

आयकर अपीलीय अधिकरण “A” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.6048/Mum/2010

(निर्धारण वर्ष / Assessment Year : 2007-08)

Shri Ajay B. Sabharwal, 208, Shah & Nahar Industrial Premises, Dr. E. Moses Road, Worli, Mumbai – 400 018.	<u>बनाम/</u> v.	ACIT, Circle 6(1), Room No. 563, Aayakar Bhavan, Mumbai.
स्थायी लेखा सं./PAN : AAIPS 1492 A		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	Shri B.V. Jhaveri
Revenue by :	Dr. Gulshan Raj

सुनवाई की तारीख /**Date of Hearing** : 07-6-2016

घोषणा की तारीख /**Date of Pronouncement** : 25-08-2016

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee company, being ITA No. 6048/Mum/2010, is directed against the appellate order dated 28th April, 2010 passed by learned Commissioner of Income Tax (Appeals)- 14, Mumbai (hereinafter called “the CIT(A)”), for the assessment year 2007-08, the appellate proceedings before the learned CIT(A) arising from the assessment order passed by the learned Assessing Officer (hereinafter called “the AO”) u/s 153A/143(3) of the Income Tax Act, 1961 (Hereinafter called “the Act”).

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

"1. The learned CIT(A) erred in concluding that the proceedings initiated u/s 132 and the seizure of cash were as per law.

2. The learned CIT(A) further erred in treating the seized cash as unexplained income in the hands of Your Appellant.

3. The learned CIT(A) failed to appreciate the following;

a) The cash belonged to Leshark Exports P. Ltd. and the same was sufficiently proved by the documentary evidence submitted at the time of search itself.

b) The company has also confirmed that the cash belonged to it."

3. The brief facts of the case are that in the instant case proceedings u/s 132(1) of the Act were initiated and conducted by the DDIT (Inv.) Unit -III(2), Mumbai on 28th/29th November, 2006 on the basis of information received from DDIT (Inv).AIU New Delhi, that the passenger Shri Ajay Balwant Sabharwal was travelling by Jet Air Ways Flight No. 9W 325 from Delhi to Mumbai carrying with him cash to the tune of Rs. 20 lacs. During the course of proceeding u/s. 132 of the Act , a statement u/s 131 of the Act was recorded of Shri Ajay Sabharwal who stated that he was currying the cash under authority of M/s Le Shark Exports Pvt. Ltd. and the said cash belong to the said company and he was also carrying a letter from the said company. While recording the statement he stated that he was one of the Directors of M/s In Design India Pvt. Ltd. and also working as a consultant to M/s Le Shark Exports P. Ltd.

The A.O. issued notice u/s. 153A of the Act and in compliance the assessee filed return of income disclosing total income at Rs. 17,98,890/-. During the course of assessment proceedings, statement of Shri Ajay Sabharwal, from whom the cash of Rs. 20 lacs was seized and Shri Kiran Bhat, employee of M/s Le Shark

Export Pvt. Ltd. who handed over the cash to Shri Sabharwal were recorded. The A.O. observed from the records that Mr. Anil Shah, Director of M/s Le Shark Exports Pvt. Ltd. who was looking after the manufacturing unit at Tirupur, came to Mumbai from Coimbatore on 20th October, 2006 reportedly carrying the cash of Rs. 20 lacs. As per the bank statement of Le Shark Exports Private Limited produced, the cash was withdrawn from Corporation Bank, Tirupur on 19th October, 2006. Copy of cash book of Tirupur unit of Le Shark Exports Private Limited reflects sending of money through Shri Anil Shah, M.D. which was handed over to Mr Anil Shah on 19-10-2006 and the cash was brought to Mumbai by Mr Anil Shah on 20-10-2006 and kept at the registered office of M/s Le Shark Exports P. Ltd. , but there was no corresponding entry of receipt of cash in the cash book maintained at the registered office of the assessee company at Mumbai. In the written submission, it was stated that the cash was kept in the safe custody of Mr. Kiran Bhat, Accountant of Le Shark Exports Private Limited at the Mumbai Office. It was asked as to why the cash was not recorded in the cash book of Mumbai office and kept in bank since actual date of travel by Mr. Sabharwal to Delhi was not specifically fixed. The assessee could not file any reply in this regard. Keeping the cash of Rs. 20 lacs in Mumbai office without any entries in the books of account for a long period from 20-10-2006 to 23-11-2006 appears to be not probabale as the assessee had office in Mumbai whereby regular books of accounts and bank accounts are maintained. Therefore, it was observed by the AO that it can be seen that cash was brought from Tirupur to Mumbai on 20th October, 2006 and the same cash was handed over to Shri Ajay Sabharwal on 27th /28th November, 2006 does not hold good at all. The A.O. observed that it was clearly an afterthought story. As per the statement of Shri Ajay Sabharwal recorded u/s 131 of the Act on 15th December, 2008 whereby he again reiterated that he got the money from Shri Kiran Bhat , accountant of Le Shark Exports Private Limited in his office two three days back from the date of seizure and did not knew the denomination. It was confirmed that he was authorized by M/s Le Shark Exports (P) Ltd. for purchase of

machinery from Delhi and he was carrying a letter specifying carrying of money. Thus, in nut-shell he submitted that cash of Rs. 20 lacs belonged to Le Shark Exports Private Limited. The statement of Mr. Kiran Bhat was also recorded who is the Accountant of Le Shark Exports P. Ltd. whereby he confirmed that he is working as Accountant of Le Shark Exports P. Ltd. for the last 12 years. He stated that he had handed over the money to Shri Ajay Sabharwal on 23rd or 24th November, 2006 and also handed over a letter to Shri Ajay Sabharwal. The A.O. observed that Shri Ajay Sabharwal reached Delhi on 28th November, 2006 and returned to Mumbai on the same day and had a very limited time for inspection or quality/type of machine etc. unless he chalked out the kind of machine as per the requirement of M/s. La Shark Exports (P) Ltd. before hand. There was no consultation regarding requirement of any particular machine between Shri Anil Shah and Shri Ajay Sabharwal. No evidence whatsoever has been submitted regarding the office etc. or any manufacturing units by Shri Ajay Sabharwal in Delhi from where he proposed to buy machines for Le Exports Private Limited. Shri Ajay Sahharwal also did not knew the denomination of cash of Rs. 20 lacs which he was reportedly carrying and he could not recollect the date of letter which specified carry of money on behalf of M/s Le-Shark Exports Pvt. Ltd. It was observed from the submission that the cash was brought by Shri Anil Shah, M.D. of M/s Le Shark Exports (P) Ltd. at the time of his visit to Mumbai from Coimbatore on 20th October , 2006 and therefore it is clear that Mr. Shah reached Mumbai on 20th October, 2006. The A.O. doubted the whole story. Copies of air ticket in respect of Shri Ajay Sabharwal were also not submitted and therefore verification of date of purchase of ticket from Mumbai to Delhi could not be verified and also Mr. Ajay Sabharwal decided to return to Mumbai from Delhi on 28th November, 2006 and the particulars of the Air ticket was also not provided and hence could not be concluded that return of Shri Ajay Sabharwal to Mumbai was decided on 28th November, 2006. The A.O. observed that the normal place of work of Shri Anil Shah was at Tirupur and no evidence that Shri Anil Shah was in Mumbai on 28th November, 2006 i.e. the date of

authority letter has been brought on record . Shri Ajay Sabharwal in his statement recorded on 28th November, 2006 stated that he was not in a position to state that cash was disclosed at the airport in Coimbatore in front of AIU or CISF, therefore, it is clear that he also did not wanted to disclose any cash at Mumbai airport to the AIU or CISF which proved beyond doubt that he was not in possession of money of Rs. 20 lakhs at the time of proceeding to Delhi from Mumbai. The A.O. accordingly came to the conclusion that the source of cash amounting to Rs. 20 lakhs found in possession of Shri Sabharwal which was seized was not proved and thus addition was made for Rs. 20 lakhs treating the same as undisclosed income in the hands of the assessee, vide assessment order passed by the AO u/s. 143(3) read with Section 153A of the Act.

4. Aggrieved by the assessment order passed by the A.O. u/s. 143(3) read with Section 153A of the Act, the assessee filed his first appeal before the Id. CIT(A).

5. Before the Id. CIT(A) , the assessee submitted that the assessee is proprietor of M/s In-design providing consultancy services in connection with textile production and exports. He submitted that he was travelling by Jet Airways Flight No. 9W 325 from Delhi to Mumbai on 28-11-2006 carrying with him cash of Rs. 20 lakhs. The assessee submitted that he suo moto informed the airport authority at Delhi that he was carrying cash of Rs.20 lakhs along with the authority letter of Le - Shark Exports Pvt. Ltd. On reaching Mumbai, Deputy Director of Income Tax (Investigation) Unit - III, Mumbai, on the basis of information received from Deputy Director of Income Tax (Investigation) AIU, New Delhi, initiated and conducted proceedings u/s 132 of Act and took the assessee to Income Tax Office at Scindia House without any legal warrant or notice and seized the cash of Rs. 20 lacs from the possession of the assessee. The assessee submitted that the Revenue before taking action u/s 132 of the Act should have reason to believe that the amount of money has not been disclosed or will not be disclosed as income. The belief has to be a bonafide belief. The

assessee submitted that at the time of interception itself the letter of authority of the company Le Shark Exports Private Limited was shown to the concerned authorities and within five hours the assessee obtained the fax copy of the necessary books of account, bank statement of the company which were produced from Tirupur office of Le Shark Exports Private Limited which had reflected that the cash was duly accounted cash of the said company, hence, there was no ground for a bonafide belief that the cash was undisclosed cash of the assessee. Thus, the assessee prayed that the proceedings u/s 132 of the Act were bad in law.

The Id. CIT(A) rejected the contentions of the assessee and observed that the assessee has challenged the proceedings under section 132 of the Act. An amount of Rs. 20 lakhs was found in possession of the assessee at the Delhi Airport and the same was seized by the Mumbai Income Tax authorities as the source of the cash has not been properly explained by the assessee. Hence, there was reason to believe that the money has not been disclosed or will not be disclosed as income. Thus, there was a bonafide belief for taking action u/s 132 of the Act. The assessee submitted that the Revenue has erred in assessing the seized cash as undisclosed income. The assessee submitted that the assessee was carrying authority letter from Le Shark Exports P. Ltd. while travelling from Delhi to Mumbai. The necessary documents like cash book, bank statement reflecting the withdrawal, confirmation from the company that the cash belongs to them and PAN card, the audited balance sheet for the financial year 2006-07 wherein the company has reflected the cash of Rs. 20 lakhs seized by the income tax department as advance tax and the company has also written to the A.O. to adjust the seized cash towards its advance tax liability were submitted. Thus, the additions have been made on the basis of surmises and conjunctions. It was submitted that the A.O. had given undue importance to the fact that cash was not recorded in the books of account at Mumbai whereas the cash was brought to Mumbai office of the company Le Shark Exports P. Ltd from Tirupur. The

cash was duly recorded in the books of account of the company at Tirupur and evidence produce was brushed aside stating that it was an afterthought. This is incorrect due to the fact that at the time when the assessee was intercepted at the airport at Delhi and Mumbai, he was in possession of the authority letter issued by the company Le Shark Exports P. Ltd that the said cash belonged to them and the assessee was carrying the same for the purposes of advancing the same for purchase of machinery. The assessee submitted that the books of account of the company and the other evidences were submitted immediately on interception by the tax-authorities within five hours of interception at Mumbai airport. The Id. CIT(A), however, rejected the contentions of the assessee and held that the assessee could not give proper reply to the satisfaction of the Revenue. He observed that the assessee has got the money from one Shri Kiran Bhatt , Accountant of M/s. Le-Shark Exports Pvt. Ltd. in his office 2-3 days back along with letter from the Company Le Shark Exports P. Ltd specifying conveying of the money. The assessee further disclosed that he was given this money for purchase of the machinery from Delhi, but when he was asked whether he had any consultation with Mr. Anil Shah, Director of M/s. Le-Shark Exports Pvt. Ltd for purchase of any machinery of any particular type from Delhi, then he replied that there was no consultation with respect to purchase of any machinery of any specific design. This reply shows that Shri Ajay Sabharwal was not asked to purchase any machinery and as such there were no specific direction from the Shri Anil Shah , Director to Shri Ajay Sabharwal for purchase of machinery. Hence, the purpose of carrying cash from Mumbai to Delhi and back as explained by the assessee was not convincing/acceptable and contradictory. It was observed by the Id. CIT(A) that Shri Ajay Sabharwal reached Delhi on 28th November, 2006 and returned to Mumbai on the same day hence it is clear that he had hardly got very limited time for inspection of quality and type of machine etc. to be purchased for Le Shark Exports Private Limited . No consultation regarding requirement of any particular machine had taken place between Mr Ajay Sabharwal and Mr Anil Shah. No Air ticket was brought on record by the

assessee for verification with regard to the date of purchase of ticket from Mumbai to Delhi. The ld. CIT(A) thus held that source of cash amounting to Rs. 20 lakhs found in possession of the assessee was not properly explained and he miserably failed to establish that the said amount belonged to M/s Le Shark Exports P. Ltd., hence, the addition made by the A.O. was confirmed by the ld. CIT(A) as unexplained income of the assessee, vide appellate order dated 28-04-2010.

5. Aggrieved by the appellate order dated 28-04-2010 passed by the ld. CIT(A), the assessee is in second appeal before the Tribunal.

6. The ld. Counsel for the assessee submitted that addition of Rs. 20 lakhs have been made in the hands of the assessee. The assessee was travelling from Delhi to Mumbai by Jet Airways Flight No. 9W 325 on 28-11-2006 carrying with him Rs. 20 lacs in cash. The copy of the Jet airways account and the check in boarding pass were placed on record vide paper book page 46 and 47. It was submitted that the said amount of Rs. 20 lacs has been added to the income of the assessee as undisclosed income in the hands of the assessee vide assessment order u/s 153A/143(3) of the Act passed by the AO which was confirmed by the ld. CIT(A). He submitted that the assessee was duly carrying the letter dated 28th November, 2006 at the time of travelling issued by Le Shark Exports P. Ltd confirming that the assessee was carrying cash of Rs. 20 lacs with him for purchase of machinery on behalf of Le Shark Exports P. Ltd and the said cash belonged to Le Shark Exports P. Ltd. The assessee was carrying Rs. 20 lakhs on behalf of Le Shark Exports P. Ltd. for purchase of machinery. The relevant letter dated 28th November 2006 by Le Shark Exports P. Ltd. is placed in paper book page 11. The assessee submitted that he was going to Delhi from Mumbai, he did not declare the cash while at the time of returning he declared at Delhi Airport. The DDIT (Inv) , Mumbai on arrival at Mumbai intercepted him and took him to Income Tax Office whereon he explained that the cash belonged

to Le Shark Exports P. Ltd. for purchase of machinery and also produced the said letter dated 28th November, 2006 issued by Le Shark Exports P. Ltd owning the said cash. The Id. Counsel submitted that within short span of 5 hours, all the records were called from the office of the said company Le Shark Exports Private Limited, Tirupur by FAX and submitted to the income Tax authorities which clearly showed that this amount was withdrawn from Corporation bank, Tirupur of Le Shark Exports P. Ltd on 19th October, 2006. The copies of the said bank statement have been placed at paper book page 39 to 45 and copy of cash book is also placed on record vide paper book page 14 to 38 whereby the withdrawal of Rs. 20 lakhs on 19th October, 2006 and also the said amount was given to the Shri Anil Shah for purchase of machinery on 19th October, 2006 itself was duly reflected . The copies of bank statement, cash book, PAN and confirmation from Le Shark Exports P. Ltd were placed before the Income Tax authorities within 5 hours of interception whereby Le Shark Exports P. Ltd explained that cash belonged to them and they owned the cash. The Id. Counsel submitted that Shri Anil Shah, Director of Le Shark Exports P. Ltd. who brought the cash from Coimbatore to Mumbai on 20th October, 2006 and copy of the air ticket is placed on record (Flight No. DN 616) (page 12/pb) . He went back to Coimbatore on 27th November, 2006 by Jet Airways, copy of the Air Ticket is also placed on record vide paper book page No. 13. The cash was kept by Shri Kiran Bhat, Accountant of Le Shark Exports Private Limited in Mumbai in the office of Le Shark Exports P. Ltd . It was also submitted that the said company has owned the cash and the same are reflected in their books of account. Assessment was framed u/s 143(3) of the Act in the case of Le Shark Exports P. Ltd for assessment year 2007-08 and copy of the assessment order is placed on record (PB No. 74-75) and no addition has been made in the hands of Le-Shark Exports Pvt. Ltd. . It was pointed out that the Revenue has mentioned in the assessment order of Le Shark Exports P. Ltd that the cash of said Le Shark Exports P. Ltd was accounted as advance tax and the Revenue did not accpetd the contention in the hands of Le Shark Exports P. Ltd as the additions were

made in the hands of the assessee. The ld. Counsel also placed on record the letter written by M/s Le-Shark Exports Pvt. Ltd on 13th March 2007 (PB No. 59) to the income Tax Department requesting for release of cash and also confirmed that the cash was being carried by Mr Ajay Sabharwal on behalf of Le Shark Exports Pvt. Ltd. The computation of income has also been placed on record whereby adjustment of Rs. 20 lakhs as advance tax (paper book page No. 61 to 73) was sought by the said Le Shark Exports Private Limited. The said cash is duly reflected as advance tax (P. B. page 67) in Schedule 11 –Loans and Advances’ which is part of the financial statement. The ld. Counsel relied on the decision of Hon’ble Supreme Court in the case of CIT v. Vindhya Metal Corporation(1997) 224 ITR 614(SC).

7. The ld. D.R. relied on the orders of authorities below and submitted that the facts are not disputed.

8. We have considered the rival contentions and also perused the material placed on record. We have observed that the assessee was travelling from Delhi to Mumbai on 28th November, 2006 by Jet Airways flight . He was carrying cash amount of Rs. 20 lakhs while traveling to Mumbai on 28-11-2006. He was intercepted by the CISF at Delhi Airport. The information was passed on to Mumbai and when he landed in Mumbai, he was intercepted in Mumbai and was taken to the Income tax office. The assessee was carrying with him while flying a letter dated 28-11-2006 issued by Le Shark Exports P. Ltd confirming that the cash of Rs. 20 lacs which he was carrying was on behalf of Le Shark Exports Pvt. Ltd. for advancing amount for purchase of the machinery which was duly submitted by the assessee to the Income tax authorities at the time of interception. The assessee, within a short span of five hours obtained all the documents by FAX from the Tirupur office of Le Shark Exports Private Limited such as cash book, bank statement , PAN, confirmation that cash of Rs. 20 lacs belonged to Le Shark Exports P. Ltd and produced the same before the Income

Tax authorities . The said amount of Rs 20 lacs cash was stated to be withdrawn from Corporation Bank , Tirupur branch of Le Shark Exports P. Ltd on 19-10-2006 . Le Shark Exports Pvt. Ltd. has also produced before the DDIT (Inv.), the bank statement, copy of PAN , cash book and confirmation owning the cash of Rs 20 lacs found in possession of the assessee . The above documents were produced with in five hours of interception of the assessee by the Income tax authorities. The said cash of Rs. 20 lacs was seized by the Income tax authorities from the possession of the assessee on 28/29th November 2006 It is also observed that Shri Anil Shah, Director of M/s Le Shark Exports Pvt. Ltd. who travelled from Coimbatore to Mumbai on 20th October, 2006 by Air Deccan flight (copy of the ticket is placed on record vide PB No. 12) and he again travelled back from Mumbai to Coimbatore on 27th November, 2006 by Jet Airways flight (copy of the air ticket is placed on record vide PB No. 13) and it is submitted before us that cash was brought to Mumbai from Coimbatore by said Mr Anil Shah on 20-10-2006 while the said cash was withdrawn from bank account at Corporation Bank , Tirupur of M/s Le Shark Exports Pvt. Ltd. on 19-10-2006 , bank statement is placed in paper book. The said cash is duly reflected as advanced to Sh Anil Shah by M/s Le Shark Exports Pvt. Ltd for advance for purchase of machinery on 19-10-2006 , cash book is placed in paper book. The said cash was stated to be kept by Mr Anil Shah in Mumbai office from 20-10-2006 till it was stated to be handed over to the assessee two-three days prior to his actual travelling to Delhi from Mumbai on 28-11-2006. The assessee submitted that the amount of Rs. 20 lakhs was advanced by Shri Kiran Bhat , accountant of Le Shark Exports Private Limited which was meant for the purpose of purchase of machinery , two- three days prior to 28-11-2006 . The said cash of Rs 20 lacs is duly reflected in the books of accounts of Le Shark Exports Private Limited which are audited and produced before the authorities below. The amount of Rs. 20 lakhs seized was also offered as advance tax by Le Shark Exports Private Limited as amount lying with income tax department which is accounted as advance tax by M/s Le Shark Exports Pvt. Ltd in its

books of accounts, but the Revenue has not accepted the contentions of the assessee and passed assessment order u/s 143(3)/153A of the Act making additions in the hand of the assessee to the tune of Rs. 20 lacs as undisclosed income. We have observed that as per the provisions of section 132(4A) of the Act where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of search u/s 132(1) of the Act, it may be presumed that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person and that the contents of such books of account and other documents are true. Thus, during the course of search u/s 132(1) of the Act, the Revenue found cash of Rs. 20 lakhs in the possession of the assessee which was seized from the assessee the presumption arose u/s 132(4A) of the Act that the assessee is the owner of the said cash of Rs 20 lacs but this presumption is rebuttable. The assessee has duly rebutted the presumption by bringing on record cogent material to disprove the contentions of the Revenue that this cash of Rs. 20 lacs found and seized from the assessee on 28/29th November 2006 is undisclosed income of the assessee, whereas the said M/s Le Shark Exports Pvt. Ltd has duly owned up the cash of Rs 20 lacs as belonging to them. The assessee has brought on record authority letter from Le Shark Exports Pvt. Ltd. at the time of his flying when the assessee was carrying the cash of Rs. 20 lacs while travelling on 28-11-2006 that the money belonged to M/s Le Shark Exports Pvt. Ltd and the assessee was carrying the same for the purposes of purchase of machinery on their behalf. When the assessee was intercepted and taken to office of the Revenue at Mumbai, he has produced all the relevant documents within a span of five hours from Tirupur office of Le Shark Exports Private Limited by FAX before the authorities below whereby it has categorically been mentioned that the money consisting of cash of Rs. 20 lacs belonged to Le Shark Exports Private Limited, thus the said company owned up the money immediately on being asked to do so as also the assessee was carrying with him the authority letter while travelling

on 28-11-2006 from Delhi to Mumbai when the money was found in his possession which he immediately brought to the notice of the authorities vide the authority letter of Le Shark Exports Private Limited dated 28-11-2006 stating that cash belonged to Le Shark Exports Private Limited. All the evidences were produced before the authorities below immediately within short span of five hours from the time of interception at Mumbai and there is a consistency in the stand taken by the assessee as well Le Shark Exports Private Limited throughout that the said cash belonged to M/s Le Shark Exports Pvt. Ltd. The said cash is reflected in the audited books of accounts of Le Shark Exports Private Limited for the year 2006-07 wherein the said cash is reflected as advance tax. The said cash was declared as advance for purchase of machinery in cash book on 19-10-2006 to Mr Anil Shah, Director of M/s Le Shark Exports Pvt. Ltd who ultimately carried the cash on the next date i.e. 20-10-2006 to Mumbai from Coimbatore for which evidences are placed on record such as airticket, bank statement and cash book. In our considered view, the assessee has duly explained the said cash of Rs. 20 lakhs which was found in his possession while travelling from Delhi to Mumbai via Jet airways flight on 28-11-2006. The assessee has duly rebutted the presumption u/s 132(4A) of the Act. The assessee has duly brought on record the audited books of accounts of Le Shark Exports Private Limited and other cogent material to prove that infact cash belonged to Le Shark Exports Private Limited who also owned up the cash. The revenue has also framed assessment in respect of Le Shark Exports Pvt. Ltd. and passed an assessment orders u/s 143(3) of the Act dated 3rd September, 2009 for the assessment year 2007-08 and no addition of Rs. 20 lacs w.r.t. cash found and seized of Rs 20 lacs from the possession of the assessee has been made in the hands of the Le Shark Exports Private Limited. The Revenue while framing assessment in the hands of the Le Shark Exports Pvt. Ltd. has mentioned in the assessment order u/s 143(3) of the Act dated 03-09-2009 that the cash seized has been taxed in the hands of Mr. Ajay B. Sabharwal whereby the contention of M/s Le Shark Exports Pvt. Ltd to adjust the said cash of Rs 20 lacs against

advance tax was rejected by the Revenue. In our opinion, addition is not sustainable in the hands of the assessee as the assessee has duly discharged his burden and has duly rebutted the presumption which arose u/s 132(4A) of the Act with cogent evidences brought on record as set out above that the cash of Rs 20 lacs which the assessee was carrying while flying from Delhi to Mumbai on 28-11-2006 in-fact belonged to Le Shark Exports Pvt. Ltd who also owned up the said cash of Rs 20 lacs for which cogent material is brought on record. Addition of Rs 20 lacs made by the Revenue in the hands of the assessee as undisclosed income is therefore ordered to be deleted. We order accordingly.

9. In the result, appeal filed by the assessee in ITA No. 6048/Mum/2010 for the assessment year 2007-08 is allowed.

Order pronounced in the open court on 25th August, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 25-08-2016 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **25-08-2016**

I

व.नि.स./ R.K., Ex. Sr. PS

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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