



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.6918/Mum./2018
(Assessment Year : 2014-15)

Shri Dynaneshwar N. Talpade
Plot no.207, Niramal Nagar
At Post Asangaon, Shahpur
Thane 421 601 PAN – ACKPT2532N

..... Appellant

v/s

Income Tax Officer
Ward-2(1), Mumbai

..... Respondent

Assessee by : Shri Devendra H. Jain
Revenue by : Shri Ashish Kumar

Date of Hearing – 28.01.2020

Date of Order – 26.02.2020

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the assessee challenging the order dated 18th August 2018,, passed by the learned Commissioner of Income Tax (Appeals)-3, Thane, pertaining to the assessment year 2014-15.

2. The dispute in the present appeal is confined to the addition of ₹ 19,93,770, made under section 68 of the Act.

3. Brief facts are, the assessee, an individual, is an Assistant Teacher in School. For the assessment year under dispute, the assessee filed his return of income on 21st July 2014, declaring income of ₹ 2,72,880. In the course of assessment proceedings, the Assessing Officer on the basis of annual information report (AIR) available on record found that during the year under consideration the assessee has purchased certain immovable property as evidenced by the agreement registered with the O/o the Sub Registrar, Sahapur, on 7th May 2013. It was noticed that while registering the sale deed, the assessee has paid stamp duty of ₹ 23,47,770, and registration charges of ₹ 30,000, in cash. He, therefore, called upon the assessee to furnish the source of cash payment made of ₹ 23,47,770. In response to the query raised, the assessee submitted that such cash deposit was made out of agricultural income of ₹ 16,93,770, unsecured loan of ₹ 5,92,000, and opening cash balance available with him. The Assessing Officer, however, was not convinced with the explanation of the assessee and ultimately concluded that source of cash payment of ₹ 23,47,770, towards stamp duty remained unexplained. Accordingly, he added back the said amount to the income of the assessee by treating it as unexplained cash credit under section 68 of the Act. The assessee challenged the aforesaid addition before the first appellate authority.

4. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) accepted assessee's explanation with regard to availability of ₹ 5,92,000, towards loan received and accordingly deleted the amount of ₹ 5,92,000, from the addition made by the Assessing Officer. However, he did not accept assessee's claim regarding availability of agricultural income to the tune of ₹ 16,92,770.

5. The learned Authorised Representative submitted, the assessee has substantial land holding and all queries made on agricultural were complied before the Assessing Officer. The learned Authorised Representative submitted, the Departmental Authorities have not properly appreciated the facts explaining the source of availability of cash for payment of stamp duty and registration charges. The learned Authorised Representative submitted, besides opening cash of ₹ 5,25,900 and loan taken of ₹ 5,92,000, assessee has also made withdrawal from bank account amounting to ₹ 5 lakh. Thus, he submitted, the source of cash payment was clearly explained with supporting evidence. He submitted, without properly verifying the material on record, the Assessing Officer had made the addition and learned Commissioner (Appeals) has sustained a part of it. Thus, he submitted, the addition should be deleted.

6. The learned Departmental Representative relied upon the decision of learned Commissioner (Appeals).

7. We have considered rival submissions and perused the material on record. Undisputedly, the Assessing Officer has made addition of ₹ 23,47,770, on account of cash payment made towards stamp duty. However, learned Commissioner (Appeals) accepting assessee's explanation with regard to the unsecured loan of ₹ 5,92,000, has restricted the addition to ₹ 16,93,770. For explaining the source of ₹ 16,93,770, the learned Authorised Representative has submitted before us that an amount of ₹ 5 lakh was withdrawn from bank account on 3rd May 2013, and paid towards stamp duty on 6th May 2013. On a perusal of cash book extract submitted in the paper book, we find the aforesaid contention of the assessee to be correct. Therefore, we are of the view that a further amount of ₹ 5 lakh out of the addition sustained of ₹ 16,93,770, stood explained. Accordingly, the addition to the extent of ₹ 5 lakh deserves to be deleted. This leaves us with the balance amount of ₹ 11,93,770. To explain the source of the aforesaid cash payment, the assessee has submitted that from the assessment stage itself it has been explained that the amount has come from agricultural income. However, the Assessing Officer as well as the first appellate authority have rejected such claim of the assessee on the reasoning that neither the assessee has offered

any agricultural income in the return of income nor has furnished any documentary evidence to justify or demonstrate earning of agricultural income. Though, it may be a fact that the assessee might have produced the details of land holding and Profit & Loss Account of agricultural income as well as cash book extract, however, the prime factor for which assessee's claim with regard to agricultural income has been rejected is due to lack of supporting evidences to show carrying on of any agricultural activity and earning of agricultural income. Even before us, except the 7/12 extract and some documents filed before the Assessing Officer, the assessee has not furnished any other evidence to prove actual carrying on of any agricultural activity or earning of agricultural income. Even, no material has been placed before us to show that the assessee had offered any agricultural income in the earlier or subsequent assessment years. If the assessee claims that it has earned agricultural income and part of the cash payment was made out of that, the burden is entirely on the assessee to prove such fact through proper documentary evidences. In view of the aforesaid, we are inclined to restore the issue relating to the balance cash payment of ₹ 11,93,770, to the file of the Assessing Officer for fresh adjudication, thereby, providing an opportunity to the assessee to furnish corroborative evidence to prove its claim of availability of agricultural income. The Assessing Officer must afford

reasonable opportunity of being heard to the assessee before deciding the issue. Grounds are partly allowed.

8. In the result, appeal is partly allowed.

Order pronounced in the open Court on 26.02.2020

Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 26.02.2020

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai