

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “जी” मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**

**श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष**  
**BEFORE SHRI C.N. PRASAD, JM AND SHRI RAJESH KUMAR, AM**

ITA NO.7318/Mum/2014  
(निर्धारण वर्ष / Assessment Year: 2004-05)

Shri Vikrant Jaywant Sankhe, 4, Ground floor, Sagar Tarang, Tarapur Road, Chitralaya, Boisar, Taluka-Palghar, Dist-Palghar-401504	<u>बनाम/</u> Vs.	Income Tax Officer Ward (1), Palghar, Taluka-Palghar, Dist-Palghar-401504.
स्थायी लेखा सं./जीआइआर सं./PAN : AMFPS2818B		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Senthil Kumaran
प्रत्यर्थी की ओर से/Respondent by	:	None

सुनवाई की तारीख /Date of Hearing	:	21.12.2016
घोषणा की तारीख /Date of Pronouncement	:	12.2016

**आदेश / ORDER**

**PER RAJESH KUMAR, A. M:**

This is an appeal filed by the assessee challenging the order dated 5.8.2014 passed by the Id.CIT(A)-II, Thane for the assessment year 2004-05.

2. This appeal was fixed for hearing on 21.12.2016 and at the time of hearing neither the assessee nor his authorized representative appeared on the appointed date of hearing despite services notice through RPAD.

Therefore, we proceed to adjudicate the appeal filed by the assessee ex-parte after hearing the Id.DR and on the basis of material available on record. It is also pertinent to note that the assessee was also granted number of opportunities of hearing on 21.6.2016, 18.7.2016, 17.8.2016 and 29.9.2016 by the Tribunal but on these dates also the assessee did not attend the hearing.

3. The assessee has raised following grounds of appeal:

**"1. Unexplained Capital at Rs. 1,12,500/- :-**

*a) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred in confirming the Unexplained additional capital of Rs.1,12,500/-.*

**2. Sundry Creditors u/s 68 at Rs. 1,71,850/-**

*a) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred in confirming the addition U/S 68 of for Unexplained Sundry Creditors at Rs. 1,71,850/-*

*b) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane failed to understand that the appellant had submitted confirmation of Sundry Creditor from one of major party and the confirmation was not for entire sum of Sundry Creditor amount shown in Balance Sheet.*

*c) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred in relying on Assessing officer remand report and not verifying copy of confirmation letter filed from M/s Guru Govind Motors.*

**3. Depreciation at Rs.1,54,091/-**

*a) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred in confirming disallowance of depreciation at Rs.1,54,091/-.*

*b) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred in not verifying purchase bills submitted for purchase of vehicles at the time of hearing and simply relying on remand report sent by AO.*

**4. Agriculture Income at Rs. 63,683/-**

*a) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred in confirming disallowance of agriculture income at Rs. 63,683/-*

**5. Marriage Gift at Rs. 1,64,150/- :-**

*a) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred not accepting Gift in Marriage at Rs. 1,64,150/-.*

*b) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals )-II, Thane has stated that Aher Register which shows gifts from as many as 439 persons, hence marriage expenses disclosed were certainly at lower side, but on other side failed to accept that Marriage gifts received Rs. 1,64,150/-*

**6. Marriage Expenses at Rs. 52,500/- :-**

*a) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred making addition of Rs. 52,500/- on ground of Marriage expenses.*

**7. Adhoc Disallowance at Rs. 1,63,374/- :-**

*a) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred confirming adhoc disallowance of expenses at Rs. 1,63,374/-*

**8. Difference in Value of Cost of Construction of Building at Rs. 3,88,000/-**

*a) On the facts and in the circumstances of the case and in learned Commissioner of Income Tax (Appeals)-II, Thane erred in confirming addition made on ground of difference in value of Construction.*

*b) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals)-II, Thane erred in not verifying the supporting documents and explanation submitted at the time of hearing at the time of appeal proceedings.*

*NOTE: The Appellant craves, leave to add to, amend, alter or withdraw the above grounds of appeal before or at the time of hearing of the appeal if necessary"*

4. The brief facts of the case are that the assessee filed his return of income on 27.9.2004 declaring total income of Rs.2,48,060/- which was accompanied with statement of total income, statement of affairs, audited profit and loss account and balance sheets and audit report in the prescribed form No.3CB and 3CD. The case of the assessee was selected for scrutiny and statutory notices u/s 143(2) and 142(1) were issued and served upon the assessee. During the course of assessment proceedings, the AO allowed several opportunity of hearing to the assessee on 15.09.2005, 28.09.2005, 19.10.2005, 7.6.2006, 6.7.2006, 17.8.2006, 25.9.06, 13.10.2006, 26.10.2006, 6.7.2006 and 20.11.2006. However, neither the assessee nor his representative appeared before the AO nor furnished any details as called for by the AO. The assessee has attended the office on 30.8.2006 without any details though the case was not fixed for hearing on that date. On 11.9.2006 a letter filed by the assessee received in the office of the AO stating that since the address written on

the notices was not correct and hence they could not be served on the assessee and hence no compliance could be made. However, the AO noticed that the address given by the assessee in return of income filed for the assessment year 2004-05 was same on which notices were sent and rejected the contention raised by the assessee. Finally the case was adjourned to 25.9.2006 and on that date also the assessee neither attended nor filed any reply before the AO. On 13.10.2006 the assessee attended and appeared before the AO and statement under section 131 of the Act was recorded. During the proceedings under section 131 also the assessee did not response to the queries raised by the AO while recording the statement. Even thereafter, the assessee did not furnish any detail/explanation regarding queries raised by the AO while recording statement on 13.10.2006. Thereafter, the case was adjourned time and again but the assessee did not appear and finally the case was fixed on 26.12.2006 but on that date also the assessee appeared but without any details and information. Therefore, the AO proceeded to make assessment u/s 144 of the Act and accordingly he framed assessment u/s 144 of the Act vide order dated 27.12.2006 by assessing the income at Rs.18,53,380/- by making various additions as detailed at page 9 of the Assessment Order. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id.CIT(A), who partly allowed the appeal of the assessee by holding as under :

"4. I have carefully considered the facts on record and submissions of the A.R. The remand report of the A.O. is also considered. During the course of assessment proceedings, the A.O. has allowed various opportunities of being heard, but the appellant did not submit desired details/evidences before the A.O. and accordingly, he passed the order u/s. 144 of the Act. During the course of appellate proceedings, the appellant has furnished certain evidences which have been examined by the A.O. during the course of remand proceedings although he has objected to admission of such evidences. On perusal of the additional evidences submitted, it is noticed that the same are rout evidences and mostly related to the entries recorded in the books of account. In view these facts and in the interest of justice, thus, additional evidences are being considered while deciding the grounds of appeal of the appellant.

4.1 First ground is pertaining to the addition of Rs. 3,52,000/- made u/s 68 on account of unexplained fresh capital. The appellant has explained the source of fresh capital by maturity value of FDRs including accrued interest, marriage gifts received and the agricultural income. The FDRs and accrued interest are already disclosed in the Balance Sheet of the appellant on the Asset side. Therefore, maturity of such FDRs will not increase the capital of the appellant. Accordingly, the appellant's contention on this account is not acceptable. Similarly, cash and receivables shown in the Balance Sheet at Rs. 23,559/- would not also increase the capital as the same are already shown in the Asset side of the Balance Sheet. Therefore, the only accretion in the capital would be on account of marriage gifts received at Rs. 1,66,650/- and agricultural income of Rs. 72,850/-. the A.O. has also added marriage gifts received at Rs. 1,66,650/- and agricultural income of Rs. 72,850/- as unexplained cash credit u/s.68. Since these two amounts have been separately assessed as unexplained cash credit u/s. 68, addition of the fresh capital which included the marriage gifts received and agricultural income would amount to double addition. Accordingly, the addition made at Rs. 3,52,000/- is required to be reduced to the extent of Rs. 1,66,650/- and Rs. 72,850/- being the marriage gifts and agricultural income added separately. Thus, addition to the extent of Rs. 1,12,500/- is confirmed on account of unexplained additional capital and accordingly, appellant partly succeeds in respect of Ground No.1

4.2 The second ground pertains to Sundry Creditors of Rs. 1,71,850/- shown in the Balance Sheet of M/s. Mahalaxmi Motors & Service Station being one of the proprietary concerns of the

*appellant. The appellant has claimed that he has received booking advances for the car from M/s. Dhanani Motors, M/s. Guru Govind Motors, M/s. Sajawat Motors & M/s. Ohuri Motors, respectively at Rs.42,000/-, Rs. 20,478/-, Rs.50,000/- and Rs.52,000. These sums have been deposited in the Bank account with ICICI Bank Ltd. However, the confirmation has been filed for the entire sum only from M/s. Guru Govind Motors. No confirmation has been filed from other parties. Moreover, the identity of these parties, creditworthiness and source of advance received have not been explained and 'proved by the appellant despite having been given various opportunities during the course of assessment proceedings as well as appellate proceedings. Therefore, in my considered view, the sundry creditors at Rs.1,71,850/- being the amount claimed to have been received. as advance, remained unexplained and accordingly, the addition made by the A.O. is sustained. Thus, appellant fails in respect of Ground No.2.*

*4.3 Ground No. 3 pertains to the disallowance of depreciation at Rs. 1,54,091/-on vehicle. The appellant has claimed that he had taken a loan of Rs. 2,95,253/- from Saraswat Co.Op. Bank Ltd. on 15.4.2002 for purchase of the vehicle namely Qualis Car and therefore, the purchase of vehicle has been established. However, it is noticed that the appellant has claimed depreciation on two vehicles namely Tata Spacio and Qualis Car. Merely because some loan has been taken by the appellant, it cannot be said that the vehicles have been actually purchased and used for the purpose of business during the year under consideration. The appellant has failed to furnish purchase document such as purchase bill, Registration Certificate and proof regarding the actual use of such vehicles for the purpose of business. In the absence of such documentary evidences, in my considered view, the depreciation on vehicles cannot be allowed and accordingly, the disallowance of depreciation made by A.O. is confirmed. Hence, appellant fails in respect of Ground NO.3.*

*4.4 4th Ground is pertaining to the agricultural income of Rs. 72,850/- treated as unexplained cash credit. On perusal of the material available on record, it is noticed that the appellant had claimed Rs. 30,000/- as deposit amount and Rs. 25,000/- as annual rent from the agricultural land. To support the contentions, the appellant has failed to furnish/produce the 'copy of original rent agreement. Moreover, the photo copy of agreement dt. 15.1.2003 filed by the appellant along with written submission shows that there*

*are as many as six co-owners in the agricultural land fetching a deposit of Rs.30,000/- and annual rent of Rs. 25,000/-. Thus, the share of appellant in the agricultural income would be Rs. 9,167/- only. In view of these facts based on the evidences furnished by the appellant himself, thus, the agricultural income to the extent of Rs.9,167/- is treated as explained and the balance addition on this account is confirmed. Hence appellant partly succeeds in respect of ground No.4.*

*4.5 Vide Ground No. 5, the appellant has challenged the addition of Rs.2,14,150/- made u/s. 68 being the unexplained marriage gifts and presents. In this regard the appellant has furnished a photo copy of Aher Register and Marriage Certificate which contains petty gifts ranging from Rs. 10/- to Rs. 501/-. On page No. 17 of this Register, the amount has been totaled which worked out to Rs. 48,362/- only. For balance amount, the appellant has claimed a gift of Rs. 2,00,000/- from father-in-law's side. However, no evidence has been furnished in respect of a gift of Rs. 2,00,000/-. Although the petty gifts received are not verifiable but considering the customs and traditions of giving Shag un at the time of marriage, the gifts to the extent of Rs.50,000/- are considered as genuine and balance amount is treated as unexplained cash credit. Thus, the addition to the tune of Rs. 1,64,150/- is confirmed and appellant partly succeeds on this ground.*

*4.6 Ground No. 6 pertains to the estimation of marriage expenses at Rs.52,500/- in addition to the marriage expenses shown by the appellant at Rs.47,500/- Since the marriage of appellant was solemnized at a large scale as is evident from the Aher Register which shows gifts from as many as 439 persons, the expenses disclosed were certainly on lower side. Accordingly, addition of Rs. 52,500/- on the basis estimation of total marriage expenses at Rs. 1,00,000/- is very reasonable and hence the same is confirmed. Thus, appellant fails in respect of Ground No. 6.*

*4.7 Vide Ground no. 7, the appellant has challenged ad-hoc disallowance of various expenses @ 20% thereof resulting into an addition of Rs. 1,99,875/- made on the ground that supporting documentary evidences were not furnished. At appellate stage also, the appellant has failed to furnish any supporting evidences. However, certain expenses such as insurance, bank charges, interest are verifiable. The other expenses cannot be said to be fully verifiable and exclusively incurred for the purposes of business.*



*Accordingly, the addition pertaining to insurance, bank charges and interest is directed be allowed. The A.D. should work out the consequential relief. Thus, appellant partly succeeds on this account.*

*4.8. Vide ground No. 8, the appellant has challenged the addition of Rs.3,88,000/- made u/s. 69 on account of unexplained investment in the construction building worked out on the basis of Valuation Report of the Departmental Valuation Officer. In this regard, it may be noted that even during the course of statement recorded u/s. 131 dt. 30.10.2006, the appellant has admitted construction cost of Rs.2,30,000/- only including the plot cost. The appellant has not furnished all documentary evidences in respect of the purchase of construction material, construction expenses, etc. ' Hence, the same is not verifiable from the books of account. Under the circumstances, the value determined by the Departmental Valuation Officer has to be accepted as correct and hence, the addition of Rs.3,88,000/- worked out on the basis of value determined by the Valuation officer at Rs.6,18,000/- deserves to be confirmed. Thus, the addition of Rs.3,88,000/- made u/s 69 on this account is confirmed and appellant fails on this account."*

5. We have heard the Id.DR and perused the material available before us including the orders of authorities below. We find that the Id. CIT(A) passed the appellate order after considering the submissions of the assessee on merit and partly allowed the assessee's appeal as stated hereinabove in para four of appellate order. In our opinion, the Id. CIT(A) has correctly appreciated the facts and accordingly the findings of Id.CIT(A) appears to be correct and well reasoned. Before us, none appeared on behalf of the assessee and no documentary evidences/other material was brought before us to contradict the findings of the Id.CIT(A). We are therefore, inclined to uphold the order passed by the Id.CIT(A) by dismissing the appeal of the assessee.

6. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 29th Dec,2016

Sd

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**(C.N. Prasad)**

**(Rajesh Kumar)**

**न्यायिक सदस्य / Judicial Member**

**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated :29th 12.2016  
SRL,Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai