



॥ आयकर अपीलीय न्यायाधिकरण, पुणे "ए" न्यायपीठ, पुणे में ॥  
IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE "A" BENCH, PUNE  
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1954/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-2014

Prashant Pratap Ahir

At – Bunglow No.8, Mahindra Society,

121, Nagar Road, Pune – 411006

PAN:AEFPA6461E

..... अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,

Circle – 10, Pune

..... प्रत्यर्थी / Respondent

**द्वारा / Appearances**

Assessee by : Shri Prashant Pratap Ahir

Revenue by : Shri Ramnath P Murkude

सुनवाई की तारीख / Date of conclusive Hearing : 12/10/2022

घोषणा की तारीख / Date of Pronouncement : 12/10/2022

**आदेश / ORDER**

**PER G. D. PADMAHALI, AM;**

This appeal challenges the order of Commissioner of Income Tax (Appeals)-13, Pune [for short "CIT(A)"] dt. 07/08/2018 passed u/s 250 of the Income-tax Act, 1961 [for short "the Act"], which soared out of assessment order dt. 21/12/2016 passed u/s 143(3) r.w.s. 147 by the Asst. Commissioner of Income Tax, Circle-10, Pune [for short "AO"] for assessment year [for short "AY"] 2013-14.



2. The appeal seeks to adjudicate the taxability of on-money received on the transfer of capital asset.
3. The grounds of appeal in the appeal memo for adjudication are;

***“On facts and in law -***

***1. The learned CIT(A) erred in upholding the action of the Assessing Officer in treatment of amount of Rs.52 lacs deposited in bank account as unexplained cash deposits.***

***2. The learned CIT(A) erred in not accepting the contention of appellant that cash received was against sale of property and same to be treated as Income from Capital gain and not from unexplained cash credit.***

***For this and such other grounds as may be urged at the time of hearing, the order of the CIT (Appeals) and assessing officer may be vacated and the appellant’s claim may be allowed or any suitable directions issued.***

***3. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.***

4. Tersely stated the facts of the case are;
  - 4.1 The appellant is an individual, who failed to file his return of income [for short **“ITR”**] for the AY 2013-14, consequently on the basis of financial information received in AIMS module / ITD system, a letter was



issued to the appellant calling reply, upon no response thereto, on a due approval by service of notice u/s 148 of the Act, a proceeding u/s 147 of the Act was initiated by Ld. AO on the ground that, the assessee inspite in receipt of salary income, cash deposits of more than 10 Lakhs into his savings bank account and large financial capital account transaction undertaken, no return of income was filed.

4.2 When notice u/s 148 remained unresponded, further notices u/s 142(1) followed by show cause notice u/s 142(1) r.w.s. 271(1)(c) of the Act were served upon the assessee, which did not yield any results.

4.3 In response to summon, the assessee submitted the copy of ITR filed, computation of income, purchase & sale deed executed and bank statements in support thereof, however failed to substantiate the claim of borrowings made against the cash deposit of 52Lakhs into saving bank account, consequently the



Ld. AO brought the total amount of cash deposit to tax by addition u/s 68 of the Act and culminated the assessment u/s 143(3) r.w.s. 147 of the Act.

4.4 The impugned addition was unsuccessfully challenged before the first appellate authority [for short "**FAA**"], for the reason the appellant seeking relief on the ground set at para 3 herein before.

5. In the course of physical hearing, the assessee represented himself in person and at the outset referring to affidavit and application filed for condonation of delay in instituting the appeal, reiterated its contents and prayed for condonation. Pressing the ground number 2 it is submitted the impugned addition and confirmation thereof by the Ld. FAA was on account of misrepresentation by the engaged representative, whereas the amount of cash deposit was out of on-money (cash) generated on the sale of capital asset and the gain arisen therefrom was declared as income in the ITR filed which was accepted by the Ld. AO, for the reason the cash deposits be treated as a integral part of sale consideration



received and be charged to tax as capital gain instead of unexplained cash credit. **Au contraire** the learned departmental representative [for short "**DR**"] adverting to para 2 to 5 of assessment order strongly contrasted the submission of appellant and submitted that, the appellant taking chameleon stance one after another to substantiate the cash deposits, which **de-facto** needs no consideration, as the addition u/s 68 was carried out after due verification of record and in the event of failure to substantiate the borrowings made, and for the reason the order of the tax authorities below deserves to be confirmed.

6. After hearing to the rival contentions of both the parties on substantive ground; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short "**ITAT, Rules**"] perused the material placed on record till conclusive hearing, case laws relied upon by the appellant as well the respondent and duly considered the facts of the case in the light of settled legal position forewarned to either parties.



7. First thing first, in so far as the delay of 45 days in instituting the present appeal is concerned, we having regards to facts & circumstance, find force in the submission of the appellant establishing the sufficiency of reason in belated filing of the appeal, consequently in the light of decision of Hon'ble Apex Court in **"Collector Land Acquisition Vs MST Katiji and Others"** reported at 167 ITR 5 (SC) and Hon'ble Bombay High Court in **"CIT Vs Velingkar Brothers"** reported at 289 ITR 382 (Bom), the delay stands condoned in the larger interest of justice.

8. Coming to the sole, substantive and merit ground of appeal, it remained an undisputed fact that, the appellant fell into non-filer category as per the database of Revenue, consequently in the evince of substantial financial transactions undertaken including cash deposits into saving bank account exceeding ₹10Lakhs and in the absence of return of income on record, the case of the appellant was subjected to 147 proceedings and upon failure to substantiate the claim of borrowings put forth in support of cash deposits made, the impugned addition was triggered, wherein the Ld. CIT(A) reverberated the



views of Ld. AO when such failure continued before him. Under the extant appeal the appellant's fresh and altered claim that, the cash deposits are out of on-money cash was generated on the sale of capital asset and was an integral part of the sale transaction can be traced back to the date of sale of capital asset undertaken in the month of November, 2012 and the corresponding cash deposits into saving bank account in immediate succeeding month of December, 2012 which Ld. DR did not controvert. **Per contra**, the Revenue failed to bring on record any deprecative material in rebutting the present claim of the appellant. In situations like this case, one may fall into realm of "preponderance of probability" where there are many probable factors, some in favour of the appellant and some may go against, but the probable factors have to be weighed on material and connected but evidential facts brought on records. Here in this case the material facts strongly indicate a probability that, the appellant had occasioned to receive on-money (cash) in the sale transaction of capital asset, and another very strong probable factor is that the said cash was deposited into



bank account after the occurrence of sale transaction. The probable factors could have gone against the appellant only if deposits would have been anterior to said sale transaction. Insofar as the revenue's action is concerned, at least something extra and weighing would have been unearthed over and above the financial information received in AIMS module / ITD system in order to draw presumption so has to conclude income by way of cash credit u/s 68 of the Act. However, this presumption or suspicion how strong it may appear to be true, but needs to be corroborated by some evidence to establish a link that, said amount of cash deposit(s) is actually untaxed income credited in the form of cash credit. It is quite a trite law that suspicion how so ever strong may be but cannot be the basis of addition except for some material evidence brought on record. The theory of preponderance of probability" is applied to weigh the evidences of either side and draw a conclusion in favour of a party which has more favourable factors in his side, and conclusions have to be drawn on the basis of certain admitted facts and materials and not on the basis of presumption of facts



Once nothing has been proved against the appellant with aid of any direct material especially when three rounds of investigation have been carried out, then nothing can be implicated against the appellant.

9. In the light of aforesaid discussion, we find force in the submission of the appellant, and for the reason we set aside the order of both the tax authorities below, and direct the Ld. AO to treat the said cash deposits as integral part of sale consideration received and reframe the assessment in the light of chapter IV-E of the Act, ergo we order accordingly.

**10. Resultantly, the appeal of the appellant assessee is allowed for statistical purpose in above terms.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Wednesday 12<sup>th</sup> day of October, 2022.

-S/d-

**S.S VISWANETHRA RAVI**  
**JUDICIAL MEMBER**

-S/d-

**G. D. PADMAHSHALI**  
**ACCOUNTANT MEMBER**

पुणे / PUNE ; दिनांक / Dated : 31<sup>st</sup> day of October, 2022.

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

1. अपीलार्थी / The Appellant.
3. The Pr. CIT-5, Pune (MH-India)
5. DR, ITAT, Pune Bench 'A', Pune

2. प्रत्यर्थी / The Respondent.
4. The CIT(A)-13, Pune (MH-India)
6. गार्डफ़ाइल / Guard File. आदेशानुसार / By Order,  
वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.