

आयकर अपीलिय अधिकरण “SMC” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 7047/Mum/2017

(निर्धारण बर्ष / Assessment Year 2009-10)

Ms. Arti M. Mohare H-3, Mohare Vithal Plot, Pushpa Colony, Daftary Road, Malad (E), Mumbai-400 097	Vs.	The Income Tax Officer, Ward 24(1)(3), C-13, 5 th Floor, Pratyaksha Kar Bhavan, Bandra East, Mumbai-400 051
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AJYPM9034F		

Assessee by : Hitesh P Shah, AR

Revenue by : Virender Singh, DR

Date of hearing: 14-05-2018 Date of pronouncement : 14-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-37, Mumbai [in short CIT(A)], in appeal No. CIT(A)-41/IT/316/11-12 dated 06.09.2017. The Assessment was framed by the Income Tax Officer, Mumbai Ward 24(1)(3) Mumbai (in short 'ITO') for the A.Y. 2009-10 vide order dated 15.12.2011 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



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2. The only issue in this appeal of assessee is against the order of CIT(A) in making addition of cash deposits in the Joint Bank Account of the assessee amounting to ₹ 15.55 lacs under section 68 of the Act. For this assessee has raised the following grounds: -

“1. The Hon. CIT(A) and Ld. A.O. erred in considering the whole Income u/s 68 in the hands of appellant in utter disregard of the facts and circumstances of the case.

2. The Hon. CIT(A) and Ld. A.O. ought to have appreciated the fact that the said Bank Account was a Joint Bank Account whole of the Deposits made in the said account did not belong to Appellant.

Without prejudice to the above Grounds of Appeal and iii the alternative, the Appellant prays that the following Grounds of Appeals may also be considered

3. The Hon. CIT(A) has erred in confirming the addition of Rs.15,55,000/- as unexplained Cash Credit without appreciating the facts and circumstances of the case.

4. The Hon. CIT(A) and the Ld. A.O. were not justified in disbelieving the amount received from Mr. Mahendra Mohare and Mrs. Vandana Mohare. merely because of nondisclosure of



Capital Gain by them especially when they had confirmed the said amount.”

3. Briefly stated facts are that according to AIR information, the AO received information that the assessee has deposited cash amounting to ₹ 20.45 lakhs in HDFC Bank account. As the assessee could not file any detail before the AO, he added that the entire cash deposit in the HDFC Bank account amounting to ₹ 20.45 lakhs. Aggrieved, assessee preferred the appeal before CIT(A), who partly accepted the claim of the assessee being cash deposit of 4.90 lakhs on account of sale of jewellery but has not accepted the claim for sale of tenancy rights of room at Malad for a sum of ₹ 9.75 lakhs, sale of residential plot at native in village Nizampur Taluka Mardgaon District, Raigad for a sum of ₹ 5 lacs and cash withdrawn re-deposited amounting to ₹ 60,000/-. Accordingly, he sustained the addition of ₹ 15.55 lacs. Aggrieved, now assessee is in second appeal before Tribunal.

4. I have heard the rival contentions and gone through the facts and circumstances of the case. I find from the facts of the case that the assessee has filed the copy of deed of assignment of tenancy rights, copy of agreement for sale of plots at native place, details of cash etc. Which were not examined by the authorities below despite the matter was remanded back to the Assessing Officer. The CIT(A) also admits that in case these documents are correct, the sale of residential plot at his native place and assignment of tenancy rights is to be remanded back to the file of the Assessing Officer. Also restore the issue of cash withdrawn redeposited amounting to ₹ 60,000/- to the file of the AO. Accordingly, I am of the view that let the AO re-examine the issue of (i) assignment of tenancy right of one at Malad, (ii) sale of plot at his native place and (iii) the cash withdrawal re-deposited in the bank account. The AO will go into



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the details to verify the fact and then pass a speaking order after allowing reasonable opportunity of being heard to the assessee. This appeal of assessee is allowed for statistical purposes.

5. In the result, the appeal Assessee is allowed for statistical purposes.

Order pronounced in the open court on 14-05-2018.

आदेश की घोषणा खुले मे दिनांक 14.05.2018 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 14-05-2018
Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI