

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 एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / **ITA No.555/PUN/2018**
निर्धारण वर्ष / **Assessment Year : 2011-12**

Suresh Babanrao Jadhav,
Flat No.901, Spandan D-12,
Popularnagar, Warje,
Pune-411058.

PAN : AAYPJ2467L अपीलार्थी/Appellant

Vs.

ITO, Ward-13(2),
Pune. प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Shri M. K. Verma

सुनवाई की तारीख / Date of Hearing : 25.02.2019	घोषणा की तारीख / Date of Pronouncement: 18.03.2019
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-8,
Pune dated 27.12.2017 for the Assessment Year 2011-12.

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

“1) Ld. CIT Appeal Pune has erred in dismissing appeal and confirming additions to the total income of Rs.5,00,000/- without appreciating facts of the case in proper perspective and ignoring that the issue was never read in proceeding u/s 263 by C.I.T. Pune.

2) Ld. CIT Appeal Pune has erred in ignoring that the confirmation of Rs.5.00 lacs submitted in the original proceeding u/s 143(3) and were accepted by the I.T. Officer.

3) 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.

4) The appellant craves leave to produce such further evidence as and when occasion demands.”

3. Briefly stated the relevant facts include that the assessee is an individual and filed his return of income on 27.07.2011 declaring total income of Rs.3,19,230/-. In the original assessment, the Assessing Officer made an addition of Rs.40,550/-. There was an audit objection and the CIT(A), invoking the provisions of section 263 of the Act, directed the Assessing Officer to make a fresh assessment. Accordingly, the Assessing Officer made a fresh assessment dated 23.08.2016 after making addition of Rs.5,00,000/- on account of cash credit and the interest income of Rs.40,550/-. The CIT(A) confirmed the above addition and dismissed the appeal of the assessee.

4. Aggrieved with the said order of the CIT(A), the assessee is in appeal against the said addition of Rs.5,00,000/- on account of cash credit.

5. Before us, there was none to represent the assessee despite service of notice. On considering the smallness of the issue, we proceed to hear the appeal with the assistance of ld. DR. Ld. DR for the Revenue submitted that the assessee is a salaried employee and he does not maintain the books of account. During the year, the assessee sold the plot of land along with co-owners and his share comes to Rs.9.5 lakhs. The resultant capital gains were reinvested as per the provisions of section 54F of the Act. The Assessing Officer accepted the said claim of the assessee. However, the Assessing Officer noticed that the assessee took loan of Rs.50,000/- each from 10 persons totalling to Rs.5,00,000/-. The said amount was deposited in Janseva Sahakari Bank Ltd. as fixed deposits. The assessee produced confirmation letters, names and addresses of the creditors. However, the assessee failed to produce the PAN numbers and bank statements of the creditors. Therefore, the Assessing Officer made addition on account of cash credit. The Assessing Officer also initiated the penalty proceedings

u/s 271D of the Act read with section 269SS of the Act. The CIT(A) confirmed the addition as per discussion given in para 9 of his order and the same is extracted hereunder :-

“9. I have carefully perused the above reply of the appellant. I find that the appellant has not made any submissions, oral or written, to substantiate the cash unsecured loans of Rs.5,00,000/-. The reply of the appellant is totally silent on the merits of the addition. On the other hand, the A.O. has categorically given a finding that the confirmations submitted by the appellant in respect of the unsecured loans do not mention the PAN of the donor. The A.O. further held that copy of their bank account or any other details to support the transactions was also not filed by the appellant. Therefore, he added back Rs.5,00,000/- as unexplained cash credits. I do not find any fault in the order of the A.O. as the appellant had failed to establish the identity and creditworthiness of the concerned parties, as well as the genuineness of the transactions before the A.O. In the absence of all these three ingredients, the explanation of the appellant could not have been accepted by the A.O. Even during the course of appellate proceedings, the appellant has not submitted any additional evidence or written submissions or documentary evidence to substantiate his claim. Accordingly, the addition of Rs.5,00,000/- made by the A.O. is upheld. Ground No.1 is Dismissed.”

6. On hearing the ld. DR, ongoing through the submissions extracted by the Assessing Officer and the CIT(A) in their respective and the evidences furnished in the Paper Book, we find the assessee furnished the confirmation letters, although there is a problem with respect to the PAN numbers of the creditors. The assessee could not furnish the PAN numbers of the creditors on one side and bank statements of the creditors on the other. It is a fact that the Assessing Officer made addition of Rs.5,00,000/- involving 10 creditors as unexplained cash credit u/s 68/69 of the Act. In our view, these sections are applicable when the books of account are maintained by the assessee and entry appears in the books. When such requirement is not there, Assessing Officer's decision in invoking the said provisions becomes unsustainable. However, on perusal of the order of the CIT(A), this angle of an argument was not taken by the assessee. As such, the assessee failed to file relevant decisions to support his argument relating to sustainable of the addition of Rs.5,00,000/- u/s 68/69 of the Act. Therefore, we are of the opinion, the matter should travel to the file of the CIT(A) for want of a speaking order after considering the above stated

arguments raised by the assessee before us. Further, we direct the CIT(A) to entertain the evidences, if any, regarding the identity, genuineness and creditworthiness of the creditors. With these directions, the grounds of assessee are allowed for statistical purposes.

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

Order pronounced on this 18th day of March, 2019.

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

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

पुणे / Pune; दिनांक Dated : 18th 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)-8, Pune;
4. The Pr. CCIT, Pune;
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