

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
"D" BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
Ms.MADHUMITA ROY, JUDICIAL MEMBER

Sr. No.	ITA No. and Asstt.Year	Appellant	Respondent
1.	3447/Ahd/2016 A.Y.2008-09	Maheshbhai Shantibhai Patel (HUF) B-202, Maruti Tower Nr.Shivranjani Cross Road Satellite Ahmedabad 380015. PAN : AAFHP 6862 F	ITO, Ward-3(3)(8) Ahmedabad.
2.	3450/Ahd/2016 A.Y.2007-08	Shantibhai P. Patel (HUF) B-202, Maruti Tower Nr.Shivranjani Cross Road Satellite Ahmedabad 380015. PAN : AAFHP 6863 F	ITO, Ward-3(3)(8) Ahmedabad.
3.	3449/Ahd/2016 A.Y.2007-08	Smt.Kashiben Shantilal Patel 22, Saket Bungalow Nr.Takshashila Apartment Vastrapur Ahmedabad 380054. PAN : ABXPP 2955 R	ITO, Ward-3(3)(2) Ahmedabad.
4.	3451/Ahd/2016 A.Y.2008-09	Smt.Kashiben Shantilal Patel 22, Saket Bungalow Nr.Takshashila Apartment Vastrapur Ahmedabad 380054. PAN : ABXPP 2955 R	ITO, Ward-3(3)(2) Ahmedabad.

(Applicant)	(Responent)
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Assessee by :	Ms.Urvashi Shodhan, AR
Revenue by :	Shri Saurabh Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 02/05/2018  
घोषणा की तारीख /Date of Pronouncement: 11/05/2018

**आदेश/O R D E R**

**PER PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER:**

The captioned appeals have been filed by the assessee against respective orders of the CIT(A) arising in the respective assessment orders passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, concerning various assessment years captioned above.

2. Issues in all four appeals are inter-connected. All assessees are partners of a common firm giving rise to the dispute in hand. Therefore, all the appeals were are being heard together and are being disposed of by way of this common order.

3. We first take ITA No.3447/Ahd/2016 as lead case for adjudication of the dispute.

**ITA No.3447/Ahd/2016 in the case of Maheshbhai Shantibhai Patel (HUF):**

4. In the captioned appeal, first two grounds seeking quashing of order of the AO under section 143(3) r.w.s.147 *in toto*, and not providing adequate of opportunity of hearing have not been addressed for adjudication by the ld.counsel for the assessee, hence the same are dismissed.

5. In Ground no.3 and 4, assessee has agitated additions of Rs.9,75,000/- towards share of the assessee in the undisclosed profit of the partnership firm.

6. Briefly stated, a search was conducted on 27.4.2011 in the case of Savvy group including partnership firm - Savvy Infrastructure Co. In the course of search and survey proceedings in the case of Savvy group, certain incriminating material were stated to be found and impounded. The said

incriminating material contained working related to M/s.Savvy Serene Projects being developed under the partnership firm M/s.Savvy Infrastructure Co. As per the partnership deed, the captioned assessee in the present appeals hold certain percentage of shares of profit in the said partnership firm. Incriminating materials were confronted the partner, Shri Mahesh Shantilal Patel (assessee herein) on 29.7.2011. A statement was recorded under section 131 of the Act. In course of reply in 131-proceedings, the said partner confessed that Rs.69 lakhs in cash was received as profits of the partners and his family members which has not been disclosed by him or other family members in their return. The said partner also asserted, in the capacity as partner, that undisclosed income so found has been disclosed in the hands of the partnership firm. In the course of assessment, the AO on enquiry into these facts found that the partnership firm has neither disclosed the undisclosed income in its return nor has paid any taxes thereon. The AO accordingly observed that the assessee and other family members (appellants herein) are liable to pay taxes for the share of undisclosed income received from the partnership firm. The AO thus, allocated unaccounted profit relating to assessment year 2007-08 and assessment year 2008-09 as admitted by the partner in the hands of respective partners having regard to their respective share of interest in the partnership firm. Working of apportionment in the undisclosed income in the hands of various partners is tabulated by the AO at page no.3 of the assessment order. As a consequence of allocation of unaccounted profit, the AO found that the assessee (Mahesh Shantilal Patel – HUF) has *inter alia* failed to disclose unaccounted profit of Rs.9.75 lakhs in his hand concerning assessment year 2008-09. The AO accordingly added Rs.9.75 lakhs to the total income of the assessee-partner as unaccounted profit.

7. Aggrieved, the assessee preferred appeal before the CIT(A).
8. The CIT(A) revisited the facts and also noted various plea raised on behalf of the assessee, but however, did not find merit therein. The CIT(A) refused to pay heed to the contentions of the assessee that share of unaccounted profits of the firm cannot be added as undisclosed income of the assessee. Plea of the assessee that share of undisclosed income of the firm (Rs.9,75,000) was not liable to be taxed in the hands of the assessee in its capacity of a partner, was not found sustainable.
9. The CIT(A) *inter alia* noted that where the partnership firm has not offered the undisclosed income for taxation as admitted, the same is required to be added in the hands of partners including the assessee herein. The CIT(A) *inter alia* observed that additions have been made on the basis of statement under section 131 of the Act, which has not been retracted at any stage, and therefore, no sustainable grievance arise in the case of the assessee. The CIT(A) accordingly declined to interfere with the order of the AO.
10. Further aggrieved, the assessee preferred appeal before the Tribunal.
11. When the matter was called for hearing, the Id.AR for the assessee, Ms.Urvashi Shodhan at the outset submitted that the additions made by the lower authorities are not sustainable on two prominent grounds, viz. (i) the undisclosed income has arisen in the hands of the partnership firm and not partners, and therefore, the undisclosed income can be possibly taxed only in the hands of the partnership firm. It was thus contended that the assessee has been wrongly taxed for the income belonging to other entities, and (ii) the partnership firm has included the impugned undisclosed income in the settlement application moved by the partnership firm under section 245C(1)

of the Income Tax Act, and therefore, on this ground also, the alleged undisclosed income cannot be taxed in the hands of the assessee-partner.

12. The Id.AR extensively referred to the order of the Settlement Commission dated 30.5.2016 passed under section 245D(4) of the Act and pointed out that while computing the additional income disclosed before the Settlement Commission the aforesaid amount has already formed part thereof.

13. The Id.DR, on the other hand, vociferously opposed the plea raised on behalf of the assessee and supported the order of the CIT(A). The Id.DR submitted that it is not evident that the aforesaid amount forms part of undisclosed income offered by the partnership firm before the Settlement Commission or not and the onus is on the assessee to demonstrate the disclosure purportedly made.

14. We have carefully considered rivals submissions and perused the orders of the authorities below. The taxability of undisclosed income detected in the course of search in the case of partnership firm where the assessee is a partner is in question. We shall first take a look into the second proposition raised on behalf of the assessee. On behalf of the assessee, it is sought to be contended that the alleged undisclosed income has already been included in the taxable income of the partnership firm in the course of settlement proceedings and thus the same income cannot be taxed again in hands of the partners. We find ourselves in complete agreement, in principle, with the said proposition raised on behalf of the assessee-partner that the undisclosed income once already considered for taxation in the hands of the partnership firm cannot be taxed once again in the hands of the partner. However, in the same vein, we find that question as to whether the undisclosed income in controversy, forms part

of the additional income declared before the Settlement Commission or not, is essentially a question of fact. This aspect has not been raised before the lower authorities, and thus remained unanswered. Hence, as a measure of fair-play, the issue requires to be remanded back and restored to the file of CIT(A) to re-appreciate the limited aspect as to whether income in dispute has already been included in the additional income offered by the partnership firm before the Settlement Commission, directly or indirectly. Therefore, we consider it expedient to set aside the issue to the file of the CIT(A) for examination of this limited aspect of assessment of undisclosed income in the hands of the partnership firm. Needless to say, the assessee cannot be taxed on the undisclosed where the undisclosed income is already found to be taxed in the hands of the partnership firm.

15. We shall now advert to the first proposition raised on behalf of the assessee that the income can be taxed only in the hands of the partnership firm. It is true that income is required to be taxed in the hands of right person only. However, we also bear in mind that the partnership firm is only a creature of agreement and partners are intrinsically connected contractually under the Partnership Act. Partners (assessee herein) hold mutual agency on behalf of the firm and are liable and responsible for the acts of the assessee-firm. A firm is merely a compendious expression for its partners. This apart, the undisclosed income of the partnership firm ultimately goes to the partners by way of share of their undisclosed income. Therefore, a strict adherence of taxability that too of an undisclosed income in the hands of the partnership firm as insisted upon, would not, in our view, change the ground reality. Besides, the inclusion of undisclosed income in the hands of partnership firm in exercise of powers vested under erstwhile provisions 153(3) is also plausible. However, since the matter has already been set aside and remanded

to the file of the CIT(A), we do not consider it necessary to delineate into this aspect of revenue neutral exercise any further.

16. In view of the aforesaid discussion, the issue is set aside and remanded back to the file of the CIT(A) for adjudication of the issue afresh in terms of directions noted above in accordance with law.

17. Other grounds being consequential do not call for any adjudication.

18. In the result, ITA No.3447/Ahd/2016 is partly allowed for statistical purpose.

**ITA Nos.3450, 3449 and 3451/Ahd/2016**

19. The captioned three appeals also involve identical issues. The facts in these appeals are strikingly similar except variation in the quantum of the undisclosed income. Therefore, in the backdrop of our discussion made in ITA NO.3447/Ahd/2016 (supra), all these three remaining appeals are also set aside to the file of the CIT(A) for fresh adjudication as per our directions given hereinabove.

20. In the result, all the appeals of the assesseees are partly allowed for statistical purpose.

**Order pronounced in the Court on 11<sup>th</sup> May, 2018 at Ahmedabad.**

Sd/-  
**(Ms.MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Sd/-  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 11/05/2018