



ITA.No.2079/Mum/2013
Amit Balkrishna Tawal
Assessment Year- 2007-08

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

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.2079/Mum/2013
(निर्धारण वर्ष / Assessment Year:2007-08)

Amit Balkrishna Tawal Room No.42,206/2 Seedat Mansion, 2 nd Floor Dr. BB.A. Road, Dadar (E) Mumbai-400 014	बनाम/ Vs.	Income Tax Officer-17(1)(1) Pratyakshkar Bhavan B.K.C., Bandra(E) Mumbai- 400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ADLPT-3307-R		
(आपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	N. Hemalatha, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	23/05/2018
घोषणा की तारीख / Date of Pronouncement	:	23/05/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee for Assessment Year [AY] 2007-08 contest the order of Ld. Commissioner of Income-Tax (Appeals)-17 [CIT(A)], Mumbai, *Appeal No. CIT(A)-17/IT-129/2011-12 dated 08/01/2013 qua* confirmation of certain additions. The assessment for impugned AY was framed by *Ld. Income Tax Officer-17(1)(1)*,



Mumbai [AO] u/s 143(3) of the Income Tax Act,1961 on 31/12/2009 wherein the income of the assessee has been determined at Rs.5.72 Lacs after certain additions / disallowances as against returned income of Rs.1.58 Lacs filed by the assessee on 31/12/2008. None has appeared for assessee despite being provided with several opportunities of being heard. Left with no option, we proceed to dispose-off the same on the basis of material available on record and after hearing Ld. Departmental Representative, *Ms. N.Hemalatha*.

2. The assessee has raised argumentative grounds of appeal which are not proper as per rules. However, in sum & substance, the assessee, is aggrieved by addition of Rs.3.99 Lacs u/s 68, addition of Rs.4.27 Lacs u/s 40A(3) and *ad hoc* addition of Rs.0.15 Lacs against *telephone and conveyance expenses*.

3.1 During impugned AY, the assessee was engaged in *labor job contract of painting, plumbing and civil work* primarily for small residences. Hence, the assessee's business was primarily cash business. As per *Annual Information Return [AIR]* information, it was found that the assessee made cash deposit of Rs.12.84 Lacs in one of the bank account maintained with *ICICI Bank Ltd., Mumbai* as against *job work* income of Rs.8.50 Lacs reflected by the assessee in the Profit & Loss Account. Against the same, the assessee reflected net profit of Rs.1,67,281/- which translated into *Net profit Rate* of 19.6%.

3.2 To substantiate the cash deposit, the assessee submitted *cash flow statement* which is extracted at *page-3* of the quantum assessment order. The assessee also filed *cash book summary*. After perusing the same, it was found that the assessee made cash withdrawals of Rs.7.13



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Lacs from the Bank, out of which Rs.5.89 Lacs were stated to be re-deposited into the Bank account. However, the Ld. AO worked out excess cash of Rs.3.99 Lacs and added the same to the income of the assessee. The *ad hoc* disallowances of Rs.15,000/- were made to account for personal element in *Telephone & conveyance expenses*.

4. Aggrieved, the assessee contested the same without any success before Ld. CIT(A) vide impugned order dated 08/01/2013 where Ld. CIT(A) while confirming the stand of Ld. AO, enhanced the assessment by Rs.4,27,350/- u/s 40A(3). Aggrieved, the assessee is in further appeal before us. The Ld. DR has placed reliance on the stand of lower authorities.

5. Upon careful consideration, we find that the assessee has withdrawn an amount of Rs.5.79 Lacs from the *ATM* of the Bank, which has not been considered by Ld. first appellate authority while arriving at cash balances for the simple reason that the same were withdrawn from the *ATM*. The same, under the circumstances, is not fair since the assessee was small labor contractor and was required to incur petty expenditure for the business. The possibility of re-deposit of the same into the Bank account also could not be ruled out keeping in view the nature of assessee's business. Therefore, by giving the credit of the same, we delete impugned addition of Rs.3.99 Lacs.

6. So far as the enhancement u/s 40A(3) for Rs.4,27,350/- as made by Ld. CIT(A) is concerned, the same is unwarranted since the material on record reveal that these payment primarily represent *petty loans* only and do not constitute *Business expenditure* so as to attract the provisions of Section 40A(3). Therefore, the same stand deleted.



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6. The *ad hoc disallowance* of Rs.15,000/- against *telephone / conveyance expenses* stand confirmed since the possibility of personal element in these expenditure could not be ruled out.

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

Order pronounced in the open court on 23rd May, 2018

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 23.05.2018
Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि □ प्रेषित/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