

| आयकर अपीलीय अधिकरण न्यायापीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&

SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 112/Mum/2024

Assessment Year: 2012-13

Surendra Kumar Rajmani Mishra Mailal Singh Chawl 3 rd Golibar Road Santacruz East Mumbai - 400055 [PAN: AOIPM1111Q]	Vs	Income Tax Officer - 22(3)(4)
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Surendra Kumar Rajmani Mishra, A/R
Revenue by :	Shri Vivek Perampurna, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 16/04/2025

घोषणा की तारीख /Date of Pronouncement: 21/04/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 07/11/2023 by NFAC, Delhi, pertaining to AY 2012-13.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the addition of Rs. 10,33,38,610/- as commission income.

3. Briefly stated the facts of the case are that on the basis of the information, the AO came to know that M/s. S5 Trading Pvt. Ltd., Crystal Corporation and M/s. Aqua Trading Company, were having CD accounts with Dhanlaxmi Bank Ltd., Fort Branch, Mumbai. The accounts were opened during June, 2010 and closed on 14/07/2011. The AO found that large volume of funds was transacted inter-se among these three accounts. The AO found that RTGS transfer of Rs. 2 Crores each is seen credited in these accounts from M/s. Ravi Kumar Distilleries Ltd..

4. The bank account in the name of M/s. Aqua Trading Company had huge credit transactions amounting to Rs.1,03,33,86,100/- in the bank account held with Dhanlaxmi Bank Ltd., Fort Mumbai.

4.1. Assessee was asked to explain the details in the aforementioned bank account. In his reply, the assessee stated that the said bank account was not operated by him but by Shri Raju Bhimrajka and he was given only Rs.2,000/- per month i.e., Rs.24,000/- per annum as commission and the same has been offered for taxation by him in his return of income.

4.1.1. The assessee was summoned u/s 131 of the Act and his statement was recorded by the AO and in his statement, the assessee categorically stated that M/s. Aqua Trading Company was carried on by Shri Raju Bhimrajka in his name. On receiving no supportive evidence, the AO treated the transactions of Rs. 1,03,33,86,100/- and made addition of the same to the returned income of the assessee.

5. The assessee carried the matter before the Id. CIT(A) but without any success.

6. We have given a thoughtful consideration to the orders of the authorities below.

7. The peculiar facts and circumstances of the case are that the assessee is an auto-rickshaw driver, who was lured by Shri Raju Bhimrajka to carry on the business in the name of M/s. Aqua Trading Company. The assessee was offered Rs.2,000/- per month for his name. It is beyond one's imagination as to how an auto-rickshaw driver can do transactions of Rs.103,33,86,100/-.

7.1. The AO was in possession of the complete information of all the three companies mentioned elsewhere. The AO was also in possession

of the transactions done through RTGS inter-se bank transfers by the three companies but the AO did not make any verifications from the real culprits and taxed the entire amount in the hands of the auto-rickshaw driver i.e., the assessee.

8. We are of the considered view that the AO ought to have considered the transactions, once the assessee has stated on oath that he is not doing any business but the entire business is done by Shri Raju Bhimrajka, there is no evidence on record that the AO made any effort to trace the real business behind the alleged transactions and instead chose to make addition in the hands of the assessee.

9. We are of the considered view that such action of the AO cannot be justified on any count. Therefore, considering the peculiarity of the case, being that of an auto-rickshaw driver, the impugned addition cannot be sustained in his hands and is accordingly directed to be deleted.

10. It is made clear that considering the peculiarity of the case and considering that the assessee is an auto-rickshaw driver, our decision should not be considered as precedence in any other case. The AO is free to take action against real culprits and bring them to tax-net. In the interest of justice and fairplay, appeal of the assessee is allowed.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 21st April, 2025 at Mumbai.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 21/04/2025

**SC S.P.*

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

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

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai