

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव , लेखा सदस्य, के समक्ष।  
**BEFORE SHRI D. KARUNAKARA RAO, AM**

**आयकर अपील सं./ ITA No.836/PUN/2016**

**निर्धारण वर्ष / Assessment Year : 2008-09**

Mr. Farhatulla Khan Hameed Khan,  
382, Daily Market, Cantonment,  
Aurangabad.  
Pin-431 002.  
PAN : ABHPPH8236K

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 2(3),  
Aurangabad.

.....प्रत्यर्थी / Respondent

Appellant by : Smt. Deepa Khare

Respondent by : Shri Pankaj Garg

सुनवाई की तारीख / <b>Date of Hearing : 15.05.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement : 17.05.2018</b>
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**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM**

This appeal filed by assessee is directed against the order of Commissioner of Income Tax (Appeals), Aurangabad dated 15.02.2016 for assessment year 2008-09.

2. The assessee has raised following grounds in appeal:

*“ 1. The learned CIT(A) erred in law and on facts in confirming addition of Rs.23,00,000/- u/s.69A on account unexplained money on the ground that the appellant has not discharged the burden of proving the cash deposited in the bank account.*

*2. The learned CIT(A) erred in law and on facts in confirming addition of Rs.55,490/- u/s.40A(3).*

*3. The learned CIT(A) erred in law and on facts in confirming disallowance of Rs.34,923/- on account of disallowance of expenses debited to P & L Account which is not just and proper.*

*4. The learned CIT(A) erred in law and on facts in confirming addition of Rs 50,000/- on account of agricultural income.*

*5. The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.”*

3. Further, the assessee has also raised an additional ground relating to question of re-opening of assessment and the said additional ground reads as under:

*“On the facts and circumstances of the case, the reassessment proceedings u/s.147 being initiated in absence of material showing escapement of income in the hands of the appellant is void and may kindly be cancelled. The material based for re-opening is vague and has no live link with escapement of income in the hands of the appellant.”*

4. On the basis of AIR information, a notice u/s. 148 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) was issued for the purpose of verifying the sources of deposits in cash amounting to Rs.29,75,050/- in his bank account. In re-assessment proceedings, the Assessing Officer made the following additions:

Sr.	Head	Amount in Rs.
1	Unexplained money under section 69A	23,00,000/-
2	Disallowance under section 40A(3)	55,490/-
3	Disallowance from sundry expenses	34,923/-
4	Disallowance out of Agricultural income	50,000/-

Aggrieved with the additions made by Assessing Officer, assessee filed appeal before CIT(A). The CIT(A) granted partial relief to the assessee. Now the assessee is in appeal before me raising grounds extracted above.

5. At the outset, Ld. Counsel for the assessee submitted that the assessee intends to not press the ground No. 2, 3 & 4 in view of smallness of the additions. Accordingly, **ground No. 2, 3 & 4 are dismissed as not pressed.**

Now, the ground No. 1 is taken up for adjudication.

6. Relevant facts with regard to the addition of Rs.23,00,000/- includes that the assessee is an individual and filed return of income. Assessing Officer reopened the assessment based on the AIR information about the verification of the sources of the cash deposits in the bank account of the assessee. Eventually, unsatisfied with the explanation of the assessee, the Assessing Officer made addition of Rs. 23,00,000/- as per discussion given in 3.1 of her order. When the details of sources of deposit was enquired by the Assessing Officer, the assessee submitted that total aggregated sum of Rs.12,00,000/- was received by assessee on different dates from Mr. Rizwan Khan. Similarly, another aggregated amount of Rs.11,00,000/- was received from Mrs. Farha Khan on various dates. On finding the assessee failed to discharge this onus about the sources of cash deposits. Assessing Officer proceeded to make addition of the gross amount of Rs.23,00,000/-. Regarding repayment of the said amount to Rizwan Khan and Farha Khan in subsequent period, Assessing Officer did not consider this fact relevant and rejected the same. Assessing Officer dismissed the assessee's submission on the fact of repayment in cheques using banking channel and held that would not affect the decision of the Assessing Officer.

7. During First Appellate proceeding, on the issue of addition of Rs. 23,00,000/-, the assessee could not improve his case despite various submissions. The CIT(A) dismissed the same as per discussion given in Para 8 of his order. In the said paragraphs, CIT(A) held that the assessee failed to prove the genuineness of the transactions by establishing the identity and creditworthiness of the persons i.e. Rizwan Khan and Farha Khan to confirm the said payment in cash. The CIT(A) held that cheques were not issued to Rizwan Khan. Relevant lines of the said paragraph extracted as under:

*“8..... In respect of Shri Rizwan Khan, the assessee, vide submissions dated 16/06/2014, had stated that Shri Rizwan Khan had left Aurangabad during the period 2006-07 to 2013-14. However, no proof of the same was supplied. Even otherwise, there is no reason as to why the assessee could not produce the above party during the course of appellate proceedings, which has gone on till 10/12/2015 which is the last date of hearing. In respect of Smt.Farah Khan, it has been simply stated in the course of appellate proceedings that she has not given any response to come forward for giving any statement and identification proof. It is absolutely clear from the assessment order and the conduct of the assessee in appellate proceedings that he has failed miserably to establish the identity of the persons, their creditworthiness and the genuineness of the transactions. Mere production of an unregistered document stating the intention to sell the property, is not sufficient to prove the genuineness of transaction. Even though the amounts were subsequently alleged to have been paid back by cheque, in the absence of any details about the bank account in which these cheques were deposited, it cannot be stated that merely because the amounts were paid back by cheque, the transaction would be genuine. In this respect, the fact that the cheques purportedly issued to Shri Rizwan Khan was found to have been credited to an account belonging to one Shri Rizwan Ahmad is also important. It is quite obvious that the cheques were not issued to Shri Rizwan Khan. If any entry stands in the name of an independent party, the burden lies on the assessee to establish the identity of the party and also to prove to the satisfaction of the assessing officer that the entries real and not fictitious. Under the circumstances, I hold that the assessee has been unable to establish the identity of Shri Rizwan Khan and Mrs.Farah Khan and to prove that these persons actually had any funds of their own, out of which cash payments were made to the assessee and as such the addition made by the AO is justified. Thus, Ground No.1 is dismissed.”*

8. The Ld. Counsel for the assessee requested for remitting the issue back to the file of Assessing Officer on merits of addition of Rs. 23,00,000/-.

9. On the other hand, Ld. DR for the Revenue relied heavily on the order of the Assessing Officer/ CIT(A).

10. On hearing both sides, I am of the view that the core issue raised before me relates to the addition of Rs. 23,00,000/- involving two creditors i.e. Rizwan Khan and Farha Khan and the discharging of the onus by the assessee. It is undisputed fact that creditors were not produced before the Authorities below at the relevant point of time. CIT(A) also raised the issue about genuineness of the assessee's submission about repayment in cheques. It is not clear as to why the creditors paid the cash in small portions and purpose thereof, without having any proper security or documentation by way of promissory note etc. There is no clarification on the nature of transactions. I also noticed that the issue of repayment was real and undoubted by the Assessing Officer. There is third party evidence by way of confirmation from both the persons i.e. Rizwan Khan and Farha Khan. There cannot be any dispute on the identity of the parties due to the undisputed fact of repayment of Rs.23,00,000/- to both the Khans (supra.). Creditworthiness and genuineness can be issues.

11. Considering the same, I am of the view that for this purpose, the matter should be examined afresh by the Assessing Officer in the remand proceedings. The assessee needs to demonstrate the genuineness of the transactions to the satisfaction of the Assessing Officer in the remand proceeding apart from the creditworthiness. The Assessing Officer shall grant reasonable opportunity of hearing heard to the assessee in accordance with set principles of natural justice. Accordingly, **ground No.1 raised in appeal by assessee is allowed for statistical purposes. Additional ground raised by assessee is also dismissed, at this stage.**

12. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 17<sup>th</sup> day of May, 2018.

Sd/-

(डी.करुणाकरा राव/D. Karunakara Rao)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 17<sup>th</sup> May, 2018.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals), Aurangabad.
4. The Pr. CIT-2, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

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