

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 3113/MUM/2018
Assessment Year: 2013-14**

Mr. Asad Naeemuddin Moulvi,
Room No. 8/9/10, 3rd floor, Faiz-
E-Akhtar, 27, Memonwada Road,
Bhendi Bazar,
Mumbai-400 003.

PAN No. AFCPM 8595 F

Appellant

Vs. Income Tax Officer, Ward 17(1)(2),
4th floor, Earnest House,
Nariman Point,
Mumbai-400021.

Respondent

Assessee by : Mr. M.N. Ladiwala, AR
Revenue by : Mr. Manoj Sinha, DR

Date of Hearing : 03/08/2022
Date of pronouncement : 19/09/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 06/02/2018 passed by the Ld. Commissioner of Income-tax (Appeals)-28, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2013-14, raising following grounds:



1. *The learned Commissioner of Income-tax, appeals has erred in confirming the addition of the sum of rs.10,39,763/- (Rupees ten lac thirty nine thousand seven hundred sixty three only), on account of cash deposits in savings bank account considered the same as unexplained cash credit u/s. 68 of the Income Tax Act, 1961 of the appellant.*
2. *The Learned Commissioner of Income-tax (Appeals), has also erred in confirming @ 50% of the additions of ₹45,13,124/- (rupees forty five lac thirteen thousand one hundred twenty four only) made by the assessing officer, on account of long term capital gains on sale of immovable property at Kharghar, Navi Mumbai.*

2. Briefly stated facts of the case are that the assessee claimed to have engaged in the business of ticketing, Visas and tours. For the year under consideration, the assessee filed return of income on 31/03/2015 declaring total income of ₹12,12,440/-. In the return of income filed, the assessee has shown rental income under the head 'Income from house property', Income from share of profit and remuneration' from three partnership firms including M/s Alliance International Tours and Travels, business income and interest income. The return of income filed by the assessee was selected for scrutiny assessment under Computer Assisted Selection of Scrutiny



(CASS) any statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The assessment under section 143(3) of the Act was completed on 23/03/2016 after making two additions. Firstly, the addition of ₹10,39,763/- was made for cash credits appearing in books of accounts which were deposited in saving bank accounts and held by the Assessing Officer as unexplained cash credit in terms of section 68 of the Act. Secondly, the addition of ₹45,13,124/- was made for capital gain on sale of the property not reported by the assessee in the return of income. Aggrieved with the order of the Ld. Assessing Officer, the assessee filed appeal before the Ld. CIT(A), however the Ld. CIT(A) also upheld the additions. Hence, the assessee is before the Income-tax Appellate Tribunal (in short 'the Tribunal') by way of raising grounds as reproduced above.

3. Before us the Ld. counsel of the assessee filed paperbook in two volumes consisting of pages 1 to 28 and 1 to 78 respectively.



4. In ground No. 1, the assessee has challenged addition of ₹10,39,763/- on account of cash deposits in saving bank account held as unexplained cash credit under section 68 of the Act.

4.1 As per the provisions of the Income-tax Act, the banks are required to file information in respect of cash deposits more than the prescribed limit by way of Annual Information Return (AIR). In the case of the assessee, information was received through AIR for cash deposits by the assessee amounting to ₹10,39,763/- for the period relevant to the assessment year under consideration. The source of cash deposit was explained by the assessee as under:

- (a) The assessee proposed to start a business of conducting religious tours at 'Macca' and 'Madina' etc for 'Haj' and 'Umrah' and for organizing the 1st tour in the month of the December, 2012, the assessee received advance against the tour from different parties towards tickets, Visa and other expenses & same was deposited in saving bank account, but



- the tour could not be organized and money received was refunded back in subsequent year.
- (b) some of the amount deposited was out of his past saving and income from current year from ticketing and visas as shown in the computation of total income.

4.2 However, the assessee failed to submit name and address of the person from whom the cash was taken and therefore in absence of the evidences, the Assessing Officer rejected the contention of the assessee and made the addition. Before the Ld. CIT(A) also same claim was reiterated by the assessee sans any evidence and therefore Ld. CIT(A) also rejected his claim holding that assessee failed to discharge his onus of establishing the nature and source of income as required under provisions of the Act. The Ld. CIT(A) relied on following decisions:

- I. **Homi Jehangir Gheesta v. CIT [1961] 41 ITR 13 (SC)**
- II. **Chuharmal v. CIT [1988] 172 ITR 252 (SC)**



- III. **Fakir Mohmed Haji Hasan v. CIT [2002] 120 Taxman 11 (Guj.)**
- IV. **Hersh W Chadha v. DDIT [2011] 43 SOT 544 (Delhi)**
- V. **Iqbal Singh v. CIT [2010] 328 ITR 301 (Punj. & Har.)**
- VI. **K.V. Mathew v. Income Tax Officer (2014) 222 Taxman 0116 (Kerela)**

5. Before us, the Ld. counsel of the assessee claimed that cash was received from 'walk-in client' for booking of their tickets by the assessee for 'Haj' and 'Umrah' travel and referred to the list of name of passengers, placed on page 27 to 28 of the paperbook volume I. The said list contain ticket No., Name of the passenger, the sector of travel for which ticket was booked, fare amount. An amount of ₹17,980/- has been claim to have been received from each passenger and total amount of ₹10,39,800/- to have been received from these 'walk-in clients'. For ready reference said list is reproduced as under :



ALLIANCE INTERNATIONAL TOURS & TRAVELS

To M/s : WALK IN CLIENT A/C

Ticket No	Paxi Name	Sectors (d)	Fare Amount
589 2873616463	MR IFTEKHAR AHMED MOHAMMED A	BOM/JED/BOM/ 9I 522 04/01 W	17,600.00
589 2873616465	MR MOHAMMAD IMRAN H H	BOM/JED/BOM/ 9I 522 04/01 W	17,600.00
589 2873616464	MR ZAKIR HUSSAIN KHURSHID A	BOM/JED/BOM/ 9I 522 04/01 W	17,600.00
589 2874091088	MR TAUHID AHMAD ABDUL R B	BOM/JED/BOM/ 9I 522 04/01 W	17,600.00
589 2874091091	MRS NIYAMATBI TAUHID A B	BOM/JED/BOM/ 9I 522 11/03 G	17,600.00
589 2874091092	MR SHAIKH MUSTAFA NAWAB	BOM/JED/BOM/ 9I 522 11/03 G	17,600.00
589 2874091093	MRS SHAIKH NAFISA MUSTAFA	BOM/JED/BOM/ 9I 522 11/03 G	17,600.00
589 2874091094	MR SHAIKH AKBAR SAIRAJ	BOM/JED/BOM/ 9I 522 11/03 G	17,600.00
098 2873592329	MR MUHAMMED SABIR M U	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592330	MRS AYESHA BI M S	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592331	MR ASIF NAVEED A R	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592332	MRS SHAIKH VAJAHAT N A N	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592346	MR SHAIKH IQBAL SHAIKH U	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592347	MR SHAKEEL AHMAD	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873597548	MR MOMIN MOHAMMAD OSAIM A N	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873597549	MR NISAR AHMAD KHAN	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592417	MISS MOMIN AYESHA SIDDIQUA M I	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873595598	MR MOHAMMAD ISMAIL MOHAMMAD	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592418	MRS RASHEEDA MOHAMMAD I	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592419	MR RAFIQUE AHMAD MOHAMMAD I	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592420	MRS SHAMSUNNISA RAFIQUE AHMAD	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592421	MSTR REHAN AHMAD ANSARI A T	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592408	MRS SEEMA MOHAMMAD GHUFRAN	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592409	MS SAMEENA TABASSUM MOHAMMAD	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592410	MR MOHAMMAD NOMAN MOHAMMAD	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592411	MRS ZAHEDA MOHAMMAD SULTAN	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592415	MISS MOMIN KHANSA TABASSUM	BOM/JED/BOM/ AI 931 20/01 T	17,980.00
098 2873592416	MSTR MOMIN ABDUL RAHEMAN	BOM/JED/BOM/ AI 931 20/01 T	17,980.00



098 2873592401	MRS MIRZA TANSEEN A	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592402	MRS MIRZA QAMAR SULTANA I	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592403	MRS KHAN ZEBA QAMAR M	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592404	MSTR KHAN MOHAMMED MAAZ	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592407	MR MOHAMMAD GHUFRAN MOHAMMAD	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592361	MR SHAIKH JUMMAN SHAIKH M	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592362	MRS KAMRUNNISA SHAIKH J	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592363	MR SHAIKH FAREED SHAIKH J	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592364	MR SHAIKH FAROQUE SHAIKH Z	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592373	MRS HUSENA SHAIKH F	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592399	MR NOORZAALAM KHURSHID A	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592382	MRS ZOHRA BANO ABDUL S	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592355	MS SHAMEEM ABDUL S	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592367	MR BHOBE KHAN MAJED K	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592358	MRS MAHRAJ BI ABDUL M K	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592359	MR ABDUL RAOOF PEER M	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592360	MRS MAHERUNNISA ABDUL R	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592354	MR MUHAMMAD AYYUB S	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592377	MR SHAIKH ASALM ABDUL G	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592375	MRS NAZNEEN AKHTAR S I	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592379	MR MOHAMMAD ASLAM M Q	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592380	MRS TQFIKA BANO M A	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592381	MR ABDUL SALIM ABDUL S	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592345	MRS SHAKEELA BEGUM	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592349	MR SHAIKH SALIM S N	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592350	MRS SHAIKH SHAHANAJBI S S	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592381	MS SHAIKH SHAKISTA	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592352	MR SHAIKH HASAN SHAIKH	AI 931 20/01 T BOM/JED/BOM/	17,980.00
098 2873592353	MRS SHAIKH SAKINABI S H	AI 931 20/01 T BOM/JED/BOM/	17,980.00



5.1 The Ld. counsel also referred to the proforma invoices issued in respect of those walk-in clients, which are placed on page 65 to 71 of the paperbook volume 2. These proforma invoices have been issued on the letterhead of partnership firm M/s Alliance International Tours and Travels. The proforma invoices contains details of airline through which ticket was booked (AIR India and Jet Airways), passenger name, sector, basic fare taxes and total fair amount. The Ld. counsel of the assessee has submitted that above information was submitted before the Ld. CIT(A) however same was not considered by him. Though before the Assessing Officer part of the source of deposit of ₹10,39,763/- was claimed to have been out of past savings and current year's business income, but before us no such evidence in respect of the past saving have been filed .

5.2 In view of the evidences filed, the Ld. counsel submitted that addition-in-dispute should be deleted. Whereas the Ld. Departmental Representative relied on the orders of the Assessing



Officer and Ld. CIT(A) and submitted that no such list of passengers were filed before the lower authorities, therefore addition in dispute should be upheld.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in dispute before us is whether assessee has discharged his onus of establishing nature and source of the cash credit of ₹10,39,763/-. The list of passengers from whom the assessee has claimed to have received cash have not been referred either by the Assessing Officer or by the Ld. CIT(A). In the list of passengers and proforma invoice issued by the assessee, it is claimed that those tickets were booked from the airlines namely AIR India and Jetairways (International). Therefore, the truth in the claim of the assessee that same were booked by him in individual capacity and cash was received from those passengers, can be verified from the respective airlines and if that fact is found to be correct, the Assessing Officer may consider



the claim of the assessee if same is in accordance with law. Therefore, in the facts and circumstances of the case and the interest of substantial justice, we feel it appropriate to restore this issue back to the file of the Ld. Assessing Officer for verification of the claim of cash deposits by the assessee. The assessee shall file all the necessary evidence in support of its claim including certificate from the airlines regarding booking of tickets by the assessee in individual capacity (not by the partnership firm) in the name of the passengers and also produce those passengers, if called for by the Assessing Officer for verification. The Assessing Officer is at liberty to carry out inquiries as deemed fit in the facts and circumstances of the case for adjudication of issue-in-dispute. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. The ground No. 1 of the appeal of the assessee is accordingly allowed for statistical purposes.



7. In ground No. 2 of the appeal, the assessee has challenged 50% of the addition of ₹45,13,124/- on account of long-term capital gain on sale of immovable property, which has been upheld by the Ld. CIT(A).

8. The Assessing Officer from the AIR information observed the fact of sale of residential flat No. 402, situated at Paratik Pura, Khargar, Navi Mumbai for a total sale consideration of ₹ 73 lakh whereas the value of the said property as per the stamp duty authority was of ₹82,71,000/-. According to the Assessing Officer sale and consequent capital gain was not appearing in the return of income filed by the assessee. The assessee explained that said property had been purchased by the partnership firm namely "Alliance International Tour and Travels" in the name of 'Mr. Ayaz Hassanali Naseer' and 'Mr Asad Naimudin Moulvi' (i.e. the assessee), both being partners in said firm. It was submitted further that purchase of the said flat was shown in the books of accounts of the



firm under the head of building (Residence) as an asset of the firm under the block of building (residence). The sale of the said premises is also shown under the block of building in the books of accounts, which is reflected in the financial statements for the year ending 31/03/2014. It was contended that said residential flat has been shown under the head block of building and the depreciation was claimed in the past, therefore, there was no tax liability under the head 'income from capital gains' in the case of the assessee. The assessee filed a confirmation letter from 'Alliance International Tours and Travels' along with balance-sheet of the said partnership firm. Further, the assessee also submitted that section 50C of the Act is also not applicable as the said property was purchased and accounted in the books of accounts of the partnership firm. The Ld. Assessing Officer after perusal of the purchase and sale agreement found that assessee is co-owner in the said residential property with 'Sh Ayaz Hasanali Naseer' and name of partnership firm was



nowhere mentioned in the said agreement(s) and for avoiding the capital gain tax, the assessee has reflected the said property in the fixed assets of the M/s Alliance International Tour and Travels. Further, the Assessing Officer held that provision of section 50C are clearly applicable in the case of the assessee as a stamp duty valuation is more than the sale consideration shown in the sale agreement. Accordingly, after reducing indexed cost of acquisition out of the valuation as per the stamp duty, the Assessing Officer computed capital gain of ₹45,13,124/- in para 5.2 of the assessment order and thus made addition of ₹45,13,124/-. Before the Ld. CIT(A) also the assessee reiterated same submission and submitted evidence containing entry in the books of accounts of M/s. Alliance International Tour and Travels and confirmation letter from said firm. The Ld. CIT(A) observed that in the agreement to sale, seller parties were appearing as 'Sh Ayaz Hassanali Naseer' and 'the assessee' only and there was no reference of firm M/s Alliance



International Tour and Travels. The Ld. CIT(A) held that documentation prepared by the assessee was post facto and an attempt to circumvent section 50C of the Act. However, he sustained the addition to the extent of the 50%, as assessee being co-owner in the property. The relevant finding of the Ld. CIT(A) is reproduced as under:

“3.2 On the other hand we have agreement for sale in which sellers are:

- i. Ayaz Hassanali Nasser*
- ii. Asad N. Moulvi (assessee).*

There is no reference whatsoever of Alliance. The documentation prepared is obviously post facto. The attempt is a colorable device obviously to circumvent Sec.50C (43CA not being in existence in impugned year). As co-owner, appellant is liable to capital gains tax but only to the extent of 50%. The A.O. clearly acknowledges appellant as co-owner. Sale value is Rs.73 lacs as per agreement. SVA is Rs.82.71 lacs per A.O. But since it is joint ownership, (in absence of specification of shares %age) the same shall be divided in equal parts. The ground is partly allowed.”

9. Before us also the assessee has reiterated the submission which were made before the lower authorities and no fresh



evidence to support the contention are filed. On perusal of the purchase and sale agreement of the property, we find that name of 'Sh Ayaz Hasanali Naseer' and 'the assessee' are appearing as a seller party in their individual capacity and not in the capacity of partner of the partnership firm M/s Alliance International Tour and Travels. Therefore, by way of making entries in the books of accounts the assessee cannot claim that said property was owned by said partnership firm. By way of making entering in the books of accounts of the partnership firm, the assessee cannot change ownership and character of the transaction of purchase and sale entered into in individual capacity. The arguments of the assessee are accordingly rejected. We do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The ground No. 2 of the appeal of the assessee is accordingly dismissed.



10. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court in 19/09/2022.

Sd/-

**(KULDIP SINGH)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 19/09/2022
Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai