



ITA No.1782/Mum/2016
Murad Ibrahim Khan
Assessment Year 2010-11

आयकर अपीलीय अधिकरण “आई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.1782/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2010-11)

Murad Ibrahim Khan Room No.9, My building premises Bandra(E),Mumbai-400 051	बनाम/ Vs.	Income Tax Officer Ward-19(3)(3) Matru Mandir Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AGZPK-9639-C		
(□ पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
Revenue by	:	Saurabh Kumar Rai, Ld.DR
Assessee by	:	None
सुनवाई की तारीख / Date of Hearing	:	03/04/2018
घोषणा की तारीख / Date of Pronouncement	:	06/04/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2010-11 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-33 [CIT(A)], Mumbai, *Appeal No.CIT(A)-33/Rg.23/36/2013-14* dated 01/01/2016 *qua* confirmation of certain additions. The assessment for



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impugned AY was framed by Ld. Income Tax Officer Ward-19(3)(3), Mumbai [AO] u/s 144 of the Income Tax Act, 1961 on 28/03/2013 wherein the income of the assessee has been assessed at Rs.139.55 Lacs after certain additions as against returned income of Rs.9.78 Lacs filed by the assessee on 29/09/2010. None has appeared for assessee despite notice and no valid adjournment application is on record. Left with no option we proceed to decide the appeal on the basis of material available on record and after hearing Ld. Departmental Representative [DR].

2. Facts leading to the same are that pursuant to certain *Annual Information return* [AIR], it was noted that the assessee made cash deposit aggregating to Rs.1,23,88,450/- in one of the savings account held with *Syndicate Bank*. Since the assessee could not explain the source thereof, the same was added to the income of the assessee as *unexplained cash credit* u/s 68. It was further noted that the assessee received interest of Rs.5,75,500/-, which was not reflected in the return of income and therefore, the same was also added to the income of the assessee. The assessee was saddled with another addition of Rs.12,640/- on account of certain *alleged bogus purchases*. Finally, the assessment was completed after making aggregate additions of Rs.129.76 Lacs on *best judgment basis* u/s 144 since the assessee failed to attend the hearing from time to time before Ld. AO and supply requisite information / documents.

3. Aggrieved, the assessee contested the same without any success before Ld.CIT(A) vide impugned order dated 01/01/2016. During the course



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of appellate proceedings, the assessee filed certain additional evidences against which a *remand report* was called from Ld. AO. During *remand proceedings*, the assessee submitted *statement of cash deposits and withdrawals* as extracted on *page no.5* of the appellate order and contended that the cash deposit was sourced from cash withdrawals made by the assessee during impugned AY. However, not finding the explanation and documentary evidences plausible one, Ld.CIT(A) confirmed additions u/s 68. The other two additions were also similarly confirmed. Aggrieved, the assessee is in further appeal before us. The Ld. DR has placed reliance on the stand of lower authorities.

4. We have carefully considered the contentions and material on record. Upon perusal, we find that the assessee has deposited cash of Rs.1,23,88,540/- and made cash withdrawals of Rs.99,06,400/- during the impugned AY as evident from the appellate order and therefore, there may be some feeble strength in the stand of assessee that cash deposits were sourced from cash withdrawals. The complete onus to prove the nexus between cash deposits and cash withdrawals completely rest on the assessee and we find that the assessee has miserably failed to prove the same before lower authorities despite being provided with sufficient opportunity of being heard. The same is also evident from the fact that no submissions could be made by assessee before Ld. AO and even during *remand proceedings*, the assessee failed to prove the nexus thereof. Nevertheless, on factual matrix and keeping in view the principle of natural



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justice, we deem it fit to provide another opportunity of being heard to the assessee and therefore, remit the matter back to the file of Ld.CIT(A) with a direction to the assessee to prove nexus between cash deposits and cash withdrawals with documentary evidences. This ground stands allowed for statistical purposes.

5. The addition on account of interest income of Rs.5,75,500/- has rightly been taxed by revenue as *income from other sources*. However, we find that the assessee, during appellate proceedings, had pleaded that the said interest was credited to profit & loss account and offered as *business income*. The same income could not be taxed twice and therefore, the matter is remitted back to file of Ld. CIT(A) for limited purpose of verification of this fact. If the income has already been offered as *business income*, the same shall be reduced accordingly. The assessee is directed to file sufficient documentary evidences to demonstrate the same. This ground stands allowed for statistical purpose. The third addition of Rs.12,640/- on account of *alleged bogus purchases* stands confirmed for want of evidences.

6. The assessee, in one of the ground has contested assessment made u/s 144. However, we find no strength in the same since the assessee failed to comply with the hearing notices and make requisite submissions before Ld. AO and therefore, Ld. AO was left with no option but to make assessment on *best judgment* basis u/s 144. This ground stands dismissed.



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7. Resultantly, the assessee's appeal stands partly allowed for statistical purposes in terms of our above order.

Order pronounced in the open court on 06th April, 2018.

Sd/-
(Saktijit Dey)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 06. 04.2018

Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

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