

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" Bench, Mumbai**

**Before Shri D. Manmohan, Vice President and  
Shri B. Ramakotaiah, Accountant Member and**

**M.A.No.520/Mum/2011  
(Arising out of ITA No.5211/Mum/2009)  
(Assessment year: 2006-07)**

Income Tax Officer 11(1)3  
Mumbai

**(Appellant)**

Vs Ms. Preeti Gobind Jhangiani  
17 Sea Mist, 14 Pali Road  
Bandra (W) Mumbai 400050  
PAN No.ACZPJ 7129 C  
**(Respondent)**

**M.A.No. 83/Mum/2012  
(Arising out of ITA No.5211/Mum/2009)  
(Assessment year: 2006-07)**

Ms. Preeti Gobind Jhangiani  
17 Sea Mist, 14 Pali Road  
Bandra (W) Mumbai 400050  
PAN No.ACZPJ 7129 C

**(Appellant)**

Vs Income Tax Officer 11(1)3  
Mumbai  
**(Respondent)**

Department by: Shri Parthasarathi Naik, DR  
Assessee by: Shri R.C. Jain

Date of Hearing: 08/06/2012  
Date of Pronouncement: 27/06/2012

**ORDER**

**Per B. Ramakotaiah, A.M.**

These are the miscellaneous applications filed both by Assessee and Revenue on the order of the ITAT in ITA No.5211/Mum/2009 dated 16.3.2011.

2. Briefly stated, assessee is an Actress and showed gross receipts of ₹30,92,000/- in her income expenditure statement. She has shown an amount of ₹35,75,000/- as advance received. AO on noticing that assessee is following cash system of accounting,

brought the amount to tax. The same was upheld by the CIT (A). In the appeal before the Tribunal this issue was agitated. The Tribunal noted that since assessee is following cash system of accounting, moneys received during the year should be brought to tax. Accordingly , it directed AO to consider the amount received as advance in each of the year in that year and directed to take consequential measures by reopening the assessment and bring to tax the amount received as advance in the respective preceding years (Para 6.1 of the order).

3. Another issue which was contested is with reference to the disallowance of ₹5,60,000/- made by AO under section 40(a)(ia). This amount was claimed as commission paid and AO disallowed the same as assessee has not deducted the tax at source. The Tribunal vide order (Para-9) considered that an amount of ₹3.00 lakhs was shown as outstanding therefore, ₹3 lakhs cannot be allowed since assessee follows cash system of accounting. With reference to the balance of ₹2,60,000/- it was held that the provisions of section 194H are not applicable to assessee, since the gross receipts during the year were ₹30,92,000/- which is below the prescribed limit of ₹40 lakhs for an individual for attracting the provisions of section 194H. Accordingly, second issue in the grounds of appeal was partly allowed.

4. The Revenue in its miscellaneous application has brought to the notice of the Tribunal that assessee being an individual professional is covered by the provisions of section 194H as the limit prescribed is only ₹10 lakhs and not ₹40 lakhs as considered by the ITAT. Assessee in her miscellaneous application, however, contends that the submissions made before the ITAT are not correctly recorded. While accepting that assessee is covered by the provisions of section 44B with reference to audit of accounts and consequently the findings of the Tribunal regarding section 194H is

a mistake however, submits that assessee's contentions were that they are not covered by the provisions of section 194H, were not considered or adjudicated by the ITAT. Not only that assessee further objected to the findings of the ITAT with reference to cash system of accounting and the directions given to take consequential measures for reopening the assessment in the preceding years. It was the objection that even though assessee is following the cash system of accounting, following the decision of the Hon'ble Supreme Court in the case of Commissioner of Income tax. v. Shoorji Vallabhdas & Co, 46 ITR 144 relied on by the Counsel before the Bench that mere advance received does not partake the character of income, it is necessary to examine whether the advances are in the nature of revenue receipt or not. Not only that the amounts accrued to the applicant out of the advance received in the assessment year 2005-06 were already transferred to professional income and were assessed as such. It is also further objected that the ITAT has not taken into account the provisions of section 150(2) of the I.T. Act as an amount of ₹19,73,951/- was the opening balance as on 1.4.2005 which cannot be brought to tax in view of the limitation provided under section 150(2) and therefore, the direction given for assessment year prior to assessment year 2004-05 is not correct. It was submitted that the order has to be recalled and reheard as the order was not according to the provisions of the Act and also the submissions made by the parties are not being considered.

5. We have considered the miscellaneous applications of both the parties. The observations in Para 9.1 with reference to limit of audit of ₹40 lakhs is certainly a mistake as assessee is an individual professional and the limit prescribed is only for ₹10 lakhs. Therefore, whether the provisions of section 194H are applicable or not has to be considered on merits. The objection regarding accrual of advance as income is also a valid point as the entire advance

shown as outstanding cannot be considered as income in the absence of any right to receive and this aspect was not examined. Further the limitations placed u/s 150(2) are also to be examined for giving directions for reopening earlier years which are not before the ITAT. Since these aspects were not properly examined and as both the parties are objecting to the order on different reasons, we, in the interest of justice, recall the order to the extent of Ground Nos. 1 & 2 raised by assessee in the appeal. Registry is directed to post the case in due course.

6. In the result both the miscellaneous applications are accordingly allowed.

Order pronounced in the open court on 27<sup>th</sup> June, 2012.

Sd/-  
**(D. Manmohan)**  
**Vice President**

Sd/-  
**(B. Ramakotaiah)**  
**Accountant Member**

Mumbai, dated 27<sup>th</sup> June, 2012.

Vnodan/sps

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The concerned CIT(A)*
4. *The concerned CIT*
5. *The DR, "C" Bench, ITAT, Mumbai*

By Order

Assistant Registrar  
Income Tax Appellate Tribunal,  
Mumbai Benches, MUMBAI