

**आयकर अपीलीय अधिकरण “सी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI**  
**BEFORE SHRI MAHAVIR SINGH, JM AND SHRI SANJAY ARORA, AM**

आयकर अपील सं./I.T.A. No. 5813/Mum/2014  
(निर्धारण वर्ष / Assessment Year: 2010-11)

Prashant Toraskar 101, 1 <sup>st</sup> Floor, Sunflower CHS, St. Francis Road, Vile Parle (W), Mumbai-400 057	<b>बनाम/</b> Vs.	Asst. CIT-25(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAAPT 5707 B		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Tarun Ghia
प्रत्यर्थी की ओर से/Respondent by	:	Shri Vijay Kumar Soni
सुनवाई की तारीख / Date of Hearing	:	07.7.2016
घोषणा की तारीख / Date of Pronouncement	:	21.9.2016

**आदेश / ORDER**

Per Sanjay Arora, A. M.:

This is an Appeal preferred by the Assessee against the Order by the Commissioner of Income Tax (Appeals)-35, Mumbai ('CIT(A)' for short) dated 09.6.2014, partly allowing the Assessee's appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2010-11 vide order dated 07.3.2013.

2. The appeal is delayed by one day. The same is explained by way of an Affidavit dated 11.4.2016 by the appellant as caused under the *bona fide* impression of having been filed in time; he being engaged in identifying a counsel for advice and representation before the Tribunal and, thus, in filing the appeal, resulting in it being

deferred to the last day. We find the same reasonable. The appeal was accordingly admitted and its hearing proceeded with.

3. The brief facts of the case are that the assessee-individual, a Thane based retailer in pharmaceuticals (by the trade name 'M/s. Biotrol') was on the basis of the AIR information found to be maintaining a bank account with ICICI bank (# 021101502990), which was not disclosed per his return of income for the year, filed on 15.10.2010 at an income of Rs.9.61 lacs (revised to Rs.12,79,420/- on 23.11.2012).

On being questioned in its respect, the assessee admitted to the said bank account being not disclosed to the Revenue, agreeing for being charged to tax on the profit relatable to the credits appearing in the said bank account (Rs.71.10 lacs), which were claimed to represent the sale receipts. The debits in this account, it was further explained, were toward purchase and expenses. A separate profit and loss account, titled as 'Personal P & L Account', was prepared in respect of the assessee's transactions routed through this bank account, disclosing a net profit of Rs.5,33,867/- (at PB pg. 37). A reconciliation of the purchases claimed therein (at Rs.101.81 lacs), stated to be from three parties, with that reflected in the assessee's account as appearing in their books of account, was prepared, also submitting the copy of the purchase bills. The same did not find favour with the Revenue. The assessee had not furnished all the purchase bills so as to verify its claim of the debits in the bank account as being toward purchases. Then, again, the same does not explain the cash deposits in the undisclosed bank account, claimed to be sales, *qua* which claim no evidence stood adduced. The entire amount credited to the ICICI bank account (Rs.71,09,920/-) was accordingly added and confirmed, placing reliance on the decisions in the following cases, holding the burden of proof to be on the assessee, and in the absence of an explanation no onus lay on the Revenue to show if the credit is from a particular source:

- 1) *Sumati Dayal vs. CIT* [1995] 214 ITR 801 (SC);
- 2) *Roshan Di Hatti vs. CIT* [1977] 107 ITR 938(SC);
- 3) *CIT vs. Devi Prasad Vishwanath Prasad* [1969] 72 ITR 194 (SC);
- 4) *CIT vs. M. Ganapathi Mudaliar* [1964] 53 ITR 623 (SC);

- 5) *Kale Khan Mohammad Hanif vs. CIT* [1963] 50 ITR 1 (SC); and
- 6) *A. Govindarjulu Mudaliar vs. CIT* [1958] 34 ITR 807 (SC).

Aggrieved, the assessee is in second appeal.

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

Without doubt, the burden to prove the nature and source of the credit/deposit in his bank account is on the assessee, in the absence of which the same is liable to be deemed as his unexplained income for the relevant year. Why, the onus to prove a claim – which in the present case extends to proving the nexus of the withdrawals in his (ICICI) bank account with the deposits therein, is only on the assessee (refer: *Sudhir Kumar Sharma (HUF) vs. CIT* (ITA Nos. 123 & 124 of 2014 dated 28.7.2014 (P&H), SLP against which stands dismissed by the Hon'ble Apex Court (in CC No. 394/2016)), also *CIT vs. Calcutta Agency Ltd.* [1951] 19 ITR 191 (SC)). The assessee states the withdrawals to be toward payment against purchase of traded goods, i.e., in the main, with the credits representing the sale proceeds of the said goods. The payments stand substantiated on the basis of the account statement of the assessee's account, depicting payments, both from his ICICI bank and the other (Axis) bank account in the books of the suppliers, one of whom, M/s. S. D. BIO Standard Diagnostics (P.) Ltd. is stated to have furnished the same directly to the Assessing Officer (A.O.) u/s. 133(6).

In our clear view, the Revenue's approach is not reasonable; the assessee having adduced sufficient evidence to exhibit the said bank account as being the bank account of his undisclosed business transactions. We, however, refrain from issuing any final finding/s in the matter, as the said account bears and, in any case, there is a distinct possibility of it bearing, credits other than by way of cash deposits, which could be by way of deposit of direct incomes, viz. rent, interest, professional fees, etc. as well. In fact, we observe that the turnover in respect of the undisclosed transactions (per the P & L A/c./PB pg.37), i.e., Rs.80.32 lacs, exceeds the total credit (Rs.71.10 lacs) in the assessee's ICICI bank account. How? Similarly, the withdrawals could also be in respect of personal expenses, or which cannot be considered as incurred

wholly and exclusively for business purposes, or even for personal savings/investment. The assessee's personal P & L account (at PB pg. 37) would therefore require being verified, both with respect to the gross profit reflected and the indirect expenditure claimed therein. This, we consider to be the principal concern or issue arising in the present case. Our preliminary examination reveals the assessee to have disclosed a gross profit at 15.25%, which compares favourably with the (pre-VAT) gross profit of 15.86% on the disclosed turnover sales of Rs.25.15 lacs (PB pg. 40). This is as the undisclosed turnover attracts no tax (VAT). This gross profit rate, though not conclusive, should recommend itself for acceptance in the absence of anything to the contrary. We may in this context also add that the assessee has furnished copy of sale bills (on its letter-head) together with courier receipts (PB pgs. 44-51), signifying sale to outstation parties. That apart, the cash stands deposited from various stations, viz. Bhuvaneswar, Dhule, Nasik, etc. gives credence to the assessee's claim of the same representing sale proceeds received from different stations (refer Ground 2 before us). The said sale bills would also reveal the profit component therein, i.e., with reference to the corresponding purchase bills. Would that, however, impact the assessee's business profile – stated to be of a retailer and, thus, the profit, is a question that would require being examined? Further, the indirect expenses claimed (Rs.7.09 lacs) are much higher, both in value and in percentage terms, than that claimed against the disclosed turnover, i.e., Rs.0.74 lacs. Though by itself not conclusive of the matter, the onus to justify his claims would be on the assessee. The receipt of cash or funds from out-station parties may though perhaps explain the inordinate increase in the postage expenses claimed *qua* the undisclosed transactions. We are in this regard, however, not in agreement with the ld. counsel for a direction to the AO to adopt a particular percentage as a net profit, i.e., as claimed to have been accepted by him for other years. The assessment orders for those years are not on record. The AO, where he has issued definite findings upon examination/verification, would though be obliged to take guidance from the factual findings or inferences drawn for those years. He has to, we may though add, act in a reasonable, yet, cogent

manner, taking a broad view of the matter in that the full details and evidences in respect of expenses, hitherto undisclosed, may not be forthcoming.

That apart, even the assessee's undisclosed capital, i.e., the capital deployed in the assessee's undisclosed business, would have to be separately considered for addition. Toward this, in our view, the AO shall himself or cause the assessee to compile the consolidated balance sheet, incorporating the erstwhile undisclosed bank account also. This, on a comparison with the balance-sheet already furnished, would reveal the additional capital, so that the same, to the extent unexplained, would merit being separately added u/s.69/69A. Whether the opening capital, and if so to what extent, gets explained on the basis of similar transactions unearthed for a preceding year, is a matter of fact. It may be argued that we are, in so directing, exceeding our jurisdiction. The argument is facile and without merit. The addition arises only in consequence of the assessee's non-disclosure of his bank account, which stands discovered by the Revenue. The accounts, including the final accounts, compiled on the basis of the said account, are only the assessee's explanation toward the credits appearing therein, also enabling the determination of the correct income, i.e., liable to be brought to tax *qua* the said credits, which the Revenue has extended to the entire credit, disbelieving the assessee's explanation.

The A.O. shall, accordingly, redo the assessment with reference to the assessee's undisclosed bank account, determining the amount that is in the facts and circumstances of the case properly assessable as income. We decide accordingly.

5. In the result, the assessee's appeal is allowed for statistical purposes.  
परिणामतः निर्धारिती की अपील सांख्यकीय उद्देश्य के लिए स्वीकृत की जाती है ।

*Order pronounced in the open court on September 21, 2016*

Sd/-  
(Mahavir Singh)

न्यायिक सदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 21.09.2016

व.नि.स./Roshani, Sr. PS

Sd/-  
(Sanjay Arora)

लेखा सदस्य / Accountant Member

**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**