

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

Before Shri Saktijit Dey (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.1638/Mum/2015
(Assessment year: 2005-06)

Mr Syed Serwat Sevy Ali (Non Resident), Flat No.1301, 13 th Floor, C-Wing, Shephers Residency CHS Ltd, Meetha Nagar Road, Opp. BMC office, Goregaon (W), Mumbai- 400 090 PAN : ALKPA7015J	vs	ITO (Intl Tax), Ward 1(1), Mumbai
---	----	-----------------------------------

Appellant by	Shri Rajesh P Shah
Revenue by	Shri V Justin

Date of hearing	22-01-2018
Date of pronouncement	09-03-2018

ORDER

Per G Manjunatha AM

This appeal filed by the assessee is directed against order of the CIT(A)-10, Mumbai dated 12-11-2014 and it pertains to AY 2005-06.

The following grounds of appeal has been taken by the assessee: _

"On the facts and under the circumstances of the case and in law, the Learned CIT(A) erred in confirming the addition made by the AO of Rs. 2.85 crores as 'Unexplained money' u/s. 69A of the Income Tax Act, 1961 without appreciating the fact that the appellant has provided all the details relating the receipt of funds from USA from third party. The appellant is a Tax Resident of UK and the UK Tax Authority has confirmed his filing return in UK.

On the facts and under the circumstances of the case and in law, the Learned CIT (A) erred in confirming the action by ignoring the confirmations, declarations, supporting documents, etc filed by the appellant to establish genuineness of the transaction of Rs. 2.85 crores without appreciating the fact that the appellant cannot prove the creditworthiness of the source of source of funds when questioned by the authority. The appellant has provided all the documents to prove the source of funds received by him.

3. On the facts and under the circumstances of the case and in law, the Learned CIT(A) erred in confirming the addition u/s 69A of the Income Tax Act, 1961, even though the appellant had maintained proper records and recorded the receipt of Rs. 2.85 Crores and provided explanation to the AO for the same. Hence, application of sec 69A is bad in law.”

2. The brief facts of the case are that the assessee is a non resident was staying in India since 2005. The assessee was maintaining NRO SB Account with Standard Chartered Bank, Lokhandwala Branch, Mumbai. The assessee has applied for VISA extension to the Ministry of Home Affairs which was rejected. The Ministry of Home Affairs further directed the office of the Deputy Commissioner of Police, Special Branch-2, CID & FR RO, Mumbai to grant him exit permit after procuring income-tax clearance certificate from the department. During the course of proceedings before the AO, the AO observed that the assessee was staying in India since 2005 and also indulged in the activity of film production where he had lent money to the producer to produce a movie. However, neither filed any return of income nor paid any tax in India. The AO also noted that bank statement furnished by the assessee reflected credit of Rs.2.85 crores during the financial year 2011-12. During the course of enquiry, the assessee claimed that said amount of Rs.2.85 crores was returned by producer which he had lent to the producer, Mr. Mahesh Bhatt in the year 2004 to produce a movie. The AO, not being satisfied with the explanation offered by the assessee, reopened the assessment by recording reasons u/s 147 of the Act, for the reason that income chargeable to tax had been escaped

assessment and accordingly notice u/s 148 has been issued. In response to notice, vide letter dated 29-09-2011, the assessee has filed return of income alongwith computation of income, balance-sheet for AY 2005-06. The case has been selected for scrutiny. In response to notice, the assessee himself attended and explained the case. The AO asked the assessee to explain the source of advance of Rs.2.58 crores shown in the balance-sheet for the assessment year 2005-06. In reply, the assessee contended that the said fund was received from Mr Sohail Khan, CEO of Sohail Khan Productions, Inc, US which is a film and T V production company based in New York. Assessee also furnished confirmation letter dated 25-05-2011 which states that Mr. Sohail Khan, a businessman, gave the assessee an amount of USD 7,50,000 through bank transfers to London in the year 2004. The confirmation letter was also enclosed with fund transfer confirmation for the amount received in USD. The assessee, vide letter dated 29-05-2011 further informed that he had given the advance of Rs.2.85 crores to Vishesh Entertainment Pvt Ltd in the year 2004 for the film, 'Nazar'. To ascertain the correctness of claim made by the assessee, the AO has conducted necessary enquiries through proper channel with US tax authority (Department of the Treasury Internal Revenue Service, Washington D.C. In response, US tax authority, vide letter dated 12-12-2011 confirmed that there is an entity registered in the name of Sohail Khan Productions,

Inc, incorporated in the state of New York in 2003, but it was inactive. The company has not reported any tax returns or other reports to the department of Treasury Internal Revenue Service. Even the second reply received from US tax authorities vide letter dated 19-11-2012 confirmed that Sohail Khan Productions, Inc. did not file any income-tax return or declared any income to the US government after 2001. The letter further stated that Sohail Khan did not have earned any declared income to support transfer of USD 7,50,000 to Shri Syed Servat Sevi Ali. The AO, after considering relevant submissions of the assessee and also by relying upon the letter furnished by US tax authorities observed that the assessee has not submitted relevant documents to support his contention nor proved the genuineness of the money found in his possession. The inflow of money into the company of Mr. Mahesh Bhat is only mentioned to have been sourced from the US company, Telegroup. Inc, but without any concrete evidence regarding the genuinity or creditworthiness of the said company. A mere affidavit, i.e. his declared document cannot constitute conclusive evidence without there being further material to support said affidavit. This is so, because an affidavit is a self generated evidence. In these circumstances, the assessee cannot be said to have discharged his onus of proving the initial burden of genuineness or creditworthiness of the original source of money, though claimed as capital receipt. Accordingly, made addition of

Rs.2.85 crores as unexplained money u/s 69A of the Income-tax Act, 1961.

3. Aggrieved by the assessment order, assessee preferred appeal before the CIT(A). Before the CIT(A), assessee has filed elaborate written submissions to argue that the amount received from M/s Vishesh Entertainment Ltd in the financial year 2009-10 is towards refund of advance given to Shri Mahesh Bhat, film producer for producing a Hindi film, viz. 'Nazar'. However, the said amount has been returned by Shri Mahesh Bhat through RTGS from M/s Vishesh Entertainment Ltd, therefore, the AO was incorrect in treating amount credited in bank account as unexplained money which is taxable u/s 69A of the Act without appreciating the fact that he has furnished various evidences to prove the source of such money transferred from US from Sohail Khan Productions, Inc in turn which has been received from Telegroup. Inc, a subsidiary of Sohail Khan Productions, Inc. The assessee also relied upon certain judicial precedents including the decision of Sushila Ramaswamy vs ACIT (2010) 36 DTR 418 and Late S Ayyakannu By LR vs ACIT (1998) 62 TTJ 233.

4. The CIT(A), after considering relevant submissions of the assessee observed that the assessee is merely trying to explain the sum of Rs.2.85 crores from self generated evidence in the form of affidavit to which the AO had taken note in his assessment order. The facts

gathered during the course of assessment proceedings clearly establishes the fact that the assessee has failed to establish genuineness of transactions and the source of money received from M/s Vishesh Entertainment Ltd, which had claimed to have received such money in the year 2004 from Sohail Khan Productions, Inc. and the source for such transfer is from Telegroup. Inc, a telecom company situated in UK. The relevant portion of the order of CIT(A) is extracted below:-

6. I have considered the A.O's order as well as the appellant's submission. Having considered both, I find that the appellant is a UK National who was residing in India. The appellant vide his submissions extracted above had stated that he maintained his books of account.. The appellant had advanced a sum of Rs.2.85 crores in the year 2004, On enquiry by the AO about the sources thereof, the appellant tried to explain the same through its remittance from UK which was basically a receipt from U.S. concern namely, M/s.Sohail Production Inc- However, the fact remains that when the AO made enquiry from U.S. tax authorities, the source of such remittance was not confirmed by the US tax authorities as it is explicitly enumerated by the A.O. in the order extracted as above. The US tax authorities has intimated the AO that the US concern M/s.Sohail Production Inc. was a legal entity incorporated in the state of New York in the year, 2003 but the same was an inactive concern. The company has not reported any tax returns or other reports to the Department of the Treasury, Internal Revenue Service. I also find that the reply received from US tax authorities through their letter dated 19.11.2012 completely affirmed the base of the decision of the A.O. treating the said sum of Rs.2.85 crores as unexplained investment. Taking note to the facts available on record, I am of the considered view that the appellant is merely trying to explain the sum of Rs.2.85 crores from self generated evidence in the form of affidavit to which the AO had taken note in its Assessment Order. Moreover, the decisions upon by the appellant in support of his contention are completely distinguishable the facts of the appellant's case. The appellant had completely indulged in financing business in India and was maintaining books of account whereas the cases relied upon by the appellant have no similarity to the appellant's case. Having taken note to all the details available on record, I consider it proper and appropriate to hold that the AO has correctly added the aforesaid sum of

Rs.2.85'cro.res as unexplained 'investment' in the hands of the appellant. Accordingly, the addition so made is confirmed."

5. The Ld.AR for the assessee submitted that the Ld.CIT(A) was erred in confirming addition made by the AO towards amount received from Vishesh Entertainment Ltd as unexplained money u/s 69A of the Act, without appreciating the fact that the assessee has provided all details relevant to the receipt of fund from USA from third party and also the assessee is a tax resident of UK and the UK tax authority has confirmed his filing return in UK. The Ld.AR further submitted that the Ld.CIT(A) erred in confirming the action of AO, by ignoring the firm's declarations, supporting documents, etc. filed by the assessee to establish genuineness of the transactions of Rs.2.85 crores without appreciating the fact that the assessee need not prove the creditworthiness of the source of source of funds when questioned by the authority. The Ld.AR further submitted that the Ld.CIT(A) erred in confirming the addition u/s 69A of the Income-tax Act, 1961 even though the assessee had maintained proper records and recorded receipt of Rs.2.85 crores and provided explanation to the AO. In this regard, the Ld.AR relied upon the following decisions:-

1. Sushila Ramaswamy vs ACIT (2010) 36 DTR 418
2. Late S Ayyakannu By LR vs ACIT (1998) 62 TTJ 233
3. DCIT vs Madhusudan Rao (2015) 68 SOT 515 (Hyd)

6. On the other hand, the Ld.DR strongly supported the order of the CIT(A).

7. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. We have carefully considered the case laws relied upon by the assessee. The AO made addition of Rs.2.85 crores u/s 69A of the Income-tax Act, 1961 towards amount credited in assessee's bank account on the ground that the assessee has failed to satisfactorily explained the source of amount. The AO further observed that though the assessee tried to explain the source of money given to Shri Mahesh Bhat, film producer through transfer of funds from USA from Sohail Khan Productions, Inc., failed to file necessary evidence to prove the creditworthiness of Sohail Khan Productions, Inc. as enquiries conducted during the course of assessment proceedings revealed that Sohail Khan Productions, Inc. did not file tax returns in US as per the letters addressed by the US tax authorities. The AO further observed that the assessee, though filed an affidavit and also filed confirmations from Sohail Khan Productions, Inc explaining the source of source in respect of amount received from Sohail Khan Productions, Inc by stating that Sohail Khan Productions, Inc has received money from Telegroup Inc., a subsidiary of Sohail Khan Productions, Inc. Mere filing of an affidavit would not be sufficient compliance to discharge the onus of proving the genuineness of

transaction and creditworthiness of the parties. Affidavit is a self serving document, to which credence cannot be given so as to accept genuineness of transactions. It is the contention of the assessee that the source of money received from M/s Vishesh Entertainment Ltd through RTGS in the financial year 2009-10 is refund of advance given to Shri Mahesh Bhat, film producer for production of film 'Nazar' which has been returned by Shri Mahesh Bhat. The assessee has filed various documents to prove transfer of funds from US to India in the year 2004 and source of such funds as has been received from Sohail Khan Productions, Inc, who in turn received the funds from Telegroup Inc., a subsidiary of Sohail Khan Productions, Inc.

7. Having heard both the sides, we do not find any merit in the arguments of the assessee for the reason that explanations offered by the assessee in the light of evidence filed during the course of assessment proceedings has been negated by the AO in the light of enquiries conducted through proper channel with US tax authorities where they have confirmed that Sohail Khan Productions, Inc is a non-existent entity and has not filed any tax return to support transfer of USD 7,50,000 to the assessee. The assessee has not filed any new evidence except evidence filed before the lower authorities. The lower authorities have taken into account all evidences filed by the assessee to come to the conclusion that the assessee has not explained the

source of money received in the year 2009-10. Facts remain unchanged. The assessee failed to bring on record any evidence to prove the findings of fact recorded by the lower authorities. Therefore, we are of the considered view that the CIT(A) was right in confirming addition made by the AO towards money received from Vishesh Entertainment Ltd as unexplained money u/s 69A of the Act. We do not find any error or infirmity in the order of CIT(A). Hence, we are inclined to uphold the finding of the CIT(A) and dismiss the appeal filed by the assessee.

8. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 09th March, 2018.

Sd/-

sd/-

(Saktijit Dey)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 09th March, 2018

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Sr.PS, ITAT, Mumbai