

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

सर्वश्री वसीम अहमद, लेखा सदस्य एवं मधुमिता रॉय, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And SMT MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 761/Ahd/2015
(निर्धारण वर्ष / Assessment Year : 2005-06)

Maharaja Amarsinhji H. Rathod (Decd) L/R. Jaydeepsinh Amarsinhji Rathod, Pratap Palace, Himatnagar-383 001.	बनाम/ Vs.	ITO, S.K. Ward -3, Himatnagar.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AATPR 4286 Q		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri K. C. Thaker, A.R.
प्रत्यर्थी की ओर से/ Respondent by:	Shri G. C. Daxini, Sr. D.R.

सुनवाई की तारीख/ Date of Hearing	30/10/2018
घोषणा की तारीख/ Date of Pronouncement	07/12/2018

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-2, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-2/ITO, S.K. Wd-3/HMT/91/13-14 dated 16.01.2015 arising in the matter of assessment order passed under s.143(3) r.w.s. 147 of the Income Tax Act, 1961(here-in-after referred to as "the Act") dated 19.03.2013 relevant to Assessment Year (AY) 2005-06.

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2. The grounds of appeal raised by the assessee are as under:-

“The learned C.I.T.(A) has erred in law and on facts in not holding that the assessment made in the name of the deceased assessee was a nullity.

2. *The learned C.I.T.(A) has also erred in law and on facts in holding that the proceedings initiated u/s. 147 of the Act are valid in law.*

3. *The learned Assessing Officer has further erred in law and on facts in not deictic the entire addition of Rs 35,82,131/- and the disallowance of Rs. 1,66,857/- relatable thereto ad in confirming the addition to the extent of Rs. 10 lacs.*

4. *On the facts mid in the circumstances of the case and in law the learned CIT(A) ought to have held the assessment made on a deceased person to be a nullity, and ought to have quashed he proceedings u/s. 147 being void-ab-initio thereby annulling the assessment and ought not have confirmed the addition of Rs. 10 lacs. Assessment.*

5. *It is therefore prayed that the assessment may be annulled being a nullity And made in pursuance of invalid proceedings u/s. 147 of the Act and deleted.*

6. *Your appellant craves leave to add, alter or amend hearing.”*

3. The issue raised by the assessee in Ground No. 3 is that the Ld. CIT(A) erred in restricting the addition made by the AO for Rs. 35,82,131/- to Rs.10,00,000/-.

4. Briefly stated facts are that the assessee is an individual and engaged in the business of construction work & interest income. There

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was assessment u/s 143(3) r.w.s 153C of the Act for the A.Y. 2005-06 in the case of Shantisuri Securities Pvt. Ltd. which was completed on 28.12.2009. In the assessment of Shantisuri Securities Pvt. Ltd. it was discovered by the AO that it has provided accommodation entry of Rs. 35,82,131/- to the assessee in the form of loans and advances. Therefore the AO sought an explanation for the amount of loan and advances received by him from Shantisuri Securities Pvt. Ltd. The assessee in compliance to it filed a confirmation from Shantisuri Securities Pvt. Ltd. justifying that the assessee has taken loan from Shantisuri Securities Pvt. Ltd.

4.1 The assessee also filed the copy of the account of Shantisuri Securities Pvt. Ltd. and submitted that he has taken loan of Rs.10,00,000/- from Shantisuri Securities Pvt. Ltd. in the year under consideration. As such, there was an opening balance of loan and advance taken from Shantisuri Securities Pvt. Ltd. of Rs.26,44,000/-.

4.2 The assessee also submitted that his name is not appearing in the statement furnished by the Director of Shantisuri Securities Pvt. Ltd. on the basis of which addition was proposed to be made in his hands.

However, the AO disagreed with the contention of the assessee by observing that the name of the assessee in the assessment order of Shantisuri Securities Pvt. Ltd. on Page No.6 is very much appearing.

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Therefore the AO made the addition of Rs. 35,82,131/- along with the amount of interest on such loan of Rs. 1,66,857/- to the total income of the assessee.

5. Aggrieved, assessee preferred an appeal to the Ld. CIT(A). The assessee before the Ld. CIT(A) reiterated the submission as made before the AO. The Ld. CIT(A) after considering the submission of the assessee deleted the addition made by the AO in part by observing as under:

“I have carefully considered the facts of the case, assessment order and the written submission of the appellant. The appellant had accepted loans and advances of Rs. 35,82,131/- from Shanti Suri Securities Pvt. Ltd. The addition was made, as there was a search at the premises of M/s. Shantisuri Securities Pvt. Ltd. During the course of proceedings, in the case of that company the statement on oath of Shri Bhavesh Bhandari was recorded and he categorically admitted that the parties who had allegedly contributed to the share capital of the company were either bogus or were mere entry givers. He had admitted that he and his family members were in the business of cheque discounting and Shroff for many years. It was accepted by him that he routed the accommodation entries from Shantisuri Securities Pvt. Ltd. by accepting share application money and then forwarding the money received as share application and share capital as loans and advances to various parties who had given him in cash in the first place. The AO has discussed these facts in detail in his order.

The AO has mentioned these facts clearly in the assessment order. He has also discussed that the retraction made by Shri Bhavesh Bhandari has no value as the same has been made after more than two years of making their statement and there is no other fact in support of the retraction. On the basis of these facts, the assessment of the appellant was reopened and the amount has been assessed as income from undisclosed sources on protective basis, as the substantive addition has been made in the hands of Shantisuri Securities Pvt. Ltd.

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The appellant on the other hand has submitted that first of all the name of the appellant does not appear in the list of the names mentioned by Shri Bhandari in the statement. The amount has been accepted by cheque, it has also filed duly signed contra account from the depositor. Confirmation letters were also given. The appellant has also pointed out that the loan received during the year under consideration was only Rs. 10 lakhs and the amount of 26.44 lakh was received in the preceding year and the same cannot be added in the year under appeal.

On a careful consideration of the entire facts of the case, it is noted that the fact that the appellant has accepted an unsecured loan of Rs. 35.82 lacs from Shantisuri Securities Pvt. Ltd. is undisputed. The person who was managing the affairs of that company has categorically accepted in his statement that the company was in the business of giving accommodation entry. The statement which was earlier recorded was without any coercion or pressure. Subsequent retraction after a period of more than two years is not a valid retraction.

*It is further noted that the assessment of Shantisuri Securities Pvt. Ltd. for the same year i.e. 2005-06 has been completed and the name of the appellant has been mentioned in the order. The records, therefore, show that the appellant has accepted unsecured loan. During the **course** of assessment proceedings of Shantisuri Securities Pvt. Ltd., the authorized person has accepted this fact that the unsecured loan given to the appellant was an accommodation entry. It is further noted that no addition on account of the accommodation entry given to the appellant has been made in the hands of the firm, treating the same as unexplained investment of that firm. Since it has been accepted by the director of Shantisuri Securities Pvt. Ltd. that the amount given to the appellant was in fact appellant's money which was given in the form of cash and subsequently given by way of cheque were of Shantisuri Securities Pvt. Ltd., the addition made by the AO is justified. The contention of the appellant that its name doesn't find mention in the statement given is not relevant as the records clearly speak about it. The director of Shantisuri Securities Pvt. Ltd. has not qualified that the loan given by that company to the appellant was proper and it was not accommodation entry. Therefore, the action of the AO in treating the*

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unsecured loan as unexplained was justified. The addition is therefore, upheld on protective basis, as it is the unexplained money of the appellant which has been routed through Shantisuri Securities Pvt. Ltd. in the form of unsecured loan but since the addition has been made in the hands of Shanti Suri Securities the addition has to be treated as protective. However, the addition is directed to be restricted to the amount of Rs. 10 lakh which has been accepted by the appellant during the year. Addition of Rs. 26.44 Lacs received in Financial Year 2003 - 04 cannot be made during the present year. Necessary action may be taken by the AO in that year for taxing that amount. The disallowance of interest made by the AO on this loan is also upheld on substantive basis.

*The ground of appeal are accordingly, **partly allowed.***”

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

6. The Ld. AR before us filed a paper book running from pages 1-30 and demonstrated from the statement of the Director of Shantisuri Securities Pvt. Ltd. that the name of the assessee is not there.

6.1 The Ld. AR further submitted that in the identical facts and circumstances the Tribunal has restored the matter to the file of AO for fresh adjudication in the case of M/s Pratik Enterprises vs. ITO in ITA No.620/Ahd/2015 vide order dated 31.10.201. Accordingly, it was prayed by the Ld. AR of the assessee to restore the matter to the file of AO for fresh adjudication in accordance to the provision of law.

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7. On the other hand, the Ld. DR raised no objection if the matter is sent back to the AO for fresh adjudication in accordance to the provision of law.

8. We have heard the rival contentions and perused the materials available on record. As the issue in the case on hand are identical to the facts in the case of *M/s. Pratik Enterprise (supra)*, we are incline to place our reliance on said order. The relevant extract of the order is reproduced as under:

“6. We have heard both the sides and perused the material on record, The assessee has shown receipt of loan of Rs. 2 lacs as loans and advances from Shantisuri Securities Pvt. Ltd. during the year under consideration. In the paper book the assessee has filed undated loan confirmation letter from the company. The assessing officer has made this addition on protective whereas the Ld. CIT(A) has directed the assessing officer to treat it as on substantive basis on the ground that no addition has been made in the hands of Shantisuri Securities Pvt. Ltd and it was unexplained money of the assessee which has been routed through Shantisuri Securities Pvt. Ltd.. The Ld. Counsel submitted that as per the statement of the .-director of the aforesaid company recorded on 8.12.2009 as per page number 15 of the paper book nowhere in the list of the parties in receipt of accommodating entries demonstrate the name of the assessee. The assessing officer has stated that the director of the company Sh. Bhavnesh Bhandari has identified the assessee to whom the entry of Rs.2,04,420/- in the form of loan and advances were given. The assessing officer has also stated that as per the assessment order in the case of Shantisuri Securities Pvt. Ltd passed on 24.12.2009 the name of the assessee was mentioned on page number 6 of the assessment order indicating that the company has given accommodating entry of Rs.2,04,420/- to the assessee. After considering the above stated facts and circumstances, we observed that the information revealed by the director of the company to the assessing officer of Shantisuri Securities Pvt. Ltd. on the basis of which addition

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was made in the case of the assessee other than the statement of the director of the aforesaid company recorded on 8.12.2009 was not disclosed to the assessee, consequently, the assessee could not get opportunity to controvert the findings of the assessing officer. In view of the above lacuna it is not feasible to decide this issue on merit, therefore, in the interest of justice we restore this matter the file of the assessing officer to decide it de novo after providing aforesaid information and adequate opportunities to the assessee.”

In view of above, we set aside the matter to the file of AO for fresh adjudication in accordance to the provision of law.

8.1 The Ld. Counsel for the assessee did not advance any argument at the time of hearing on the other ground of appeal raised in the memo of appeal. Therefore we are not inclined to adjudicate the same. Thus we dismiss all other remain grounds of appeal raised by the assessee as infructuous.

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

This Order pronounced in Open Court on

07/12/2018

sd/-
(मधुमिता रॉय)
न्यायिक सदस्य
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated
Priti Yadav, Sr.PS

Sd/-
(वसीम अहमद)
लेखा सदस्य
(WASEEM AHMED)
ACCOUNTANT MEMBER

07/12/2018

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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)-2, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad.
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad