

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "SMC", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM

**आयकर अपील सं. / ITA No.2682/PUN/2016**  
**निर्धारण वर्ष / Assessment Year : 2010-11**

M/s. Chakan Petrol Depot,  
Pune Nashik Highway,  
Chakan, Khed, Chakan,  
Pune, Maharashtra – 410501

.... अपीलार्थी/Appellant

PAN: AABFC1136E

Vs.

The Income Tax Officer,  
Ward 8 (1), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Jadhav  
प्रत्यर्थी की ओर से / Respondent by : Shri Mukesh Jha

सुनवाई की तारीख / <b>Date of Hearing : 18.04.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 27.04.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the assessee is against the order of CIT(A)-9, Pune, dated 10.08.2016 relating to assessment year 2010-11 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following ground of appeal:-

1. *The learned CIT Appeal has erred in confirming the addition made by the learned AO of Rs.5,00,000/- u/s 68 of the IT Act.*
2. *The learned AO as well as the learned CIT Appeal has failed to appreciate the fact that the capital was introduced by the partner in the appellant firm by way of withdrawal by the same partner from another partnership firm namely M/s Hrishikesh Auto Spares (Diesel).*
3. *The learned CIT Appeal as well as learned AO has failed to appreciate the fact that the firm M/s Hrishikesh Auto Spares (Diesel) has been carrying on the business and has maintained regular books of account and has been drawing financial statements containing various Assets and Liabilities. Therefore, in the facts and circumstances of the case invoking section 68 in the appellants case to deny the source of Rs.5,00,000/- is contrary to the provisions of the law.*
4. *The order passed by the learned AO and confirmed by the CIT Appeal is contrary to the provisions of the law and therefore is unsustainable. The addition of Rs.5,00,000/- may kindly be deleted.*
5. *The learned AO has erred in initiating the penalty proceedings u/s 271(1)(c) of the IT Act.*

3. The present appeal is filed after the delay of ten days. The assessee has filed affidavit in this regard and has stated that due to change in Consultant, there was delay in filing the appeal late by ten days. In view thereof, there is merit in the plea of assessee and the delay of 10 days is condoned.

4. The issue raised on merits is against the addition of ₹ 5 lakhs under section 68 of the Act.

5. Briefly, in the facts of the case, the assessee was a dealer of Hindustan Petroleum Corporation Ltd. The assessee was partnership concern, wherein one of the partners had introduced capital of ₹ 5 lakhs during the year. The assessee explained the source of same. In respect of sum of ₹ 5 lakhs, it was stated that same was withdrawn from M/s. Hrishikesh Auto Spares (Diesel). The said concern was partnership firm, which was doing negligible business. It was submitted by the assessee that the return of income for assessment year 2010-11 was not filed because of smallness of business. However, later the

assessee produced cash book, sale book and also return of income which was filed on 21.03.2013. The Assessing Officer however, rejected the same on the ground that return of income was filed only to authenticate the source of cash capital introduction. Addition of ₹ 5 lakhs was made in the hands of assessee under section 68 of the Act.

6. The CIT(A) upheld the addition made by the Assessing Officer as the source of capital introduction of ₹ 5 lakhs remained unexplained.

7. The assessee is in appeal against the order of CIT(A).

8. The learned Authorized Representative for the assessee submitted that the assessee had furnished explanation of source of capital introduction which has been rejected by the Assessing Officer and hence, addition in the hands of assessee. However, he further stated that there was no merit in asking for source of source of said capital contribution.

9. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

10. On perusal of record and after hearing both the learned Authorized Representatives, the issue which arises in the present appeal is against addition of ₹ 5 lakhs. The assessee had made capital contribution of ₹ 5 lakhs during the year. The assessee explained that the said sum was out of withdrawals from another partnership firm, wherein since the business receipts were less, the return of income was not filed initially. However, the same was filed during the course of assessment proceedings and books of account of the

said concern were produced before the Assessing Officer. However, the contention of assessee was rejected on one premise or the other. The requirement of section 68 of the Act is, for the assessee to establish the identity, genuineness and creditworthiness of creditor. The assessee has established the same and has explained the source of making the said capital contribution. The authorities below however, have gone into source of source, which is not permitted under law and hence, there is no merit in the aforesaid addition made in the hands of assessee. The addition is deleted under section 68 of the Act. The grounds of appeal raised by the assessee are thus, allowed.

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

Order pronounced on this 27<sup>th</sup> day of April, 2018.

**Sd/-**  
**(SUSHMA CHOWLA)**  
**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 27<sup>th</sup> April, 2018.  
GCVSR

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-9, Pune;
4. The Pr.CIT-5, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune