

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

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE BENCH “SMC”, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं./ ITA No.1518/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Parag Hanumant Tambe,  
16/6, Raghudurga Apartments,  
Opp. Karve Road, Erandwane,  
Pune-411 004.

PAN : ACRPT9327L

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward 3(1), Pune.

.....प्रत्यर्थी / Respondent

Appellant by : Shri Pratik B. Sandbhor

Respondent by : Shri M.K.Verma

सुनवाई की तारीख / <b>Date of Hearing : 09.10.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement : 22.10.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM**

The appeal filed by the assessee is against the order of Commissioner of Income Tax (Appeals)-2, Pune dated 09.01.2017 relating to assessment year 2013-14 passed under section 143(3) of the Income Tax Act, 1961 ( in short ‘the Act’).

2. The assessee has raised following grounds of appeal:-

*“1. On the facts and in the circumstances of the case, the Ld.CIT(A) has erred in sustaining the addition of Rs.1,50,000/- that represents rent credited to capital account of the appellant, grossly ignoring the factual submission that this amount constitutes reimbursement of rent in respect of alternative accommodation provided by the builder, on account of development of appellant's property and thereof is not income in the hands of appellant.*

*2. On the facts and in the circumstances of the case the Ld.CIT(A) has erred in disregarding the gross profit disclosed by the appellant @ 14.84% and erroneously estimating the same @ 24.78% without there being any justification for rejecting the books result.*

*3. On the facts and in the circumstances of the case and without prejudice to aboveground No.2 the Ld.CIT(A) has erred in not considering the fact that the appellant is a small assessee eligible for presumptive taxation u/s.44AD, despite of which appellant has himself declared a net profit margin @ 13.79% as against mandatory 8% of turnover u/s. 44AD.*

*4. On the facts and in the circumstances of the case the Ld.CIT(A) has erred in sustaining the addition of Rs.27,68,500/- u/s. 68 assuming and holding that it is gift from appellant's father overlooking the fact that the same is substantiated with confirmation and that the amount is paid by crossed cheque.*

*The above grounds of appeal may kindly be allowed to be amended, altered or modified in the interest of natural justice.”*

3. The issue raised in the ground of appeal No.1 is against addition of Rs.1,50,000/-.

4. Briefly in the facts of the case, during the year under consideration, the assessee had furnished return of income declaring total income of Rs.3,59,700/-. The assessee was engaged in the business of trading of milk. The case of the assessee was picked up for scrutiny. The Assessing Officer noted that sum of Rs.1,83,333/- was credited to the capital account on account of rent received. However, the assessee had not included the same in the return of income filed. The assessee was asked to explain the reason. In reply, the assessee pointed out that he had given the property for development to the builder and in turn, the builder had offered rent free accommodation to the assessee. He pointed out that the builder had shown it as expenditure and the person, from whom he had taken the premises on rent, had shown it as income and there was no income in the

hands of assessee. The Assessing Officer also noted that the assessee had claimed the credit for the TDS. The Assessing Officer, thus, added the sum of Rs.1,83,333/- to the total income of the assessee.

5. Aggrieved by the order of Assessing Officer, assessee filed appeal before the CIT(A) who restricted the addition to Rs.150,000/-.

6. Now, the assessee is in appeal before the Tribunal against the findings of CIT(A).

7. The Ld. AR for the assessee submitted that amount received is not the income in the hands of the assessee and no part of the same is to be assessed in his hands. He also pointed out that it was reimbursement of expenditure. The Ld. AR for the assessee was asked to file details of month-wise reimbursement and rent paid during the year. In reply, assessee furnished information as per which, the reimbursement of rent was Rs.1,83,334/- and rent paid was Rs.1,51,000/-. The Ld. AR for the assessee stated that though there was cash reimbursement of Rs.32,334/- but the same was not the income of the assessee.

8. The Ld. DR for the Revenue has placed reliance on the orders of Authorities below.

9. On perusal of the record and after hearing both the Authorized representatives, the first issue arising in the present appeal is with regard to the amount received by assessee from developer. As per development agreement, the assessee was entitled for rent free accommodation for the period of development. However, the assessee received sum of Rs.1,83,334/- from builder against which, the assessee paid rent to the flat owners totaling Rs.1,51,000/-. On the rent paid, the developer had deducted tax at source which was claimed by

assessee as part of taxes paid. The issue which arises is assessability of amount received by assessee from developer. The case of the assessee is that the said amount is reimbursement of rent paid and not taxable in his hand. There is merit in the plea of the assessee in this regard. However, the balance cash reimbursement, if any, is to be added in the hands of the assessee as his income for the year. As per details filed, the total rent paid was Rs.1,51,000/- against which the assessee had been reimbursed the sum of Rs.1,83,334/-. Hence, the balance of Rs.32,334/- is to be added as income of the assessee. Accordingly, the Assessing Officer is directed to include the sum of Rs.32,334/- as income in the hands of the assessee. Accordingly, ground of appeal No. 1 raised by assessee is partly allowed.

10. The ground of appeal No. 2 is against the addition made on account of gross profit on the business receipts of the assessee. As pointed out earlier, the assessee was carrying on trading milk. The assessee had shown total sales of Rs.33,71,840/- declaring gross profit of Rs.5,00,530/-, GP rates @ 14.84% of the total turnover. The Assessing Officer noted that the assessee was dealing in milk which was a perishable item; the assessee had not shown any stock of the milk with him. From the books of accounts, the Assessing Officer also noted that the assessee was not accounting for the sales correctly and the surplus between sales and purchases from month to month, was not comparable. The Assessing Officer summarized month-wise surplus between sales and purchases as generated from books of account which is tabulated and reproduced at page 5 of the assessment order. The Assessing Officer noted that the assessee was not showing the surplus/margin correctly and GP rates varies month-wise; he adopted average margin ratio of @24.78% and the difference of Rs.3,35,068/- was added to the income of the assessee.

11. The CIT(A) reduced the said GP rate @20% on the total turnover during the year.

12. Now, the assessee is in appeal before the Tribunal against the order of CIT(A).

13. The Ld. AR for the assessee pointed out that as against GP rates declared by the assessee @14.84%, estimation made by the CIT(A) @ 20%, was very high. He further pointed out that in the case of small assessee who was running trade of milk, higher GP rates in the total turnover should not be applicable.

14. The Ld. DR for the Revenue has placed reliance on the order of CIT(A).

15. On perusal of the record and after hearing both the Authorized representatives, the issue which arises by way of ground of appeal No. 2 & 3 is against estimation of GP rate of the milk business carried on by the assessee. A perusal of the tabulated details at page 5 of the assessment order reveals variation of GP rates from negative up to 40%. The assessee is engaged in trading of perishable item i.e. milk and the said variation of GP rate, is not acceptable. Hence, it is a fit case for estimation of GP rate since the assessee has not maintained books of account correctly. Accordingly, I direct the Assessing Officer to restrict the addition by applying GP rate of @ 18% on the total turnover. Thus, grounds of appeal No. 2 and 3 raised by assessee are partly allowed.

16. With regard to the ground of appeal No.4, the Assessing Officer noted that sum of Rs.27,68,500/- was credited to the capital account of the assessee. The assessee explained that his father gave him the said amount as gift for purchase of flats. He had shown it as addition to capital account. However, the assessee failed to furnish any documentary proof in this regard. No confirmation was filed

for the alleged gift and no copies of income tax return and bank statement of his father was submitted by the assessee. Hence the Assessing Officer treated the said amount as unexplained credit in the hands of the assessee and addition of Rs.27,68,500/- was made.

17. The CIT(A) upheld the said addition made by the Assessing Officer.

18. The Ld. AR for the assessee during the course of hearing has furnished additional evidences in the form of bank statement of his father of Bank of Maharashtra which are placed at page 57 to 59 of the paper book, bank statement of Pune People's Co-Op. Bank Ltd. which are placed at page 60 to 66 of the paper book, income tax return of his father for assessment year 2012-13 which are placed at page 67 to 69 of the paper book and also confirmation of gift from his father which is placed at page 70 of the paper book along with application for admission of additional evidences. He also filed bank statement of Bank of Baroda. Referring to the additional evidences, Ld. AR pointed out that the sum of Rs.17,68,000/- was paid by his father to the assessee through cheques during the year and the balance sum of Rs.10,00,000/- was directly paid to the developer. He thus stressed that since it was gift received from his father, then the same merits to be accepted. The Ld. AR for the assessee also furnished computation of income of assessee's father along with Balance Sheet wherein the said bank accounts had been disclosed.

19. The Ld. DR for the Revenue heavily opposed the admission of additional evidence.

20. On perusal of the record and after hearing both the Authorized representatives, the issue raised by assessee in ground of appeal No. 4 is against addition of Rs.27,58,000/-. The assessee stated that he had received gift from his

father for purchase of flat. However, assessee could not furnish evidence of creditworthiness of his father neither before the Assessing Officer nor before the CIT(A). However, now, by way of additional evidences, the assessee has furnished the evidences before me which are placed in the paper book at page 57 to 70 and copy of bank statement of Bank of Baroda has also been filed. The assessee moved an application for admission of additional evidence which according to him should be admitted as it goes to the root of the issue. There is merit in the plea of the assessee especially where the alleged gift has been received from his father. Hence, additional evidences filed by the assessee, are admitted. The additional evidences consists of the bank statement of his father where different cheques have been issued totaling Rs.17,68,000/-. Undisputedly, the whole amount has been paid through banking channels to the assessee except the sum of Rs.10,00,000/-. With regard to the said sum of Rs.10,00,000/-, claim of the assessee was that it was directly paid to the developer. However, the assessee could not furnish any evidence regarding debit of Rs.5,00,000/-. In view of the additional evidences filed by the assessee before me, specially where transaction has been made through banking channels and gift having been received from family member i.e. father of the assessee, additional evidences filed by the assessee should be accepted while deciding the issue in respect of payment of Rs.17,68,000/- and payment of Rs.5,00,000/- to the builder directly. However, the Assessing Officer is directed to verify the aforesaid documents in order to adjudicate the creditworthiness of the person and also genuineness of the transaction. The Additional evidence filed by assessee before me would be filed before Assessing Officer who shall verify the claim of the assessee and after affording reasonable opportunity of hearing to the assessee in accordance with law, decide the issue. The assessee is unable to furnish any document with regard to Rs.5,00,000/- which he claims that his father had directly paid to the builder. In the absence of the any documentary evidence available of Rs.5,00,000/- being paid by father of the assessee to the builder or to the

assessee, such amount is added in the hands of the assessee. Hence, the sum of Rs.5,00,000/- is added as income of the assessee and in respect of the balance amount, the issue is set aside to the file of Assessing Officer who shall determine the claim of the assessee and decide the issue accordingly. Hence, ground of appeal No. 4 raised in appeal by assessee is allowed for statistical purpose.

21. In the result, appeal of the assessee is partly allowed.

Order pronounced on 22<sup>nd</sup> day of October, 2018.

Sd/-  
(SUSHMA CHOWLA)  
न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22<sup>nd</sup> October, 2018.

SB

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

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

// True Copy //

आदेशानुसार / BY ORDER,

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