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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No. 899/PUN/2015
निर्धारण वर्ष / Assessment Year : 2011-12

Dy. Commissioner of Income Tax,
Circle – 8, Pune

.......अपीलार्थी / Appellant

बनाम / V/s.

Shri Ashok Narayan Bhosale,
Prop. M/s. Ultra Engineers,
PCNTDA, Sec. No. 10,
Plot No. 59 & 68, Bhosari,
Pune – 411026

PAN : AASPB3588Q

......प्रत्यर्थी / Respondent

Assessee by	: Shri Vijay D. Kendhe
Revenue by	: Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing	: 10-07-2017
घोषणा की तारीख / Date of Pronouncement	: 12-07-2017

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-6, Pune dated 26-03-2015 for the assessment year 2011-12.

2. The Revenue in appeal has raised solitary issue with respect to deleting of addition of Rs.96,08,000/- u/s. 69 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3. The brief facts of the case as emanating from records are: The assessee is a proprietor of M/s. Ultra Engineering and is engaged in manufacturing of windmill parts, job works of press tools, jigs, fixtures, labour job and trading in shares. Survey action u/s. 133A of the Act was carried out in the business premises of the assessee on 18-08-2011. During the course of survey proceedings, statement of assessee was recorded wherein he made disclosure of Rs.96,08,000/- on account of advance paid for purchase of land at Yellur in the period relevant to assessment year under consideration. The assessee filed his return of income for the impugned assessment year on 30-09-2011 declaring total income of Rs.17,02,05,350/-. Thereafter, the assessee filed revised return of income on 31-03-2013 declaring total income as Rs.16,06,05,350/-. In the revised return, the assessee excluded income of Rs.96,00,000/- offered during survey action as the same was declared on application basis. The assessee claimed the benefit of telescopic in application of funds for the assessment year under appeal vis-à-vis the source of funds disclosed in assessment years 2009-10 and 2010-11. The Assessing Officer rejected the contention of the assessee and inter alia made addition of Rs.96,08,000/- in respect of investment in land u/s. 69 of the Act.

Aggrieved by the assessment order dated 21-01-2014, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) accepted the contention of the assessee and allowed the benefit of telescopic and deleted the addition.

Now, the Department is in appeal before the Tribunal assailing the findings of Commissioner of Income Tax (Appeals) in deleting the addition of Rs.96,08,000/-.

4. Shri Mukesh Jha representing the Department submitted that it is a case of hawala purchases. The assessee agreed to addition in the statement recorded u/s. 133A of the Act during survey action. Subsequently, the assessee retracted from the statement and filed revised return of income by excluding Rs.96,00,000/- offered during survey. The assessee's prayer for granting telescopic benefit is an afterthought. The ld. DR prayed for reversing the findings of Commissioner of Income Tax (Appeals) on this issue and confirming the order of Assessing Officer.

5. On the other hand Shri Vijay D. Kendhe appearing on behalf of the assessee vehemently supported the findings of Commissioner of Income Tax (Appeals) in deleting the addition. The ld. AR submitted that the Assessing Officer in subsequent assessment year i.e. assessment year 2012-13 granted the benefit of telescopic on the same set of facts. The Commissioner of Income Tax (Appeals) applied the same principle in the assessment year under appeal and deleted the addition u/s. 69 of the Act. The assessee has explained the source of cash flow in assessment years 2009-10 and 2010-11 which has been accepted by the Department. The assessee is claiming telescopic benefit in the assessment year under appeal against the source of funds declared in assessment years 2009-10 and 2010-11. In the current assessment year addition has been made on application of funds u/s. 69 of the Act. The ld. AR prayed for dismissing the appeal of the Revenue.

6. We have heard the submissions made by the representatives of rival sides and have perused the orders of the authorities below. In so far as the facts are concerned there is no dispute. The Department is aggrieved by the action of Commissioner of Income Tax (Appeals) in deleting the addition u/s. 69 of the Act by granting the benefit of telescopy. The assessee during the period relevant to assessment year under appeal has allegedly purchased land at Yellur, District Udupi, Karnataka for a consideration of Rs.96,08,000/-. During the course of survey, the assessee made declaration of Rs.7.01 crores for the three assessment years which is as under :

Assessment year		Amount
2009-10		Rs.5,00,000/-
2011-12		Rs.96,08,000/-
2012-13		Rs.6,00,00,000/-
	Total	**Rs.7,01,08,000/-**

7. The declaration made in assessment years 2009-10 and 2010-11 is on account of purchase of land at Yellur i.e. undisclosed investments. In assessment year 2012-13 the declaration was made on various counts, viz. stock, purchase of land at Malwadi, purchase of second hand machinery, investment in gold, etc. The assessee vide letter at pages 6 to 8 of the paper book has explained the source of funds, applied for purchase of land in assessment year 2011-12. According to the assessee the funds generated in the period relevant to the assessment years 2009-10 and 2010-11 were utilized for making investment in assessment year 2011-12. The Commissioner of Income Tax (Appeals) has reproduced the extract of the letter in para 13 of the impugned order. For the sake of brevity, we are

not extracting the same here again. The Commissioner of Income Tax (Appeals) after considering the entirety of facts and the assessment order for assessment year 2012-13 wherein the Assessing Officer has granted the benefit of telescopy to the assessee, concluded as under :

> *"14. I have carefully considered t le facts of the case as well as reply of the appellant. In this case it is already seen that the appellant has filed revised return of income for A.Y. 2009-10 offering additional income of' Rs.4,54,13,359/- and for A.Y. 2010-11 offering additional income of Rs.2,13,06,942/-. The appellant has also paid the taxes on the same and this declaration has been accepted by the Assessing Officer too. This being so, it is held that the appellant was having sufficient funds to cover the investment made in A.Y. 2011-12 amounting to Rs.96,08,000/- and the appellant deserves the benefit of telescoping. The Assessing Officer claims that there is no linkage between cash generated by obtaining fake Hawala bills and the investment made in A.Y. 2011-12 and therefore addition is required to the extent of Rs.96,08,000/-. This view of the Assessing Officer cannot be accepted for the simple reason that no linkage is required for allowing telescoping as even after conducting the survey, no evidence of any other investment has been found. It is also seen that the Assessing Officer in the assessment order for A.Y. 2012-13 has accepted the contention of the appellant and has completed the assessment on the basis of revised return of income in which revised return after allowing telescopic benefit was accepted. In view of the above position, I do not find any justification to sustain the addition of Rs.96,08,000/-. Accordingly, the Assessing Officer is directed to delete the addition. Thus, ground No. 3 is allowed."*

8. The ld. DR fairly admitted that the Assessing Officer in assessment year 2012-13 has granted the benefit of telescopic to the assessee. Thus, in view of the documents on record and the fact that the Revenue has admitted the claim of the assessee is immediately succeeding assessment year on same set of facts, we find no infirmity in the order of Commissioner of Income Tax (Appeals) in deleting the addition made u/s. 69 of the Act by granting telescopic benefit. Accordingly, the findings of Commissioner of

Income Tax (Appeals) on this issue are upheld and the appeal of the Revenue is dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced on Wednesday, the 12th day of July, 2017.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th July, 2017
RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-6, Pune
4. The Pr. Commissioner of Income Tax-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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