

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

BEFORE SHRI A.K. GARODIA, AM

आयकर अपील सं./I.T.A. No.2861/Mum/2014

(निर्धारण वर्ष / Assessment Year: 2009-10)

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| Nanji Ranchhod Patel. R. No. 05, Amar Kunj, Besant Road, Santacruz-West, Mumbai-400 054. | बनाम/ Vs. | Commissioner Of Income Tax (Appeal-18). R. O. 20, 3 rd floor, B-wing, Mittal Court, Nariman Point, Mumbai-400021. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AADPK 8375K | | |
| (अपीलार्थी /Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी की ओर से / Appellant by | : | None |
| प्रत्यर्थी की ओर से/Respondent by | : | Shri B.S.Bist |

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| सुनवाई की तारीख / Date of Hearing | : | 30/11/2015 |
| घोषणा की तारीख / Date of Pronouncement | : | 04.12.2015 |

आदेश / ORDER

PER AK GARODIA, A. M:

This appeal by the assessee is directed against the order dated 09/12/2013 of Commissioner of Income Tax (Appeals)-18, Mumbai (Hereinafter called as the CIT(A)) for assessment year 2009-10.The assessee has raised following ground of appeal:

1. *The learned Assessing Officer 12(3)(2), Mumbai erred in law and on facts on record in assessing the total income at Rs.13,57,710/- as against the*

returned income of Rs.1,42,569/- and thereby erred in raising the total demand of Rs.4,70,640/-.

- 2. The Income Tax Officer has erred in law and facts on record in invoking the provisions of u/s 69A of the I.T. Act by treating as unexplained Money and thereby erred in making the addition (on protective basis) of Rs.12,15,138/- being the accumulated profit of Mr. Nanji Ranchhod Patel.*
- 3. The Income Tax Officer has brushed aside the appellant's legal and factual submissions, in this regard (as detailed in the 'Statement of Facts'), without assigning any cogent reason for the same. This leads to the conclusion that the addition is not warranted at all.*
- 4. The Honourable Commissioner Income Tax (Appeal)-30 is send us notice to attend the case and also submission all the documentary evidence to prove genuineness of this transaction. Thus I am failed to produce the evidence because of there is problem with my accountant.*
- 5. So I also send the request letter to Honourable Commissioner Income Tax (Appeal)- 30 on dated 16th December 2013 for readmit my appeal and send the fresh date for submission all evidence to prove the genuineness of this transaction.*
- 6. So I request to Honourable Appellant Tribunal please admit my appeal and if remand back to Honourable Commissioner Income Tax (Appeal)- 30. I produce all the documentary evidence in one date. There is no issue create from myself on this matter.*

2. This appeal was fixed for hearing earlier also on 25/06/2015 but none appeared on behalf of assessee. The hearing was adjourned to 27/07/2015 and the notice was sent through RPAD but on this date also, none appeared on behalf of the assessee and thereafter, this appeal was fixed on several dates and on those dates, the bench did not function and the hearing was adjourned and finally the appeal was fixed on

30/11/2015 and notice was sent to assessee but on this date also, none appeared on behalf of assessee and therefore, I proceed to hear the appeal ex parte qua the assessee.

3. The ld. DR supported the order of the ld. CIT(A).

4. I have considered the submissions of Ld. DR of the revenue and perused the orders of the lower authorities. I find that the addition made by the AO of Rs.12,15,138/- is on the basis of AIR report as per which, the assessee has deposited cash in two ICICI Bank Accounts of Rs.10,03,938/- and Rs.2,11,200 totaling to Rs.12,15,138/- and there was a written submission filed by the assessee before CIT (A) as reproduced by him in para no.2.2 of appellate order as per which, it was explained by the assessee that the assessee is engaged in the business of Commission Agent for Readymade Garments and the buyers of the assessee who are road side vendors deposited cash in the assessee's bank accounts which is withdrawn by the assessee in cash from these bank accounts and after deducting the commission charges of the assessee, suppliers of the assessee were paid in cash and this was also explained by the assessee that these bank accounts were closed before 31/03/2009 and therefore, these two bank accounts were not shown in the return of income filed by the assessee. Regarding these submissions of assessee before the ld. CIT(A), the ld. CIT(A) has stated in his order that no confirmation or documentary evidence was submitted to substantiate these claims and he had brushed aside the submissions of the assessee before him and upheld the assessment order. In my opinion, the explanation given by the assessee in written submissions filed before the CIT(A) are reasonable explanations regarding the cash deposit in the assessee's two bank accounts with the ICICI Bank and asking the assessee to obtain confirmation from such road side vendors is not proper before believing this explanation in the facts of the present case. Regarding non disclose of these two bank accounts in return of income also, it was

explained by the assessee that these two bank accounts were closed before 31-03-2009, and ,this is not a case of any body that his contention is not correct and these two bank accounts was not closed before 31-03-2009. I also find that in written submissions, it was submitted by the assessee before the CIT(A) that the assessee was earning commission income of 5% to 7% and therefore, the income declared by the assessee under the head of income from business of Rs.71,915/- is sufficient to take care of commission income on this transaction of the assessee which is reflected in these two bank accounts amounting of Rs.12,15,138/-. Hence in my opinion, there is no reason to approve the action of the A.O. in the facts of the present case. The assessee has properly explained the nature and sources of deposits in these two bank accounts with ICICI Bank and the same was disbelieved by the ld. CIT(A) on this basis that the assessee could not furnish documentary evidence. In my considered opinion, in respect of such cash deposit by road side vendors, asking the assessee to obtain confirmation from those road side vendors is not proper and reasonable in the facts of the present case and therefore, I delete the addition made by the AO and confirmed by CIT (A).

In the result, the assessee's appeal is allowed.

Order pronounced in the open court on 4th December, 2015

Sd/-

(A.K. GARODIA)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 04.12.2015

Ps. Ashwini Gajakosh

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