

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

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.226/Ahd/2020
Assessment Year : 2012-13

M/s.Shivam Developers Plot No.C/1, 1301, Phase-I GIDC, Chhatral, Tal.Kalol Dist. Gandhinagar - 382 229	Vs	The Dy.CIT Mehsana Circle Mehsana
PAN: ABWFS 4815 N		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Hardik Vora, AR & Shri Daivat Bhatt, AR
Revenue by :	Shri Ashesh R. Rewar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 17/04/2024
घोषणा की तारीख /Date of Pronouncement: 24/04/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

The present appeal has been filed by the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Gandhinagar, Ahmedabad [hereinafter referred to as "CIT(A)" in short] arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (AY) 2012-13.

2. The Assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in upholding the reassessment proceedings u/s 148 of the Act.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in confirming addition u/s 69C of the Act on account of capital introduced by the partner of Rs. 17,14,000/-.

3. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-Tax (Appeals) has erred in confirming addition u/s 69C of the Act on account of unsecured loan amounting to Rs.33,00,000/-.

4. It is therefore prayed that the above addition/disallowance made by the assessing officer may please be deleted.

Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.

Condonation of Delay:

3. At the outset, we note that there was a delay of 266 days in filing the appeal by the assessee. There were condonation petition and affidavit filed by the assessee. The reasons specified therein for the delay was negligent attitude of the Accountant, who was thrown out of the job and the order passed by Ld. CIT(A) was found in the drawer of the Accountant.

3.1. In view of above the, Ld. AR for the assessee before us submitted that the delay in filing the appeal occurred due to unavoidable circumstances. Therefore, the delay in filing the appeal should be condoned.

4. On the other hand, Ld. Sr.DR. submitted that the reason given in the Affidavit is generic in nature and there is no supporting evidence submitted to the petition and, therefore, opposed to condone the delay.

4.1. The Hon'ble Supreme Court in the case of Collector, Land Acquisition v. Mst. Katiji 1987 Taxmann.com 1072, analyzed the provisions of law qua limitation Act and held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice that being the life purpose for the existence of the institution of Courts. Further, refusing to condone delay can result in a meritorious matter being thrown out, at the very threshold, and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

4.2. In view of the judicial pronouncement and circumstances as highlighted above by the Ld.Counsel and in the interest of justice, the delay in filing of the present appeal is hereby condoned.

Facts of the case:

5. The brief facts of the case are that the assessee is a partnership-firm engaged in the business of real estate development. As per the information available with the I&CI Wing of Department, it was found that the assessee had purchased non-agricultural land admeasuring 24888 sqm on 19.05.2011 for Rs.1.10 Crore and the value assessed for the purpose of stamp duty was Rs.6,47,14,285/- No Income tax return was filed by the assessee. A notice

u/s.148 of the Act was issued on 15.11.2016 in response to which the assessee filed return on 07.12.2016.

5.1. During the course of assessment proceedings, the AO asked the assessee to explain the source of investment amounting to Rs.1,42,81,250/-. In response to which the assessee, vide reply dated 11.09.2017, furnished the source thereof by way partners' capital, unsecured loan and booking advance from customers.

5.2. The AO after going through details, as per the order sheet entry dated 27.12.2017 required assessee to show cause as to why the amount of Rs.50,14,000/-, represented by the capital introduced by Sh. Dhaval Patel of Rs.14,17,000/-, unsecured loan taken from Jadhav Tractors of Rs.19,00,000/- and unsecured loan taken from Bhadresh Shah of Rs. 14,00,000/-, should be treated as unexplained expenditure.

5.3. The AO further concluded that the booking advance taken in cash totalling to Rs.10,27,250/- from nine parties also could not be explained by the assessee and in turn could not be verified for want of evidence except index copy of land.

5.4. Thus, the AO made aggregate addition of Rs.60,31,250/- under section 69C of the Act.

5.5. During the course of appellate proceedings before Ld. CIT (A), the assessee submitted the details and also the additional evidence under Rule 46A of the Income Tax Rules. The Ld. CIT(A) forwarded the information to

the AO for the remand report. The AO submitted the remand report. Further the Ld.CIT(A) forwarded the copy of the remand report to the assessee, who as a rejoinder filed a reply dated 21.02.2019. The Ld CIT(A) admitted the additional evidence.

5.6. The Ld.CIT(A) after concluding that the explanation provided by the assessee towards source of capital of Rs.17,14,000/- as not satisfactory and unsecured loans of Rs.19,00,000/- and Rs.14,00,000/-, totalling to Rs.34,00,000 are not genuine, confirmed the addition.

5.7. The Ld.CIT(A) deleted the addition of Rs.10,17,250/- towards unexplained booking advance received by the assessee.

6. Aggrieved by the appellate order passed by Ld.CIT(A), the assessee filed second appeal before us.

On Merits:

Ground No.1

7. The Ld. Counsel for the assessee, argued that the Ld.CIT(A) has erred in upholding the reassessment proceedings u/s 148 of the Act. He argued that the AO has failed in giving the exact reason for reopening the assessment and the reasons which the assessee came to the knowledge of the assessee from the assessment order are vague in nature.

8. The Ld.DR objected to this ground as the same were not grounds before Ld.CIT(A). He also informed that the case initially selected for the scrutiny since there was a huge difference in agreement value of the land and the

value for the purpose of stamp duty. As the assessee was non-filer, the Assessing Officer under *prima-facie* belief that the income has escaped assessment, the notice was sent u/s 148 of the Act. Since the land purchased was shown as stock-in-trade, the Assessing Officer concluded that it is not a matter involving section 50C of the Act and verified the other details provided by the assessee. He also argued that the AO is empowered to verify the other issues based on information available on records and justified the reopening of the case and additions made by the AO.

9. When asked, during hearing, the Ld. Counsel agreed and confirmed that the reasons for reopening were not asked for by the assessee during the course of either assessment proceedings or appellate proceedings.

10. The Hon'ble Supreme Court in its judgement of GKN Driveshaft (India) Ltd. Vs Income Tax Officer and Others - (2003) 259 ITR 19 (SC) has categorically laid down the procedure to be adopted during reassessment proceedings and clarified that -

"... when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. (emphasis supplied)"

10.1. As agreed by the Ld.Counsel, the assessee has not sought for any reason during the course of entire assessment and therefore seeking relief merely on technical ground is not tenable. Therefore, relying on facts and the judgment of Hon. Supreme Court the ground of appeal is dismissed.

Ground No. 2

11. The Ld. Counsel argued that the Ld.CIT(A) has erred in confirming addition of Rs.17,14,000/- u/s 69C of the Act on account of the capital introduced by the partner.

11.1. During the course of hearing, the Ld.Counsel took us through the details provided by the assessee during the remand report proceedings which were re-produced by the Ld.CIT(A) in his order.

11.2. While confirming the addition of Rs.17,14,000/- made by the AO, Ld. CIT (A) concluded that the sources of the amounts of Capital introduced by the partner were not satisfactorily explained with supporting evidence. He also concluded that non-filing of return by the partner proves that the partner i.e. Dhawal B. Patel has no creditworthiness.

11.3. The assessee, before Ld.CIT(A), relied upon the judgements of Hon'ble High Court of Gujarat in case of CIT Vs. Pankaj Dyestuff Industries (ITR No.241 of 1993) and Odedara Construction reported at 362 ITR 338. The Ld.CIT(A) reproduced the part of later decision and rejected the applicability of these judgements stating that **the Hon'ble High Court in the above-referred case noted that the partners were capable of introducing the capital and making deposits with the partnership firm.**

11.4. While doing so, Ld.CIT(A) has not taken into consideration the judgement of Hon'ble High Court of Gujarat in case of CIT Vs. Pankaj Dyestuff Industries (ITR No.241 of 1993). In the said judgement, Hon'ble High Court applied the principles from the judgement of The Bombay High

Court in case of Narayandas Kedarnath Vs. Commissioner of Income Tax, Central reported at [1952] 22 ITR 18. The same is reproduced here –

“13.Applying the aforesaid principles to the facts of the present case, it is apparent that the assessee had furnished the details which would discharge the onus which lay on the assessee. It is not the case of the revenue that the partners of the assessee firm are fictitious. The Income Tax Officer has not disputed that the credits in the accounts of the partners were not deposits from the partners. Moreover, it is an admitted position that this was the second year of the firm, and that it was running in loss. It is true that the Income Tax Officer did not accept the explanation given on behalf of the assessee in respect of the new deposits or cash credits in the accounts of the partners. The mere non-acceptance of that explanation does not, however, provide material for finding that the said sum represented income of the assessee firm. As held by the Allahabad High Court in case of Commissioner of Income Tax, Allahabad v. Jaiswal Motor Finance (supra), in the absence of any material to indicate that there were profits of the firm, the amount credited to the partners' accounts could not be assessed in the hands of the firm. Once the partners have owned that the monies deposited in their accounts are their own, the Income Tax Officer is entitled to and may proceed against the partners and assess the same in their hands, if their explanation is not found satisfactory.”

11.5. In the present case, the partner (Late Dhaval B. Patel, who is expired on 18.12.2021 and we have taken note of the death certificate placed on record) has explained the source funds towards introduction of the capital. Therefore, if the department was not satisfied with the explanation given by the partners, then it is legitimate for the department to draw inference that these amounts represent undisclosed profits/unexplained credits and to assess them in their hands in their own individual assessment. Thus, the amounts credited to the partners' bank account cannot be assessed in the hands of the firm. Once the partner has owned that the money deposited in his accounts are of his own, the AO is entitled to and may proceed against the partner and assess the same in his individual hands.

11.6. Considering the material available on records and arguments of the aggrieved parties, we are of the opinion that Ld.CIT(A) has not taken into

consideration, principles to the facts of the judicial pronouncement as referred above in case of CIT Vs. Pankaj Dyestuff Industries (ITR No.241 of 1993) and has erred in confirming the addition. Therefore, the ground of the assessee is allowed.

Ground No. 3

12. The Ld. Counsel argued that the Ld.CIT(A) has erred in confirming addition of Rs. 33,00,000/- u/s 69C of the Act on account of unsecured loans.

12.1. This amount of Rs.33,00,000/- is represented by two loans -

1. Rs.19,00,000/- from Jadhav Tractors
2. Rs.14,00,000/- from Bhadreshkumar S. Shah

12.2. During the course of hearing, the Ld.Counsel explained with the help of remand report and the facts reproduced by the Ld.CIT(A) in his order, that the assessee has proved the identity and genuineness by providing PAN, bank statement and copy of ITR of the person who lent money to the assessee as unsecured loan. It was also observed by the AO in the remand report that the person who lent money by cheque to the assessee had deposited cash in his account to clear the cheque.

12.3. The Ld.CIT(A) concluded that the assessee has not come forward with any explanation for the deposit of cash by this person and has not provided the other supporting like Balance Sheet, Profit and loss account, etc. and failed to discharge the secondary onus to prove the creditworthiness of the persons. The Ld.CIT(A) confirmed the addition, being **unexplained cash-credit** in his order (page 29 at para 8.3). However,

the addition made by AO is under section 69C of the Act as unexplained expenditure.

12.4. Since the identity, genuineness and creditworthiness of the depositor are proved by the assessee and hence the primary onus cast upon the assessee is discharged and the onus now shifted to the AO to show why the assessee's case could not be accepted and why it must be held that such loans remained unexplained and treating as dubious and doubtful.

12.5. In order to arrive at such a conclusion, the AO has to be in possession of sufficient and adequate material. Further the assessee cannot be presumed to have special notice about the source of source or origin of origin. Once the assessee has explained the source of the funds having come from the depositors as an explanation to support the loans received, it is not expected from the assessee to explain the source of the source. Even if it is assumed that the person who lent the money, was unable to explain the nature and source of the funds received by them which were given as loan to the assessee than its unexplained amount could be treated as unexplained investment in the hands of the depositors u/s.69 of the Act or other section but could not be taxed in the hands of the assessee as unexplained expenditure u/s 69C of the Act in absence of any evidence.

12.6. During the course of hearing before us, the Ld.Counsel relied upon decision of co-ordinate bench in case of Rohini Builders Vs. DCIT reported at [2001] 117 Taxmann 25 as confirmed by the Hon. High Court of Gujarat vide Tax Appeal No. 65 of 2001 reported as [2003] 127 Taxman 523.

12.7. Thus, taking into consideration the totality of the facts and circumstances and in particular the fact that the addition is made and confirmed u/s.69C of the Act in the hands of assessee, the Ld.CIT(A) is not justified in confirming the addition. The addition of Rs.33,00,000/- is accordingly deleted. This ground of the assessee is allowed.

Ground No. 4 is generic in nature and already considered in other grounds, is not adjudicated separately.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 24th April, 2024 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

Ahmedabad, Dated 24/04/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-Gandhinagar, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
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