



आयकर अपीलीय अधिकरण "एफ" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
 श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.3570/Mum/2017
 (निर्धारण वर्ष / Assessment Year: 2010-11)

Vishal Karia 204, 2 nd Floor, Grace Building Opp. Lotus Eye Hospital Juhu Scheme, Juhu Mumbai – 400 049	बनाम/ Vs.	ITO-20(3)(4) Piramal Chambers Lalbaug, Lower Parel Mumbai – 400 012
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. ASGPK-2890-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	Shri Shailesh Parmar – Ld. AR
Department by	:	Chaudhary Arun Kumar Singh-Ld.DR
सुनवाई की तारीख/ Date of Hearing	:	15/05/2019
घोषणा की तारीख / Date of Pronouncement	:	06/06/2019

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'] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-39, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-39/IT-27/ITO-20(3)(4)/12-13 dated 10/02/2017 qua* confirmation of certain additions.



2. Brief facts are that the assessee being *resident individual* was assessed u/s 143(3) for impugned AY on 26/02/2013, wherein the income was determined at Rs.139.09 Lacs after certain additions as against returned income of Rs.7.25 Lacs filed by the assessee on 22/06/2010. The addition of Rs.52.06 Lacs made u/s 68 is the sole subject matter of present appeal before us.

3. During assessment proceedings it transpired that the assessee deposited cash of Rs.52.06 Lacs in one of his bank accounts maintained with ICICI Bank Ltd. The failure to furnish any explanation resulted into addition of the same u/s 68.

4.1 Before first appellate authority, the assessee furnished additional evidences which were subjected to remand proceedings. The assessee explained that the assessee along with his brother formed an *Association of Person* [AOP] to carry out car hire business. Accordingly, the said bank account was opened. The vehicles were purchased on bank finance and the receipts were deposited in the said bank account. However, Ld. AO, in remand report, opposed the admission of additional evidences. Nevertheless, rejecting the same, Ld. CIT(A) proceeded to consider the assessee's submissions in the light of these evidences.

4.2 It was noted that the said bank account was in the sole name of assessee and no evidence could be adduced by the assessee to support the stated submissions. Finally drawing strength from the first appellate order in assessee's own case for AY 2009-10, the said additions were confirmed. Aggrieved, the assessee is in further appeal before us.



5. The Ld. Authorized Representative for Assessee [AR], drawing our attention to the documents placed in the *paper-book*, pleaded that the said deposits were sourced out of business income generated by the AOP during impugned AY and the income belonged to AOP only. Alternative pleadings have been made to direct lower authorities to adopt the correct figures of the income. The Ld. DR submitted that the assessee miserably failed to furnish any convincing evidences and therefore, the additions were justified.

6. Upon careful consideration, the undisputed fact that emerges are that the bank account under question has been held in the sole name of the assessee. The assessee could not adduce any single evidence in support of the claim that any AOP existed between him and his brother prior to opening of the said bank account and the stated deposits belonged to AOP. Therefore, finding no substance in the same, we dismiss Ground Nos.1 & 2.

7.1 By way of ground no.3, the assessee has pleaded that the correct income to be assessed is Rs.36.41 Lacs and not Rs.52.06 Lacs as adopted by lower authorities. The Ld. AR, in support of the same, placed on record Profit & Loss Account, Balance Sheet, Bank Statement, Cash Book etc. wherein the assessee has drawn the accounts and reconciled the stated cash deposits. The perusal of the bank statements as well as other documents on record would reveal that the assessee had obtained Auto Loan from HDFC Bank Ltd. The installments of the same was being paid through the stated bank account. This fact lends certain credence to the submissions that the assessee was into some sort of car running business.



7.2 Upon perusal of orders for AY 2009-10, we find that the assessee was saddled with similar additions of Rs.35.98 Lacs which was restricted to Rs.23.99 Lacs by first appellate authority after giving the benefit of peak credit. Similar is the position in AY 2011-12 wherein Ld.AO, himself, has worked out the addition on peak basis.

7.3 Keeping in mind the aforesaid factors, we direct Ld. AO to restrict the impugned additions to Rs.36,41,497/- as reflected by the assessee in the financial statements. This ground stands partly allowed.

8. Resultantly, the appeal stands partly allowed to the extent indicated above.

Order pronounced in the open court on 06th June, 2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 06/06/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ँ प्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai