

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. 1541/Ahd/2015

निर्धारण वर्ष/Assessment Year: 2010-11

Smt.Rupalben H. Patel Post Falia Sardar Chowk Borsad 388540 PAN : AKNPP 5263 D	Vs	DCIT, Cent.Cir.1 Baroda.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri B.T. Thakkar, AR
Revenue by :	Shri Aditya Shukla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/02/2018

घोषणा की तारीख /Date of Pronouncement : 21/03/2018

ORDER

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-12, Ahmedabad dated 7.3.2015 passed for the Asstt.Year 2010-11.

2. Assessee is challenging confirmation of addition of Rs.9,39,102/- which was added by the AO with aid of section 68 of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed her return of income on 20.9.2010 declaring total income at Rs.2,67,270/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. The assessee at the relevant time was engaged in business of civil construction. On

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scrutiny of the accounts, it revealed to the AO that the assessee deposited a sum of Rs.7.00 lakhs in the bank account on 12.05.2009. The Id.AO has directed the assessee to explain source and nature of the transaction. In response to the query of AO, it was contended that Arunaben Ravjibhai Patel has purchased a plot vide registered sale deed on which construction was to be raised. The sale deed was executed 9.02.2011. A sum of Rs.1,76,274/- paid through HDFC account was made for land and Rs.7.00 lakhs paid through cheque no.003070 was made to the assessee as advance for construction purpose. Both these facts are duly narrated in the deed. Thus, the assessee has raised construction and incurred this expenditure. It was an advance from Smt.Arunaben Patel, and therefore, it should not be added as unexplained income. The Id.AO did not accept this contention of the assessee. He was of the opinion that this amount ought to be recognised as income in the gross contract receipt. He made discussion with a different angle and accordingly confirmed addition. Similarly, an addition of Rs.2,37,691/- was made. The assessee has contended before the Id.CIT(A) this amount was already included by her in the gross receipt computed under section 44AD of the Act on which profit in terms of section 44AD was offered for taxation. Her gross receipts did not exceed the limit provided in section 44AD, and therefore, she was not required to maintain books of accounts. The Id.AO did not accept this contention of the Id.counsel for the assessee.

4. On appeal, the Id.CIT(A) has accepted the contention of the assessee *qua* second issue. He directed the AO to verify whether the assessee has included a sum of Rs.2,37,691/- in the gross receipts

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computed under section 4AD. If it is included then no separate addition ought to be made. After considering the observation of the Id.CIT(A), I am of the view that if the assessee has already accounted a sum of Rs.2,37,691/- in the contract receipt, then it is not to be added as unexplained cash credit separately. The Id.AO shall verify this fact and thereafter adjudicate the issue. In other words, if it is included in the gross receipt, then no addition can be made because the assessee has already offered income on this amount. If it is not included in the gross receipt then the Id.AO shall verify source and nature of this receipt, and thereafter adjudicate the issue.

5. So far as addition of Rs.7 lakhs is concerned we find that cheque vide which this amount was received by the assessee has been stated in the deed of Arunaben Patel. There is a specific mention that Rs.7.00 lakhs will be meant for construction. This deed was executed before issuance of notice under section 143(2) by the AO. The deed is dated 9.2.2011 whereas the case of the assessee was selected for scrutiny assessment vide notice dated 12.9.2011. Therefore, there could not be any manipulation at the end of the assessee. In the bank statements placed at page no.19 of the paper book though this cheque was received from Kiranben USA, but it was meant for construction and credited in the accounts of the assessee. As far as assessee's source is concerned, it is not relevant whether vendee of the house has contributed this amount or someone else has contributed it for construction of the assessee. The question is in the hands of the assessee. It was an advance amount for construction of house which is being purchased by Arunaben Patel. Therefore, taking into consideration documentary evidence on record, I

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am satisfied that the assessee has explained nature and source of Rs.7 lakhs, addition is not sustainable. Accordingly, we allow the appeal of the assessee and delete addition.

6. In the result, appeal of the assessee is allowed.

Pronounced in the Open Court on 21st March, 2018.

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

Ahmedabad; Dated, 21/03/2018