आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "सी" मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE HON'BLE S/SHRI H.L. KARWA, PRESIDENT AND B.R.BASKARAN (AM)

सर्वश्री एच.एल. कार्वा, अध्यक्ष एवं बी.आर.बास्करन, लेखा सदस्य

आयकर अपील सं./I.T.A. Nos.3879 & 3909/Mum/2011

(निर्धारण वर्ष / Assessment Years :2003-04 & 2002-03)

Dy.Commissioner of Income Tax-Central Circle-45, Room No.659, 6th Floor, Aayakar Bhavan, M K Road, Mumbai-400020	बनाम/ Vs.	M/s Pooja Equireasearch Pvt.Ltd., A/25, Abhinav Apartment, Mathuradas Road, Kandivali,(W), Mumbai-400067
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./**PAN/GIRNo.:AAACP6499F**

अपीलार्थी ओर से / Revenue by :	Shri Premand J
प्रत्यर्थी की ओर से/Assessee by	Shri M Subramanian

सुनवाई की तारीख / Date of Hearing : 1.1.2015

घोषणा की तारीख /Date of Pronouncement : 16.01.2015

आदेश / O R D E R

Per B.R.BASKARAN, Accountant Member:

Both the appeals filed at the instance of revenue are directed against the separate orders passed by Ld CIT(A)-36, Mumbai and they relate to the assessment year 2002-03 and 2003-04. The revenue is aggrieved by the decision of Ld CIT(A) in deleting the additions made by the assessing officer u/s 68 of the Act.

2. We heard the parties and perused the record. In assessment year 2002-03, the assessing officer has assessed the credit balance of Rs.70,83,180/- appearing in the name of M/s Nageshwar Investments Pvt Ltd u/s 68 of the Act. In assessment year 2003-04, the assessing officer has assessed following cash credits as income of the assessee u/s 68 of the Act:-

Share Application money from M/s D Kumar Trading Company Private Limited	10,00,000
Unsecured Loan from M/s R keshavlal Traders Private Limited	75,00,000

The assessment of both the years have been re-opened by the assessing officer, consequent to the information received at the time of search conducted in the case of M/s SKS Ispat Group. In connection with the above said search proceedings, the directors of the companies, from whom the assessee had received loans/share application money, were examined and in the statements taken from them on oath u/s 131 of the Act, it appears that they have admitted that they have given accommodation entries. Under these background, the assessing officer rejected the documents filed by the assessee and accordingly assessed the above amounts as unexplained Cash Credits in the respective years u/s 68 of the Act.

3. However, a perusal of the orders passed by Ld CIT(A) would show that the Ld CIT(A) has failed to consider and address the ground on which the impugned assessments have been made. We notice that the Ld CIT(A) has deleted the assessments of cash credits in both the years on the reasoning that the assessee has discharged the burden placed upon it u/s 68 of the Act by proving the identity and credit worthiness of the creditor and the genuineness of the transactions. We may notice that the assessing officer has made the impugned additions only doubting about

the genuineness of the transactions on the basis of facts, which surfaced during the course of search proceedings conducted in the hands of M/s SKS Ispat Group and also on the basis of statement taken from the directors of the parties from whom the assessee had received funds. We notice that the Ld CIT(A) has failed to address those vital issue, on which the impugned additions have been made. Thus, the question of genuineness of transactions remain unaswered in both the years.

4. Under these set of facts, we are not able to sustain the orders of Ld CIT(A) in both the years, since the first appellate authority has failed to address the ground on which the impugned additions have been made. Hence, in our view, the additions made in both the years require fresh adjudication by Ld CIT(A) by duly addressing the ground on which the impugned additions have been made. Accordingly, we set aside the orders passed by Ld CIT(A) in both the years and restore them to his file with the direction to examine them afresh. The Ld CIT(A) is directed to consider and address the grounds on which the assessing officer had made the additions. After affording adequate opportunity of being heard, the Ld CIT(A) may take appropriate decision in accordance with the law.

5. In the result, both the appeals filed by the revenue are treated as allowed for statistical purposes.

The above order was pronounced in the open court on 16th Jan,2015.

घोषणा खुले न्यायालय में दिनांकः 16 th Jan 2015 को की गई ।

sd	sd
(एच.एल. कार्वा/ H.L. KARWA)	(बी.आर. बास्करन,/ B.R. BASKARAN)
अध्यक्ष/ **PRESIDENT**	लेखा सदस्य/**Accountant Member**

मुंबई Mumbai: 16th Jan, 2015.

व.नि.स./ SRL , Sr. PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

true copy

सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai