

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "I" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 218/MUM/2016  
Assessment Year: 2009-10**

Ismail Sahabjan Shaikh Room No. 3, Maharashtra Nagar No.1 Slougher House Compound, Bandra (E), Mumbai-400050. <b>PAN No. CCMPS1035D</b> <b>Appellant</b>	Vs.	Income Tax Officer - 19(3)(2), Mumbai Now assessed with ITO- 23(1)(2). <b>Respondent</b>
---	-----	--

Assessee by	:	Mr. K. Gopal, AR
Revenue by	:	Mr. Saurabh Kumar Rai, DR

Date of Hearing	:	15/05/2018
Date of pronouncement	:	23/05/2018

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the assessee. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-32, Mumbai [ in short 'CIT(A)'] and arises out of the assessment completed u/s 144 r.w.s. 147 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee/appellant read as under:

1. The Ld. CIT(A) has erred in not considering the facts and evidence on record and raise several questions first time in assessment without giving any opportunity of being heard. These questions were about ignorance of

existing laws and court order hence are mistake apparent hence plea of the assessee to be considered in right spirit and after considering full facts.

2. The Ld. CIT(A) has erred in considering capital receipt as income from other source.
3. The Ld. CIT(A) has erred in not considering the plea of assessee that this receipt of Rs.99,00,000/- is Hardship Allowance and being a "Capital Receipt" cannot be added u/s 68.

3. The appellant has moved an application dated 01.05.2018 before the Tribunal under Rule 29 of the ITAT Rules, 1963 to admit additional evidence. The Ld. counsel of the appellant files a Paper Book (P/B) containing (i) petition to admit additional evidences under Rule 29 of the Income Tax Appellate Tribunal Rules, 1963, (ii) copy of the letter dated 22.01.1975 issued by Maharashtra Housing Board to Ismail Shaikh pertaining to the allotment of plot at Bandra Kurla Complex (Bandra), (iii) copy of undertaking given by the Ismail Shaikh, (iv) copy of letter issued by the Maharashtra Housing Board to Ismail Shaikh for calling counterfoils pertaining to the tenements at Transit Camp, (v) copy of letter dated 15.02.1975 addressed to the Housing Commissioner, Maharashtra Housing Board, (vi) copy of the letter dated 11.07.1978 issued by Estate Manager (Maharashtra Housing Board) with respect to the rent recovery due from Ismail Shaikh along with charge sheet, (vii) copy of the letter issued by Bombay Housing Development Board along with annexures, (viii) copy of the submission dated 21.04.2015 filed before the Ld. CIT(A) and (ix) copy of the letter dated 13.12.2016 addressed to HDIL for asking documents against surrendering tenancy right at Plot No. 6 at Bandra Kurla Complex.

The Ld. counsel submits that the documents compiled at serial no. 2 and 8 were available before the Ld. CIT(A) whereas documents compiled at serial no. 3 to 7 and 9 are being produced for the first time before the Tribunal. It is stated that the appellant is illiterate and he cannot even sign as all along in the documents he is putting his thump impression for signature. It is submitted that the additional evidence produced by it at serial no. 3 to 7 and 9 have got direct bearing on the present appeal. Reliance is placed by him on the decision in *Prabhavati Shah v. CIT* 231 ITR 1 (Bom) and *Abhay Kumar* 63 ITD 144 (Pat) (TM) for admission of the above additional evidence.

4. *Per contra*, the Ld. DR submits that nothing prevented the appellant in producing the above documents either before the AO or the Ld. CIT(A). It is stated by him that the assessee had not filed his return of income for the impugned assessment year. After receipt of certain information, the case was re-opened by the AO by issuing notice u/s 148 on 20.03.2013. As there was no compliance in the assessment proceedings, the AO completed the assessment u/s 144 r.w.s. 147 on 10.03.2014.

It is also stated that the appellant could have produced the said documents before the Ld. CIT(A). However, he failed to do so.

The Ld. DR further states that the documents pertain to the year 1975 and 1978 and could have been produced before the AO or the Ld. CIT(A), whereas the appellant failed to do so.

It is further submitted by him that the nature of payment as per the said documents is not clear.

5. We have heard the rival submissions and perused the relevant materials on record. In a nutshell the facts are that during the course of assessment proceedings of Shri Kewal Anan Patil, statement of Mr. Ismal Shaikh was recorded u/s 131 of the Act. The AO found that the assessee had advanced a loan of Rs.11,00,000/- to Shri Patil. In his statement, the assessee had stated that during the financial year 2008-09 relevant to the assessment year 2009-10, he had received Rs.99,00,000/- from M/s Dewan Housing for surrendering Room No. 602, Plot No. 6, Bharat Nagar, Bandra (East), Mumbai 400051. The AO made an addition of the above sum of Rs.99,00,000/- as unexplained income. In appeal, the Ld. CIT(A) confirmed the action of the AO. We find that being illiterate, the appellant was not in a position to appreciate the issue and take remedial measures. We are of the considered view that documents filed by the appellant in the P/B at serial No. 3 to 7 and 9 have got direct bearing on the addition of Rs.99,00,000/- made by the AO as unexplained income.

In *Tek Ram (Dead) Through LRS v. CIT* (2013) 357 ITR 133 (SC), the additional evidences were first time produced before the Hon'ble Supreme Court, which were admitted by the Supreme Court stating that the additional documents are of some relevance on the issue. The matter was set aside to the High Court to decide afresh.

If evidence produced by the assessee is genuine, then assessee should not be denied opportunity of it being produced for the first time before the appellate authority

In view of the above facts and position of law, we admit the additional evidence filed by the appellant. However, we also keep in mind that where an additional evidence has been allowed to be

adduced, the interest of justice demands that the other side must be given an opportunity to explain or rebut such additional evidence as held in *Smt. Urmila Ratilal v. CIT* (1982) 136 ITR 797, 799 (Guj); *Hiralal Devdutt Jagadhari v. Addl. CIT*, (1980) 18 CTR (Punj) 96, 98; *Uttam Construction Co. v. CIT* (1985) 156 ITR 459, 462 (MP).

In view of the above reasons, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make a *de novo* order after giving reasonable opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the AO.

6. In the result, the appeal is allowed for statistical purposes.

**Order pronounced in the open Court on 23/05/2018.**

Sd/-  
( SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 23/05/2018

*Rahul Sharma. Sr. P.S.*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**