

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./I.T.A. No. 2769/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2008-09)

Ms. Priyanka Chopra 705, 706 & 806, Raj Classic, B-Wing, Versova, Mumbai-400 061	बनाम/ Vs.	Dy. CIT, Central Circle-1(3), Room No. 905, Old CGO Building Annex, M. K. Road, Mumbai-20
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ACXPC 1741 R		
(Assessee)	:	(Revenue)

आयकर अपील सं./I.T.A. No. 2524/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2008-09)

Dy. CIT, Central Circle-1(3), Mumbai-20	बनाम/ Vs.	Ms. Priyanka Chopra Mumbai-400 061
(Revenue)	:	(Assessee)
Assessee by	:	Shri Rahul Raman
Revenue by	:	Shri Naresh Kumar & Shri Yogesh Joijode
सुनवाई की तारीख / Date of Hearing	:	02.11.2017
घोषणा की तारीख / Date of Pronouncement	:	16.01.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

These are cross appeals by the assessee and the Revenue arising out of the order of the Commissioner of Income Tax (Appeals) dated 12.02.2015 and pertain to the assessment year 2008-09.

Revenue's appeal (in ITA No. 2524/Mum/2015):

2. The ground of appeal read as under:

"Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) is justified in deleting the addition of Rs.50 lacs being cash payment made for acquisition of Studio Aesthetique without appreciating the fact that the addition has been made on the basis of documents seized and voluntarily admitted by the assessee and her mother Smt. Madhu Copra during the search to be cash component of the payment made to the said party over and above payment of Rs.3.50 crores made by cheque and subsequently retracted without giving any supporting evidence to the contrary?"

3. In this case, search and seizure action u/s. 132 of the Act was conducted on 24.01.2011. The assessee is a well known actress of Indian Film Industries. Various incriminating documents were found during search. On this issue during the course of search an amount of Rs.50 lacs was declared as undisclosed income for cash payment for purchase of Studio Aesthetique. Various incriminating material were found during search. When the same was confronted to Smt. Madhu Chopra, the mother of the assessee who was managing the affairs of the assessee, she admitted the following with respect to Q. No. 19 as under:

Q. 19 Do you want to state anything else?

Ans. Yes, I admit that based on the above seized papers and the answers to the Q Nos. 11 to 17, I offer following undisclosed incomes, which had accrued to me and Priyanka Chopra through various Events, Shows and Sale of flats in the Years as mentioned above. The application of this cash by the above mentioned activities are as under-

F.Y. (Rs.)	Description	Amount
2005-06	Cash-Payment in Evershine Cosmic	15 lacs

2006-07	Cash Payment in Raj Classic	35 lacs
2007-08	Cash expenditure for renovation of NavKaran Apt. 901	25 lacs
2007-08	Cash Payment for purchase of Studio Aesthetique	50 lacs
2008-09	Cash Payments for Property at Bandra & MHADA	15 lacs
2010-11	Cash payments made for the commercial Unit	3.35 crores
2010-11	Cash Payments made for the land in Savantwadi	1.00 crore

Further, in order to make peace with the department and considering the other entries in the various seized documents and any other issues that may sprung up during the course of investigation, I further offered Rs. 30 Lacs for the F.Y. 2010-11 to cover up any such discrepancies. I also promise to pay the taxes on the same in due course."

5. Subsequently, statement on oath u/s.132(4) of the I T Act, 1961 of the assessee was also recorded on 25-01-2011 and in reply to the declaration made by her mother Mrs.Madhu Chopra she has submitted as under:

"Q. 27. In continuation of your statement u/s.132(4) of Income Tax Act, 1961, you are handed over the statement u/s.132(4) of the LT.Act,1961 given by your mother, Mrs.Madhu Chopra at your Office premise at 403, Navkaran Building, Lokhandwala, Mumbai. You are requested to go through the same.

Ans: I have gone through the statement. As per the statement my mother has admitted that she has been receiving Cash Payments on my behalf for me making the appearance at Marriage Functions and also at minor appearances such as cutting of ribbon etc. My mother has also admitted that this cash along with some other cash has been used for making cash payments for purchase at various properties and also for making various expenditures. The details of such payments and expenses are as follows:-

F.Y. 2005-06	Amount
Evershine Cosmic	15 lakhs

F.Y. 2006-07	
Raj Classic plus Parking	35 lakhs
<u>F.Y. 2007-08</u>	
Renovation of Navkaran Building and Clinic Aesthetique Purchase	75 lakhs (25 lakhs + 50 lakhs)
F.Y. 2008-09	
Bandra & MHADA property	15 lakhs
F. Y. 2010-11	
Commercial	3.35 crores
Sawantwadi Land	1.00 crores
Unit General Issues	30 lakhs

Thus, my mother has admitted that total Cash Payment at Rs.6.05 crores has been made for purchase at various properties and various renovation works. I have already stated that all my financial transactions are looked after by my mother, Mrs. Madhu Chopra and since she has admitted that the above mentioned payments are unaccounted, I state that the same is correct and I agree and abide by the same as my mother is fully aware and competent to know everything related to my Finance."

4. Subsequently, Smt. Madhu Chopra, the mother of the assessee vide letter dated 13.4.2011 filed in the office of Income Tax Office on 06.06.2011, retracted the above said statement. In this background, the Assessing Officer was of the opinion that as per the seized material Rs.50 lacs in this regard was to be added as undisclosed income of the assessee. Regarding the retraction statement of Smt. Madhu Chopra, the said retraction stated that no cash payment was made for purchase of Studio Aesthetique, except the payment made by a cheque of Rs.3.50 crores. However, the Assessing Officer was not convinced. He observed that the assessee has not contradicted the seized material on the basis of which she had disclosed an amount of Rs.50 lakhs being made for purchase of Studio Aesthetique. Instead, the assessee has

simply stated that there is no cash component as agreed in the statement recorded during the course of search. Therefore, the contention of the assessee is not accepted and the disclosure made during the course of search to the tune of Rs.50 lakh is treated as undisclosed income for the year under consideration and is accordingly taxed.

5. Against the above order, the assessee appealed before the Id. Commissioner of Income Tax (Appeals).

6. The Id. Commissioner of Income Tax (Appeals) accepted that the Assessing Officer has not accepted the submission made by the assessee during the assessment stage and has made the addition arbitrarily. He held that no documentary evidence in this regard has found. He held that no addition can be made solely on the basis of the loose papers. Hence, he held that the assessee's explanation is acceptable in light of the Hon'ble Apex Court decision in the case of *CIT vs. Kalyanasundaram* [2007] 294 ITR 49 (SC). Accordingly, he deleted the addition.

7. Against the above order, the Revenue is in appeal before us.

8. We have heard the counsel and perused the records. We find that as evident in the material obtained by the Revenue during search and seizure, it was only with reference to the search and seizure material that Smt. Madhu Chopra gave a specific amount to various heads wherein the undisclosed income had been utilized. The

assessee had also separately accepted the same. Hence, it cannot be said that this addition is not based upon any incriminating material found or searched. Furthermore, the so called retraction is by the mother of the assessee and the Assessing Officer is correct in finding that there is no retraction whatsoever by the assessee. Hence, the Id. Commissioner of Income Tax (Appeals) has totally erred when he has held that the Assessing Officer has made this addition without any evidence or arbitrary. Furthermore, the Id. Commissioner of Income Tax (Appeals) has himself erred and contradicted himself when he observes that no addition can be made on the basis of the loose papers. Thus, on one hand she is stating that there is no material and on the other hand she is stating that there are materials in the form of loose papers. Hence, the reasoning by the Id. Commissioner of Income Tax (Appeals) is contradictory and is unsustainable. The decision of the Hon'ble Apex Court in the case of *Kalyanasundaram* (supra) relied upon by the Id. Commissioner of Income Tax (Appeals) is on totally different facts and circumstances. In the said case, where the tribunal's decision was authored by one of us, the issue related to on money payment in respect of immovable property based on conflicting statement of the seller and certain figures noted in loose sheets. Hence, this decision was rendered in a different context and does not help the case of the assessee. Hence, we set aside the order of the Id. Commissioner of Income Tax (Appeals) and restore that of the Assessing Officer.

9. In the result, this appeal by the Revenue stands allowed.

Assessee's appeal (in ITA No. 2769/Mum/2015):

10. The assessee's appeal relates to sustenance of following additions by the Id.

Commissioner of Income Tax (Appeals) :

- 1) Addition of Rs.40 lacs being unaccounted/undisclosed income in the form of Gifts from LVMH Watch and Jewellery India Pvt. Ltd.
- 2) Addition of Rs.15 lacs on account of unaccounted/undisclosed income in respect of professional remuneration received from Ramee Royal Hotel, Dubai, UAE.
- 3) Addition of Rs.4,64,000/- made by the Assessing Officer for perquisites given by Ramee Royal Hotel, Dubai, UAE.
- 4) Addition of Rs.14 lacs for notional rent for penthouse at Flat no. 901 and 904 of Navkaran building.

11. The assessee has also filed an additional ground in this regard which reads as under:

Additional Ground No 1:- The addition of Rs 16,00,000 made in the assessment order passed u/s 143(3) r.w.Sec 153A for the assessment year 2008-09 in the case of the appellant on account alleged receipt from Ramee Royal Hotel is bad-in-law because the addition is not based on any document or valuable asset belonging to the appellant seized u/s 132 . The documents relied upon in the assessment order were impounded during the survey action u/s 133A.

Additional Ground No 2 :- The addition of Rs 4,64,000 made in the assessment order passed u/s 143(3) r.w.Sec 153A for the assessment year 2008-09 in the case of the appellant on account alleged receipt of tickets from Ramee Royal Hotel is bad-in-law because the addition is not based on any document or valuable asset belonging to the appellant seized u/s 132 . The documents relied upon in the assessment order were impounded during the survey action u/s 133A.

Apropos: Addition in serial no. 1:

12. On this issue the Assessing Officer noted that on verification of the endorsement agreement entered with LVM-TAG Watches it is noticed that an amount of Rs.1.40 crores receipts has been paid to the assessee. Apart from the above said receipts, the assessee has also been received gift of watch worth Rs.40 lakhs.

13. In explanation, the assessee has explained that it is gift received for love and affection and respect towards the assessee by the company, therefore, the same cannot be treated as receipt. The Assessing Officer was not convinced. He held as under:

In addition to the above, the company does not have any human touch of love and affection, it is an artificial person and therefore does not have any emotional feeling of love and affection which is the cardinal factors for treating any transaction as gift. So, there is not even a remote possibility to consider this transaction as gift. Therefore, the contention raised by the assessee's representative is not accepted. Since the above said receipts are received as part and parcel of the endorsement signed by the assessee, the said receipts are treated as perquisites u/s. 28(iv) of the I. T. Act and is taxed accordingly.

14. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) observed that the Assessing Officer has rightly taken the gift of watch as perquisite and taxed it correctly u/s. 28(4). He observed that in the written submission, the assessee has accepted the same. However, he noted that the assessee has mentioned that the value of the watch is much less. However, since the assessee has not able to produce any of the evidence in this regard, the Id. Commissioner of Income Tax (Appeals) did not accept the demand of the assessee. Accordingly, he confirmed the addition.

15. Against the above order, the assessee is in appeal before us.

16. We have heard the counsels and perused the records. The Id. Counsel of the assessee submitted that the assessee has received gift of watch as per the agreement from which the assessee acted as model for its advertisements and promotional activities for an agreed remuneration of Rs.1.4 crores for 2 years. Furthermore, it was submitted that the value of the watch is much less.

17. Per contra, the Id. Departmental Representative relied upon the orders of the orders of the authorities below. We find that it is clear that the assessee has received watch worth of Rs.40 lacs from the same company and in the same agreement in which she has undertaken advertisements and promotional activities and has received remuneration of Rs.1.4 crores. Hence, the addition as perquisite u/s. 28(4) has no infirmity. Furthermore, the statement of the assessee that the actual value of the watch is much less has rightly been rejected by the Id. Commissioner of Income Tax (Appeals) has no corroboratory evidence in this regard has been produced. Accordingly, we do not find any infirmity in the order of the Id. Commissioner of Income Tax (Appeals) in this regard. Hence, we uphold the same.

Apropos addition in serial nos. 2 & 3:

18. On this issue, the Assessing Officer made an addition by observing as under:

Regarding addition of Rs.16 lacs:

On verification of Annexure A-7 of page nos.65-66 dated 18-06-2007 & 118 dated 04-07-2007 seized during the course of search it is seen that as per page no. 118, the assessee has received professional receipts of Rs.15 lakhs" and Rs.1 lakhs through Chand Mishra totaling to Rs, 16 lakhs from Ramee Royal Hotel, Dubai; UAE for stage performing. Accordingly the assessee was asked to submit the details of the same and its accountability in the books of account for the year under consideration. The assessee has not submitted any explanation nor the said receipts have been disclosed in her books of account. As per page no. 118 it is evident that the assessee had attended the above said function and performed the event and received an amount of Rs.16 lakhs from Ramee Royal Hotel and assessee could not justify the said receipt. Therefore, the same are treated as unaccounted income of the assessee for A.Y.2008-09 and taxed accordingly. Penalty proceedings u/s.271(1)(c) of the I T Act are initiated for furnishing inaccurate particulars of income and thereby concealing the said income

Regarding addition u/s.28(iv):

Further as per the letter dated 04-07-2007 seized as Annexure A-7 of page 118, it is evident that the assessee Ramee Royal Hotel had paid Air Tickets of Staff, Brother and Sister of Priyanka Chopra which as per page 63 & 64 of Annexure A-7 works out to (Rs.2,36,000 + Rs.2,28,000) Rs. 464000. Therefore, in the absence of any details, this amount of Rs.4,64,000/- is also added u/s.28(iv) of the I T Act and taxed accordingly, penalty proceedings u/s.271(1)(c) of the I T Act are initiated for furnishing inaccurate particulars of income and thereby concealing the said income.

19. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) confirmed the addition. However, as regards the addition of Rs.16 lacs, he restricted the same to Rs.15 lacs and added Rs.1 lac in the case of Mr. Chand Misra.
20. Against the above order, the assessee is in appeal before us.
21. In this regard, we note that the assessee has raised an additional ground wherein it has been argued that this addition is not based upon any incriminating material

found during search for the document relied upon were impounded during survey. We find that in this case, the assessee has filed original return on 29.09.2008. Subsequently, this assessment has been done u/s. 153A pursuant to search and seizure. Now it is the settled law that the Hon'ble jurisdictional High Court decision in the case of *CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.* [2015] 58 taxmann.com 78 (Bom), order dated 21.04.2015 dehorse any seized material/incriminating material found during search, addition in the case of abated assessments u/s. 153A is not sustainable. We further note that this additional ground has been raised for the first time. It also needs reference to the factual records. Since, it is an important legal ground and goes to the root of the matter, we admit the additional ground and remit the issue to the file of the Assessing Officer. The Assessing Officer is directed to consider the issue afresh in accordance with the ratio from the Hon'ble jurisdictional High Court decision in the case of *Continental Warehousing Corporation (Nhava Sheva) Ltd.* (supra), and factual details.

Apropos addition of Rs.14 lacs on account of notional rent:

22. In this regard, the assessee has also raised additional ground which read as under:

Additional Ground No 3:- The addition of Rs 14,00,000 made in the assessment order passed u/s 143(3) r.w. Sec 153A for the assessment year 2008-09 in the case of the appellant as income from House Property from Flat No 901 & 904 Navkaran Appts is bad-in-law because the addition is not based on any document or valuable asset belonging to the appellant seized u/s 132.

It may be mentioned that these are purely legal grounds. All the facts necessary to decide the additional ground of appeal are already on record and no new evidence is required to be brought on record.

23. On this issue, the Assessing Officer made the addition by observing as under:

In the return of wealth filed, the assessee had claimed the penthouse at 9th Floor in Navkaran apartments as exempt as an office, being used for the business purpose. However, during the course of search, it was noticed that the flat No.403 was used as office rather than 901. In this regard, statement on oath of one of the assessee's employee Ms. Deepika Prakash was recorded u/s.132(4) of the I.T. Act on 24-01-2011, wherein she stated in reply to Q.5 that;

“As per my knowledge the flat was purchased by Ms. Priyanka Chopra in 2008. The flat was since then never utilized for business or residence purpose. Hence the flat is vacant since it was purchased.”

On further verification it is noticed that the said penthouse is of two different units and separate agreements are made. Further, as admitted above, the penthouse was not utilized since A.Y.2009-10, however, the assessee is claiming depreciation on the same.

In this regard, the assessee was asked to submit the details with supporting documentary evidence that the said penthouse has been used for office purpose and why annual value under the provisions of sec.23(l)(c) should not be determined treating it as income from House Property by disallowing depreciation. In reply to the same the assessee's representative orally stated that the said penthouse is used for keeping the assessee's dresses as godown, however he has not furnished any documentary evidence that it has been utilized for official use.

Further, it can be seen that the property under consideration is a penthouse which is located in the residential area. Hence, it cannot be considered as commercial property. Therefore, the annual value of the above said properties has to be determined under the provisions of sec.23(l)(c) and charged under Income from House property.

Relying on the case of Smt. Radhadevi Dalmiya Vs. CIT 125 ITR 134 the Tribunal had 'adjudged that a fair return of about 7% on the investment in properties can be taken into account for determining annual rateable value and shall be regarded as just and fair for determining the annual value of the above said properties. Therefore, the annual value of the above said properties is computed as under:

S.No	Flat No.	Investment Value (Rs.)	Annual Rent (7% of Investment)
1	Penthouse 901	1,25,00,000	8,75,000
2	Penthouse 904	75,00,000	5,25,000
	Total	2,00,00,000	14,00,000

Therefore, deemed rental Income of Rs.14,00,000 is charged on estimate basis and is taxed accordingly. Further, as the property has not been used for any official use, the depreciation claimed on Penthouse and depreciation on furniture & fixture totaling to Rs.21,88,367/- is disallowed and is added to the income of the assessee for the year under consideration.

24. The Id. Commissioner of Income Tax (Appeals) affirmed the action of the Assessing Officer.

25. Against this order, the assessee is in appeal before us.

26. In this regard, the assessee has also raised an additional ground wherein it is urged that addition is not based upon any incriminating material. On the same reasoning, as the previous ground adjudicated by us wherein we have admitted the additional ground and remitted the issue to the file of the Assessing Officer, we similarly admit this ground. The Assessing Officer is directed to consider the issue afresh in accordance with the ratio arising out of the order of the Hon'ble jurisdictional High Court decision in the case of *Continental Warehousing Corporation (Nhava Sheva) Ltd.* (supra).

27. In the result, this appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 16.01.2018

Sd/-
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-
(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :16.01.2018

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