



ITA No.1495/Mum/2017  
Mr. Chandraiah Balanna Kalal  
Assessment Year :2012-13

**आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.1495/Mum/2017  
(निर्धारण वर्ष / Assessment Year:2012-13)

<b>Mr.Chandraith Balanna Kalal</b> Plot No.7, D-1 Mandar CHS Ltd., RSC 21, Gorai-1, Borivali (W) Mumbai-400 092.	<b>बनाम/ Vs.</b>	<b>Income Tax Officer-32(1)(2)</b> Mumbai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AABPK-8755-H</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Appellant by</b>	:	M. Subramanian- Ld. AR
<b>Respondent by</b>	:	Abhi Ram Kartikeyan - Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	14/03/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	19/03/2019

**आदेश / O R D E R**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-44, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-44/ITO 32(1)(2)/ITA-496/15-16* dated 30/01/2017 *qua* confirmation of certain addition on account of Reconciliation of Form 26As and addition u/s 43B. The assessee has raised additional grounds



of appeal on 02/05/2018 which do not require appreciation of new facts and hence, taken on record. These grounds contest addition of *deemed rental value* and addition of account of *alleged bogus purchases*.

2. The assessment for impugned AY was framed by Ld. Income Tax Officer-32(1)(2), Mumbai [AO] u/s 143(3) on 30/03/2015 wherein the income of the assessee was determined at Rs.218.99 Lacs after certain additions / disallowances as against returned income of Rs.10.89 Lacs filed by the assessee on 30/09/2012. The assessee being *resident individual* carried on business during impugned AY under proprietorship concern namely *C.B.& Sons*. Our ground wise adjudication is given in the succeeding paragraphs.

3. Ground No.1 is related with addition of Rs.31.90 Lacs on account of non-reconciliation of Form 26AS, which has been made by Ld. AO for want of proper explanation during assessment proceedings. The Ld. first appellate authority declined to accept the additional evidences filed during appellate proceedings. Upon careful consideration, we find that the addition is merely a matter of reconciliation. Therefore, in the interest of justice, this issue stands remitted back to the file of Ld. AO with a direction to the assessee to reconcile the difference to the satisfaction of Ld. AO. The ground stands allowed for statistical purposes.

4. The second ground contesting addition u/s 43B stem from the fact that during assessment proceedings, the assessee failed to demonstrate the payment of outstanding liabilities for Rs.150.78 Lacs before due date of filing of return of income. The Ld. first appellate authority refused to appreciate the additional evidences submitted by the assessee during appellate proceedings. Therefore, in the interest of justice, the matter



stands remitted back to the file of Ld. AO with a direction to the assessee to demonstrate the fulfilment of conditions of Section 43B. The ground stands allowed for statistical purposes.

5. The first additional ground is related with estimation of notional rental income from flats situated at *Charkop, Mira Road* and a *Room at village*. The assessee contended that both the flats were being used for business purposes and room at village was occupied by his parents and therefore, no notional rental income from the same were to be added. However, noticing that the depreciation was not being claimed by the assessee against the two flats, Ld. AO concluded that the flats were not being used for business purposes. Accordingly, the notional rent from these properties have been estimate at Rs.6.60 Lacs against which statutory deduction of 30% was allowed to the assessee. The same has resulted into an addition of Rs.4.62 Lacs in the hands of the assessee. The same, upon confirmation by first appellate authority, is under appeal before us. The Ld. AR pleaded that the estimation made by Ld. AO does not commensurate with the fair rental value of these properties and therefore, the matter require revisit at the end of Ld. AO. Upon careful consideration of quantum order, we find that there is no basis given by Ld. AO while estimating notional rental value of these properties. Therefore, keeping in view the same, we remit the matter back to the file of Ld. AO to estimate the notional rental value of these 3 properties as per statutory provisions after affording reasonable opportunity of being heard to the assessee. The ground stands allowed for statistical purposes.



6.1 The second additional grounds contest estimation of income on account of *alleged bogus purchases*. Pursuant to receipt of certain information from *DGIT (Inv.)*, it transpired that the assessee stood beneficiary of *bogus purchase bills* aggregating to Rs.19.22 Lacs from 11 parties, the details of which have already been extracted at *para 6.1* of the quantum assessment order. Notices sent u/s 133(6) to confirm the transactions elicited no satisfactory response. The assessee failed to provide the latest addresses of the suppliers. After careful consideration of factual matrix, these purchases were disallowed and added to the income of the assessee. The Ld. CIT(A), keeping in view the assessee's nature of business, restricted the addition to 12.5% of *alleged bogus purchases*. Still aggrieved, the assessee is in further appeal before us. The Ld. AR pleaded that the estimation was on higher side.

6.2 Upon careful consideration, we find that the assessee was engaged as contractor which could not be carried out without actual purchase of material. The sales turnover has not been disputed by the revenue. At the same time, the assessee failed to conclusively substantiate these transactions. Keeping in view the totality of factors, while upholding the reasoning of first appellate authority, we reduce the estimation to 8% which works out to Rs.1,53,832/-. The ground stands partly allowed.

7. Resultantly, the appeal stands partly allowed for statistical purposes in terms of our above order.



ITA No.1495/Mum/2017  
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Assessment Year :2012-13

*Order pronounced in the open court on 19<sup>th</sup> March, 2019.*

**Sd/-**

**Sd/-**

**(Mahavir Singh)**

**(Manoj Kumar Aggarwal)**

न्यायिक सदस्य / **Judicial Member** लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 19/03/2019  
Sr.PS, Jaisy Varghese

**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. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**