



ITA No.6086/Mum/2017  
Mr. Mahesh C.Pithawalla  
Assessment Year :2012-13

**आयकर अपीलीय अधिकरण "डी" न्यायपीठ मुंबई में।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" 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.6086/Mum/2017  
(निर्धारण वर्ष / Assessment Year:2012-13)

<b>Mr. Mahesh C. Pithawalla</b> 15, Abdul Court, 5 <sup>th</sup> Floor 1161, S.S. Marg Off Cadell Road, Dadar Mumbai-400 028.	<b>बनाम/ Vs.</b>	<b>ACIT-21(2)</b> 1 <sup>st</sup> Floor, Piramal Chamber Lalbaug Mumbai-400 012.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AAAPP-8879-L</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Appellant by</b>	:	Chetan Karia- Ld. AR
<b>Respondent by</b>	:	Abhi Rama Kartikeyan - Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	18/03/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	03/04/2019

**आदेश / ORDER**

**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)-33, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-33/Rg.21/227/2016* dated 14/06/2017 *qua* confirmation of certain addition of Rs.16.50 Lacs on account of *cash deposit*.



2. The registry has noted a delay of 22 days in filing the present appeal, the condonation of which has been sought by the assessee on the strength of an affidavit dated 28/09/2017. The delay has been attributed to the fact that the assessee was out of India for business purposes which led to delay in handing over the impugned order to the concerned *Chartered Accountant*. Keeping in view the quantum of delay, the same is condoned and we proceed to dispose-off the appeal as argued before us.

3.1 Facts leading to the same are that the assessee being *resident but not ordinarily resident* individual was assessed for impugned AY u/s 143(3) wherein the income of the assessee was determined at Rs.177.12 Lacs after certain additions as against returned income of Rs.109.38 Lacs filed by the assessee on 30/08/2012. The addition of Rs.16.50 Lacs representing *cash deposit* in assessee's bank account is the sole subject matter of present appeal before us.

3.2 During assessment proceedings, it transpired that the assessee deposited cash of Rs.16.50 Lacs in one of his bank accounts held with *Bank of Baroda, Surat Branch*. Accordingly, the assessee was asked to substantiate the source thereof. The assessee placed on record *cash summary* for the year and submitted that cash was deposited out of earlier withdrawals made by the assessee. The summary of cash in hand submitted by assessee has already been reproduced in the quantum assessment order. However, not convinced, Ld. AO opined that the assessee was maintaining high opening as well as closing cash balance which was improbable. Further, he assessee was having excess cash in hand and therefore, there was no need to withdraw the cash. The Ld. AO



also doubted the opening cash balance reflected by the assessee. Another pertinent observation was the fact that all the cash were deposited during the period 03/12/2011 to 23/03/2012 whereas the assessee was having cash balance of more than Rs.40 Lacs as on 04/10/2011 and further all the money was deposited in *Surat Branch* as against all the withdrawals which were made from *Prabhadevi Mumbai Branch*. It was also noted that cash was deposited only after sale of certain property by the assessee during impugned AY. Finally, the aforesaid deposit of Rs.16.50 Lacs was added to the income of the assessee.

4. Aggrieved, the assessee agitated the same without any success before Ld. CIT(A) vide impugned order dated 14/06/2017 wherein the matter was concluded against the assessee by observing that there was no justifiable reason for the assessee to keep huge cash with himself which was frequently deposited and withdrawn at regular intervals. Aggrieved, the assessee is in further appeal before us.

5. The prime argument of Ld. Authorized Representative for Assessee, *Shri Chetan Karia*, revolve around the fact that cash deposits were substantiated by the *cash summary* and the additions have been made merely on the basis of doubts, conjectures & surmises. Per Contra, Ld. DR submitted that the pertinent observations as made by lower authorities could not be controverted by Ld. AR.

6. We have carefully heard the rival submissions and perused relevant material on record including *cash summary* as placed on *page nos. 3 & 4* of the *paper-book*. It is undisputed position that the cash has been deposited during the period 03/12/2011 to 23/03/2012. As against



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this, the assessee has cash balance of Rs.28.13 Lacs as on 30.11.2011. We find that after excluding the opening cash balance of Rs.5 Lacs which has been doubted by Ld.AO, the remaining cash in hand i.e. Rs.23.13 Lacs was quite sufficient to make the aforesaid deposits and this would dispel one of the doubts raised by Ld.AO. So far as the fact that deposits have been made after sale of property, is concerned, we find that there is no material on record to establish that the assessee has received any money over and above the reflected sale consideration and therefore, there was no justification to make the addition on that basis. Further, it was for the assessee to manage its own cash inflows and outflows and there was no illegality in making frequent cash deposits and withdrawals. In our opinion, when the *cash summary* was submitted by the assessee wherein the source of the cash deposits was substantiated, the onus shifted upon revenue to bring on record adverse material to establish that the cash was utilized elsewhere. It is trite law that additions could not be made merely on the basis of probabilities, doubts, conjecture or surmises. Therefore, the impugned addition, in our considered opinion, would have no leg to stand. We order so.

7. Accordingly, the appeal stands allowed.

*Order pronounced in the open court on 03<sup>rd</sup> April, 2019.*

**Sd/-**

**(Mahavir Singh)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 03/04/2019  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant



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2. प्रत्यर्धी/ 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.