

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member  
and Shri Sandeep Gosain, Judicial Member**

**ITA No. 2101/Mum/2014**  
(Assessment Year: 2007-08)

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| Shri Vasant Kalyanji Bheda<br>C/o. Monarch, Pali Hill<br>Dr. Ambedkar Road<br>Bandra (W), Mumbai 400050 | Vs. | Income Tax Officer-19(3)(4)<br>Piramal Chambers<br>Dr. S.S. Rao Road, Lalbaug<br>Mumbai 400012 |
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PAN - AABAT4355R

**Appellant**

**Respondent**

Applicant by: Shri S.M. Makhija  
Respondent by: Shri A. Kumbhar

Date of Hearing: 03.05.2016  
Date of Pronouncement: 04.05.2016

**ORDER**

**Per Jason P. Boaz, A.M.**

This appeal by the assessee is directed against the order of the CIT(A)-18, Mumbai dated 10.01.2014 for A.Y. 2007-08.

2. The facts of the case, briefly, are as under: -

2.1 The assessee filed his return of income for A.Y. 2007-08 on 05.09.2007 declaring total income of ₹90,980/-. The return was processed under section 143(1) of the Income Tax Act, 1961 (in short 'the Act') and the case was taken up for scrutiny. The assessment was completed under section 143(3) of the Act vide order dated 04.12.2009, wherein the income of the assessee was determined at ₹23,75,540/- in view of, inter alia, an addition of ₹22,85,379/- being cash/other credits in the assessee's bank account at Karnataka Bank Ltd., Bandra (W) Branch, Mumbai treated as unexplained income of the assessee and brought to tax in his hands under section 69A of the Act. On appeal, the learned CIT(A)-18, Mumbai dismissed the assessee's appeal vide the impugned order dated 10.01.2014 for A.Y. 2007-08.

3.1 Aggrieved by the order of the CIT(A)-18, Mumbai dated 10.01.2014 for A.Y. 2007-08, the assessee has preferred this appeal before the Tribunal raising the following grounds: -

*“Your Appellant therefore prays that -*

*(a) The addition of Rs 2285379/- made by the Ld. Assessing Officer and the Ld. Commissioner of Appeals 18 may be deleted.*

*(b) Your Appellant may be allowed to amend, alter, amend, add, and modify the grounds of the appeal till final hearing.”*

3.2.1 The learned A.R. for the assessee was heard in support of the grounds raised. At the outset, the learned A.R. for the assessee submitted that the orders of the AO and the learned CIT(A) have been passed without any appreciation or verification of the evidence placed before them. In this context, the learned A.R. for the assessee submitted a paper book containing pages 1 to 65 certifying that the contents therein were filed before the learned CIT(A) and or the AO and which, inter alia, are copies of documents in respect of the bank account No. 0862500100784801 in Karnataka Bank Ltd., Bandra (W) Branch which it is submitted is held jointly by the assessee with his sister Ms. Chhaya Kalyanji Bheda and parents, copy of the acknowledgement of filing of return of income for A.Y. 2007-08, etc. According to the learned A.R. for the assessee, the facts on record in the order of assessment would prima facie establish that these documents/submissions in the paper book filled by the assessee (supra) the assessee's contention that the matter for verification as per AIR information, i.e. the deposits of ₹19,80,400/- in the aforesaid savings bank account with Karnataka Bank Ltd., etc. have not been examined or verified properly.

3.2.2 It is submitted that on being queried by the AO about the deposits of ₹19,80,400/- in the said bank account with Karnataka Bank, the assessee had vide letter dated 28.07.2009 (relevant portion extracted at para 5 of assessment order) explained that he is holding a joint account in the name of himself, his sister Chhaya, his mother Kasturben Kalyanji Bheda and his later father Kalyanji Kanji Bheda bearing No. 0862500100784801 in Karnataka Bank Ltd., Bandra (W) Branch, Mumbai and that the

transactions therein have been included in the returns of income and financial statements filed by his sister Chhaya K. Bheda for A.Y. 2007-08. Alongwith these averments the assessee enclosed a copy of the first page of the bank account, entire set of bank statements and return of income of Chhaya Kalyanji Bheda for A.Y. 2007-08; i.e. the year under consideration. In this context, the learned A.R. for the assessee drew our attention to page 1 of the paper book filed by the assessee; which is a copy of the first page of the Pass Book of the aforesaid bank account with Karnataka Bank in respect of which the AO received AIR information of deposits to the tune of ₹19,80,400/- being made therein in the year under consideration and submitted that a perusal thereof showed/evidenced that the said bank account was held jointly by the assessee's sister, Ms. Chhaya K. Bheda alongwith the assessee and his parents. It is pointed out that the AO at para 6 of the order, however, records the finding that from the bank details filed the account is only in the name of the assessee and there is no mention of any joint holder of the said bank account. The learned A.R. for the assessee further drew the attention of the Bench to para 7 of the order of assessment where the AO goes on to record that the details of the said bank account were never submitted in the course of assessment proceedings, which the learned A.R. for the assessee contends is contrary to and contradicts the AO's finding in para 6 that the AO had examined the bank account details to arrive at the conclusion that the bank account was only in the name of the assessee. The learned A.R. for the assessee also submitted that the AO brushed aside the averments that the said bank account in Karnataka Bank was disclosed by the assessee's sister, Chhaya K. Bheda, in her return of income for A.Y. 2007-08 and the deposits/withdrawals therein are already in her Trading and Profit & Loss Account included in the return of income for the period under consideration.

3.2.3 The learned A.R. for the assessee submitted that on appeal, the documents in the paper book (pages 1 to 58) were submitted and the same were sent to the AO for verification and report thereon and the AO in the remand report submitted that inspite of opportunities being afforded to the

assessee, the assessee failed to appear and furnish details called for. The learned A.R. for the assessee contends that no separate finding on the merits of the issue or independent verification of the documents were carried out by the AO in remand proceedings from the said bank account and it is on this basis the learned CIT(A) observed that since the assessee had failed to submit documentary evidence to prove the source of cash deposits in the said bank account, and proceeded to uphold the addition of ₹22,85,453/- made by the AO.

3.2.4 The learned A.R. for the assessee contended that the facts of the matter, as brought out above, clearly establish that no proper or independent verification of documents/details filed in assessment proceedings and before the learned CIT(A) in appellate proceedings has been carried out by the authorities below and it is clear that all the averments/documentary evidence filed by assessee has been brushed aside, thereby resulting in factually erroneous and contrary findings being rendered by the AO in respect of in whose name the said bank account was; whether details/documents were filed or not; etc. which led to an adverse inference being taken and the said addition being made. It is contended that even the impugned order of the learned CIT(A) is a non-speaking order confirming the AO's order without considering/verifying any of the details filed by the assessee. It is pleaded that in the interest of equity and justice, the issue in dispute be set aside to the file of the AO for de novo adjudication after consideration of the details/documents filed in connection with the said bank account in Karnataka Bank, Bandra (W) Branch, Mumbai so that justice be rendered to the assessee.

3.3 Per contra, the learned D.R. supported the order orders of the authorities below, but had no objection if the issue of the verification of the deposits in the said bank account with Karnataka Bank for the period under consideration be sent back to the file of the AO for de novo verification and adjudication.

3.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. As submitted by the

learned A.R. for the assessee, we find that the AO, while examining the AIR information on the issue of the deposits in the said bank account with Karnataka Bank, has prima facie, come to the findings he did based on a wrong appreciation or no proper examination or verification of the material on record leading to erroneous factual findings as to in whose names the said bank account stood, i.e. whether in the assessee's name only or in the joint names with other family members. It is also seen that the AO has given contrary factual findings, i.e. at para 6 that he has arrived at the conclusion that the said bank account is in the assessee's name after examining the said bank account and later in para 7 the AO records that details of the said bank account were never filed before him. We further find that in remand proceedings at the appellate stage, the AO has not independently examined or verified the details forwarded by the learned CIT(A) regarding the said bank account or the averments of the assessee that the transactions in the said bank account stand disclosed as part of her financial statements in the return of income of the assessee's sister, Ms. Chhaya K. Bheda for A.Y. 2007-08, etc. The assessee's contentions, it is evident, have been just brushed aside citing his non-attendance and this has been blindly followed by the learned CIT(A) in the impugned order, thereby resulting in factually erroneous findings as pointed out above (supra). The object of assessment is to ensure that the assessee's income is correctly and justly determined and assessed. However, in the case on hand we find that, prima facie, there has been no effort on the part of the authorities below to do so either at the stage of assessment or remand proceedings. In this view of the matter, we are of the considered opinion that in the factual matrix of the case as discussed above, the addition of ₹22,85,453/- in respect of deposits in the said bank account in Karnataka Bank in the period under consideration made by the AO based on AIR information is unsustainable in its present form since the same has been made both on an erroneous appreciation of facts and by brushing aside material placed on record in appellate proceedings before the learned CIT(A) which were forwarded to the AO in remand proceedings. We, therefore, in the interest of equity and justice set aside the said addition of

₹22,85,453/- made by the AO in respect of deposits in the said bank account with Karnataka Bank and sustained by the learned CIT(A) and restore this issue to the file of the AO alongwith details filed in paper book (pages 1 to 58) and in remand proceedings for de novo examination, verification and adjudication thereon, after affording the assessee adequate opportunity of being heard and to file details/documents/submissions in this regard as required and considering the same in accordance with law. It is accordingly ordered. The grounds raised by the assessee are allowed for statistical purposes.

4. In the result, the assessee's appeal for A.Y. 2007-08 is allowed for statistical purposes.

Order pronounced in the open court on 4<sup>th</sup> May, 2016.

Sd/-  
**(Sandeep Gosain)**  
**Judicial Member**

Sd/-  
**(Jason P. Boaz)**  
**Accountant Member**

Mumbai, Dated: 4<sup>th</sup> May, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -18, Mumbai*
4. *The CIT, 19, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.