

IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai  
Before S/Shri B.R. Baskaran (AM) & Sandeep Gosain (JM)

I.T.A. No. 3677/Mum/2015 (Assessment Year 2005-06)

Mr. Faizal Abdul Khan A/1201, Brook Hill Towers Lokhandwala Complex 3 <sup>rd</sup> Lane, Andheri (West) Mumbai-400 053. PAN No. AIFPK1248K (Appellant)	Vs.	ITO Ward 25(1)(1) 204, C-12 Pratyakashakar Bhavan, BKC Mumbai. (Respondent)
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Assessee by	None
Department by	Ms. Pooja Swaroop
Date of Hearing	25.1.2018
Date of Pronouncement	25.1.2018

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 27.03.2015 passed by Ld CIT(A)-39, Mumbai and it relates to the assessment year 2005-06.

2. None appeared on behalf of the assessee despite service of notice on more than one occasion and hence we proceed to dispose of the appeal ex-parte, without presence of the assessee.

3. We heard Ld D.R and perused the record. The assessing officer reopened the assessment on noticing that the assessee has not disclosed bank housing loan of Rs.85.30 lakhs availed by him. In the reopened assessment, the AO added the above said sum by treating the same as cessation of liability.

4. The facts relating to the above said issue are discussed in brief. The assessee had availed the above said bank loan for purchasing a flat at Leela Sterling, Goregaon (E). The loan amount was directly given to the builder. It appears that the builder sold the flat to some other person and hence the bank

started recovery/criminal proceedings against the assessee and the builder. According to the assessee, the builder has cheated both the assessee and the builder. Hence he did not disclose bank loan in his books of account. The AO was not convinced with the explanations of the assessee and assessed the above said loan amount of Rs.85.30 lakhs as income of the assessee u/s 41(1) of the Act.

5. In the appellate proceedings, the Ld CIT(A) also confirmed the addition made u/s 41(1) of the Act. The Ld CIT(A) further noticed that the sale agreement for purchase of flat was entered at Rs.1,18,00,000/-. The Ld CIT(A) treated the difference between the sale agreement value of Rs.118.00 lakhs and bank loan of Rs.85.30 lakhs as unexplained investment of the assessee and accordingly assessed the difference amount of Rs.32.70 lakhs as income of the assessee.

6. The assessee has challenged the order so passed by Ld CIT(A) on the above said issues.

7. We notice that it is not clear from the orders passed by tax authorities as to whether the assessee has finally purchased the flat or not. The question of making addition towards unexplained investment of Rs.32.70 lakhs shall arise only if the assessee has made the payment. Further the addition can be made only in the year in which the payment was made, if the sources are not properly explained. It is the case of the assessee that the builder has sold the said flat to somebody else. Hence it is not clear as to whether the flat was actually purchased by the assessee or not. Similarly, it is the case of the assessee that the bank loan was directly disbursed to the builder and the bank has initiated recovery proceedings against the assessee. Without ascertaining the status of the criminal and recovery proceedings, it may not be proper to invoke the provisions of sec. 41(1) also. Another question is whether the provisions of sec. 41(1) itself would get attracted in this kind of situation

remains unanswered. Under these set of facts, we are of the view that both the issues requires fresh examination.

8. Accordingly we set aside the order passed by Ld CIT(A) on both the issues and restore them to his file for examining them afresh. After giving adequate opportunity of being heard to the assessee, the Ld CIT(A) may pass appropriate order in accordance with the law.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 25.1.2018.

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 25/1/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai

PS