

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.156/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Pratap Ramrao Shinde
Flat No.B28, Nikash Skies,
Someshwarwadi,
Off Baner Road,
Pune – 411008

.... अपीलार्थी/Appellant

PAN: ADAPS0067J

Vs.

The Tax Recovery Officer & Assessing Officer,
Range 7, Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte
प्रत्यर्थी की ओर से / Respondent by : Ms. Sabhana Parveen

सुनवाई की तारीख / Date of Hearing : 19.11.2018	घोषणा की तारीख / Date of Pronouncement: 12.02.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-3, Pune, dated 12.11.2015 relating to assessment year 2011-12 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case and in law the Learned Assessing Officer has erred in treating a sum of Rs.8,30,000/- received from Mr. Murlidhar Patil as income of the appellant by treating it as unexplained investment u/s 69 of the Income Tax Act, 1961 by disregarding appellant's submission as well as documentary evidences furnished during the course of proceedings before the lower authorities.*
2. *On the facts and in the circumstances of the case and in law the Learned Assessing Officer has erred in treating a sum of Rs.8,70,000/- received from Mr. Trimbakrao P. Shinde as income of the appellant by treating it as unexplained investment u/s 69 of the Income Tax Act, 1961 by disregarding appellant's submission as well as documentary evidences furnished during the course of proceedings before the lower authorities.*
3. *On the facts and in the circumstances of the case and in law the Learned Assessing Officer has erred in treating a sum of Rs.25,00,000/- received from appellant's two sisters viz. Smt. Lalitabai Dattatray Sonawne and Smt. Meena Ramesh Patil as income of the appellant by treating it as unexplained investment u/s 69 of the Income Tax Act, 1961 by disregarding appellant's submission as well as documentary evidences furnished during the course of proceedings before the lower authorities.*

3. The only issue raised in the present appeal is against addition made under section 69 of the Act on account of loans received from three different parties, treated as unexplained investment in the hands of assessee.

4. Briefly, in the facts of the case, the assessee was an individual and was deriving income from salary, house property and short term capital gains. For the year under consideration, the assessee had furnished return of income declaring total income of ₹ 15,89,663/-. The case of assessee was selected for scrutiny through CASS to examine the source of cash deposits in the Saving Bank account as per AIR. The assessee explained that it had received cash from different persons totaling ₹ 37 lakhs. The Assessing Officer noted that in ICICI Bank, there were cash deposits on different dates during the year totaling ₹ 31,20,000/- and in the Bank of India Saving Bank account, there was cash

deposit of ₹ 6 lakhs. The explanation of assessee was that it had received ₹ 8,30,000/- from his uncle Shri Murlidhar Patil, ₹ 8,70,000/- from Shri Trimbakrao P. Shinde, his brother-in-law and ₹ 20 lakhs from Shri Uttamrao Patil. Statement of Shri Uttamrao Patil, father-in-law of assessee was recorded and in his statement, he stated that he had given sum of ₹ 20 lakhs in cash on various dates and gave ₹ 10 lakhs through Demand Draft, the source of such deposit was stated to be his savings out of agricultural income. He stated that cash was given to the assessee and his wife i.e. his daughter in Jalgaon and some cash in Pune, but he did not remember exact dates. He also explained that cash was kept at home. The amount was given on various dates to the assessee. Further, statement of Trimbakrao P. Shinde was also taken, who had advanced sum of ₹ 8,70,000/-. He also explained that it was out of his agricultural income and pension. The Assessing Officer notes that he was unable to give any proof regarding agricultural income. Shri Murlidhar Patil was unable to appear because of his knee operation but he filed an affidavit stating that he gave a cheque of ₹ 8,30,000/- out of agricultural income for investing in shares. The Assessing Officer did not accept the explanation of assessee and was of the view that cash was deposited out of undisclosed source of assessee and hence, he treated the same as unexplained investment under section 69 of the Act and made addition of ₹ 37,20,000/-. The Assessing Officer also made another addition of ₹ 25 lakhs on account of amount received from sisters of assessee.

5. Before the CIT(A), 7/12 extract of agricultural land, confirmations from the parties were submitted but the CIT(A) did not accept the plea of assessee

observing that loan givers had landholding and even earned agricultural income, but no direct link could be established by the assessee from the agricultural receipts to the amounts deposited into his bank account. The second explanation of creditors that they had given money for investment in shares was also not accepted as the investment in shares was made by the assessee through his D Mat account in his own name. This is the explanation of Shri Murlidhar Patil and Shri Trimbakrao P. Shinde. In respect of explanation of Shri Uttamrao Patil of ₹ 30 lakhs i.e. ₹ 20 lakhs in cash and ₹ 10 lakhs by DD was accepted by the CIT(A), against which the Revenue has not filed any appeal.

6. Now, coming to last addition i.e. ₹ 25 lakhs, which the assessee claims to have received as loan from his two sisters Smt. Lalita D. Sonawane and Smt. Meena R. Patil. The Assessing Officer had made the addition as no confirmation was filed and only copies of Aadhar cards of two sisters were given. However, before the CIT(A), confirmations from two sisters, 7/12 extracts of landholding were also filed and the assessee also produced receipts of sale of agricultural produce. But the CIT(A) did not accept the same as no details were furnished for purchasing demand draft of ₹ 25 lakhs. He confirmed the addition of ₹ 25 lakhs in the hands of assessee, against which the assessee is in appeal before us.

7. The learned Authorized Representative for the assessee pointed out that the assessee had furnished all the explanations, evidences before the Assessing Officer and even before the CIT(A), furnished evidence of

substantial income earned by two parties. In respect of loan taken from two sisters, he stated that the amount was paid directly by demand draft and explanation was not accepted as there was no proof of when the assessee received money. Another point raised by the learned Authorized Representative for the assessee was that when amount was deposited through DD in bank, then no addition was warranted under section 69 of the Act on account of unexplained investment. He then, refers to various evidences filed in this regard and stressed that when the capacity of lenders was not doubted, there was no merit in the addition.

8. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

9. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is in respect of non acceptance of explanation furnished by assessee in respect of certain loans taken by him. The assessee during the year under consideration had made investments in purchase of flat and has explained the part source of investment out of loan received from the parties. The loans have been received from related parties. One loan has been received by assessee from his brother-in-law of ₹ 8,70,000/- and the second loan has been taken from his uncle of ₹ 8,30,000/-. The CIT(A) in para 3.2.2 of appellate order while dealing with the said issue of receipt of cash from Shri Murlidhar Patil of ₹ 8,30,000/- and from Shri Trimbakarao P. Shinde of ₹ 8,70,000/- has referred to the evidences filed i.e. 7/12 extract, the quantum of agricultural income i.e. bills of sale of agricultural

produce being submitted. The CIT(A) also comments that two loan givers had landholding and had even earned agricultural income. He further goes on to say that no direct link could be established by the assessee between agricultural receipts to the amounts deposited into his bank account. Once the statements of two persons were recorded by the Assessing Officer, then the identity stands established and the creditworthiness of parties also stands established by the observations of CIT(A), in view of evidences filed by assessee i.e. quantum of agricultural income earned by them. In such circumstances, there is no merit in making addition under section 69 of the Act of ₹ 8,30,000/- and ₹ 8,70,000/- on account of cash loan received from the said parties. We find no merit in the order of CIT(A) and the same is dismissed. Reversing the same, we delete addition of ₹ 8,30,000/- and ₹ 8,70,000/- in the hands of assessee.

10. Coming to the addition of ₹ 25 lakhs i.e. loan taken from two sisters of assessee, who had not paid cash to the assessee but had deposited the same through DD for the payment of purchase of property. The amount has been directly deposited into the bank account of assessee and there is no dispute about the same. The Assessing Officer holds it to be unexplained investment under section 69 of the Act.

11. First of all, the investments are recorded in the bank account and secondly, the assessee has explained the source of said deposit i.e. out of loan received from his two sisters, who had sufficient agricultural landholding and had also carried on agricultural activity on the said land. The assessee

produced the receipts of sale of pulses and onions during the year. The plea of assessee was rejected on the ground that it was difficult to link the agricultural receipts to actual demand draft purchased. There is no merit in the observations of CIT(A) in this regard and reversing the same, we delete the addition made in the hands of assessee, where the assessee has explained the nature of entries completely. The grounds of appeal raised by assessee are thus, allowed.

12. In the result, the appeal of assessee is allowed.

Order pronounced on this 12th day of February, 2019.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 12th February, 2019.
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-3, Pune;
4. The Pr.CIT-2, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune