

IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC BENCH, NAGPUR  
(AT e-Court, PUNE)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. /ITA No.316/NAG/2017

निर्धारण वर्ष / Assessment Year : 2001-02

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|---|-----|---------------------------------------|
| Smt. Pratibha<br>Legal heir of Raju Ramhari,<br>C/o. M/s. Loya Bagri & Co.,<br>Chartered Accountant,<br>Gandhibag, Nagpur<br>PAN : APTPK5278D | Vs. | ACIT,<br>Amravati Circle,<br>Amravati |
| Appellant   |     | Respondent                            |

Assessee by Shri Rajesh V. Loya  
Revenue by Shri G.J. Ninawe

Date of hearing 22-09-2022  
Date of pronouncement 23-09-2022

आदेश / ORDER

PER R.S. SYAL, VP:

This appeal by the assessee arises out of the order passed by the Commissioner of Income-tax (Appeals)-I, Nagpur on 17-05-2017 in relation to the assessment year 2001-02.

2. The first issue raised in this appeal is against the confirmation of addition of Rs.7,79,175/- made by the Assessing Officer (AO) u/s.69 towards cash deposits in the bank account.

3. Briefly stated, the facts of the case are that a survey u/s.133A of the Income-tax Act, 1961 (hereinafter also called 'the Act') was carried out at the business premises of the assessee on 09-01-2007. During the course of survey, certain documents relating to the properties/investments were found. Notice u/s.148 was issued, pursuant to which the assessment was finalised determining total income at Rs.10,33,990/-, which was rectified u/s.154 at the total income at Rs.10,63,990/-. The Id. CIT(A) allowed some relief. When the matter came up before the Tribunal in the first round through cross appeals filed - both by the assessee as well as the Revenue -, the Tribunal, vide its order dated 04-03-2009 in ITA Nos.369 & 374/Nag 2008 and ITA No.381/Nag/2008, set aside the assessment order and remitted the matter to the file of the AO with a direction to supply to the assessee the Xerox copies of the impounded documents and also evidence collected by the Revenue before making assessment. Pursuant to such order, the AO took up the assessment proceedings u/s.143(3) r.w.s.254. He observed from the bank account maintained by the assessee with Santaji Nagari Sahakari Patsanstha that the assessee had deposited cash on

different dates during the year totalling upto Rs.7,79,175/-. The assessee tendered some explanation in support of the deposits, being, coming from business activity carried out by him. Not convinced, the AO made the addition for the said sum, which came to be affirmed in the first appeal.

4. I have heard the rival submissions and gone through the relevant material on record. It was contended before the authorities below that the assessee was carrying on some business outside the books of account, whose proceeds were deposited in the bank account. The existence or carrying on of any such business has not been established. It is seen from the bank account, copy placed at page 21 onwards of the paper book, that there are certain cash deposits and cash withdrawals on different dates. When cash is deposited in a bank and thereafter withdrawn and again re-deposited, the presumption is that the amount re-deposited came out of the amount withdrawn earlier, unless the AO shows the utilisation of cash elsewhere. In such circumstances, it is only the peak credit which can be charged to tax and not all the deposit entries in the bank account. As such, I set aside the impugned

order and remit the matter to the file of the AO for determining the peak credit out of such transactions and make addition for the same in addition to the interest income credited by the bank separately as recorded in the bank statement.

5. The next ground is against the confirmation of addition of Rs.31,990/- towards purchase of plot. The facts anent to this issue are that the assessee purchased a plot of land at Survey No.214/1 from one Mr. Ashok Nanwatkar and spent a total sum of Rs.31,990/- on such purchase. In the absence of the assessee furnishing any source of investment, the AO made addition for the same, which was echoed in the first appeal.

6. I have considered the rival submissions and perused the relevant material on record. The ld. AR contended that the purchase of plot should be considered as sourced from the bank withdrawals for which separate addition was made by the AO. While disposing of the first issue *supra*, I have directed that only the peak credit of the cash deposits and withdrawals should be included in the total income and not all the deposits. The contention of the assessee that Rs.31,990/- should be considered as

coming out of the bank withdrawals, cannot be accepted because once the peak credit is taken, the presumption remains that all the amounts withdrawn from the bank were re-deposited. In such a situation, if the assessee makes a claim that a particular amount was utilised elsewhere, then the peak balance has to be adjusted accordingly by increasing it correspondingly. The net effect of the above discussion is that where the peak is added, the investment made by the assessee has to be added separately and it cannot be claimed that the cash re-deposited in the bank after withdrawal was used for purchase of any other asset. I, therefore, uphold the addition of Rs.31,990/- sustained in the first appeal.

7. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 23<sup>rd</sup> day of September, 2022

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

पुणे Pune; दिनांक Dated : 23<sup>rd</sup> September, 2022  
*Satish*

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-I, Nagpur
4. The Pr.CIT-I, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,  
Nagpur / DR, Nagpur
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

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

|     |  | Date       |       |
|-----|--|------------|-------|
| 1.  | Draft dictated on                                | 22-09-2022 | Sr.PS |
| 2.  | Draft placed before author                       | 23-09-2022 | 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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