



**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH, MUMBAI**

**माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं  
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।  
BEFORE HON'BLE SHRI C.N. PRASAD, JM AND  
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.2621/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2012-13)

<b>Ajit Kumar J. Singh</b> F/604, Gulmohar CHS Ltd. Ramkrishna, Chemurkar Marg Chembur Naka, Chembur Mumbai-400 071.	<b>बनाम/ Vs.</b>	<b>ACIT-27(1)</b> 4 <sup>th</sup> Floor, Tower-6 Vashi Railway Station Bldg. Vashi Navi Mumbai-400 703.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. <b>AETPS-7307-F</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Kaushal Shah- Ld. AR
<b>Revenue by</b>	:	Shri Rajesh Kumar Yadav - Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	24/04/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	03/05/2019

**आदेश / ORDER**

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

1. Aforesaid appeal by assessee for Assessment Year [AY] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-25, Mumbai [CIT(A)], *Appeal No. CIT(A)-25/IT-111/14-15* dated 09/02/2017 *qua* confirmation of certain additions.

2.1 Facts in brief are that the assessee being *resident individual* was assessed for impugned AY u/s 143(3) on 12/03/2015 wherein the income was determined at Rs.88.47 Lacs after certain additions as



against returned income of Rs.29.25 Lacs filed by the assessee on 20/03/2013. The following quantum additions as made by Ld. AO & confirmed by first appellate authority are subject matter of present appeal before us: -

<b>No.</b>	<b>Nature of Addition</b>	<b>Amount (Rs.)</b>
1.	<i>Disallowance of Expenditure</i>	13,70,787/-
2.	<i>Unexplained investment u/s 69</i>	29,51,471/-
3.	<i>Unexplained cash credit u/s 68</i>	16,00,000/-

2.2 During assessment proceedings, it transpired that the assessee reflected gross receipts in the profit & loss account for Rs.43.31 Lacs and after claiming expenses of Rs.13.70 Lacs worked out net profit of Rs.29.61 Lacs. The receipts were stated to be in cash and it was submitted that the assessee was carrying liasioning business and did not maintain list of persons from whom the payments were received. In the absence of documentary evidences, the expense of Rs.13.70 Lacs claimed by the assessee was added back to the income of the assessee. The quantum assessment order records a finding that the assessee acquiesced to such disallowance of expenditure.

2.3 It also transpired that the assessee deposited cash of Rs.31.05 Lacs in ICICI Bank, Rs.14.12 Lacs in HDFC Bank Ltd. & made payment for various credit cards amounting to Rs.33.50 Lacs. Also, the assessee made investment in Flat Nos. 1903 & 1904 situated at *Casa Univis, Bdg. Cielo A-wing, Thane* purchased from *Lodha Novel Buildfarms Pvt. Ltd.* and another property being *Flat No. 1603 situated at A wing, Evershine, Cosmic, Oshiwara, Jogeshwari* purchased from *M/s Evershine Builders*. Accordingly, the assessee was directed to prove source of all these deposits / payments / investments. For ease of reference /



understanding, the quantum of the same could be tabulated in the following manner: -

<b>No.</b>	<b>Nature of deposit / payments / investments</b>	<b>Amount (Rs.)</b>
1.	Cash deposit in ICICI Bank	31,05,550/-
2.	Cash deposit in HDFC Bank	14,12,000/-
3.	Payment through credit cards	33,50,609/-
4.	Investment in Flat No. 1903 & 1904 at Thane	38,37,745/-
5.	Investment in Flat No. 1603 at Jogeshwari	9,03,955/-

2.4 The assessee reconciled that net payment through credit card amounted to Rs.25.41 Lacs since certain payments were reversed. Out of balance Rs.25.41 Lacs, actual usage of credit card i.e. net of cash withdrawals of Rs.12.32 Lacs was stated to be Rs.13.09 Lacs. The net cash deposit in the bank accounts was stated to be Rs.40.99 Lacs considering the cash withdrawals made by the assessee. The investment of Rs.38.37 Lacs in Flat No. 1903 & 1904 situated at Thane was stated to be funded to the extent of Rs.16 Lacs from sale of an Aurangabad Property held by the assessee and the balance was stated to be paid out of income. Similarly, the payment in respect of Flat No.1603 situated at Jogeshwari was stated to be sourced out of income earned by the assessee. The source and investment, were thus, reconciled by the assessee in the following manner: -

<b>Application of Fund</b>	<b>Amount (Rs.)</b>
Investment in Lodha Property	38,37,745
Investment in Evershine Property	9,03,955
Credit Card Expenses Drawing	13,09,544
<b>Total Application of Fund</b>	<b>60,51,244</b>
<b>Source of Fund</b>	
Capital Receipt through Sale of Aurangabad Property	16,00,000
Gross receipt Received	43,31,773
Out of Credit Card Expenses	1,19,471
<b>Total source of Fund</b>	<b>60,51,244</b>



2.5 However certain discrepancies were noted in the investment figures reflected in the Balance Sheet which was show-caused to the assessee vide notice dated 13/02/2015. It was noted that the assessee, in its Balance Sheet as on 31/03/2012, reflected Advance to *Lodha* as Rs.80 Lacs and shown investment in residential properties as Rs.88.16 Lacs which were not matching with the details furnished by the assessee.

2.6 The assessee, vide reply dated 28/02/2015, accepting the nomenclature issues, bifurcated the gross investments of Rs.168.16 Lacs in the following manner: -

<b>Head</b>	<b>Amount (Rs.)</b>
<i>Investment in Lodha Property Flat No. 1904</i>	<i>38,17,387/-</i>
<i>Investment in Lodha Property Flat No. 1903</i>	<i>3,34,210/-</i>
<i>Investment in Evershine Property</i>	<i>96,39,200/-</i>
<i>Old Premises at Bihar</i>	<i>30,25,615/-</i>
<b>Total</b>	<b>1,68,16,412/-</b>

2.7 However, not convinced, Ld. AO opined that expenses incurred as well as investment made by the assessee were in excess of the income shown during the year by Rs.29.51 Lacs as computed in the following manner: -

<b>Head</b>		<b>Amount (Rs.)</b>
<i>Gross Receipts Credited in P &amp; L Account</i>		<i>43,31,773/-</i>
<i>Less: Expenses through credit card</i>	<i>25,41,544/-</i>	
<i>Investment in Flat No. 1904</i>	<i>38,37,745/-</i>	
<i>Investment in Flat No. 1603</i>	<i>9,03,955/-</i>	<i>72,83,244/-</i>
<b>Excess Expenses / investments</b>		<b>29,51,471/-</b>

Accordingly, excess amount of Rs.29.51 Lacs was added in the hands of the assessee as unexplained investment u/s 69.

2.8 The last addition of Rs.16 Lacs was an addition on protective basis against sale of a property bearing *Plot No. M-46, MIDC Waluj,*



*Gangapur, Distt. Aurangabad.* It was submitted that the property belonged to a partnership firm of the assessee namely *M/s Maratha Chemicals*. It was submitted that the assessee was the *GPA holder* of the firm. The Land was acquired by the firm and a factory building was constructed thereupon. During the year, the said plot along with construction and Machinery was sold to *M/s Omkar Industries* for a sale consideration of Rs.16 Lacs and the possession was handed over on 25/08/2011. Since the firm was not having any bank account and was in the process of obtaining PAN, the assessee, as GPA holder got the credit of the same in his own bank account which was nothing but receipts under trust. In the said background, it was submitted that the same would be reflected in the Income Tax Return of the firm. Accepting the assessee's version, the addition was made on protective basis. The impugned order of Ld. CIT(A) records a finding that till the date of appellate proceedings which concluded vide order dated 09/02/2017, no return was filed by the firm and therefore, the additions were confirmed in first appeal.

3. Aggrieved, the assessee agitated the additions before Ld. CIT (A), wherein while confirming the additions, relief of Rs.16 Lacs, being receipts of Aurangabad property was granted against addition of unexplained investments. In other words, the addition on account of unexplained investment were reduced from Rs.29.51 Lacs to Rs.13.51 Lacs. Aggrieved, the assessee, is in further appeal before us.

4.1 We have carefully heard rival submissions and perused relevant material on record. At the outset, so far as the addition of Rs.16 Lacs is concerned, we find that the assessee has failed to demonstrate that the said amount was ever offered by the firm to tax. The addition was made



on protective basis on the strength of assessee's reasoning that the money was received under Trust on behalf of the firm which was under the process of filing its return of income. Nothing has been brought on record to establish that the firm has filed its return of income for the impugned AY. Therefore, this income would be assessable in the hands of the assessee.

4.2 The Ld. AR has alternatively pleaded that since the aforesaid income has arisen out of sale of long-term capital assets, the same would be assessable as Long-Term Capital Gains only. The working of the same has also been placed on record. We agree with the same. Upon perusal, it is noted that additions have been made u/s 68 as *unexplained cash credit*, which is not the case here since the assessee is able to explain the nature of credit. It is uncontroverted fact that the gains have arisen on sale of a long-term capital assets and therefore, the resultant gains would be assessable as *Long-Term Capital Gains* only. The computation of the same shall be governed by the provisions of the act and accordingly, the benefit of cost of acquisition etc. shall be available to the assessee against the sale consideration. The assessee has already placed on record the working of the same and submitted that Long-Term Capital Gains would work out to Rs.14.51 Lacs. The Ld. AO is directed to verify the computations and assess the income accordingly. The ground stand partly allowed.

5. So far as the expense disallowance of Rs.13.70 Lacs is concerned, we find that the assessee reflected receipts of Rs.43.31 Lacs from liaising business and after claiming expenditure of Rs.13.70 Lacs against the same, reflected profit of Rs.29.61 Lacs which was more than 68% of total receipts. This rate is much more than presumptive rate of



8% as prescribed by Section 44AD of the Act. Since the offered rate was much more than 8%, there was no requirement on assessee to maintain books of accounts etc. Further, these expenses were stated to be in the nature of Audit Fees, Bank Charges, Conveyance expenses, Salary expenses, travelling expenses etc. as submitted before Ld. first appellate authority. Therefore, the addition of expense disallowance for Rs.13.70 Lacs could not be sustained. We order so. The ground stands partly allowed.

6. The last addition of Rs.29.51 Lacs representing unexplained investments has been reduced to Rs.13.51 Lacs by Ld. first appellate authority after giving the credit of Rs.16 Lacs, being receipts of sale of Aurangabad property. However, it was submitted that the amount of Rs.12.32 Lacs was cash withdrawals through credit cards and the same were not investments, as wrongly taken by Ld. AO. This aforesaid fact remains uncontroverted before us. Another pertinent fact to be noted is that the addition has been made u/s 69 as unexplained investments. However, we find that the investments were duly recorded by the assessee in the books of accounts and they were not unexplained investments found out of the books. Further, the conclusion drawn by Ld. AO could not be sustained since the opening cash / bank balances have not been considered in the computations. Viewing from any angle, the impugned addition of Rs.13.51 Lacs could not be sustained. By deleting the same, we allow this ground of appeal.

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



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

**Sd/-**

**(C.N. Prasad)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated :03/05/2019  
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.