

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.1742/PUN/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Ramesh Sakharam Kasar,
At Kashid Nandgaon,
Murud-Janjira,
Dist. Raigad.

..... अपीलार्थी /
Appellant

PAN : BGVPK7320R.

बनाम v/s

The Income Tax Officer,
Ward-3, Panvel.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Nikhil Pathak.

Revenue by : Shri Vishwas Mundhe.

सुनवाई की तारीख / Date of Hearing : 27.08.2019	घोषणा की तारीख / Date of Pronouncement: 16.10.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 2, Pune dated 09.07.2018 for A.Y. 2014-15.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual, who filed his return of income for A.Y. 2014-15 on 13.10.2015 declaring total income at Rs.2,91,250/-. The case was selected for scrutiny and thereafter assessment was framed u/s

143(3) of the Act vide order dt.20.09.2016 and the total income was determined at Rs.37,27,215/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.09.07.2018 (in appeal No.87/2017-18) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

“1. The learned CIT (A) erred in dismissing the appeal of the assessee without appreciating the facts of the case and failed to give adequate opportunities.

2. The Ld.CIT(A) erred in confirming the income assessed by the learned AO at Rs.37,27,215/-.

3. The appellant submits that before the CIT(A) as well as at the stage of assessment proceedings before the AO, the facts could not be appreciated by both the authorities that –

a) The amount deposited in the bank account was not of the assessee alone or earned by the assessee during the relevant A.Y. 2014-15.

b) The amount deposited in the bank account aggregating to Rs.34,36,000/- was raised by the assessee and other persons from Murud who contributed cash for depositing in bank account, with an intention to start new business.

c) With the amount of cash deposited, the 'Parasailing Boat' was purchased in the name of assessee and was proposed for business In partnership by plying the same at sea beach in Murud.

4. The appellant humbly submits that the hardship is caused to him owing to absence of the proper representation and submission at the assessment as well as 1st appeal stage, although, the necessary documents and information were made available by the assessee at relevant time.

5. The appellant humbly submits that

a) He never earned the income as assessed by the learned AO and confirmed by Hon'ble CIT(A).

b) He is not a man of means as assessed especially after early retirement from the job.

c) The appellant was trying to find out new source of income by doing business of Parasailing Boats at seashore Murud and for that purpose the contribution in common pool was raised and deposited in the bank account in order to make payment by cheque for purchase of Parasailing Boats and contributions confirmed the same.

6. *The appellant humbly submits that the concerned persons who contributed the sum could not get sufficient time to explain the source for the contribution raised by each of them which in unwarranted addition of Rs.34,36,000/- in the hands of the appellant.*

7. *Without prejudice it is further submitted that although the concerned persons confirmed the contribution still the addition has been made, holding the failure to explain by the creditor, the source for the source, which was not justified as confirmed by the CIT(A).*

8. *The AO in the assessment proceedings sought an explanation about the source for cash deposited in bank account and after going through the explanation of the concerned creditors, made addition as unexplained cash deposited in bank, without going adequate opportunities to explain the return filed.*

9. *The CIT(A) and the learned AO failed to appreciate that –*

- a) The assessee had past savings in the form of cash accumulation.*
- b) The cash deposited came also out of business receipt.*
- c) The assessee availed gold loan.”*

3. Before me, at the outset, Ld.A.R. submitted that he does not wish to press ground No.1 and the only effective ground is 3(b).

4. The ground No.3(b) is with respect to the cash deposits of Rs.34,36,000/- in the saving bank account of assessee.

4.1. AO has noted that information was received about the huge cash deposits in assessee's bank account. During the course of assessment proceedings, on perusing the bank account of assessee maintained with State Bank of India, Murud Janjira Branch, it was noticed that assessee has made aggregate cash deposits of Rs.34,36,000/-. The assessee was asked to explain the nature and source of cash deposits. Assessee inter-alia submitted that assessee along with five other persons intended to buy parasailing water boat for business purpose and for which five other persons contributed the cash which was deposited in assessee's saving bank account with S.B.I. The details of person-wise contribution and the

date of cash deposits are noted by the AO in Page 4 of the assessment order. With respect to the source of the deposits by those persons assessee submitted that the amount was received by them through hand loans. AO noted that the details of hand loans, names and address of the persons from whom hand loan was raised, whether the hand loan was returned by them or not etc. was not proved by the assessee. AO also noted that as per the bills issued by Aquarius Fibreglas Pvt. Ltd., the boat was purchased by the assessee along with Shri Umesh Sakharam Kasar and Shri Bharat Dashrath Belose. AO noted that the purchase was thus only in the name of these three persons and not other persons who stated to have contributed for the purpose of the boat. AO concluded that the persons who stated to have been contributed amount for the purchase of boat for business purpose were having meager income and their creditworthiness was not proved. AO accordingly considered the aggregate cash deposits of Rs.34,36,000/- as unexplained cash deposits and made its addition u/s 69 of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO.

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal.

5. Before me, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A). He further submitted that out of the total cash deposits of Rs.34,36,000/-, Rs.25 lakhs are received by the assessee from outsiders, whose names are listed by AO in Page 5 of the assessment order and the balance amount is from assessee and other family members. He submitted that with respect to the loan from outsiders, AO had passed a penalty order u/s 271D of the Act on 22.12.2016 wherein on the amount

of loan of Rs.13 lakhs, he has levied penalty u/s 271D of the Act. He therefore submitted that to the extent when the persons have been identified to have given loans, addition u/s 68 of the Act is not warranted. With respect to the balance addition which is from the assessee and his family members, he relied on the submissions made by the assessee before AO and Ld.CIT(A). Ld. D.R. on the other hand, submitted that the penalty proceedings are separate and merely because penalty has been levied u/s 271D of the Act on certain deposits, it cannot be said that no addition u/s 68 of the Act is warranted. He thus supported the order of lower authorities.

6. I have heard the rival submission and perused the material on record. The issue in the present ground is with respect to addition of cash deposits aggregating to Rs.34,36,000/- in assessee's saving Bank account maintained with SBI. It is the case of the assessee that he had received loans aggregating to Rs.25 lakhs from outsiders for purchasing of shipping boat for business purpose. It is also a fact that on such cash deposits which have been received by the assessee, AO vide order dated 22.12.2016 passed u/s 271D of the Act had levied penalty on Rs.13 lakhs which is the unsecured loan to have been received by the assessee by cash from those persons. In such a situation, I find force in the argument of the Ld.A.R. that to the extent of Rs.13 lakhs, the parties have been identified and no addition is warranted to that extent. With respect to the balance amount, no plausible information has been furnished by the Ld.A.R. and nor was he in a position to controvert the findings of AO and Ld.CIT(A). I therefore direct the deletion of addition to the extent of Rs.16,50,000/- and the balance amount of addition is confirmed. **Thus, the ground of the assessee is partly allowed.**

7. **In the result, the appeal of assessee is partly allowed.**

Order pronounced on 16th day of October, 2019.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 16th October, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-2, Pune.
4. The Pr.CIT-2, Thane.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" /
DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.