

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस.एम.सी' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1990/Ahd/2016

निर्धारण वर्ष/Assessment Year : 2011-12

Kalpesh Bhupendrabhai Brahambhatt, B/12, Mrudand Park Society, B/h. Bright School, VIP Road, Karelibaug, Vadodara - 390 018.	Vs.	ITO, Ward - 5(2), Baroda, Now 3(1)(2), Vadodara.
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Mukund Bakshi, A.R.
Revenue by :		Shri Apoorva Bhardwaj, Sr.D.R.

सुनवाई की तारीख/Date of Hearing : 09.08.2018

घोषणा की तारीख /Date of Pronouncement : 08.10.2018

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the appellate order of the learned Commissioner of Income-Tax (Appeals)-3, Vadodara ["CIT(A)" in short] relevant to Assessment Year 2011-12.

2. Assessee has raised the revised grounds of appeal vide letter dated 6th August, 2018 which are reproduced as under:

- "1. The Ld. CIT (Appeals) has erred in law and in facts in not admitting the additional evidences filed in support of the Appellant's claim against the additions made in the assessment. The Hon'ble Tribunal be pleased to admit the same and allow necessary reliefs.
2. The Ld. CIT (Appeals) has erred in law and in facts in confirming the action of the Ld. A.O. in holding that an amount of Rs.22,71,343/- received in the course of business of plying of motor trucks was to be assessed u/s. 56 of the IT Act and that no further allowance of expenditure from the same could be allowed.

The amount of Rs.22,71,343/- being received in the course of business of plying motor trucks may please be held so and only the income from such receipts be subjected to tax.

3. *The ld CIT(A) has erred in law and in facts in confirming the action of the ld AO in holding that an amount of Rs.3,85,000/- received during the year represents unexplained money. The amount of Rs.385,000/- being fully explained may please be held so and that the addition may please be deleted.*
4. *The Appellant craves the liberty to add, alter, modify or withdraw any of the Grounds of Appeal."*

3. The first issue raised by the assessee in this appeal is that ld. CIT(A) erred in treating the income from the business of plying of motor trucks as income from other sources.

4. Briefly stated facts are that the assessee in the present case is an individual and engaged in the business of plying, hiring and leasing goods carriage. The assessee during the year has derived his income from salary, business & profession and income from other sources.

4.1 The assessee in its income tax return *inter alia* has shown income from other sources as detailed under:

"Schedule OS - Other Source of Income

d. Others/Gross (excluding income from owning race horses) Rs.22,71,343/-

f. (i) Expenses Rs.20,91,050/-

(ii) Depeciation Rs. 85,611/-

g. Balance (income from other sources) Rs. 94,717/-"

However, the assessee during the assessment proceedings submitted that income shown under the head from other sources includes the income from the

plying of goods carriage. The assessee further submitted that he has earned such income of Rs. 1,20,000/- as per the provisions of section 44AE of the Act.

However, the AO during the assessment proceedings requires the assessee to file the registration certificates of the vehicles owned by him and also proposed to take the gross income of Rs. 22,71,343/- as income from other sources as it was not offered in the income tax return under the provision of Section 44AE of the Act.

4.2 The assessee in compliance thereto justified that he has derived income from the plying of goods vehicles by filing form 26AS. The assessee further submitted that he has earned income from the plying of goods carriage from M/s Rahul roadlines. The assessee also submitted that the TDS was deducted u/s 194C of the Act which shows that the assessee has earned his income under the head business and profession. As per the assessee, he was the owner of two heavy vehicles. Accordingly, the income of Rs. 1,20,000/- was offered to tax u/s 44AE of the Act during the assessment proceedings.

However, the AO disagreed with the submission of the assessee by observing that the assessee filed his return of income in ITR-2 though, the assessee was liable to file his income tax return in ITR-5 in the case of having business income.

4.3 The AO also observed that the assessee has not filed any evidence in support of the expenses claimed against the income from other sources for Rs. 20,91,050/-. Accordingly, the AO treated the gross income of Rs.22,71,343/- as income from other sources u/s 56 of the Act.

5. Aggrieved, assessee preferred an appeal to Id. CIT(A). The assessee before the Id. CIT(A) submitted that the assessee has declared his income during the assessment proceedings from plying of goods carriage u/s 44AE of the Act. Accordingly, the assessee was not liable to maintain any books of accounts. As per the provision of Section 44AE of the Act, the income has to be computed on presumption basis i.e. Rs. 5,000/- per month per vehicle.

5.1 The assessee inadvertently has filed his income tax return in ITR-2 but the same should have been treated as defective under the provision of section 139(9) of the Act. However, the AO did not intimate the defect as observed from the income tax return within the specified time.

5.2 The assessee in support of his claim also filed the additional evidences as detailed under:

- i. Ledger of Rahul Road Lines.
- ii. Copy of Form 26AS for the year 2010-11.

However, the Id. CIT(A) disregarded the contention of the assessee and rejected the additional evidence filed by the assessee and confirmed the order of AO by observing as under:

“The appellant has furnished the ledger account certified by Rahul Road Lines at the stage of appellate proceedings only and therefore the same can be said to be additional evidence. However, no application has been filed by the appellant explaining the circumstances under which he could not produce such ledger account of Rahul Road Lines. The appellant has failed to explain why he could not produce the ledger account of Rahul Road Lines and other evidences i.e. RTO Registration Book of the vehicles owned by him and confirmation of Rahul Road Lines stating that this party has made payment of Rs. 22,71,343/- to him at the stage of assessment proceedings. The fact is that the ledger of Rahul Road Lines as furnished by the appellant vide his letter dated 15/07/2014 during the course of appellate proceedings was never submitted to the AO during the course of assessment proceedings despite the ample opportunities given to it. The appellant

also did not submit the proof i.e. RTO Registration Book of vehicle owned by him to the AO during the course of assessment proceedings despite the fact that the AO vide his show cause notice dated 07/10/2013 specifically asked for the same. The appellant also did not file any confirmation from Rahul Road Lines to establish that the receipt of Rs. 22,71,343/- was made by him from this party because of contractual business.

9.3 Rule 46A prescribes certain conditions which should be fulfilled before admitting any additional evidences by the appellate authorities, viz. where the AO had refused to admit evidence which ought to have been admitted, where the appellant was prevented by sufficient cause to produce the evidence before the AO which he was called upon to produce or was relevant to any ground of appeal or the AO did not accord sufficient opportunity of being heard to adduce the evidences relevant to any ground of appeal. A careful perusal of records of the appellant reveals that none of these conditions are fulfilled by the appellant. It would be pertinent to refer to the decision of Hon'ble High Court of Gujarat in the case of Fairdeal Filaments Ltd. vs CIT (2008) 302 ITR 173 where the Hon'ble High Court of Gujarat has held that "So far as admitting additional evidence under Rule 29 of the Income-tax Appellate Tribunal Rules was concerned, the Tribunal had come to the conclusion that the benefit under the said rule was not available to a person who was negligent, non-cooperative and recalcitrant, and the Tribunal was not required to give another chance or opportunity to a person to cover up its own lapses. Applying the tests mentioned above to the facts of the case, it was to be held that the Tribunal had approached the matter correctly"

9.4 Again, the Hon'ble ITAT, Chandigarh, in the case of Rishi Sagar vs CIT [2013] 36 taxmann.com 508 has held that where the assessee had failed to produce documents during assessment and failed to establish reasonable cause and further did not comply with the notices of the Assessing Officer, additional evidence could not be accepted in appeal.

9.5 In view of the above facts and legal position it can be said that the additional evidence as submitted by the appellant at appellate stage is in contravention of Rule 46A of the Income tax Rule and no credence can be given to the same. Considering these facts, the additional evidences of the appellant as filed at the appellate stage are hereby rejected. Further, it may be the case that the appellant had filed wrong ITR i.e. ITR-2 instead of filing ITR-4 or ITR-5. It may also be the case that the AO did not intimate the appellant to rectify the defect as per section 139(9). But here the main issue arises is that as to whether the amount of Rs. 22,71,343/- was actually the gross turnover/gross receipts of the appellant on account of sub-contracting business with Rahul Road Lines. In order to prove this fact, the appellant was required to submit proper evidence and

details to the AO during the course of assessment proceedings which he failed to do despite the various opportunities given to it by the AO which is evident from the assessment order. Further, the appellant has not been able to furnish any details regarding expenses of Rs. 20,76,611/- and therefore such expenses are not allowable. Considering all these facts and more particularly the fact that the additional evidence filed by the appellant at the stage of appellate proceedings is not admissible under Rule 46A of the Income Tax Rule it is held that the AO has rightly treated the amount of Rs. 22,71,343/- as income from other sources u/s 56 of the IT Act and has rightly rejected the claim of expenditure of Rs. 20,76,611/- in absence of any corroborative and documentary evidences. In view of this, the addition of Rs. 22,71,343/- as made by the AO by treating the same as 'income from other sources' u/s 56 of the IT Act is hereby confirmed. Thus, the revised ground of appeal no. 1 of the appellant is dismissed."

Being aggrieved by the order of Id. CIT(A) the assessee is in appeal before us.

6. The Id. AR before us filed a paper book running from pages 1-46 and submitted that all the details of the income from plying goods carriage was furnished to the AO during the assessment proceedings. But the claim of the assessee was rejected by the AO merely on the ground that the return was filed in ITR-2 and there was no detail in support of the expenses.

6.1 The Id. AR further submitted that the fact of having income from the plying of goods carriage was filed by the assessee by furnishing Form 26AS which reveals that the income of the assessee was subject to TDS u/s 194C of the Act. But the AO without pointing out any defect in the submission of the assessee treated the entire amount of gross receipts as income from other sources.

6.2 The Id AR also submitted that the details of ownership of the goods vehicle was filed before the AO which is placed on 17 to 20 of the paper book.

7. On the other hand, Id. DR vehemently supported the orders of authorities below.

8. We have heard the rival contentions and perused the materials available on record. The facts of the case are not in dispute. Therefore, we are inclined not to repeat the same for the sake of brevity and convenience.

8.1 At the outset, we note that the Id CIT(A) confirmed the order of the AO after rejecting the additional evidences filed by the assessee during the appellate proceedings. On perusal of the additional evidences, we note that these include copy of the registration certificate of goods carriage, ledger copy of Rahul Road Lines and Form 26AS.

However, we note that the assessee during the assessment proceedings has filed the copy of Form 26AS before the AO. Similarly, we also note that there was the detail available with the AO about the M/s Rahul Road Lines from where the assessee has claimed to have received charges on account of the plying of goods vehicles. Therefore in our considered view these two documents cannot be termed as additional evidences. It is because the information about the same was very much in the possession of the AO during the assessment proceedings.

8.2 Besides, the above we also note that the AO in his assessment order has duly recorded in Column No. 9 of Page 1 that the assessee is engaged in the business of plying, hiring or leasing of goods carriage which evidences that the assessee was engaged in the plying of goods carriage.

8.3 Thus, the only additional document filed by the assessee was registration certificate of the vehicle owned by him. However, none of the authority has pointed out any defect in the submission filed by the assessee to justify his income chargeable to tax u/s 44AE of the Act. Therefore, considering the facts in totality, we are inclined to give one more opportunity to the assessee to raise his point of contention before the Id CIT(A). Hence, we restore the issue to the file of Id CIT(A) with the direction to admit the additional evidences filed by the assessee and adjudicate the issue afresh as per the provision of law and after giving reasonable opportunity to the assessee. It is needless to mention that the assessee shall cooperate during the appellate proceedings. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

9. The next issue raised by the assessee is that Id CIT(A) in confirming the addition of Rs. 3,85,000/- as unexplained money u/s 69A of the Act.

10. The assessee during the year has *inter alia* shown receipts from Rahul Road Lines as detailed under:

Date	Narration	Deposits
05.05.2010	Received from RAHUL ROAD LINES (prop : Rejindersingh C. Sindhu) against payment as sub-contractor shown under sec - 194C	1,35,000.00
28.05.2010	Received from RAHUL ROAD LINES (prop : Rejindersingh C. Sindhu) against payment as sub-contractor shown under sec - 194C	2,50,000.00

However, the AO during the assessment proceedings observed that these entries were not reflecting in the copy of the ledger supplied by Rahul Road Lines. Therefore, the AO sought clarification from the assessee about the aforesaid mismatch. The assessee in compliance to it submitted that he has

transferred the contract receipt from Rahul Road Lines for Rs. 1,35,000/- to other parties as he was unable to perform the same due to overloaded capacity of the work.

10.1 The assessee further claimed that a sum of Rs. 2,50,000/- has already been included in the gross receipt of Rs. 22,71,343/- as shown income from other sources.

However, the AO disagreed with the submission of the assessee and confirmed a sum of Rs.3,85,000/- as unexplained money of the assessee u/s 69A of the Act. Thus, the AO disallowed the same and added to the total income of the assessee.

11. The aggrieved assessee carried the matter to the Id. CIT-A and submitted that the entries of Rs. 1,35,000/- and 2,50,000/- are representing the money receipt against the sale of property. The assessee further furnished the capital loss incurred by him out of sale of such property.

However, the Id CIT(A) disregarded the contention of the assessee after rejecting the additional documents filed by him and confirmed by the order of AO by observing as under:

"10. The second revised ground of appeal of the appellant is related to the addition of Rs. 3,85,000/- which was received from Girishkumar Shukla against sale consideration of house property which is in his name. As per this ground of appeal for the same the loss has been calculated at Rs. 1,28,650/- and therefore the addition of Rs. 3,85,000/- is not his income. The appellant has given the working of long term capital gain as per this ground of appeal. With regard to this ground of appeal it is mentioned that the appellant during the course of assessment proceedings in response to query of the AO submitted that an amount of Rs. 1,35,000/-out of total amount of Rs. 3,85,000/- was received as freight contract from Shri Girishkumar Shukla but due to overloaded capacity in

work, the contract was transferred to Apur Vaidya, Deepak Deshmukh, Prithviraj Pardesi and Nialaben Vaidya. With regard to balance amount of Rs. 2,55,000/-, the appellant submitted to the AO during the course of assessment proceedings that the same was already declared in total receipts in ITR of Rs. 22,71,343/- as received from Rahul Road Lines. Surprisingly, the appellant in his 'Statement of Facts' as submitted along with Form No. 35 and also in his final reply/rebuttal dated 03/02/2016 as submitted in connection with the remand report has totally changed his version. The appellant in the 'Statement of Facts' and also in his final reply dated 03/02/2016 has submitted that this amount of Rs. 3,85,000/- was received as sale consideration on account of sale of property from Shri Girishkumar Shukla who is relative of purchaser of property. As per the appellant the amount of Rs. 1,35,000/- was received on 05/05/2010 and amount of Rs. 2,50,000/- was received 28/05/2010. The appellant has further stated that he had derived capital loss of Rs. 2,00,800/- on account of such sale of property. This submission dated 03/02/2016 as filed by the appellant during the course of appellate proceedings in connection with remand report is reproduced in earlier paragraphs of this appeal order and the same may be referred to. The appellant has enclosed the copy of purchase deed, certificate of stamp duty and indexed. On perusal of these documents it is seen that a house i.e. D-72, Abhay Anand Society, Harni, Vadodara has been sold to one Shri Saurabh Shah and the name of seller being first party is Pravinaben Yogeshchandra Shukla & others and being second party is appellant i.e. Kalpesh B. Brahmhatt. This property has been sold at Rs. 3,11,000/-. It is not understandable as to how the amount of Rs. 1,35,000/- and Rs. 2,50,000/- was received by the appellant from Shri Girishkumar Shukla when the property was sold to one Shri Saurabh Shah and that too at the cost of Rs. 3,11,000/-. Again, the appellant had not disclosed any long term capital gain/loss in the return of income filed for the year under consideration and such plea has been taken by the appellant only in his final submission. The appellant had calculated the long term capital loss of Rs. 2,00,800/- after taking into account the amounts as per construction agreement and the appellant has shown the indexed cost of acquisition of the property at Rs.5,11,800/- which includes the amounts of Rs. 1,53,564/-, Rs. 50,070/- and Rs.1,43,058/- against construction agreements. But all these submissions of the appellant are not only irrelevant but misleading also and in no way the same are going to justify or explain the sources of amount of Rs. 3,85,000/-. Further, copy of purchase deed, certificate of stamp duty and indexed have been filed only at the stage of appellate proceedings and totally a different stand has been taken by the appellant at this appellate stage and such additional evidences cannot be admitted under Rule 46A of the Income-tax Rule in view of the reasons as mentioned in earlier paragraphs of this appeal order. In my opinion, the appellant has miserably failed to explain the sources of deposit of Rs. 3,85,000/- as appearing in his bank account with Kotak Mahindra Bank. In view of this it is

held that the AO has correctly made addition of Rs. 3,85,000/- u/s 69 of the Act on account of unexplained money and therefore the same is confirmed. The revised grounds of appeal of the appellant as mentioned in initial paragraphs of this appeal order are dismissed."

Being aggrieved by the order of Id CIT(A) assessee is in appeal before us.

12. The Id AR before us submitted that the assessee has claimed a sum of Rs. 3,85,000/- as business receipts from Rahul Road Lines inadvertently. Actually these entries are representing the money receipts from the sale of property.

12.1 The Id AR further submitted that all the details supporting the transaction for the sale of property were duly filed before the Id CIT(A) but the same was rejected by the Id CIT(A) on the ground that case of the assessee does not fall within the parameters of Rule 46A of Income Tax Rule.

13. On the other hand, Id. DR vehemently supported the order of authorities below.

14. We have heard the rival contentions and perused the materials available on record. It is undisputed fact that the assessee has changed his stand before the Id CIT(A) so far as the amount of Rs. 3,85,000/- is concerned.

However, on perusal of the submission of the assessee, we note that the assessee has shown 2.50 lacs as income under the head business which has already been taxed. Thus, further addition of Rs.2.50 lacs will lead to double addition of the same income. Therefore, in the interest of justice and fair play we are inclined to hold that the Id CIT(A) should have admitted the additional

evidences as filed by the assessee in order to avoid the double addition of the same amount. Therefore, we are inclined to restore this issue to the file of Id. CIT(A) for fresh adjudication as per the provision of law and after admitting the additional evidences and giving the fresh opportunity to the assessee. It is needless to mention that the assessee should cooperate during the appellate proceedings. Thus, the ground of appeal of the assessee is allowed for statistical purposes.

15. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 8th October, 2018 at Ahmedabad.

Sd/-

(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 08/10/2018

Prati Yadao, 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) - 3, Vadodara.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad.
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./ Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad