

**आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH,**  
**PUNE**

**BEFORE SHRI SATBEER SINGH GODARA, JM**  
**AND DR. DIPAK P. RIPOTE, AM**

**आयकरअपीलसं. / ITA No.665/PUN/2017**  
**निर्धारणवर्ष / Assessment Year : 2012-13**

Mangal A. Jadhav, M/s.Shah Khandelwal Jain & Associates, Level 3, Riverside Business Bay, Plot No.84, Wellesley Road, Near RTO, Pune - 411001. PAN: AHYPJ 9285 D	Vs	The Income Tax Officer, Ward-1, Ahmednagar.
Appellant/ Revenue		Respondent/ Assessee

Assessee by	Shri Rajiv Thakkar – AR
Revenue by	Shri S P Walimbe - DR
Date of hearing	19/04/2022
Date of pronouncement	06/05/2022

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This is an appeal filed by the Assessee directed against the order of Id.Commissioner of Income Tax(Appeals)-2, Pune dated 09.12.2016for the Assessment Year 2012-13. The Assessee raised the following grounds of appeal:

- “1. On facts and circumstances prevailing in the case and as per provisions fit scheme of the Income-tax Act, 1961 ('the Act') it be held that addition of Rs. 10,57,073/- made by the AO, doubting the opening cash balance which is further deposited into bank, and upheld by CIT(A), is merely on-guesswork & conjectures and is improper, unjustified, incorrect and contrary to provisions of law and facts prevailing in the case. No such addition is warranted in the case of the appellant. The addition made by the AO and upheld by CIT (A) be deleted. The appellant be granted just and proper relief in this respect.*
- 2. On facts and circumstances prevailing in the case and as per provisions & scheme of the Income-tax Act, 1961 ('the Act') it be held that addition of Rs. 60,00,000/- made by theAO, doubting the advances against booking of flats received in cash in which were further deposited into bank, and upheld by CIT(A), is merely on guesswork & conjectures and is improper, unjustified, incorrect and contrary to provisions of law and facts prevailing*

*in the case. No such addition is warranted in the case of the appellant. The addition by the AO and upheld by CIT (A) be deleted. The appellant be granted just a relief in this respect*

3. *On facts and circumstances prevailing in the case and as per provisions & scheme of the Income-tax Act, 1961 ('the Act') it be held that addition of Rs. 6,98,000/- made by the AO, doubting the sale of car in cash which is further deposited into bank, and upheld by CIT(A), is merely on guesswork & conjectures and is improper, unjustified, incorrect and contrary to provisions of law and facts prevailing in the case. No such addition is warranted in the case of the appellant. The addition made by the AO and upheld by CIT(A) be deleted. The appellant be granted just and proper relief in this respect.*
4. *The appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing.*

2. Brief facts of the case are that the assessee is an individual and is engaged in the business of catering and supplying building materials. The return of income for the year was filed on 30.3.2013 showing total income at Rs.8,00,960/- and agricultural income of Rs.92,400/-. The Assessing Officer completed the assessment on a total income of Rs.88,95,473/- and agricultural income at Rs.92,400/-.

3. The relevant part of the Assessment Order is reproduced here as under :

*"4. During the year under consideration assessee purchased N.A land at NimgaonKorhale, Tal-Rahata on 10/06/2011 along with two others for Rs.4,28,40,000/-, expenses incurred on account of stamp duty Rs.1,52,220/- + registration fee-30,720/- i.e. totalling to Rs.4,30,22,940/-. The assessee's share in the said land is 25% i.e. Rs.1,07,55,735/-.*

5. *During the assessment proceeding when called upon to explain the source of investment the assessee submitted as under-*

<i>A</i>	<i>Advance (as per AY 2011-12 Balance Sheet)</i>	<i>5,79,100/-</i>
<i>B</i>	<i>Cash balance</i>	<i>15,57,000/-</i>
	<i>(as per AY 2011-12 Balance Sheet)</i>	
<i>C</i>	<i>Advance against booking of Facts</i>	<i>60,00,000/-</i>
<i>D</i>	<i>Gift received from Mother</i>	<i>6,01,000/-</i>
<i>E</i>	<i>Out of sale of safari Car</i>	<i>6,98,000/-</i>
<i>F</i>	<i>Last year's Bill received AY 11-12 Bsheat</i>	<i>90,800/-</i>

G Out of current year's income  
and creditors, etc  
Total Sources

12,29,800/-  
1,07,55,700/-

7. To verify the genuineness of claimed sources and credit worthiness of persons, the assessee was asked to produce those persons along with their identity and creditworthiness evidence. The assessee produced 18 persons on 25/03/2015, their statement recorded on oath which are summarized as under:

S N	Name	Nature of Business	Gross Annual Income	Amount of Advance given	Price of Flat	Purpose of Booking flat	Whet her havi ng Bank acco unt
1	Shri Suresh Ravanraolj ate	Mess	120000	350000	2000000	Investment	Yes
2	Shri Rajesh Madhava Jadhav	Agriculture	250000	350000	1860000	Investment	Yes
3	ShriRahul Madhav Jadhav	Agriculture	350000	200000	2100000	Investment	No
4	Shri Rao Saheb hari Jadhav	Agriculture and Service	238000	350000	1800000	Investment	Yes
5	Shri Vijay Ashok Jadhav	Agriculture	99000	150000	1800000	Self residence	No
6	Shri Sagar Suresh Bhorde	Service	130000	250000	1920000	Self residence	Yes
7	Shri Shyam Shankar Sonavane	Cutlery business	125000	250000	1980000	Investment	Yes
8	Shri Sagar Ashok Shinde	AGricultur e	100000	300000	1980000	Investment	Yes
9	Shri Sachin Jagannath Datal	Agriculture & service	132000	350000	2100000	Self residence	No
10	Shri Vikram Ghanshya m Kachare	Mobile repair	170000	300000	2100000	Investment	Yes
11	Shri Sanjay Bhausahab Kardile	Sale of Vegetable	72000	250000	2040000	Residence	No
12	Shri Vijay Janardhan Jadhav	Driver	96000	350000	2040000	Self residence	No
13	Shri Amol Datattatry	Driver	200000	200000	1800000	Investment	Yes

	<i>a Jathar</i>						
14	Shri Jadhav Sandeep Vithal	Hotel	228000	350000	1800000	Self residence	Yes
15	Shri Satish Hiraji Kale	Motor Mechanic	270000	200000	1800000	Investment	Yes
16	Shri Chudival Rounak Subhesh	Agriculture	100000	350000	1980000	Investment	Yes
17	Shri Amol Ram Jadhav	Ornament Maker	165000	250000	2040000	Investment	No
18	Smt Shalan Bhausaheb Jadhav	Agriculture and service	300000	250000	1800000	Investment	Yes

8.1 On the contrary, even though the gross income stated by those persons in their statement is accepted as correct, it is categorized as under:

<b>Gross Annual Income</b>	<b>No of Persons</b>
Below Rs.1,00,000	Four
Rs.1,00,000 to 2,00,000	Nine
Rs.2,00,000 to 3,00,000	Four
Rs.3,00,000 to 3,50,000	One

If household and other expenses considered from this gross income, then the net income of those depositors will be remained at lesser side or meagre. Any person from the income group as mentioned above books a flat having cost round about Rs.20,00,000/- and paid 3,00,000/- to 3,50,000/- as an advance at one stroke is not convincing and not acceptable. Moreover, the amount of advance paid is more than their net annual income for 3 to 4 years. Regarding source of advance it is stated that it is out of their past savings. However, no evidence of past saving has been produced. Further, some of the customers in their statement stated that they had given said advance out of their past saving which kept at their home. This is also unbelievable.

8.2 In the absence of evidence, such behaviour can only be tested by the test of the human probabilities as held by the Hon'ble Supreme Court in the case of Sumati Dayal Vs CIT (1995) 214 ITR 801 (sc). If the test of human probabilities is applied to such behaviour, the conclusion would be that no person in right mind would keep substantial amount of savings in house.

Moreover, a person from said income group, to purchase the flat costing round about Rs.20,00,000/-, only for the purpose of investment is not acceptable and it is beyond their capacity.

*This clearly established that capacity of customer remains unexplained.*

4. Aggrieved by the order of the Assessing Officer, the Assessee filed an appeal before Ld.CIT(A)-2, Pune. Ld.CIT(A) upheld the additions. The relevant paras are reproduced here as under :

*“4.2.3 I have perused the facts in this regard and it is seen that when questioned about the source of investment in the land one of the source stated by the appellant was advance of Rs, 60,00,000/- received from 21 persons towards proposed safe of flats. It is observed that there is no sanctioned plan or permission to construct the flat from any government department or local municipality which is one of the prerequisite for accepting advances against booking of flats. The appellant herself has admitted that neither the rate per square feet was decided nor the size of the plot was decided. On further perusal of the facts, it is observed that all the so called investors were small person like drivers, vegetable sellers, motor mechanic and small agriculturalist and none of them are filing returns of the income. The appellant in the return of income has also not mentioned that she was involved in any flat construction activity or real estate development, It is further observed that out of the 21 persons 03 of them were not produced before the Assessing Officer and others who were produced could not prove their creditworthiness and genuineness of the transaction. For the purpose of proving cash credit it is necessary that 03 prerequisites are to be fulfilled by the assesses i.e. identity of the creditors, creditworthiness of the creditors and genuineness of the transaction. Although the appellant by producing 18 persons was able to bring their identify on record but it has miserably failed to prove two other prerequisites of cash credits. As stated above, the persons were of small means having limited sources of income and none of them are income tax payers. In absence of any such evidence the creditworthiness of these persons could not be proved as a matter of fact.*

*4.2.4 Genuineness of the transaction also remains in doubt as the entire amount of Rs. 60,00,000/- have been shown to be received in cash. The logic behind advancing such huge money in cash is unacceptable as because a major portion of these alleged creditors were having bank accounts and they were in a position to advance money through banking channels. However even after that the appellant has shown to receive the money in cash which seriously raises the genuineness of the transaction. Also three persons were not produced before the Assessing Officer for examination in spite of specifically required by the Assessing Officer during the assessment proceedings. It is relevant to mention here that the appellant during the appellant proceeding herself admitted that the scheme for sale of flats did not take off even during the subsequent periods which raises serious questions about the credibility of the submission made during the assessment proceeding.*

4.2.8 *Section 110 of the Evidence Act is material in this respect which stipulates that when the question is whether any person is owner of anything of which he is shown to be in possession, the onus of proving that he is not the owner, is on the person who affirms that he is not the owner. In other words, it follows from well settled principle of law that normally, unless contrary is established, title always follows possession. Chuharmal vs CIT (1988) 172 ITR 250 (SC). Documentary evidence plays an important part in law. The Courts attach great value for documentary evidence. The Punjab & Haryana High Court in the case of Paramjit Singh Vs ITO (2010) 323 ITR 588 (P & H) pointed out that oral evidence is not conclusive as against documentary evidence under sections 91 and 92 of the Indian Evidence Act, 1872.*

4.2.13 *In view of the aforesaid discussion on the facts of the case and decisions cited, I hold that the Assessing Officer has rightly treated the amount of Rs.60,00,000/- shown to have been received as advance against sale of flats as income of the appellant. The action of the Assessing Officer is upheld.”*

4. Aggrieved by the order of the Ld.CIT(A), the appellant assessee has filed an appeal before this Tribunal.

4.1. The ld.Authorised Representative(ld.AR) submitted that ld.CIT(A) has erred in not appreciating the evidence filed by the appellant assessee. The ld.AR submitted that during the assessment proceedings all the 18 persons who have given impugned advance were produced before the Assessing Officer(AO), AO recorded their statements. All of them have confirmed the fact of giving advance. Therefore, the Assessee has proved identity, genuineness, and creditworthiness. Thus assessee has established that the entire advance is genuine.

5. Per Contra, Ld.Departmental Representative(ld.DR) relied on the orders of the Lower Authorities.

6. We have heard both the parties, studied the submissions, perused the records. We are taking up the **Ground No.2** of additions of Rs.60,00,000/- first.

6.1 It is fact that assessee has purchased NA land on 10/06/2011 with two other persons for Rs.4,28,40,000/-. While explaining the source of investment assessee claimed that assessee collected advance of Rs.60,00,000/- from 21 persons. 18 persons were produced before the AO and AO recorded their statements:

S N	Name	Nature of Business	Gross Annual Income	Amount of Advance given	Price of Flat	Purpose of Booking flat	Whether having Bank account
1	Shri Suresh Ravanraoljate	Mess	120000	350000	2000000	Investment	Yes
2	Shri Rajesh Madhava Jadhav	Agriculture	250000	350000	1860000	Investment	Yes
3	ShriRahul Madhav Jadhav	Agriculture	350000	200000	2100000	Investment	No
4	Shri Rao Saheb hari Jadhav	Agriculture and Service	238000	350000	1800000	Investment	Yes
5	Shri Vijay Ashok Jadhav	Agriculture	99000	150000	1800000	Self residence	No
6	Shri Sagar Suresh Bhorde	Service	130000	250000	1920000	Self residence	Yes
7	Shri Shyam Shankar Sonavane	Cutlery business	125000	250000	1980000	Investment	Yes
8	Shri Sagar Ashok Shinde	AGriculture	100000	300000	1980000	Investment	Yes
9	Shri Sachin Jagannath Datal	Agriculture & service	132000	350000	2100000	Self residence	No
10	Shri	Mobile	170000	300000	2100000	Investment	Yes

	Vikram Ghanshyam Kachare	repair					
11	Shri Sanjay Bhausahab Kardile	Sale of Vegetable	72000	250000	2040000	Residence	No
12	Shri Vijay Janardhan Jadhav	Driver	96000	350000	2040000	Self residence	No
13	Shri Amol Datattatrya Jathar	Driver	200000	200000	1800000	Investment	Yes
14	Shri Jadhav Sandeep Vithal	Hotel	228000	350000	1800000	Self residence	Yes
15	Shri Satish Hiraji Kale	Motor Mechanic	270000	200000	1800000	Investment	Yes
16	Shri Chudival Rounak Subhesh	Agriculture	100000	350000	1980000	Investment	Yes
17	Shri Amol Ram Jadhav	Ornament Maker	165000	250000	2040000	Investment	No
18	Smt Shalan Bhausahab Jadhav	Agriculture and service	300000	250000	1800000	Investment	Yes

6.2 Money was given in cash between 1<sup>st</sup> August to 6<sup>th</sup> August 2011. It is surprising that persons making investment in purchase of flat have not even entered into any Agreement for Sale or any such document. If we apply the test of human probability then it is impossible that a person earning meagre income investing in flat in cash without any Agreement for Sale etc. The AO recorded the statement in March 2015, i.e. after more than 3.5 years but many of them were not aware about the exact progress of construction of flats, exact number of flat allotted to them. Even After 3 ½ years, there are no “Agreement for Sale”. They have not filed return of Income. They have not seen any Construction Plan, Structure of the proposed flat.

All these things are not normal. If we apply the test of human probability then such things are highly unlikely.

6.3 The appellant assessee has filed copy of Cash Book for the FY 2011-12 at page number 112-116 of the paper book . On perusal of the cash book, it is observed that upto 31/07/2011, there are some entries of purchase and sale of Steel, other material etc. But from 01/08/2011 to 06/08/2011, there are only entries of cash receipts from the above mentioned persons, no other entries during this period. As if there was no normal business during this period, there was no travelling expenditure during this period. September onwards the normal purchase and sale debits/ credits are appearing. This shows that assessee has created these entries. These are not genuine entries. Based on appreciation of all these facts , documents, we are of the opinion that the Appellant assessee has failed to prove the Genuineness of the transaction, creditworthiness of the persons. Hence. We confirm the addition of Rs. 60,00,000/- made by the Assessing Officer. Thus the ground number 2 of the appellant assessee is dismissed.

7. **Ground No.1** is regarding opening cash balance of Rs.15,57,073/-. The assessing officer has mentioned in the assessment order that as per the previous Return of the assessee, she has not maintained Books of Accounts. Hence AO concluded that in the absence of Books of Accounts for the previous year (FY 2010-11) the authenticity of Opening Cash Balance is in doubt. Therefore, based on the assessee's business receipts, the AO estimated opening cash

balance at Rs. 500000/- and added remaining amount of Rs.10,57,073/- . The Id.CIT(A) has confirmed the addition. Before us the AR submitted that the Balance sheet for earlier year was submitted before AO. The AO has rejected it on conjectures.

7.1 We have perused the copy of the Return of Income for AY 2012-13 and AY 2011-12 filed by the appellant assessee at page number 34-56 of the paper book. At page number 37 of the paper book is the copy of page number 5 of the return of Income which is pertaining to Balance sheet items. Against the column Cash-in-hand, assessee has merely made dash, no figure has been mentioned. Similarly at page number 48 of the paper book is the page 5 of the return of income for AY 2011-12, against the column "cash -in-hand" assessee has just made dash i.e."-". Thus in the return of Income for AY 2011-12, the assessee has not shown any closing cash balance, therefore, there is no evidence of opening cash balance for AY 2012-13. The AO has already mentioned in the order that as per the return of income for AY 2011-12, assessee has not maintained any books of accounts. We have already mentioned in Para 6.3 above that genuineness of the cash book filed in the paper book for the A.Y.2012-13 is doubtful. In the absence of books of accounts, the AO has rightly estimated the opening cash balance. Therefore, the Ground No.1 of the appellant assessee is dismissed.

8. **Ground No.3** is about addition of Rs.6,98,000/- on sale of car. The AO had asked the assessee to produce copy of RC book and documentary evidence of purchaser of the car. However, the assessee filed before us copy of a screen shot to explain the transfer. In this background, the Assessee is directed to file all the evidence before the Assessing Officer for his verification. Accordingly, the Ground No.3 is set aside to the file of AO for verification. AO shall afford opportunity to the assessee. Thus, Ground No.3 is allowed for statistical purpose.

9. In the result, Ground No.1 and 2 are dismissed and Ground No.3 is allowed for statistical purpose.

Order pronounced in the open Court on 6<sup>th</sup> May, 2022.

Sd/-  
(SATBEER SINGH GODARA)  
JUDICIAL MEMBER

Sd/-  
(DR. DIPAK P. RIPOTE)  
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 6<sup>th</sup> May, 2022/ SGR\*

**आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) concerned.
4. The Pr. CIT concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, “ए” बेंच,  
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary  
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.