

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'B' BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and Mahavir Prasad JM]

ITA No.456/Ahd/2016
Assessment year: 2009-10

Prakashbhai Dahyabhai Babariya

.....**Appellant**

C/o. B.R. Popat & Co.,
Chartered Accountants
326, Galaxy Mall,
Above Bank of India,
Opp. Jhansi Ki Rani BRTS Bus Stop,
Satellite Road,
Ahmedabad – 380 015.
[PAN : AIYPB 2335 D]

Vs.

Income Tax Officer,
Ward – 1(1), Bhavnagar.

.....**Respondent**

Appearances by

B.R. Popat for the appellant
James Kurian for the respondent

Hearing concluded on: 24.01.2018
Order pronounced on : 21.03.2018

O R D E R

Per Pramod Kumar, AM:

1. This appeal filed by the assessee appellant is directed against order dated 21.12.2015, passed by the learned CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act 1961 ('the Act' hereinafter), for the assessment year 2009-10.

2. Grievance raised by the assessee is as follows :-

"1. The learned CIT(A)-6, Ahmedabad has erred in law and on facts in confirming the action of the AO in making addition of Rs.10,25,000/- by treating the same as unexplained investment under section 69B of the Act."

3. Briefly stated, the relevant material facts are like this. During the course of scrutiny assessment proceedings, the Assessing Officer made the impugned addition of Rs.10,25,000/- by observing as follows :-

“8. It is further seen from the records that as per the Annual Information Return furnished by the Kotak Mahindra Investments Ltd. u/s.285BA of the Act, the assessee has made investment of Rs.10,25,000/- in Bonds/Debenture of Kotak Mahindra Investments Limited during the year under consideration. During the course of assessment proceedings, the assessee was requested to furnish source with documentary evidence of the same. However, the assessee did not furnish the same. Hence, a show cause vide this office letter dated 21.11.2011 was issued and served upon the assessee as to why the investment of Rs.10,25,000/- should not be treated as unexplained investment u/s.69B of the Income-tax Act, 1961 and added to total income.

8.1 The assessee furnished reply of the same vide his submission dated 08.11.2011 and 28.11.2011. The reply of the assessee is considered. On careful consideration of the same, it is seen that there is no substance in it. It is also not supported by any cogent documentary evidence. It is contended by the assessee that source of the investment of Rs.10,25,000/- in the above bond debenture of Kotak Mahindra Investment Limited is from the interest free unsecured loans taken from Shri Girishbhai D Babariya, his brother and Smt. Pushpaben Prakashbhai, his wife. In this regard, it is observed that a lay man would think of making an investment only when he is having spare money. He would never think of investment if he does not have his own fund. In the case of assessee, it is claimed by the assessee that his brother gave him interest free loan of Rs.7,00,000/- for the purpose of making investment in the above bonds/debentures. Meaning thereby that Shri Girishbhai D Babariya, the brother of assessee, instead of making investment out of his own spare money in his own name and earning something out of it, he parted with those Rs.7 lacs and lost not only the interest on his spare money but also, the dividend on the such investment in Bond/Debenture. No prudent person would do like this.

*8.2 Without prejudice to the above, as discussed above, the creditworthiness and competency of both the depositors are not established by the assessee. Hence, above investment of Rs.10,25,000/- made in Bonds/Debenture of Kotak Mahindra Investments Limited during the year under consideration remain unexplained. Accordingly, the said investment of Rs.10,25,000/- is treated as unexplained investment u/s.69B of the Income-tax Act, 1961. Thus, an amount of **Rs.10,25,000/-** is added to the total income. Penalty proceedings u/s.271(1)(c) of the Income-tax Act, 1961 is initiated on this issue for furnishing inaccurate particulars of income.”*

4. Aggrieved, assessee carried the matter in appeal but without any success. The assessee is not satisfied and is in further appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

6. We have noted that the investments in Kotak Mahindra Investment Limited's debenture are made out of loans from Shri Girishbhai Babariya, brother of the assessee (Rs.7,00,000/-) and Smt. Pushpaben Babariya, wife of the assessee (Rs.2,35,000/-) and credit balance in assessee's overdraft account. Both the lenders are assessed to tax and their assessment details are on record. The existence of these persons is not in doubt and they are related to the assessee. Under these circumstances, investments made out of these funds cannot, by any stretch of logic, be treated as unexplained investments. As regards any issues about sources of income of these persons, the same can be, given the circumstances of this case and our prima facie satisfaction with the bonafides, can only be addressed in their respective assessments. In any event, having perused the material on record, we are satisfied *prima facie* about the genuineness as well. In the light of these discussions and bearing in mind entirety of the case, we delete the impugned additions. The assessee gets the relief accordingly.

7. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open Court on this 21st day of March, 2018.

Sd/-
Mahavir Prasad
(Judicial Member)

Sd/-
Pramod Kumar
(Accountant Member)

Dated: 21st March, 2018

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Copies to: (1) The appellant (2) The respondent
 (3) CIT (4) CIT(A)
 (5) DR (6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad