

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.3011/PUN/2017
निर्धारण वर्ष / Assessment Year: 2008-09

Dr. Ramchandra Pandurang Shinde,
Anand Apartments, Flat No.3,
S.No.12/2, Plot No.23,
Sangvi, Haveli,
Pune 411027

PAN : ADXPS4372B

.... अपीलार्थी/Appellant

Vs.

The Income Tax Officer,
Ward-5(1), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Dilip S. Rahurkar
प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख /
Date of Hearing : 26.12.2018

घोषणा की तारीख /
Date of Pronouncement: 28.12.2018

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of Commissioner of Income Tax (Appeals) – 1, Pune dated 26.09.2017 relating to assessment year 2008-09 against order passed 143(3) of the Income Tax Act 1961 (in short 'the Act').

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

“1. Ld.CIT Appeal-1, Pune has erred in dismissing appeal and confirming additions to the total income of Rs.10,00,000/- without appreciating facts of the case in proper perspective.

2. The appellant craves leave to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal if deemed necessary at the time of hearing of the appeal.

3. The appellant craves leave to produce such further evidence as and when occasion demands.

3. The only issue raised in the present appeal is against the addition made by the Assessing Officer under section 68 of the Act of Rs.10 lakhs.

4. Briefly in the facts of the case, the case of the assessee was picked up for scrutiny. The Assessing Officer noted that the assessee had purchased the land at Dhumalwadi, Taluka Koregaon, Dist. Satara for a consideration of Rs.32 lakhs. The assessee explained the source of investment made in the purchase of the said land and claimed to have obtained a loan from his father-in-law Shri S. G. Kadam for Rs.10 lakhs. The assessee filed PAN of his father-in-law. But the Assessing Officer did not accept the same as the assessee failed to establish the credit worthiness of the creditor and hence, the genuineness of the transaction was not proved. The Assessing Officer held that mere confirmation by the creditor was not sufficient since the assessee had failed to file the copies of the income-tax returns filed by the creditor explaining the source from which the aforesaid loan was given. The assessee also claimed that the loan amount was repaid by cheque but the same was held to be not sacrosanct by the Assessing Officer and hence, the addition of Rs.10 lakhs was made in the hands of the assessee under section 68/69 of the Act.

5. Before the CIT(A), the assessee furnished the bank statement of his father-in-law which was received from him from Belgaum, Karnataka. The assessee filed the same as an additional evidence on the ground that when the same was received from his father-in-law and filed before the Assessing Officer, he had already passed the assessment order under section 143(3) of the Act. The CIT(A) in view of Rule 46A of the Act confronted the loan confirmation along with the copies of the bank account wherein payment of Rs.10 lakhs was made through cheque to the assessee was reflected. The Assessing Officer noted in the remand report that the assessee had appeared in the remand proceedings and furnished the bank passbook of Shri S.G. Kadam and also the copies of the agreements of development in which, he as a promoter was the consenting party on behalf of the society. The Assessing Officer was of the view that where the assessee had not furnished the returns of income of his father-in-law who was a retired person since last 15 years, the deposits in the bank account are not proved and hence, he did not accept the explanation of the assessee. The assessee in the rejoinder before the CIT(A) stressed that the entries in the bank passbook of Shri S.G. Kadam clearly reflect the sum of Rs.10 lakhs and the subsequent withdrawal by cheque No.521195 on 11-06-2007, which was deposited to the other account. It was also evidenced from the said bank account that the said amount was debited in the name of the assessee. The said amount was paid out of the available balance in the bank account out of deposits of Rs.28 lakhs by way of three cheques. The assessee also filed the bank account with Bank of Maharashtra at Karve Road Branch, Pune wherein the said cheque No.521195 was deposited. The assessee also explained the source of the deposit in the account of his father-in-law which was received on account of transaction entered into by him on 20-02-2007 and also furnished the registered agreement

in respect of the said amount. However, the CIT(A) did not accept the plea of the assessee as per Para No.11 of the appellate order and questioned the source of source in the hands of the assessee. The CIT(A) made observations in respect of explanation of the assessee, vis-à-vis the source of deposits in the account of Shri S.G. Kadam and upheld the addition made by the Assessing Officer. The assessee is in appeal against the order of CIT(A).

6. The only issue raised before the Tribunal is against loan of Rs.10 lakhs received by the assessee from his father-in-law Shri S.G. Kadam. The said transaction was through banking channels. The assessee had in the first instance filed the confirmation letter and also PAN of his father-in-law. The explanation of the assessee was that, initially his father-in-law was staying in Pune and in later years he settled in Belgaum town of Karnataka State. However, he had the Bank account in Pune in which certain deposits were made through cheques which were received on behalf of Cooperative Society in which he was a promoter and the advances were received. All these advances were received in cheques. Out of the aforesaid deposits, the loan creditor advanced sum of Rs.10 lakhs by cheque through banking channel to the assessee. Necessary entries were clearly available in the bank account of the loan creditor and the evidences were furnished by the assessee in this regard before the authorities below. In such a scenario, where the assessee has proved the identity of the creditor, credit worthiness of the creditor, then the genuineness of the transaction cannot be objected on the ground that source of source has not been proved by the assessee. The Courts have time and again held that when complying the conditions of section 68 of the Act, it is not open to the recipient of the loan to establish the source of source. Accordingly, I find

no merit in the orders of the authorities below and the same are reversed. The addition of Rs.10 lakhs made under section 68 of the Act is thus deleted.

7. In the result, the appeal of the assessee is allowed.

Order pronounced on this 28th day of December, 2018.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 28th December, 2018

Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-1, Pune;
4. प्रथम आयकर आयुक्त / The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //TRUE COPY//

Senior Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	26-12-18	Sr.PS
2.	Draft placed before author	27-12-18	Sr.PS
3.	Draft proposed & placed before the second member		AM
4.	Draft discussed/approved by Second Member.		AM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		