

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.70/PUN/2016

निर्धारण वर्ष / Assessment Year : 2009-10

Samir N. Mehta, Row House No.3, Matru Mandir, Opp. Ghatage Patil Industries, Uchagaon, Kolhapur-416005 PAN : AKKPM6834G	Vs.	CIT-II, Kolhapur
Appellant		Respondent

ITA No.71/PUN/2016

निर्धारण वर्ष / Assessment Year : 2009-10

Akshay Anantrao Sawant, Plot No.9, 2365, Juna Budhawar Peth, Kolhapur PAN : BJGPS7249D	Vs.	CIT-II, Kolhapur
Appellant		Respondent

Assessee by Shri Pramod Shingte  
Revenue by Shri Satish K. Goyal

Date of hearing 23-10-2020  
Date of pronouncement 26-10-2020

आदेश / ORDER

**PER R.S.SYAL, VP :**

These two appeals by different assesseees involve a common issue. We, are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

**ITA No.70/PUN/2016 – Samir N. Mehta :**

2. The appeal is time barred by 789 days. The assessee has filed an affidavit citing reasons for the delay. We are satisfied with the same. The delay is condoned and the appeal is admitted for hearing on merits.

3. In this appeal, the assessee is aggrieved by the order passed by the CIT u/s.263 of the Income-tax Act, 1961 (hereinafter also called 'the Act') on 17-09-2013 in relation to the assessment year 2009-10.

4. Briefly stated, the facts of the case are that the assessee is a salaried employee, who, at the material time, has been working with Wockhardt Limited, a pharmaceutical company. Return was filed declaring income at Rs.1,71,039/-. The case was selected for scrutiny on the basis of 'Cash deposits made in the bank reflected in the savings bank account'. The Assessing Officer (AO) completed the assessment by means of his order dated 29-12-2011 determining total income at Rs.1,80,432/-, thereby making a small addition of Rs.9,393/-. The Id. CIT, invoking his power u/s.263 of the Act, came to hold that the AO did not make proper enquiry in

respect of cash deposits made by the assessee in his bank account.

After considering the arguments from the side of the assessee in the light of the assessment order, the ld. CIT set-aside the assessment order passed u/s.143(3) for a *de novo* determination of total income. The assessee is in appeal before the Tribunal against the order passed by the ld. CIT.

5. We have heard the rival submissions through the virtual court and gone through the relevant material on record. A copy of the notice issued u/s.263 of the Act is available at page 23 of the paper book recording the initial view of the ld. CIT that the assessee made cash deposit of Rs.23,60,000/- in his saving bank account maintained with ICICI bank, which was not properly examined by the AO. He further noted that the assessee claimed before the AO that such amount was deposited by Mr. Dilip Talekar, partner of Shri Laxmisen Agencies, Kolhapur for purchasing Demand Drafts in favour of Wockhardt Limited towards purchases from the company. This is how, he held that the AO did not make proper verification of this aspect.

6. On going through the assessment order passed u/s.143(3), which has been set aside by the ld. CIT u/s.263 of the Act, it is

seen that the AO called upon the assessee to furnish evidence of the cash deposits of Rs.23,97,730/- in his savings bank account. Para 4.4 of the assessment order talks of certain enquiries made by the AO with the assessee's bank and also with Mr. Dilip Talekar. The assessee contended before the AO during the course of assessment proceedings that Mr. Dilip Talekar misused his bank account by depositing cash and thereafter making purchases from Wokhardt Limited through the demand drafts from this account. The AO also invoked the provisions of section 133(6) and carried out inquiries from Wokhardt Limited and ICICI bank Ltd. It was confirmed from the bank records that transactions from the assessee's bank account were made for purchasing Demand Drafts in favour of Wokhardt Limited. The AO also recorded statement of Mr. Dilip Talekar, partner of Shri Laxmisen Agencies indicating that the amount was withdrawn by him from the assessee's bank account by means of Demand Drafts issued in favour of Wokhardt Limited. The corresponding cash deposits were made by Mr. Dilip Talekar in assessee's bank account for which the purchases were made from Wokhardt Limited. This issue has been aptly discussed in paras 4.4 to 4.6 of the assessment order. On examination of the entire details, the AO concluded that Mr. Dilip Talekar and

Shravan Kumar Kole used savings bank account of the assessee for the business of the firm, namely, Shri Laxmisen Agencies wherein Mr. Dilip Talekar was a partner. It is further noticed that the AO of the assessee passed on this information to the AO of Shri Laxmisen Agencies. A copy of the assessment order dated 28-03-2014 for the year under consideration in the case of Shri Laxmisen Agencies has been placed at page 1 onwards of the paper book. In this assessment order, there is reference of the proceedings taking place in the hands of the assessee and further the AO of the assessee concluding that Shri Laxmisen Agencies made purchases by withdrawing amounts from the bank account of the assessee. It transpires from such an order that Shri Laxmisen Agencies was doing this practice using others' bank accounts and the operation was not confined to the assessee only. Not only that, the AO of Shri Laxmisen Agencies made an addition of Rs.1,69,54,513 towards unaccounted purchases.

7. On a careful circumspection of the entire factual scenario prevailing in the instant case, it is more than clear that albeit the cash was deposited in the assessee's bank account but the source of such cash was Mr. Dilip Talekar, partner of Laxmisen Agencies. He used the assessee's bank account by purchasing demand drafts

in favour of Wokhardt Limited for making purchases, which business the firm was admittedly doing outside the books of account. The AO, not only examined this fact after recording the statement of Mr. Dilip Talekar as well as the assessee, but also got such transactions verified with Wokhardt Limited and the bank of the assessee. This amply proves that the AO made proper verification of the assessee's claim and reached right conclusion that such cash deposits, in fact, represented transactions carried out by Mr. Dilip Talekar for and on behalf of Shri Laxmisen Agencies. Not only that, the AO of the assessee passed on this information to the AO of Shri Laxmisen Agencies, who, in turn, made addition towards unaccounted purchases. The narration of above facts clearly demonstrates that neither the AO failed to make proper investigation nor did he reach any wrong conclusion in holding that the amount of cash deposits by the assessee in his bank account did not pertain to him. We, therefore, set-aside the impugned order doubting the correctness of the assessment order.

**ITA No.71/PUN/2016 – Akshay A. Sawant :**

8. The appeal is time barred by 776 days. The assessee has filed an affidavit explaining reasons for the delay. We are satisfied with

the reasons so stated. The delay in filing the appeal is condoned and the appeal is admitted for hearing on merits.

9. This appeal arises out of the order dated 30-9-2013 passed by the Id. CIT u/s.263 of the Act in relation to the assessment year 2009-10.

10. Both the sides are in agreement that the facts and circumstances of this appeal are *mutatis mutandis* similar to those of Samir N. Mehta. This assessee is also a salaried employee who was working with Wochardt Limited. Bank account of this assessee was also used by Mr. Dilip Talekar for making purchases outside the books of account for Shri Laxmisen Agencies. Proper investigation was carried out by the AO during the course of original assessment proceedings who did not find anything amiss requiring addition on this score. The Id. CIT, in the same manner, as in the case of Samir N. Mehta, set-aside the assessment order with a direction to the AO for making *denovo* adjudication. In view of the reason that the facts and circumstances of this appeal are similar to those of Samir N. Mehta, following the view taken hereinabove, we set-aside the impugned order.

11. In the result, both the appeals are allowed.

Order pronounced in the Open Court on 26<sup>th</sup> October, 2020.

Sd/-  
**(S.S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 26<sup>th</sup> October, 2020  
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT-II, Kolhapur
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“ए” / DR ‘A’, ITAT, Pune
5. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	23-10-2020	Sr.PS
2.	Draft placed before author	26-10-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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