of Bihar*, AIR 1965 SC 277, 279, it is neither a sound rule of law nor a rule of practice. The matter, as apparent, is purely factual, i.e., whether the

assessee has been able to satisfactorily explain the source of the investment in a joint business, the profits of which have admittedly not been disclosed, even post search. That is, has he discharged the burden of proof cast on him on the basis of the material found, particularly considering the statutory presumption of s. 292C of the Act, or not.

Toward this, we find that the documents are self-evident and corroborative, establishing their truth or of their representing actual transactions, with the figures therein in agreement, both internally as well as in relation to each other. PB pg. 113 is a statement of the trading account, month-wise. The last two columns appear to be that of the number of transactions and the profit per transaction respectively. The same though is not relevant in view of our concern being with the figure of profit (or loss). Likewise APB pg. 112 lists the fraction of the monthly profit (or loss), reckoned at 30%, stated to be the assessee's share therein (as a partner in a partnership firm, to which the said profit is stated to belong or is earned through). APB pg. 65 is again a trading account, tabulated for different months; its figures matching with that per PB pg. 113. APB pg. 66 is in respect of the assessee's account, ostensibly in the books of another.

Analysis

5.3 The economic activity generating profit, as it appears from the account and its constituents, i.e., purchase and sale and the mention of the item, is trading in non ferrous scrap (refer PB pg. 65). The assessee's claim of having joined a partnership/venture from June, 2004, is evidenced by the credits to his capital account beginning 01.06.2004 at Rs.1 lac/PB pg. 66; there being no balance in his account prior thereto. This gets also corroborated by the note mentioning of the profit of Rs.1,80,516/- (i.e., Rs.1.80 lac approximately), to be, for the purpose of Munna Bhai (stated to be the assessee's nick name), taken at Rs.1,20,000/-, i.e., corresponding to the period for which he is a partner. As explained by the Id. Authorized Representative (AR), the assessee's counsel, the profit of Rs.1.80 lacs is for the 18 month period, i.e., from

December, 2003 to May, 2005, as stated in the document itself, so that the profit for the 12 month period (June, 2004 to May, 2005) would be at Rs.1.20 lacs. That Munna Bhai is the assessee's name, is in agreement with the document and the narration therein; the assessee would, after all, be interested only in his account. Further, the other documents found during search also confirm his name as Munna Bhai (APB pgs. 63, 136, 143, 144), with in fact it being the accepted position between the assessee and the Revenue, the other additions being also made with reference to that name only.

Decision

5.4 The next question thus would be the amount assessable in the assessee's hands. APB pg. 112 clearly states of the share of profit (to be received by mm, i.e., the assessee, at the rate of 30%). This, in fact, gets also confirmed by the working, in hand, totaling on the side, the share of profit (taken at 30%) with Rs.1,20,000/-, i.e., the profit of the assessee (Munna Bhai) for the period June 2004 to May, 2005 (at PB pg. 66). We, therefore, confirm the addition of the profit (including loss) as specified for different months (from prior to November 2003 to December 2005) in the documents, as falling to the assessee's share (30%), spanning over 3 years. The profit of Rs.1,20,000/-, referred to at para 5.3, spreading over (first) two years, the same can safely be taken at a uniform rate of Rs.10,000/- p.m. for the purpose of determining the quantum of profit to be assessed for different years. No income other than the same, i.e., on account of the profit/loss earned/suffered from such trading, is inferable from the material on record. We say so as the Revenue has separately added the cumulative profit (from Dec., 2003 to Dec., 2005) of Rs. 3,03,237/- (APB pg. 53).

The second category of addition would be for the capital invested in the firm/entity (Rs.3 lacs, from June to October, 2004/APB pg. 66). For the balance addition, how we wonder could, firstly, the same be added, much less in the assessee's hands - the same being undoubtedly the figures of stock, credits and advances,

aggregating to Rs.5.80 lacs, of the 'company'. We accordingly confirm the addition of Rs.3,00,000/- on account of capital invested, being admittedly unexplained, the entire of which falls in A.Y. 2005-06. We may here though clarify that when we hold so, we are not in any manner confirming the existence or otherwise of a partnership firm, for which there is no evidence as such, but only of an economic activity, in the form of trading in non-ferrous (scrap), the assessee's share in surplus (or deficiency) from which is at 30% - nothing more and nothing less. In fact, the law (Act) does not recognize a partnership firm unless the same is evidenced by an instrument, with specified shares, certified copy of which is furnished to the A.O. We decide accordingly, disposing the sole ground of appeal for A.Y. 2004-05 and Gd. 1 for A.Y. 2005-06, and the assessee gets part relief.

6. Ground # 2 for A.Y. 2005-06 relates to an addition in the sum of Rs.30 lacs on the basis of a MOU (Memorandum of Understanding) between the assessee and one, Mr.Nirmal Daftary, found from the assessee's residence (as Annexure A1 to the Panchanama dated 06.01.2007/APB pgs. 75-76) during search and seized. The contents thereof are relevant, and reproduced as under:

MOU

This MOU (memorandum of understanding) is drawn between Mr. Nirmal Daftary and Mr. Abbas Naqvi, both of Bombay.

Following are the terms & conditions of the MOU:

- 1) Mr. Naqvi & Mr. Daftary will jointly invest in the business of Imports-Exports, of various products.
- 2) The ratio of investment:
Mr. Nirmal Daftary: Between 45 & 50%
Mr. Abbas Naqvi: Between 45 & 50%
- 3) The type of investment:
Mr. Nirmal [L/C + Bank] Total of Rs.40-50 lacs.
Mr. Naqvi: Total of Rs.45-50 lacs.
- 4) Expected turnover with the same investment:
1st Year 1CR to 1.5 CR

2nd year – 2CR to 2.5 CR
3rd Year – 3CR

- 5) Expected profit before taxes:
App. 10% to 12% nett:
1st year @ 12% - 18 lacs App.
2nd year @ 12% - 25 lacs App.
3rd year @ 12% - 30 lacs App.
- 6) Division of profit:
It has been agreed by and between above two parties that it will be divided as under, after making provision for taxes.
Mr. Abbas Naqvi – 35% (as he will be a sleeping partner)
Mr. Nirmal Daftary – 65%
- 7) *Mr. Abbas Naqvi has already invested Rs.30 lacs from Nov'04. He will invest another Rs.20 lacs by the 15th of January'05*
- 8) There is a proposal of MNC's giving us business of imports for them, terms and conditions of which will be separately decided with them. After deducting commissions, profits will be divided by & between the above two parties, in the same ratio.
- 9) Present business constitutes of imports of tools, abrasives & metal powders.
- 10) Any expansion in the above will be jointly decided by the above two partners.
- 11) Rs.25,000 (Rs. Twenty five thousand) will be paid every month to Mr. Abbas Naqvi as a part payment towards his share of profit.
- 12) A/c's will be done at the end of December. Every year, beginning January' 05.

Signed - Mr. Abbas Naqvi:
- Mr. Nimal Daftary:'

[emphasis ours]

The assessee, on being called upon during the assessment proceedings to explain the source of Rs.30 lacs, stated to have been invested by him vide clause 7 of MOU, denied having paid any such sum in-as-much as he did not have the said amount. True, an understanding was arrived at and sought to be implemented, but did not

materialize. This was also evident from the fact that the document (MOU) was unsigned and undated. Nirmal Daftary was also examined on oath (on 24.12.2008) u/s.131 of the Act in this respect (APB pgs. 118-119). He reiterated the same, stating his refusal to make the assessee a partner in the venture, which was insisted upon as a condition for investing, for the failure of the deal, i.e., to get going. On being further questioned as to why in that case it was specifically stated in the MOU that the assessee had *already* invested the said sum from November, 2004 (Q. No. 12 of the statement), he would submit that this was as the assessee was ready with the money, but in view of the afore-stated issue, the deal did not materialize, as happens generally. The said explanation did not find favour with the Revenue, so that, aggrieved, the assessee is in further appeal.

7. Before us, the case of both the parties was the same. The ld. AR would emphasize on the document (MOU) being unsigned and undated, so that it represented merely a proposed agreement, which was to be put through, i.e., actually executed, but did not. Further citing an example of where a draft agreement is prepared for its registration, stating of money having been paid/exchange hands. In practice, however, it is not so, and the money is actually parted with only on the signature on the Agreement at the time of its registration. The ld. DR would, on the other hand, submit that a note-book was also recovered during search from the assessee's residence. The same, bearing the details of the purchase and sale of a trading business, was subsequently confirmed by Nirmal Daftary as belonging to him and, in fact, written in his own hand (in answer to Q. Nos. 7 & 8), even as he denies having any business relation with the assessee, but as being only his friend (in answer to Q. No. 6). How could that be? The statement, he would further submit, taking us through it (placed at pages 118 & 119 of APB), is internally inconsistent, and that the two had a business relationship is patent.

8. We have heard the parties, and perused the material on record.

The assessee and Mr. Nirmal Daftary, a businessman, have known each other for long, i.e., 15 to 20 years; are admittedly friends, implying a relationship of mutual trust and goodwill (refer answers to Questions 5 & 6 of the statement on oath u/s.131). That they discussed business extensively, and in detail, envisaging its joint conduct, with the assessee as an investor/sleeping partner, is apparent from the undisputed facts and circumstances of the case. The recovery of Nirmal Daftary's note-book, containing the details of the business, found at the assessee's residence during search, further establishes this. This is also borne out by the MOU and, in fact, admitted thereby. The fact of a joint business being in contemplation is again admitted. *To what effect or purport, then, the argument of the document being not signed?* The plea of the document being unsigned and undated is, in view thereof, as also of s. 292C of the Act, casting a statutory presumption as to the truth of the contents of any document found during search or survey, of no moment.

The only issue is as to whether the assessee had already invested the impugned sum of Rs.30 lacs, i.e., as stands stated in the MOU, or was only in contemplation. Toward this, the document is to be read as a whole, and in the backdrop of the facts and circumstances of the case, even as in view of section 292C the onus to disprove the same or dislodge the presumption of truth of its contents is on the one who so alleges. Every detail of the joint business has been, as apparent, thought out, including the investment; its financing; turnover; profitability; the division of the profit amongst the two partners, etc. The accounting period as well as the manner of disbursement of profit to the assessee, a silent/sleeping partner, has also been agreed upon and stands clarified. The business is of import & export, with the imports being of tools, abrasives and metal powders, i.e., the same category of trade – Import and Export of stone cutting tools, in which Mr. Nirmal Daftary already is (refer APB pg. 118). The document itself bears, as would be apparent, a clear reference to dates. As we infer, the business had already commenced in November,

2004, if not earlier, with the note-book containing the details thereof. The business is of trading, so that there was no reason to delay it once the investment starts pouring in. The assessee was to invest Rs.45-50 lacs. Rs.30 lacs had already been invested from November, 2004 onwards, and the balance Rs.20 lacs was to be invested by 15.01.2005. *How could, then, it be said that no amount had in fact been invested, or that the arrangement had not actually materialized? Clearly, the question of investment of the balance Rs. 20 lacs would arise only if Rs. 30 lacs had already been paid and received!* That is, the figure of Rs. 20 lacs being the balancing figure, comes into reckoning only once some amount (Rs. 30 lacs in the instant case) stands already paid/invested. The assessee's case gets in fact impugned even on the basis of Mr. Nirmal Daftary admitting (on oath) to the assessee having the money in readiness, *implying he being in possession thereof*, though did not part with it as he (Mr. Daftary) did not accept the condition of the assessee being taken in as a partner. The argument is frivolous, if not specious, in-as-much as that in fact is the primary condition for the conduct of the business, disagreement on which would have the effect of scuttling the proposition at the threshold, while MOU would stand to be reduced in writing only on an agreement on all major issues, and on the verge of the commencement of the business and, rather, as it appears in the present case, subsequent to its' commencement from Nov., 2004, or perhaps even earlier. The Id. AR, on this being observed by the Bench during hearing, would submit that the assessee did not have any money, as shall also be evident from the books of account produced during the assessment proceedings. *On what basis then, it was asked, could he think of investing, much less in terms of being an investor/sleeping partner?* Through borrowings perhaps, was his reply. The financing arrangement, it escapes him, stands in fact stipulated at cl. 3 of the MOU itself, with the bank borrowing and the non-fund based financing to be arranged by Mr. Daftary, while the risk (owner's) capital is to the account of the assessee. The same put pays and, in fact, disproves the argument, which is only a bald statement. We have in fact already seen in the context

of Ground # 1 the assessee to have invested in another business of trading in non-ferrous scrap, also earning profits there-from, both admittedly undisclosed to the Revenue. Clearly, the assessee has access to source/s of income, which is not disclosed. It may well be or also include his regular profession (of interior designing), fetching him returns/income far higher than that he chooses to disclose – he returning an income of Rs.1.25 lacs for the current year. Leave alone investing, it would be extremely difficult for one to survive in Mumbai on that income. Again, the accounts are to be settled after the year-end, and the assessee is to only get a small fraction of his share on a monthly basis (Rs.25,000/-). Surely, a person subject to interest, which is usually charged on a monthly/quarterly basis, would seek repartition of profit to that extent so as to meet the interest obligation. *How, in its absence, one may ask, would the interest on the admitted proposed investment of Rs.50 lacs be discharged?* The same, is again, a bald statement, completely inconsistent with the facts and circumstances of the case.

Coming to the contention of the arrangement being not executed, the same is misplaced. The Revenue has not added any income by way of profits of the said business, for us to dwell on that aspect of the matter. The only issue in dispute is if the assessee had indeed invested Rs.30 lacs, the sum specified in the document (MOU) as having been already invested, i.e., as on the date on which the MOU was reduced in writing, and which could theoretically be anytime between November 2, 2004 to January 14, 2005. It could be that the assessee had also invested the balance Rs.20 lacs, as is likely, or perhaps did not. We say likely, as, why, where not so, did the assessee preserve the afore-referred note-book as well as the document itself, if the arrangement had, for some reason, failed, and not actually carried out? A holistic and contextual reading of the MOU, together with the facts and circumstances of the case, clearly points to an arrangement which had been put in place, being on for some time, and there is no merit in the argument that when the Revenue considers an investment of Rs.30 lacs to have been made by the assessee in the business, it is not reading the

said document as one whole. It may well be that the business, though envisaged on a continuing basis (refer cl. 12 of MOU), did not continue for long, and was stopped subsequently, but that is a matter with which we are not concerned with.

Whichever way, thus, one may look at it, the assessee's case is without basis, unsubstantiated by and *de hors* any document or even circumstantial evidence/s, which rather point to the contrary, as does the clear language of the document itself. Section 292-C of the Act is a rule of evidence, clear in its import. Under the circumstances, we, in view of the foregoing, are in complete agreement with the Revenue of the impugned sum of Rs.30 lacs as representing an investment by the assessee in a joint venture with Mr. Nirmal Daftary, the source of which being unexplained would stand to be deemed as unexplained income u/s. 69, also drawing support for the purpose from the decision in *Surendra M. Khandhar vs. Asst. CIT* [2010] 321 ITR 254 (Bom). We, accordingly, confirm the same, dismissing the assessee's relevant ground.

9. The third and the final ground of appeal for A.Y. 2005-06 is *qua* an addition in the sum of Rs.3,60,000/- based on a seized document (Pg. 8 of Annexure A-3 to the Panchanama dated 06.01.2007/APB pg. 135). The same is in respect of notings in a diary bearing different dates of the calendar (on the leaf dated 12.01.2005), listing the payments made to different contractors on account of one, Dimple, as well as payments received from her, the same being found reflected in the assessee's books of account. Before the Assessing Officer (A.O.), the assessee's explanation was that the said notings relate to payments received from Ms. Dimple Athawali, Lokhandwala, a client, as well as disbursements made to the different contractors, for and on behalf of the RDC World Wide, New Delhi for the interior work undertaken for the said client. The same did not pass muster as the assessee could not establish any nexus between the said document and RDC World Wide (RDC), so that the document belonged to

and the payments were made only for and on behalf of the assessee, also adverting to section 292C of the Act.

In appeal, the Id. CIT(A) noted that, firstly, no written submissions were filed by the assessee in respect of this addition. Two, neither there was any mention of RDC on the said or even in any allied document nor did the assessee furnish any confirmation from the same so as to link the said firm with the transactions under reference. There was, in fact, no confirmation even from any contractor as well. The assessee being thus unable to improve his case in any manner, the addition stood confirmed by the Id. CIT(A) relying on the decisions by the Hon'ble High Court in the case of *Surendra M. Khandhar* (supra) and *Fifth Avenue vs. CIT* [2009] 319 ITR 127 (Kar), besides on section 292C of the Act in-as-much as the assessee had failed to rebut the presumption mandated thereby. Aggrieved, the assessee is in second appeal.

10. Before us, the Id. AR would take us through another seized document (Pg. 54 of Annexure A1 / APB pg. 115), which reads as under:

‘Date: 02.06.2005

Dimple & Samit (Lokhandwala)

1)	Suresh Mistry	70,000/-
2)	Tiles	44,000/-
3)	Plumbing	35,000/-
4)	Electric works	25,000/-
5)	Carpenter (Chand)	45,000/-
6)	Amarnath Painter	25,000/-
	Total	2,44,000/-
Less	75,000	
	40,000	1,30,000/-
	15,000	
		1,14,000/-’

The same is, he would continue, again, a statement drawn on the letter head of Annya Constructions, the assessee's proprietary concern, as on 02.06.2005, of payments made to different contracts on account of Ms. Dimple Athawali,

Lokhandwala, as well as total amount received there-from. The figures therein completely match the figures stated in APB pg. 135 supra, save for a minor difference of Rs.1,000/-, substantiating the assessee's stand, i.e., of the same as being payments made in respect of interior work for a client, Dimple Athawali, to different contractors. The assessee had only acted as a consultant, overseeing the work, and made disbursement of the amount received to different contractors engaged for carrying out different works. How could, thus, there at all be any addition in the assessee's hands, who is only entitled to his professional charges? Again, only the net amount paid could, in any case, be considered as the assessee's income, he conceded, when asked about the source of the payments to the contractors, while reiterating the same (payments) as having been made by and on behalf of RDC. The Id. DR would also reiterate the Revenue's case of the absence of any nexus of the said documents with RDC, though could not show the two documents, i.e., APB pgs. 115 and 135, as not referring to the same set of transactions.

11. We have heard the parties, and perused the material on record.

There is no merit in the assessee's contention of the payments as having been made by RDC – which assertion is wholly unsubstantiated or uncorroborated by any other material. The documents, thus, one of which (APB pg. 115) is on the letter-head of the assessee's proprietary firm, Ananya Constructions, are only of the assessee. The assessee has made a total payment of Rs.2.45 lacs over a period, receiving Rs.1.30 lacs from the client during the same period, so that the balance Rs.1.15 lacs is receivable from the client. As the dates of both the payments and the receipts are not available, the assessee would have to be, giving him the benefit of doubt, necessarily allowed credit in respect of the entire amount received, so that the balance amount receivable (Rs.1.15 lacs) was not exceeded at any given point of time, as where the assessee had effected payments, net of that received from the client, in a sum higher than Rs.1.15 lacs at any time covered by the said period. The source of the said

payment being unexplained in-as-much as neither are the said payments reflected in the assessee's accounts nor shown before either authority, we confirm the addition of Rs.1.15 lacs outstanding for being received as on 02.06.2005, on account of payments made by the assessee to different contractors. We are conscious that the assessment year under reference is A.Y. 2005-06. However, it is clear that the payments are made not on a single day, but over a period, toward charges for services rendered, beginning, presumably 12.1.2005, to 02.6.2005, i.e., the date on which the final statement of outstanding was drawn. The Revenue has made an addition for the succeeding year as well, based on the same document (APB pg. 115), agitated vide Gd. # 2 for A.Y. 2006-07. Two additions cannot obviously be made for the same payments. The work being undertaken on an ongoing basis, we have no basis to determine the amount outstanding from the said client as on 31.3.2005, i.e., in the absence of date-wise detail of the amounts paid and received over the said period. Under the circumstances, we only consider it proper to assume (net) payments on a uniform basis. The net excess payment of Rs.1.15 lacs would, accordingly, stand to be allocated between the two different previous years, being f.y. 2004-05 and f.y. 2005-06, during which the transactions have seemingly taken place, on the basis of time period, i.e., assuming a uniform accumulation of the said balance of Rs.1.15 lac over time. We decide accordingly, disposing the relevant ground of appeal.

12. In the result, the assessee's appeals are partly allowed.

परिणामतः निर्धारिती की अपीलें आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on October 09, 2015

Sd/-

(D. Manmohan)

उपाध्यक्ष / Vice President

Sd/-

(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 09.10.2015

व.नि.स./Roshani, Sr. PS

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)
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