

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH AHMEDABAD

BEFORE, SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND SHRI S. S. GODARA, JUDICIAL MEMBER

ITA No. 404/Ahd/2014
(Assessment Year: 2009-10)

Smt. Daxa Nareshbhai Santani,
1-Maruti Bunglow, B/H. Taj
Residency Hotel, Airport Circle,
Sardar Nagar, Ahmedabad - 382475

Appellant

Vs.

Income Tax Officer,
Ward- 12(2), Ahmedabad

Respondent

PAN: BLLPS5138L

आवेदक की ओर से/By Assessee : Shri N. C. Amin, A.R.
राजस्व की ओर से/By Revenue : Shri Mahesh Jiwade, Sr. D.R.
सुनवाई की तारीख/Date of Hearing : 01.11.2017
घोषणा की तारीख/Date of
Pronouncement : 13.11.2017

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This assessee’s appeal for assessment year 2009-10 emanates from the CIT(A)-I, Ahmedabad’s order dated 18.11.2013 in case no. CIT(A)-I/Wd.12(2)/174/2013-14, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. The assessee’s first substantive ground seeks to reverse both the lower authorities’ action making Section 69 addition of Rs.2lacs in her hands. There is no dispute that she had claimed to have received the amount in question as loan

from her husband's uncle Shri Kaniyalal Sontani. The Assessing Officer sent this creditor a notice u/s.133(6) of the Act. He did not appear. This made the Assessing Officer to invoke Section 69 of the Act qua the impugned sum.

3. The CIT(A) affirms Assessing Officer's findings as under:

“3.2 During the appellate proceedings, the A.R. of the appellant submitted as under:

“During the course of earlier hearing, your honour have asked me regarding opening balance as on 01.04.2009. In this connection I have to state that I am coming from Sindhi community and before my marriage I was doing stitching and tailoring work and residing with my father Shri Ramlal Nirumal Radhani. After my marriage I have continued and doing the stitching and tailoring work and in this connection I have filed my capital account, balance sheet from 1.4.2004 to 31.03.2005 and opening balance carried forward as on 31.03.2009 and copies of the same are lying in Paper Book from pages 6 to 10. I have started filing of my Income-tax Returns from the A.Y.2007-08 and onwards which are lying on the record of the learned A.O. and earlier years balance sheet from 2004-05 relevant to A.Y.2005-06 and considering the same the opening balance shown by me as on 31.03.2008 is carried forward and therefore it is self-explanatory and as such additions made by learned Assessing Officer amounting to Rs. 12,87,500/- which includes loan taken from Shri. Kanaiyalal Santani amounting to Rs.2,00,000/- for which documentary evidences and confirmation is lying on page 17 of Paper Book and for Bank loan certificate from Central Bank of India, Maskati Market, REvdi Bazar, Ahmedabad is available on page 18 of Paper Book.”

4. *I have gone through the assessment order and submissions of the A.R. of the appellant carefully. It is seen that the appellant had stated that she had taken a loan of Rs.2,00,000/- from Shri Kanaiyalal Santani, husband of the appellant. Only confirmation of Shri Kanaiyalal Santani was filed before the Assessing Officer. The Assessing Officer issued notice/s. 133(6) of the I.T. Act, 1961 to Shri Kanaiyalal Santani asking him to confirmation of the loan given to the appellant. However, the said letter was written back unserved. No other evidence regarding the sources of Shri Kanaiyalal Santani were filed. During the course of appellate proceedings, the A.R. of the appellant was asked to justify the genuineness of the loan from Shri Kanaiyalal Santani and also to prove creditworthiness of Shri Kanaiyalal Santani. However, no such evidence was filed. During the course of appellate proceedings, the A.R. of the appellant stated that he was not in position to file any further evidence and relied only on the submission made. In view of the above, the loan from Shri Kanaiyalal Santani cannot be accepted as genuine. Since the transaction has not been proved before the Assessing; Officer or even during the appellate proceedings. The creditworthiness of Shri Kanaiyalal Santani has also not been established. In view of the above, the addition made by the Assessing Officer is confirmed.”*

4. Heard both the parties reiterating their respective stands. Learned counsel representing assessee vehemently contends that both the lower authorities have erred in making the impugned addition amounting to Rs.2lacs in case of the above

creditor/her close relative. He seeks to refer to assessee's paper book on record comprising of various documents in the nature of income tax returns, capital account as well as confirmation from her above relative. We find no merit to agree with all these arguments as there is no dispute about the above creditor being her close relative (supra). It was therefore very well within her capacity to produce the said creditor before either of the two authorities instead of relying upon mere documentary evidence and confirmation. Her act of filing confirmation on her close relative's behalf lends credence to both the lower authorities' action wherein it can be safely implied that the said party was very much in touch with her. We further quote hon'ble apex court's landmark decision in CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC) and Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC) that the most crucial test in such cases is that of human probability to be applied in appreciating the relevant evidence. We therefore conclude that the assessee has not been able to prove genuineness of her explanation to have availed loan from above close relative on the basis of mere documentary evidence. We therefore reject this former substantive ground.

5. This leaves us with assessee's latter grievance challenging correctness of Section 69 unexplained investment addition of Rs.6lacs as restricted to Rs.3lacs only in the lower appellate proceedings as under:

"5.1 It is seen that the Assessing Officer has made addition observing as under:

"4.2 The details regarding Rs.6,00,000/- made through her own capital, on verification of return filled by the assessee it was noticed that year under consideration year return of Income was filed on 31/03/2010, so the return was not filled in time, hence the document is not supported, the investment in immovable property of Rs.6,00,000/- is treated unexplained investment u/s 69 of the IT Act. Therefore the same is added back in total income of the assessee.

4.3 In this regard show cause notice issued on 29/11/2011, for reasonable opportunity given to the assessee, and hearing was fixed on 05/12/2011, but could not complied, by the A.R. of the assessee, and requested on telephone for adjournment for few days, and same is considered. On 15/12/2011 Shri Tekwani A.R. of the assessee has furnished written submission for consideration, that assessee has source of own capital of Rs6.00,000/-through various sources, but as per discussion in Para 4.2, the assessee has not filed return of income in time limit of section 139 of the income tax Act., hence the same is not taking in, to consideration, and addition made accordingly."

5.2 During the appellate proceedings, the A.R. of the appellant submitted as under:
"During the course of earlier hearing I have submitted written submissions on 26.9.2013 and in furtherance thereto I have to submit as under: The learned A. O. has discussed in para 4.2 and 4.3 of the assessment order which is reproduced, as under:

"4.2 - The details regarding Rs.6,00,000/- made through her own capital, on verification of return filed by the assessee it was noticed that year under consideration year return of income was filed on 31/03/2010, so the return was not filed in time, hence the document is not supported, the investment in immovable property of Rs. 6,00,000/- is treated unexplained investment U/s 69 of the I. T. Act. Therefore the same is added back in total income of the assessee.

4.2 - In this regard show cause notice issued on 29.11.2011, for reasonable opportunity given to the assessee, and hearing -was fixed on 05/12/2011, but could not complied, by the A.R. of the assessee, and requested on telephone for adjournment for few days, and same is considered. On 15/12/2011 Shri Tekwani A.R. of the assessee has furnished written submission for consideration, that assessee has source of own capital of Rs.6,00,00/- through various sources, but as per the discussion in Para 4.2, the assessee has not filed return of income in time limit of section 139 of the income-tax Act, hence the same is not taking in to consideration, and addition made accordingly. (Addition of Rs.6,00,00)"

1. The learned A.O. has made additions of Rs.6,00,000/- as investment made in the house property U/s 69. The section 69 says that where in the financial year immediately preceding the assessment year, the assessee has made investment which are not recorded in the books of account if maintained by him and the assessee offers no explanation, then additions can be made U/s 69 of the I.T.Act 1961. In the case of appellant the amount has been accounted for in the books of account and therefore addition U/s 69 made by learned A.O. is not in accordance with law.

2. The learned A.D. has given finding in para 4.3 that assessee has not filed return of income within the time limit of Sec. 139 which is also incorrect fact. The return of income from A.Ys. 2007-08 to 2009-10 have been filed U/s 139(4) and therefore it is filed U/s 139 of the I.T. Act 1961. The appellant has furnished the details in this regard for A.Y. 200-02 to 2009-10 vide letter dated 15.12.11 which has not been challenged by learned A.O. and therefore considering the same also the appeal of the appellant be decided on merits.

3. The learned A.O. has given finding in the assessment order in par a 4.3 that return is not filed in time limit of Sec. 139 and hence addition is made accordingly. The Assessing Officer is bound to take cognizance of the return filed U/s 139(4) and determine the income by making assessment for the relevant assessment year. The law prescribes a time limit for filing return that it also permits a belated return within the further time specified, so that it has been recognized as a right available to the assessee to file belated return. It also state that the income disclosed in the belated return could not be treated as undisclosed income once it has been disclosed, so belatedly. Reliance is placed on the following decisions:

- (i) Shan Trust v. Asst. CIT [2006] 5 SOT 761 (Ahd)
- (ii) Deputy CIT V. Raja Udayshankar [2006] 7 SOT 680 (Bang)
- (iii) Nagin Das M. Gondia v. Depytt CIT [2004] 83 TIJ (Mum) 151
- (iv) Chandra Bhan v. Asst. CIT [2006] 98 ITO 6 (Agra)
- (v) C.P. Nanda v. Deputy CIT[2005] 144 Taxman (Mag) 13 (Pune)(Trib)
- (vi) CIT v. Kunkum Kohli (Mrs.) [2005] 2 76 ITR 589 (Delhi)
- (vii) Vidya Madanlal Malani (Sou) v.Asst. CIT[2000] 74 ITO 341 (Pune)

A reading of section 139(1) and 139(4) shows that a return filed within the time specified u/s. 139(4) has to be considered as having been made within the time prescribed under Sec. 139(1). Reliance is placed on the decision of (1) Trustees of Tulsidas Gopalji Charitable, Chaleshwar Temple Vs. CIT 207 ITR P. 368 (Bom) and (2) Kareem Sons (Pvt) Ltd., 198 ITR P. 543 (Kar) [FB] and hence considering the same also the addition made by learned A.O. deserves to be deleted.

Undisclosed Income- Returns no filed on due date- does not IPSO FACTO result in income be treated as undisclosed income - Income-tax Act 1961 s. 139(1). Reliance is placed on the decision of Jyoti Harshad Mehta Vs. ACIT, ITAT Mumbai Bench reported in 319 ITR P. 107 (Mum)(AT)

ssA return to be filed under sub-section (4) of section 139 can be filed within the maximum time limit fixed in the section 139(4) the return filed is valid return and no addition can be made on the basis of such return and therefore addition made by learned A.D. deserves to be deleted

Considering the above stated facts and circumstances of the case and various decisions, the, appeal of the appellant be decided on merits."

6. *I have gone through the assessment order and submissions of the A.R. of the appellant carefully. It is seen that no details about sources of income were filed before the Assessing Officer, hence, the Assessing Officer made the addition,' During the course of appellate proceedings, the A.R. of the appellant filed the capital account of the appellant from 31.03 2005 to 31 ,03 700Q to show that the appellant had closing cash balance of Rs.6,67,761/-. However, the capital account had never been filed before the department. It was also noticed that the appellant had claimed to have received gifts in marriage of Rs.2,39,270/- and having incomes for year from A.Ys.2000-01 to 2007-08. However, no returns had been filed for the earlier period. The first return in this case was filed only for the A.Y. 2007-08 on 04.09.2008. The capital: account showed that the appellant had given loans and advances to several parties. However, no details regarding such loans and advances were produced during the appellate proceedings. No evidence what so ever was produced during the appellate proceedings to justify the fact that the appellant had incomes in the earlier years. It is seen that the appellant had filed return of income for A.Y.2007-08 declaring stitching of Rs.1,58,790/-incomes of Rs.1,72,460/- and Rs.1,72,455/- for A.Ys.2008-09 and 2009-10 respectively. In view of the fact that the A.R.of the appellant was not able to adduce any evidence to justify the income of the earlier years for which no return was filed and also the fact that no details of the loans and advances shown to be given were available and the fact that the A.R. of the appellant stated that no further evidence could be filed, it becomes clear that the capital shown by the appellant is not genuine. In view of the fact that the appellant had filed return of income for A.Ys. 2007-08 and 2008-09 and has shown income during the year, the entire capital balance available with the appellant should be estimated at Rs.3,00,000/-. In view of the above, the addition made by the Assessing Officer at Rs.6,00,000/- is reduced to Rs.3,00,000/-."*

6. Learned Authorized Representative submits that both the lower authorities have not accepted assessee's explanation based on her capital account being maintained since long. His further case is that such an addition ought not to have been made on the basis of opening balance as held by various hon'ble courts from time to time. The factual position however is to the contrary. It has come on

record that the CIT(A) has granted sufficient weightage to her in restricting the impugned addition from Rs.6lacs to Rs.3lacs only by taking into account all the relevant facts as well as documentary evidence. We therefore find no merit in assessee's factual as well as legal arguments since the above extracted findings have gone unrebutted in the course of hearing. It is evident that the assessee has not filed cogent oral or documentary evidence to actually prove the fact of her having carrying out stitching or any other income earning vocation. We therefore decline assessee's latter substantive ground as well.

7. This assessee's appeal is accordingly dismissed.

[Pronounced in the open Court on this the 13th day of November, 2017.]

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 13/11/2017

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।