

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.3078/PUN/2017**
निर्धारण वर्ष / **Assessment Year : 2009-10**

Smt. Hemlata Govinda Attarde,
52/2, Parshwapuram Apartment,
Behind Omkareshwar Mandir,
Jaynagar, Jalgaon-425001.

PAN : AGQPA1153N

.... अपीलार्थी/Appellant

Vs.

ITO, Ward- 1(1),
Jalgaon.

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Smt. Deepa Khare
प्रत्यर्थी की ओर से / Respondent by : Shri M. K. Verma

सुनवाई की तारीख / Date of Hearing : 13.02.2019	घोषणा की तारीख / Date of Pronouncement: 01.03.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-2,
Nashik dated 12.10.2017 for the Assessment Year 2009-10.

2. The grounds raised by the assessee are as under :-

“1] The learned CIT(A) erred in law and on facts in dismissing the appeal without appreciating the correct facts and confirming the addition of Rs.9,00,000/- u/s. 68 of the I T Act. Therefore, additional may please be deleted.

2] The learned CIT(A) erred in law and on facts in confirming the addition of Rs.9,00,000/- u/s. 68 of the I T Act, even though all the ingredient requires to prove the credits have been full-filled by the appellant. Therefore, addition may please be deleted.

3] The Appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of the appeal, if deemed necessary at the time of hearing of the appeal.”

3. Briefly stated the relevant facts include that the assessee is an individual and is engaged in the business of manufacturing and selling of garments. The assessee filed her return of income declaring total income of Rs.4,50,638/-. At the end of the assessment, the Assessing Officer made an addition of Rs.9,00,000/- on account of unexplained cash credit u/s 68 of the Act. The Assessing Officer added the same to the total income of the assessee. The CIT(A) confirmed the said addition and dismissed the appeal of the assessee.

4. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted grounds of appeal.

5. Before me, at the outset, ld. Counsel for the assessee submitted that this is a case of making addition on account of cash deposits of Rs.9 lakhs u/s 68 of the Act. The assessee deposited the said cash of Rs.9 lakhs on 14.04.2008. It is the submission of the assessee that the said amount was received from her brother, Shri Viniyak Atterde in the form of loan. There are confirmation letters available on record to support the transaction and its genuineness. The assessee further submitted that the loan taken by Shri Viniyak Atterde is the source of the said cash deposit. The Assessing Officer did not satisfy with the said explanation of the assessee and made an addition of Rs.9 lakhs on account of unexplained cash credit u/s 68 of the Act. The CIT(A) confirmed the same.

6. Bringing my attention to the Paper Book, ld. Counsel submitted that, although the loan account of Shri Viniyak Atterde was furnished before the revenue authorities showing the transfer of loan from the said loan account to some other bank account of Shri Viniyak Atterde, the Assessing Officer did not appreciate the evidence so furnished. Therefore, the Assessing

Officer did not have any occasion to know the money was transferred originally from the loan account of Shri Viniyak Atterde to SB account of Shri Viniyak Atterde and withdrawal of cash by Shri Viniyak Atterde from the SB account and gave a loan to the assessee. In these backgrounds, ld. Counsel for the assessee brought my attention to the “**additional evidences**” and submitted that the same is furnished for the first time before the Tribunal and made a written request to admit the said additional evidences in this regard. For the sake of completeness, the said additional evidences are extracted hereunder :-

“The issue involved in the above appeal pertains to addition on account of Rs.9,00,000/- as loan taken by assessee from her brother Mr. Vinayak Atterde u/s 68 as unexplained. The appellant, in support of the loan, filed Copy of Return of Income of creditor, Confirmation of the creditor, Affidavit of the creditor and statement of loan a/c from Rukmini Urban Coop Credit Soc Ltd. The loan statement was furnished to prove the source from which the Brother had given to the appellant.

The ld. CIT(A) held that there are no withdrawals from the Loan account of the creditor. Since the ld. CIT(A) made this basis for confirming the addition, the appellant is placing the Savings A/c Extract with Rukmini Urban Credit Coop Society for a period from 1.4.2007 to 31.3.2008 wherein the amounts transferred from Loan Account to the Savings account are reflected. At the same time, cash withdrawals are also reflected. The total cash withdrawals are reflected of Rs.42,41,807/- during the year.

In order to meet the point of ld. CIT(A) of no withdrawals, the additional evidence is placed before Your Honour. It is prayed that in the interest of justice, the same may kindly be considered and decided on merits.”

7. On hearing the ld. DR for the Revenue and considering the above **additional evidences**, I am of the opinion the SB account of Shri Viniyak Atterde, the creditor of the assessee, assumes from significant for deciding the issue meaningfully. Therefore, the said additional evidences are admitted and referred to the file of the Assessing Officer for deciding the issue afresh. The Assessing Officer shall examine the cash flow statement of loan account to the SB account of Shri Viniyak Atterde and if the amounts and debts are matching to the cash received by the assessee as loan, claim of the assessee, may be allowed after examining the documents, additional evidences and the submissions of the assessee in the remand proceedings. Accordingly, the issue is remanded to the file of the Assessing

Officer for deciding the issue afresh after giving a reasonable opportunity of being heard to the assessee. Thus, the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on this 01st day of March, 2019.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 01st March, 2019.
Sujeet

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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