

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘SMC’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 2768/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2011-12

Urmit H. Patel 101, Vimal Residency Flat , 7-Amarkunj Society BPC Road, Akota Baroda.  PAN : ADTPP 5029 Q	Vs	ITO, Ward-2(4) Baroda.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Tej Shah, AR
Revenue by :	Shri Aditya Shukla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 14/02/2018

घोषणा की तारीख /Date of Pronouncement : 16/02/2018

### ORDER

Present appeal is directed at the instance of the assessee against order of Id.CIT(A)-4, Vadodara dated 20.7.2016 passed for the Asstt.Year 2011-12.

2. Though the assessee has taken four grounds of appeal including sub-grounds, but his grievance revolves around a single issue viz. the Id.CIT(A) has erred in upholding re-opening of the assessment under section 148 of the Income Tax Act and erred in confirming addition of Rs.5.00 lakhs.

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3. The Id.counsel for the assessee did not press ground relating to validity of reopening of the assessment under section 148. Hence this fold of grievance is rejected.

4. As far as next fold of grievance is concerned, it emerges out from record that the assessee has filed his return of income on 29.9.2011 declaring total income at Rs.10,59,450/-. The assessee has claimed credit of Rs.50,000/- representing TDS deducted by M/s.P.K. Chlorochem P.Ltd. The AO observed that receipt of Rs.5.00 lakhs ought to have been received from M/s.P.K. Chlorochem P.Ltd. has not been accounted for by the assessee, hence he made an addition of Rs.5.00 lakhs. On the other hand, the case of the assessee is that though M/s.P.K. Chlorochem P.Ltd. has issued a TDS certificate exhibiting deduction of TDS, but actually not paid a sum of Rs.5.00 lakhs to the assessee. Certificate to this effect was issued by M/s.P.K. Chlorochem P.Ltd. which is available at page no.35 of the paper book. It reads as under:

*"To, whom so ever it may concern*

*We P K CHLOROCEM PVT LTD. Hereby State that Mr. Urmit Hirubhai Patel Was Given a work for Which He was to get Commission of Rs. 5 lacs in F.Y:2010-2011 For The Order etc. Of Biotor Industries Ltd. Since The work is not completed by him we have not paid the said sum to him for amount provide by us Rs.5 lacs and TDS of Rs.50000/- till date.*

*Thanks,*

*Yours faithfully,  
For P.K. Chlorochem P.Ltd.  
Sd/-  
Director"*

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5. On the strength of this certificate, the assessee contended that he has never received a sum of Rs.5.00 lakhs, and therefore it could not be included in the total taxable income of the assessee. On the other hand, the Id.DR submitted that once the assessee has claimed credit of alleged TDS deducted by the payer, then corresponding receipt ought to be accounted for. The Id.counsel for the assessee, on the other hand, submitted that let TDS credit be withdrawn from the assessee, but how the gross receipt could be added.

6. On due consideration of the above facts, I am of the opinion that merely on the basis of a TDS certificate it cannot be assumed that a right to receive payment was accrued to the assessee in mercantile system of accountancy or such payments were actually be received when the payer deposing that no such payment was ever credited to the accounts of the assessee, nor it was paid. Thus, on the basis of TDS certificate, which in reality not materialized, the gross receipts cannot be added. I allow appeal of the assessee and delete addition of Rs.5.00 lakhs. Consequently, credit of Rs.50,000/- given to the assessee be withdrawn.

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

**Pronounced in the Open Court on 16<sup>th</sup> Feb., 2018.**

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**

Ahmedabad; Dated, 16/02/2018