<u>आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, ई , मुंबई ।</u>

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य **एवं**

संजय अरोड़ा, **लेखा सदस्य, के समक्ष**

Before Shri Joginder Singh, Judicial Member, And
Shri Sanjay Arora, Accountant Member
ITA NO.4998/Mum/2011
Assessment Year: 2007-08

Asst. Commissioner of Income Tax, Circle-5(3), R. No.573, 5th floor, Aaykar Bhawan, M.K. Raod, Mumbai-400020	**बनाम**/ Vs.	M/s Shambho Construction Pvt. Ltd. 321 Kumud Villa, V.P. Road, 1st Floor, Rear Building, Mumbai-400004
(राजस्व /Revenue)		(निर्धारिती /Assessee)
		P.A. No.AAJCS5692Q

राजस्व **की ओर से** / Revenue by :	Shri Love Kumar-DR
निर्धारिती **की ओर से** / Assessee by)	Shri D.C. Jain

सुनवाई की तारीख / **Date of Hearing :**	**13/01/2015**
घोषणा की तारीख / **Date of Pronouncement :**	**13/01/2015**
Date of Order: **आदेश** की तारीख **/**	**14/01/2015**

<u>आदेश / O R D E R</u>

<u>PER JOGINDER SINGH (Judicial Member)</u>:

The Revenue is aggrieved by the impugned order dated 31/03/2011 of the ld. First Appellate Authority, Mumbai. The Revenue has raised the following grounds:-

> *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in :-*

1. *deleting the addition of Rs.5 lacs made* by *the Assessing Officer on account of unsecured loans without appreciating that the amounts of unsecured loans were not appearing in the bank statements of the loan creditors* as *well* as *the assessee company, further, the Ld.CIT(A) admitted the fresh and additional evidences in violation of Rule 46A of the I. T. Rules, 1962 without giving an opportunity* to *the Assessing Officer.*

2. *deleting the addition of Rs.10 lacs made* by *the Assessing Officer on account of share capital and admitting the fresh and additional evidences in violation of Rule 46A of the I. T. Rules,* 1962 *without giving an opportunity* to *the Assessing Officer.*

3. *deleting the addition of RS.58,31,4001- out of Rs.70,01,4001- made* by *the Assessing Officer on account of unexplained cash credits without appreciating the fact that several cash deposits were found in the bank account of the assessee which was not satisfactorily explained* by *the assessee and admitting the fresh and additional evidences in violation of Rule 46A of the I. T. Rules,* 1962 *without giving an opportunity* to *the Assessing Officer."*

2. At the time of hearing, the ld. DR, Shri Love Kumar, advanced his arguments which are identical to the ground raised by further submitting that the First Appellate Authority granted relief without appreciating the fact that the amount of unsecured loans were not appearing in the bank statement of loan creditors as well as the assessee company. It was also contended that addition of Rs.58,31,400/- was deleted out of 70,01,400/- on account of unexplained cash credit without appreciating the fact that several cash deposits were found in the bank account of the assessee which were not explained before the Assessing Officer. It was further submitted that there is violation of Rule 46A of

Income Tax Rules as fresh/additional evidence was admitted by the ld. Commissioner of Income tax (Appeals) and no opportunity was granted to the Assessing Officer.

2.1. On the other hand, Shri D.C. Jain, ld. counsel for the assessee, defended the conclusion arrived at by the ld. Commissioner of Income tax (Appeals). Without going into much deliberation and the fact that necessary details were not furnished before the Assessing Officer in spite of the fact that various notices on 07/01/2009, 22/06/2009, 27/07/2009, 07/09/2009 and 12/10/2009 (along with questionnaire) were sent to the assessee and the assessee did not file the necessary details/documents/information relevant to the impugned assessment year. At the same time, the ld. Commissioner of Income tax (Appeals) admitted additional evidence, without affording opportunity to the Assessing Officer, therefore, it is violation of Rule 46A of the Rules, thus, we remand this file to the file of the ld. Assessing Officer to examine the claim of the assessee afresh and decide in accordance with law for which due opportunity of being heard with further liberty to furnish evidence, if any, in support of its claim be provided to the assessee. The mandate of the Constitution is to collect/levy due taxes, consequently, so that no grievance is caused either side, we deem it appropriate to send this file to the ld. Assessing Officer. Thus, appeal of the Revenue is allowed for statistical purposes only.

Finally, the appeal of the Revenue is allowed for statistical purposes only.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 13/01/2015.

आदेश की घोषणा दिनांकः 13/01/2015 को की गई ।

Sd/-	***Sd/-***
(Sanjay Arora)	(Joginder Singh)
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य** / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 14/01/2015

Shekhar, P.S./नि.स.

<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, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**