

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.4740/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

Amrish Arora 216, Shalimar, Marin Drive, Mumbai-400020.	बनाम/ Vs.	ACIT-17(1) Aayakar Bhavan, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAAPA9192K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Shiv Prakash (AR)
Revenue by:	Shri Akhtar Ali Ansari (DR)

सुनवाई की तारीख / Date of Hearing: 06/01/2020
घोषणा की तारीख /Date of Pronouncement: 20/01/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 15.05.2018 passed by the Commissioner of Income Tax (Appeals) -55, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.

2. The assessee has raised the following grounds: -

“For the year under appeal, appellant filed return of income declaring total income of Rs 6,47,38,112/-

The case of the appellant was selected for scrutiny and the appellant duly filed all the details called for by the Assessing Officer from time to time.

During the year the appellant had purchased 2 cars along with accessories from one 'Reema Sen and Upaj Enterprises for a total



consideration of Rs.25,00,000/- (Rs 11,00,000 + Rs 14,00,000). The payments for the same were made by bank pay order.

The aforesaid 2 cars (without the accessories) were sold to two separate parties— Mr Ravindra Kadel and m/s Dhruv Automobiles, Prop: Dinesh Kadam, for a total consideration of Rs 10,70,000/- Payments for the above sale have been received by the appellant by cheques and are reflected in his bank account.

The accessories were sold separately to 14 different parties in cash. The names of the parties who purchased the accessories have been duly furnished to the Assessing Officer during assessment proceedings and the proceeds thereof totaling about Rs 14 lakhs were duly deposited into the bank account of the appellant.

The learned Assessing officer has made the addition on the assumption that since there is no road transport permit taken by the appellant—the sale of the vehicles cannot be accepted.

The learned Assessing Officer has failed to appreciate the following facts while arriving at the aforesaid conclusion

1. The appellant has purchased and sold second hand cars (not new cars)

2. The road transport permit is not to be transferred by the appellant in his name as he is not the ultimate user— but only a dealer of the car and as such he is not required to obtain the road transport permit in respect of such vehicles in his name. However, delivery challans have been executed between the purchasers and the seller. The Assessing Officer never called for this document.”

3. The brief facts of the case are that the assessee filed his return of income on 30.07.2012 declaring total income to the tune of Rs.6,47,38,112/- for the A.Y. 2012-13. The case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee is an individual who is director in few companies and has shown income from capital gains and interest income. The assessee was asked to reconcile the details of AIR with its books. The assessee deposited the cash in sum of Rs.14,00,000/- in his account. The assessee was asked to explain these cash deposits. The assessee purchased the car



from Reema Sen in consideration of Rs.11,00,000/- and another car was purchased cash in sum of Rs.14,00,000/- through a pay order. Thereafter, the assessee sold two cars spare parts to Mrs. Ravindra Kadel and Dhruv automobiles for Rs.6,70,000/- and Rs.4,00,000/- respectively. He sold the body of car while the spares and accessories were sold to other customers. The payments were deposited in the bank. The assessee provided the list of 14 parties who purchased the spares. The AO was not satisfied and added the said amount as unexplained cash credit and assessed the income in sum of Rs.6,61,38,110/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the addition raised by the AO, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee has argued that the assessee has purchased the old BMW car from Mrs. Reema Sen on 14.11.2011 in sum of Rs.11,00,000/-. The assessee made the payment through pay order and the assessee also purchased Mercedes Benz car from M/s. Upaj Enterprises in sum of Rs.14,00,000/-. In this regard, the necessary documents were furnished but the CIT(A) has wrongly confirmed the addition, hence, the finding of the CIT(A) is not justifiable, hence, liable to be set aside. However, on the other hand, the Ld. Representative of the Department has refuted the said contentions. The assessee purchased the old BMW car from M/s. Reema Sen in sum of Rs.11,00,000/-. In this regard, the necessary documents are on record which lies at page no. 7 to 20 of the paper book. The payment was made through cheque. The assessee also purchased the Mercedes Benz from M/s. Upaj Enterprises in sum of Rs.14,00,000/- and paid in sum of Rs.14,00,000/-. The payment was also made through cheque and in this regard the



necessary documents lies at page no. 21 to 33 of the paper book. The documents nowhere seems false and fabricated. Thereafter, the assessee sold the said car after dismantling. The body of the car of BMW was sold to M/s. Druv Automobiles in sum of Rs.4,00,000/- and in this regard the Assessee received the amount of Rs.4,00,000/- in view of the document Exhibit-A lies at page no. 24 of the paper book. The assessee also sold the Mercedes Benz car to Mr. Ravinder Kadel in sum of Rs.6,70,000/-. The car was transferred with his name and in this regard the documents lies at page Exhibit – B. Thereafter, the assessee sold the spare parts of the BMW car and details of which are hereby mentioned below.: -

<i>Mr. Indrajit Thakur</i>	<i>- Allow Wheel</i>	<i>Rs.1,00,000</i>
<i>Mr. Xerses Daruwala</i>	<i>- Performance list</i>	<i>Rs.1,75,000/-</i>
<i>Mr. Ajmal Shaikh</i>	<i>- Xenon Lights</i>	<i>Rs.75,000/-</i>
<i>Mr. Satish Kale</i>	<i>- Seats</i>	<i>Rs. 25,000/-</i>
<i>Mr. Satish Kale</i>	<i>- Tyres</i>	<i>Rs.1,00,000/-</i>
<i>Mr. Rakesh Chakraworthi</i>	<i>-Deak</i>	<i>Rs.1,00,000/-</i>
<i>Mr. Virshi Salehu</i>	<i>-Body Kit</i>	<i>Rs.1,25,000 Rs.7,00,000</i>

The relevant document has been executed by assessee in their favour which lies at page no. 13 to 20 of the paper book. The deposited in the accounts are from the sale of the care as well as sale of the spare part of the car. Nothing came into notice that the car is in possession of the assessee and the payment was not belonging to to sell of the said car/spare parts. The business of the Assessee seems to be alienate the spare parts of the car after its dismantling. There is no need to change the name in the RC. No doubt, the RC is required to be cancelled. The genuineness of the transaction was



not confirmed. No doubt, the evidence adduced by assessee can be discredited by adducing cogent and convincing material on record. The evidence is not liable to be declined on the basis of surmises and conjectures. The evidence adduced by assessee is nowhere rebutted by AO by bringing the sufficient evidence on record. Taking into account, all the facts and circumstances, we are of the view that the assessee has explained the cash credit in sum of Rs.14,00000/- being justifiable, therefore, we are of the view that the finding of the CIT(A) is not justifiable, hence, we set aside the finding of the CIT(A) and allowed the claim of the assessee against the revenue.

5. In the result, the appeal filed by the assessee is hereby ordered to be allowed.

Order pronounced in the open court on 20/01/2020

Sd/-
(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 20/01/2020

Vijay Pal Singh/ Sr. P.S.

आदेश की प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai