

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH
MUMBAI**

BEFORE SHRI R.C.SHARMA, AM & SHRI PAWAN SINGH, JM

**ITA No. 7446/Mum/2018
(Assessment Year: 2010-11)**

Suresh H. Thakkar, Plot No. 278, Thakkar Niwas, Singh Estate Road, Near Samta Nagar, Kandivali (East), Mumbai-400101.	Vs.	CIT(A)-45, Mumbai, 103, 1 st Floor, Earnest House, Nariman Point, Mumbai-400001.
PAN/GIR No. AEDPT 5373 A		
(Appellant)	..	(Respondent)

Assessee by	Shri Pravesh Agarwal (AR)
Revenue by	Shri Mohammed Rizwan (Addl.CIT)
Date of Hearing	06/01/2020
Date of Pronouncement	06/03/2020

आदेश / O R D E R

PER: R.C. SHARMA, A.M.

This is the appeal filed by the assessee against the order of the Id. CIT(A)-45, Mumbai dated 11/09/2018 for the A.Y. 2010-11 in the matter of order passed U/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, the Act).

2. The grievance of the assessee relates to addition of Rs. 6.50 lacs upheld by the Id. CIT(A) in respect of cash paid for purchase of residential flat.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessment of the assessee was reopened on

getting information from DGIT that the assessee had made cash payment of Rs. 13.00 lacs for purchase of flat and no return of income was filed. A search and seizure action was carried out on M/s Ekta and Bhoomi group by the Investigation Wing of the Department and on the basis of documents found during the search it was alleged that the assessee paid a sum of Rs. 13,00,000/- in cash during March 2010 for purchase of a residential flat. Thereafter the assessee's assessment was reopened U/s 147 and notice U/s 148 of the Act was served on the assessee. During the assessment proceedings, the assessee submitted day wise cash book and bank statements of saving bank accounts and of proprietary concern highlighting each cash withdrawals pertaining to the cash available of Rs. 13,00,000/- with him as on 11/03/2010 out of total cash balance as on that day of Rs. 15,14,150/- was paid to the builder along with source of the same. However, the A.O. did not agree with the assessee's contention and added Rs. 13.00 lacs U/s 69 of the Act.

4. By the impugned order, the Id. CIT(A) accepted availability of cash to the extent of Rs. 6.50 lacs and confirmed balance addition. The main contention of the Id. CIT(A) was that it is not possible to believe that all cash withdrawn during the F.Y. 2008-09 and 2009-10 was available with assessee for giving to the builder. The Id. CIT(A) further observed that generally, human behavior is small amounts

are withdrawn for immediate expenditure but not to keep at home. The expenditure of Rs. 10,000/- per month accounted in cash summary for living and household expenses during these years was found to be unbelievable. Against the order of the Id. CIT(A), the assessee is in further appeal before the ITAT.

5. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that before the lower authorities, the assessee has filed detailed statement of date wise withdrawal from his bank accounts during the F.Y. 2008-09 and 2009-10. We also found that as per the cash statement so submitted, there was a cash balance of Rs. 15,14,150/- as on 11/03/2010, out of total cash balance as on that date of Rs. 15,14,150/-. The assessee had paid cash of Rs. 13.00 lacs to the builder. The lower authorities have doubted the availability of cash on the plea that the cash was withdrawn by the assessee from his bank account in the earlier year and was not available for giving the same to the builder. Neither the A.O. nor the Id. CIT(A) has brought any material on record to suggest that the cash so withdrawn by the assessee was utilized for some other purposes and was not available with him on the date of payment. We also found that the correctness of date wise statement of withdrawal of cash from the bank account and deposit in the bank

account was neither faulted nor doubted by any of the lower authorities. Under these facts and circumstances, there is no justification on the part of the Id. CIT(A) for accepting only Rs. 6.50 lacs out of total addition of Rs. 13.00 lacs so made by the A.O..Therefore, we direct the A.O. to delete the addition so made.

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

Order pronounced in the open court on 06th March, 2020.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 06/03/2020

*Ranjan

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai