

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH ‘B’, MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No.7127/Mum/2013 (Assessment Year- 2005-06)**

Nizar Noorali Govani , Flat No.1, Hill View CHS, 241, Hill Road, Bandra (West), Mumbai-400050 PAN:AGBPG9175H	Vs.	Income Tax Officer, Ward No. 19(3) (3), Mumbai-400007.
(Appellant)		(Respondent)

Assessee by : Sh. Deepak Tharashwala -AR
Revenue by : Sh. Suman Kumar-DR
Date of hearing : 11.04.2017
Date of Pronouncement : 28.04.2017

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee under section 253 of the Income-tax Act ('the Act') is directed against the order of Id. CIT (A)-5, Mumbai dated 23.01.2013 for AY-2005-06.
2. The assessee has raised following ground of appeal:
 - (i) *On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) has erred in upholding the disallowance of a sum of Rs.29,09,586/- deposited in his bank account as unexplained money under section 69A without considering the facts of the case and in its correct perspective and ignoring the explanation and proof as to the source of deposit in the bank account, as submitted by the appellant, at the time of the assessment as well as at the time of appeal.*
 - (ii) *Hence, the total income as reduced by Rs.29,09,586/-by deleting the addition made under section 69A of the income tax act and the income of the assessee be assessed under section 44AF at Rs. 145479/-being 5% of the total sale proceed of Rs. 2909586/-.*
3. Brief facts of the case are that for the relevant assessment year the assessee filed return of income on 31 October 2006 declaring income of Rs.49,744/-. The assessment was completed on 27 December 2007 under section 143(3) of

the Act. The Assessing Officer while passing the assessment order made the addition under section 69A of Rs.29,09,586/-. On appeal before Commissioner (Appeals) the addition was sustained. Further, aggrieved by the order of Commissioner (Appeals) the assessee has filed present appeal before us.

4. We have heard the learned AR of the assessee and the learned DR for revenue and perused the material available on record. The learned AR of the assessee argued that assessee is the self-employed, marketing the products of M/s. Hindustan Coca-Cola Marketing Company Private Limited on behalf of its distributor M/s Silver Line Marketing and earned commission of sales affected on their behalf. The assessee also sells on his own account on purchases made by him and supply to the parties. It was further argued that during the relevant assessment year under the appeal the assessee had reflected the sales of Rs.7,96,600/- which was from the purchases made by him on his own for supply to the parties. The gross profit on such sale is reflected at Rs. 1,61,537/- which is nearly 20% of such sales. The gross profit in these sells is higher as the appellant has to procure and store the material which is supplied on demand to the customers. However, the margin earned by the assessee on the sales on behalf of Silver Line Marketing is a maximum of 5% of supply based on the incentive and the scheme offered by the company. The assessee effected the sales of Rs. 21,14,148/- on behalf of Silver line marketing. The assessee collected the money from the parties to whom the material was supplied on behalf of M/s Silver Line Marketing and was deposited in his saving account with Development and Credit Bank and transfers the amount due to M/s Silver Line Marketing by direct transfer/account payee cheques. The entire sale transaction including the personal trading is Rs.29,10,748/- out of which the assessee has paid a sum of Rs. 25,74,960/- to M/s Silver Line Marketing for the sales affected on their behalf. The Assessing Officer obtained the addresses of Sh. Hussian Charania Proprietor of M/s Silver Line Marketing from Development Credit Bank and issued summons under section 131 to verify the transaction. The assessee was informed by the Assessing Officer that none had attended from Silver Line Marketing in response to the summons issued to

them. No further action was taken against the said form by the Assessing Officer. The Assessing Officer wrongly presumed that if the product was procured through Silver Line Marketing and sold on cash basis than as to why the sale proceed were deposited in assessee's account. The said amount as per the Assessing Officer should have been deposited in the Silver Line Marketing account. The Assessing Officer further observed that Silver line marketing has not filed return of income for assessment year 2005- 06. The Assessing Officer added the entire transaction as unexplained money under section 69A of the act in the income of assessee. It was further argued by learned AR of the assessee that is the tax practitioners who represented the assessee during the assessment proceedings wrongly presented the facts before the Assessing Officer that assessee is engaged in the business of garments and cloth and also derived income from other sources. The assessee never engaged in the business of garment or clothes the facts were wrongly presented before Assessing Officer. The learned AR for the assessee further argued that during the First appellate stage the assessee filed written submission before Id CIT(A) vide letter dated 08.03.2010, the submission of the assessee were remanded to the Assessing officer. On the other hand, Id. DR for the Revenue argued that the assessee is taking inconsistent stand before the AO and the Id. CIT(A). Before the AO, the assessee contended that he is engaged in the business of garments and clothes, however, before the Id. CIT(A), the assessee contended that he is doing the business of supply of products of Hindustan Coca-Cola Marketing Company Pvt. Ltd. under the distributorship of Silver Line Marketing. The assessee failed to substantiate his contention before the AO as well as before the Id. CIT(A). The AO himself find out the address of Proprietor of Silver Line Marketing. The Proprietor of Silver Line Marketing is close relative of assessee. The assessee has not proved the facts, as to how the amount was deposited in assessee's account. The copy of submission dated 21.08.2013 allegedly filed by assessee before the Id. CIT(A) does not bear the signature of assessee or his representative. The copies of the confirmation filed by assessee are stereo type confirmation containing the similar language which is not helpful to the

assessee. As no quantity of material is mentioned in all those confirmations. In the rejoinder argument, the Id. AR of the assessee argued that for verification of the confirmation and the statement of account, the matter may be set-aside to the file of lower authorities. It was further argued that in group case the Tribunal has set-aside the case to the file of AO for deciding the case afresh. The Id AR further prayed that the income of assessee may be assessed under section 44AF. The assessee made submission to the Id CIT(A) but the same was not considered while passing the impugned order.

5. We have considered the rival contention of the parties and carefully gone through the orders of authorities below. The AO during the assessment noticed that the assessee is changing his stand regarding the nature of business. The assessee initially stated that he is engaged in the business of garments and thereafter started claiming that he is a Commission Agent and distributing the products of M/s Hindustan Coca Cola after procuring from its distributor M/s Silver Line Marketing and sold the same on cash basis and those sale proceeds were deposited in his account. The assessee retains the amount of 5% of service charge out of the sale proceed. The contention of assessee was not accepted by AO and the entire deposit of Rs. 29,09,586/- was added in the income of assessee u/s 69 on account of unexplained money. Before the Id. CIT(A), the assessee filed documents along with written submission. The documents of assessee were referred to the AO for his remand report. The AO furnished his remand report along with letter dated 04.09.2013. In the remand report, the AO objected that no supporting sales bills or cash memo were produced for verification. The AO also mentioned in his report that these document were not filed during the course of assessment proceeding. M/s Silver Line Marketing is family concern of the assessee. The confirmation and the cash memo do not contain the complete address of purchasers, VAT Number and Phone Number etc. The Remand Report was supplied to the assessee for his comment. The assessee filed his comment vide reply dated 28.09.2013. The assessee objected about the Remand Report of the AO. In objection the assessee contended that the assessee filed copy of financial statement before

the AO along with cash book, bank book and the AO wrongly hold that entire documents produced by the assessee are not authentic. After considering the remand report and the contention of the assessee, the Id. CIT(A) conclude that the assessee has not establish the source of amount of Rs. 29,09,586/- deposited in the account of assessee from the sale of Coca-Cola Beverage. The other submission of assessee is that purchases from Silver Line Marketing have not been proved beyond reasonable doubt. The assessee has not produced the evidence to establish the transaction with Silver Line Marketing as Silver Line Marketing has not filed return of income.

6. We have seen that the assessee has placed on record the statement of bank Account in Development Credit Bank showing banking transaction with m/s Silver Line Marketing (PB 10-15). Similarly, the assessee has filed statement of account of Silver Line Marketing in Development Credit bank showing the banking transaction with M/s Hindustan Coca-Cola Marketing Co. Pvt. Ltd. (page 16 to 40 of PB). The assessee has also placed on record the cash memo of various products of Hindustan Coca-Cola Marketing Co. Ltd. (page 41 to 45 of PB) and the cash memo issued by Silver Line Marketing in favour of assessee (Page 46 to 48 of PB) and various confirmation from the purchaser (page 61 to 91 of PB). These documentary evidence are prima-facie corroborative evidence in favour of assessee. As the lower authority have not given any finding on these documents. Moreover, some of the documents were filed during the First Appellate Proceeding. Considering the corroborative value of the evidence, we deem it appropriate to restore the case to the file of AO to consider the case afresh and to pass the order in accordance with law. We may also observed that the assessee made a prayer during the assessment proceedings as well as before Ld CIT(A) to his income under section 44AF on the sale of distribution activity, however, the lower authorities have not given any finding on such prayer. Hence, we direct that in alternative the AO may also consider the alternative contention of the assessee for assessing his income under section 44AF of the Act. Needless to say that AO shall grant sufficient

and adequate opportunity before passing the order. With these, observations, the appeal of the assessee is allowed for statistical purpose.

In the result the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 28th day of April 2017.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

Mumbai; Dated 28/04/2017

S.K.PS

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai