



ITA No.1992/Mum/2012
Arman Maroof Khan
Assessment Year-2007-08

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

श्री सी .नागेंद्र प्रसाद, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI C.N. PRASAD, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./I.T.A. No.1992/Mum/2012
(निर्धारणवर्ष / Assessment Year:2007-08)

Arman Maroof Khan 701, Sea wood Garden, A-Wing Sector-17, Palm Beach Road Sanpada, Navi Mumbai-400 705	बनाम/ Vs.	Income Tax Officer-22(2)(1) 3 rd Floor, Tower No.6 Vashi railway station complex Navi Mumbai-400 705
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.AKZPK-7745-D		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)
Revenue by	:	Rajesh Kumar Yadav,Ld.DR
Assessee by	:	Prateek Jain, Ld.AR
सुनवाईकीतारीख/ Date of Hearing	:	13/07/2018
घोषणाकीतारीख / Date of Pronouncement	:	25 /07/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2007-08 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-33 [CIT(A)], Mumbai, *Appeal No.CIT(A)-33/IT/1320/09-10 dated 13/01/2011 qua* confirmation of certain additions. The assessment for impugned AY was framed by *Ld. Income Tax Officer-22(2)(1) u/s 143(3)* of the Income



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Tax Act, 1961 wherein the income of the assessee was determined at Rs.26.99 Lacs as against returned income of Rs.2.21 Lacs filed by the assessee on 11/01/2008. The assessee being *resident individual* was engaged as *Air Conditioning Repair Contractor & transport commission agent* under proprietorship concern namely *Supreme Cooling Services*.

2.1 The registry has noted that the appeal has been filed with a delay of 371 days. The Ld. Authorized Representative for Assessee [AR], *Shri Prateek Jain* has pleaded for condonation of the same on the strength of condonation petition dated 26/03/2012 as supported by assessee's affidavit dated 24/03/2012. The delay has been attributed to *negligence of the representing counsel* of the assessee namely *Shri Tarun Tripathi* in filing the appeal in time. In support, a letter from the representing counsel has also been placed on record wherein the counsel has attributed the delay to bad health conditions being faced by him. The condonation has been vehemently opposed by Ld. Departmental Representative [DR], *Shri Rajesh Kumar Yadav* by pleading that each days delay was required to be explained and there was no sufficient cause demonstrated by the assessee in the condonation petition.

2.2 After hearing rival contentions, we find that the explanation furnished by Ld. AR before us , in this regard, is not very plausible explanation and do not convince us to condone the huge delay. However, keeping in view the fact that the representing counsel was facing adverse medical conditions and the assessee was an individual engaged as small contractor and



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keeping in view the principle of natural justice, we condone the same and proceed to dispose-off the appeal on merits.

3.1 During assessment proceedings, pursuant to certain *Annual Information Return [AIR]*, it was noted that the assessee deposited cash of Rs.11.25 Lacs in an account held with *Oriental Bank of Commerce, Chembur Branch*. The said account was not reflected in the financial statements submitted by the assessee. The statement of the assessee was recorded u/s 131, which is extracted on *pages 6 to 9* of the quantum assessment order, where the aforesaid fact was admitted by the assessee. The source of the cash deposit was attributed to sales proceeds of the house stated to be sold by the assessee during impugned AY. Upon perusal of the unregistered sale agreement, it was found that the house was sold for Rs.8.67 Lacs. However, no document to support the purchase price could be filed by the assessee, which resulted into an addition of Rs.8.67 Lacs as *Short Term Capital Gains* in the hands of the assessee. The balance cash deposit of Rs.2.58 Lacs was treated as unexplained cash credit u/s 68.

3.2 The assessee, in the similar manner, could not substantiate the cash deposit of Rs.10.56 Lacs & Rs.66.98 Lacs in two another bank accounts held with *ICICI Bank*. The same resulted into additions of Rs.6.06 Lacs & Rs.7.40 Lacs respectively, being peak of the cash deposited in these accounts. Finally, the income was assessed at Rs.26.99 Lacs as against returned income of Rs.2.21 Lacs.



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4. Aggrieved, the assessee contested the same without any success before Ld. CIT(A) vide impugned order dated 13/01/2011 wherein the stand of Ld. AO got confirmed. Against the same, the assessee is in further appeal before us.

5. The Ld. AR, drawing our attention to the documents placed in the *paper-book* contested the additions as sustained by first appellate authority. The same has been controverted by Ld. DR by submitting that the assessee miserably failed to substantiate the transactions and the lower authorities were justified in making the impugned additions.

6. We have carefully heard the rival contentions and perused relevant material on record. So far as the computation of capital gains is concerned, we find that apparently the assessee has purchased the house under question vide unregistered agreement dated 07/04/1995 for a consideration of Rs.3.82 Lacs. The Ld. first appellate authority accepted the sale value as reflected in the unregistered sale agreement but did not recognize the unregistered purchase document which is not justified since the property under question must have been acquired by the assessee by some mode of acquisition. Since the purchase agreement was not before Ld. AO, we deem it fit to restore the matter back to the file of Ld. AO for reconsideration of the same with a direction to the assessee to furnish requisite documents in this regard. This ground stand allowed for statistical purposes.

7. So far as issue of cash deposit in three bank accounts is concerned, we find that the account held with *Oriental Bank of Commerce* was never



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reflected by the assessee in financial statements whereas huge cash was deposited by the assessee in other two accounts held with ICICI Bank as against meager turnover of Rs.8.88 Lacs. The complete onus to explain the source of cash lies on assessee. The Ld. AR has submitted that cash has been sourced from earlier withdrawals made from the aforesaid accounts as supported by the *cash flow statements*. Therefore, on factual matrix, we remit the issue back to the file of Ld. AO to verify the same and re-adjudicate the issue with a direction to the assessee to substantiate the cash deposited by him in the three bank accounts with documentary evidences and explanations. These grounds stands allowed for statistical purposes.

8. Resultantly, the appeal stand allowed for statistical purposes.

Order pronounced in the open court on 25th July, 2018

Sd/-

(C.N.Prasad)
न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25.07.2018

Sr.PS:-Thirumalesh



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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त (अपील)/ The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधिमुंबई ,आयकरअपीलीयअधिकरण ,/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard File

आदेशानुसार/ BY ORDER,

**उपसहायकपंजीकार/ (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण ,मुंबई / ITAT, Mumbai**