

आयकर अपीलीय अधिकरण, 'एच' खंडपीठ मुंबई

INCOME TAX APPELLATE TRIBUNAL, MUMBAI "H" BENCH

सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य, एवं राजेन्द्र, लेखा सदस्य

Before S/Sh. Joginder Singh, Judicial Member & Rajendra, Accountant Member

आयकर अपील सं./ITA No.4400/Mum/2013, निर्धारण वर्ष/Assessment Year-2005-06

Income tax Officer-15(3)(4) Room No.115, 1 <sup>st</sup> Floor Matru Mandir, Tardeo Grant Road(W) Mumbai-400 007.	Vs	Shri Harsharansingh Dharni S-5, Centurion, 2 <sup>nd</sup> floor Plot No.88, Sector 19A Nr. Seawood Station, Nerul, Navi Mumbai-400 706. <b>PAN:AHAPD 3632 J</b>
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

प्रत्याक्षेप/CO/179/Mum/2014, निर्धारण वर्ष/Assessment Year-2005-06

Shri Harsharansingh Dharni Nerul, Navi Mumbai-400 706.	Vs	Income tax Officer-15(3)(4) Mumbai-400 007.
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(प्रत्याक्षेपक/Cross Objector)

(प्रत्यर्थी / Respondent)

निर्धारिती ओर से/Assessee by

: Shri V.D. Parmar

राजस्व की ओर से/ Revenue by

: Shri Jitendra Kumar-Sr.AR

सुनवाई की तारीख/ Date of Hearing

: 16-06-2015

घोषणा की तारीख / Date of Pronouncement

: 16-06-2015

आयकर अधिनियम, 1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

**लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-**

Challenging the order dated 11.03.2013 of the CIT(A)-2013, Mumbai, the Assessing officer (AO) has raised following Ground of Appeal:

"1. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.17,91124/- made by the Assessing Officer on account of bogus share transactions entered into by the assessee with M/s. Mahasagar Securities Pvt. Ltd. and not appreciating the fact that the assessee has not been able to discharge the onus cast upon him that these transactions belong to him."

Following grounds were raised by the assessee in the Cross Objection filed by him:

"1) On facts and circumstances of the case and in law Ld. CIT(A) erred in justifying reopening the case us 147 of the IT Act.

2) On facts and circumstances of the case ld.CIT (Appeals) has erred in not quashing the assessment order framed under section 147/ 143(3) as the jurisdictional conditions were not satisfied;

3) On facts and circumstances of the case and in law ,Learned CIT(A) erred in justifying that the ITO Wd. 15(3)(4) has jurisdiction over the case even though the appellant is regularly filing return of income before ITO Wd. 22(3)( 1) Navi-Mumbai where the appellant's correct jurisdiction lies and appellant has objected jurisdiction of ITO Wd 15(3)(4) during assessment proceedings.

*4) On, facts and circumstances of the case and in law Learned CIT(A) erred in justifying reopening the case us 147 of the I T Act even though the appellant's name as beneficiary is not specifically mentioned in statement of Hawala giver.*

*The appellant craves leave to add, amend ,and/or modify any of the above grounds of cross objections.”*

During the course of hearing,the Authorised Representative(AR)did not press the grounds raised in the CO.Hence,the CO stands dismissed as not pressed.

**2.**Assessee,an individual,filed his return of income on 29.03.2006 declaring income of Rs.1.46 lacs.The AO completed the assessment,on 12.12.2011,u/s.143(3) r.w.s.147 of the Act, determining his income at Rs.19.37lacs.

Effective ground of appeal is about deletion of addition of Rs.19,37,124/- made by the AO under the head bogus share transaction.A search and seizure operation was carried out in the case of Mahasagar Securities P.Ltd.(MSPL)on 25.11.2009.The Director of the company Mukesh M Choksy(MMC)in his statement admitted that MSPL and its associated companies namely Gold star finvest P.Ltd.(GSFPL) and Alliance Intermediaries & Network P.Ltd.(AINPL)were engaged in fraudylent billing activities and in the business of providing bogus accommodation entries in respect of speculation profits/loss,short/long term capital gains/loss.On the basis of the above statements and detailed investigations carried out by the Investigation wing the AO reopened the assessment by issuing a notice u/s.148 of the Act.In the reassessment proceedings,the AO observed that the assessee had entered into bogus transaction to the extent of Rs.17.19 lakhs with AINPL,that he had purchased shares worth Rs.17,19,124/- of CIPLA Ltd.,Federal Bank and Sucheta Metal,that the amount invested in purchasing shares represented his undisclosed income for the year under appeal.In response to the above observations of the AO,the assessee contended that those share transactions did not belong to him,that there is no mention of cash payment in the ledger account of AINPL,that he had neither paid or received any amount in connection with the alleged transaction with AINPL.The AO,however did not accept arguments of the assessee and held that the assessee was benefitted by the bogus entries of Rs.17.19 lakhs.He added the said amount to the income of the assessee as undisclosed income as quantified by the investigation wing.

**3.**Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority(FAA).Before him it was argued that the assessee had not been provided with opportunity of cross examination of the persons on the basis of whose statement addition had been made in the his hands,that there was nothing on record to prove that the assessee had paid cash for purchase of shares as alleged by the AO.In view of the submissions of the assessee,the FAA sent a letter to the AO to clarify as to whether there was any evidence of any payment by the assessee for purchase of shares as mentioned in the assessment order.Vide his remand report dated 20.12.2012 the AO stated that the assessment was completed on the basis of the details submitted by the investigation wing, that notices u/s.133(6)of the Act were issued to MSPLand AIPNL,that no one attended his office, that his office did not have any additional evidence. Commenting upon the remand report the assessee stated that the assessee AO had not made any attempt to prove that the assessee had purchased shares of Sucheta Metals,Federal Bank or CIPLA Ltd.,that no specific question was put MMC by any of the departmental authority as to whether any compensatory payment in cash or otherwise was received or paid for purchase or

sale of such shares,that there was nothing on record to prove that he had paid cash,that inspite of specific request opportunity of cross examining MMC was not provided by the AO during the assessment proceedings,that addition was made on the basis of one ledger account maintained by AINPL,that entries found in third party books were not binding on the assessee,that entries were paper entries and profit involved was of Rs.43883/-, that MMC had not stated that he had provided accommodation entries to the assessee.Certain decisions were relied upon by the assessee in his support.

After considering the remand report,reply of the assessee on the remand report the FAA referred to the decision of Uttara R Shorewalla(ITA/5506/Mum/2009 and 5507/Mum/2009 dated 25.05.2011- AY.s.2001-02 and 02-03.)Smt.Lata Soni(ITA/77/JU/2010 dated 19.01.2010). he had that the AO had made the addition solely on the basis of information received from the investigation, that he had in his possession the information that the name of the assessee was appearing in the books of accounts of AINPL, a company controlled by MMC, that the assessee had all the time denied to have entered into any transaction with AINPL, that the AO had to show some positive evidence to support his presumption that the assessee had made cash payments for purchase of shares through AINPL, that on the basis of a general statement by a third person such as MMC in the case under consideration addition could not be made in the hands of other person unless the statement of the third party was supported by any documentary evidence, and the case under consideration there was no proof of actual payment of cash/receipt of cash by the assessee, that s imply on the basis of some entries of alleged purchases and sale of shares in the books of accounts of the persons who were admittedly indulging in accommodation entries, addition of undisclosed income could not be sustained.

4.During the course of hearing before us,Departmental Representative(DR)stated that in the books of the shares of were appearing in the name of the assessee,that the investigation Directorate had made inquiries regarding the bogus share transactions, that had admitted of having given hawala entries,that the name of the assessee was found in the paper found at the business premises of AINPL.Authorised Representative(AR)supported the order of the FAA.

5.We have perused the material before us.We find that the AO had reopened the case after receiving a piece of information from the investigation wing about an action taken under section 132 of the Act in case of MMC and companies controlled by him, that MMC had admitted to have indulged in giving accommodation entries and arranging bogus capital gains/capital loss, that in the books of account of AINPL name of the assessee was appearing with regard to three scrips,that the assessee denied to have any connection with the companies controlled by MMC, that the AO did not afford opportunity of cross examination of MMC during the assessment or the remand proceedings,that there was no evidence or statement of MMC proving that the assessee had business transaction with AINPL, in the remand report the AO had admitted that except that report of investigation wing he had no other evidences. We are of the opinion that report of investigation was a good starting point but solely on that basis AO was not justified of making addition of 17.19 lacs , specially when the assessee had denied the transactions. We have gone through the decisions relied upon by the FAA.We find that in those case in similar circumstances,the addition made by the AO have been deleted by the Tribunal.Considering the above,we are of the opinion that the order of the FAA does not suffer from any legal infirmity.So,confirming his order we decide the effective ground of appeal against the AO.

As a result, appeal filed by the AO and CO filed by the assessee stand dismissed.  
फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील और निर्धारिती का प्रत्याक्षेप नामंजूर किया जाता है।

Order pronounced in the open court on 16<sup>th</sup>, June, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक 16 जून, 2015 को की गई ।

Sd/-

(जोगिन्दर सिंह /Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Date: 16.6.2015

व.नि.स./V.Sr.PS.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR A Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, ए खंडपीठ, आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.