

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री अमित शुक्ला, न्यायिक सदस्य एवं श्री राजेशकुमार, लेखा सदस्य के समक्ष ।
BEFORE SHRI AMIT SHUKLA, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.5302/Mum/2012
(निर्धारण वर्ष / Assessment Year : 2007-08)

Mrs.Mintu Sayermal Jain, 435,Patthe Bapurao Marg, Somaji Building, Opp Islampura st. Mumbai-400024	बनाम/ Vs.	Income Tax Officer 16(3)(1), Mumbai.
स्थायी लेखा सं./ PAN : ADCPJ3983C		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by :	Shri R K Bothra
प्रत्यर्थी की ओर से/ Respondent by :	Shri Naveen Gupta

सुनवाई की तारीख / **Date of Hearing** : **14.1.2016**
घोषणा की तारीख / **Date of Pronouncement** : **15.3.2016**

आदेश / O R D E R

PER RAJESH KUMAR, AM :

This appeal by the assessee is directed against the order dated 1.6.2012 of Commissioner of Income Tax (Appeals)- 36, Mumbai (Hereinafter called as the CIT(A) for assessment year 2007-08.

2. The issue raised in the revised grounds of appeal no.1,2 and 3 are against the confirmation of addition of Rs.1,40,43,154/-, Rs.10,00,000/- and Rs.26,00,000/- as income from unexplained /undisclosed sources.

3. Facts in brief are that the assessee filed her return of income on 31.10.2007 declaring an income of Rs.3,96,505/-. The assessee is a proprietor of M/s Millenium Metals and was engaged in the business of trading in Steels and Metals. The case of the assessee was selected for scrutiny and the notices u/s 142(1) and 143(2) were issued and served upon the assessee. During the course of scrutiny proceedings, the AO found that the assessee had entered into certain transactions which were not confirmed or partly confirmed by those parties and thus made the additions of Rs.1,40,43,154/- vide 5(a), Rs.10,00,000/- vide para 5(b) and vide para 5(c) of the assessment order respectively. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority. The Id. CIT(A) called for the remand report from the AO and in the said remand report the AO stated that the assessee was afforded an opportunity to appear before him, however none appeared before the AO. Thereafter, the AO issued summons u/s 131 of the Act to the three parties which were returned unnerved with the remark of postal authorities "Not Known or Left Place". Thus, the AO held that the identity of the loan creditors and their existence could not be satisfactorily verified. The AO further observed and held that none of the loan creditors seems to have creditworthiness to offer the amount of loans to the assessee. The Id. CIT(A) also furnished a copy of the remand report, which was replied by the assessee vide her reply dated 24.1.2012. The Id. CIT(A) finally observed and held that the assessee was not able to rebut the stand of the AO on the remand report and simply stated that all these transactions were through banking channels and were fully accommodated

for. The Id. CIT(A) also observed that all the submissions made by the assessee were without any documentary evidence and therefore were not tenable and reliable in law. Hence, the Id. CIT(A), dismissed the appeal of the assessee. Aggrieved by the decision of the Id. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. The Id. AR submitted before us that neither the AO nor the CIT(A) had applied their mind to the various facts and record produced before them and the assessment was made on hypothetical basis by the AO and in the same fashion the Id. CIT(A) confirmed the action of the AO.

5. On the ground No.1, the Id. AR submitted that during the year, the assessee received an amount of Rs.35 lakhs from M/s Sera Organics Pvt Ltd on 24.1.2007 by cheque which was duly confirmed by the parties by a confirmation letter dated 1.4.2007, which is supported by a letter placed at page 13 of the paper book. The Id. AR further submitted that the AO wrongly observed as stated in para 5(a) of the Assessment order that the assessee has advanced Rs.1,75,43,154/- to Sera Organic Pvt Ltd on various dates which were not accounted for which is totally wrong and against the facts of the case of the assessee. The AO had wrongly taken the entries on 15.1.2007 for Rs.15 lakhs, 20.1.2007 for Rs.35 lakhs, 24.1.2007 for Rs.32 lakhs, 30.1.2007 for Rs.40 lakhs has given by the assessee to M/s Sera Organics Pvt Ltd., which were in fact, the payment received by that company from its various clients on accounts of sales made as is clear from the certificate issued by Chartered Accountant of M/s Haresh Karvat and Co, dated Nil, which is placed at page 24 of the assessee's paper book. As per the certificate Rs.109.50 lakhs was received by M/s Sera Organics Private Limited from M/s Chintamani Iron bank statement of M/S Sera Organics Pvt Ltd , Rs. 7.50 lacs from

Jammudeep Metal and Tubes Pvt Ltd and Rs. 7.00 from Life Lines Metals and Tubes Pvt Ltd. The assessee also filed a copy of ledger account of Sera Organics Pvt Ltd in the books of assessee, bank statement of M/s Millennium Metal issued by the Centurian Bank placed at page 14 to 22 of assessee's paper book, in support of his contention in which only Rs.35 lakhs appearing on 24.1.2007. Thus, the Id. Counsel submitted that both the Id.AO and the Id.CIT(A) has recorded wrong findings of the facts with respect of addition of Rs.35 lakhs that the assessee had not placed any documents and the details of customers with whom M/s Sera Organics Pvt.Ltd entered into various sales transactions. Similarly, with respect to the addition of Rs.10 lakhs, the AO observed that Rs.14 lakhs were received from M/s Chintamani Iron and Steel Co.Pvt.Ltd and Rs.4 lakhs advanced which was not reflected in the bank statement and therefore, he disallowed Rs.10 lakhs which is also totally wrong and against the facts. Before the AO and the Id. CIT(A), the Id.AR submitted a confirmation letter dated 1.4.2007 confirming Rs.18 lakhs payable to M/s Chintamani Iron and Steel Co. Pvt. Ltd. The Id. Counsel submitted that during the year, the assessee received an amount of Rs.8 lakhs on 8.9.2006 and Rs.14 lakhs on 22.11.2006 by account payee cheques from the above parties and returned Rs.4 lakhs on 4.11.2006. Thus, net outstanding of the above parties was Rs.18 lakhs which was confirmed by that party by filing the confirmation, bank statements and copy of ledger account as placed at page 28 to 32 of the paper book. The Id. Counsel drew our attention to the page 48 of the paper book which shows that Rs.30 lakhs deposited in both bank account by three cheques of Rs.14 lakhs, two times Rs.8 lakhs. Out of the three cheques Rs.14 lakhs was from M/s Chintamani Iron and Steel Co.Pvt.Ltd and rest of the two cheques were from other parties namely M/s Delite Tubs and Alloys Pvt Ltd and Jammudeep Metal and Tubes Pvt Ltd. which has been mentioned backside

of the page 48 of the paper book. Similarly, at page 47, the assessee received Rs.8 lakhs from M/s Chintamani Iron and Steel Co.Pvt.Ltd on 18.9.2006 against cheque of Rs.8 lakhs was received from Jammudeep Metal and Tubes Pvt Ltd, which was also duly reflected in the bank account of the assessee. The Id.AR drew our attention that the cheque of Rs.14 lakhs was not appearing in the bank account of the assessee. He failed to appreciate that instead of one there were three cheques deposited on 22.11.2006 in the same pay-in-slip in the Centurian Bank of Punjab which is placed at page 48 of the paper book, and thus the additions made by the AO and confirmed by the Id. CIT(A) were wrong and without basis. In respect of third addition of Rs.26 lakhs ,the Id. Counsel of the assessee submitted that during the year the assessee received various cheques from the said party and also repaid at the end of the year as per copy of account filed at page 37 of the paper book and net balance outstanding to M/s Jammudeep Metal and Tubes P Ltd was Rs.26 lakhs which was confirmed by the party in the confirmation letter placed at page 36 of the paper book. The AO also observed that the assessee had advanced Rs.26 lakhs to M/s Jammudeep Metal and Tubes P Ltd which was not reflected in the confirmation of the said party and at the same time the AO observed that the assessee had received an amount of Rs.23 lakhs which was reflected in the statement of bank account of the assessee and thus, Rs.26 lakhs was added as unexplained transaction and undisclosed amount. The Id. Counsel submitted that the assessee had entered into various transaction of borrowings and repaying the advances by account payee cheques to these parties on various dates as is clear from page 37 of the paper book which was duly confirmed by the confirmation letter which is placed at page 36 of the paper book. The copy of the bank statement of to M/s Jammudeep Metal and Tubes P Ltd was also placed at pages 38 to 40 of the paper book, in which the

transactions between the assessee and the said parties were duly reflected as being received and repaid on various date and thus the Id. Counsel finally submitted that all these additions made by the AO and confirmed by the Id. CIT(A) were out of merely imagination and were not based on the the records produced during the course of scrutiny proceedings and during the appeal proceedings. The Id. Counsel finally submitted that the addition as made by the AO and confirmed by the Id.CIT(A) be deleted as it had caused a lot of harassment to the assessee due to gross negligence and not application of mind on the part of the AO and the Id. CIT(A) and also pass stricture against the said authorities beside imposing cost.

6. We have considered the rival contentions of the parties and perused the material available before us. We have also perused various certificates and bank statements which were brought to our notice during the course of hearing from page no 13 to 42 of the paper book. As discussed above we find it is a classical case where various additions have been made by the AO without proper application of mind and has no distant connection with the material on record. We find that the third party transactions were added in the hands of the assessee without without any basis or material and thus, the AO framed the assessment in a hypothetical way putting the assessee to enormous harassment and inconvenience . Similarly, the Id. CIT(A) confirmed the addition without looking into the merits and facts of the cases which are very clear and apparent from the records produced. Therefore, in view of these facts, the additions of Rs.1,40,43,154/- in Ground No.1, Rs.10 lakhs in ground no 2 and Rs.26 lakhs in ground No.3 on account of unexplained/undisclosed income are ordered to be deleted by reversing the order of First Appellate Authority. AO is directed accordingly.

7. In result the appeal of the assessee is allowed.

Order pronounced in the open court on 15th March, 2016 .

आदेश की घोषणा खुले न्यायालय में दिनांक:

को की गई ।

(अमित शुक्ला/AMIT SHUKLA)

(राजेशकुमार/RAJESH KUMAR)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 15/03/2016

व.नि.स./ SRL , 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai