

**आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT BENCH, SURAT**  
**श्री कुल भारत, न्यायिकसदस्यतथाश्रीओ.पी.मीना, लेखासदस्यकेसमक्ष**  
**BEFORE SHRI.KUL BHARAT, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**  
**आ.अ.सं./I.T.A. No.857/A/2016**  
**निर्धारणवर्ष/Assessment Year : 2010-11**

Income Tax Officer, Ward-1(2), Bharuch-392001	Vs.	Shri. Mohmedsajid A. Saiyed, B-13, Apsara Apartment, Kasak, Bharuch-392001. [PAN: ALVPS5372H]
अपीलार्थी Appellant		प्रत्यर्थी/Respondent
निर्धारितीकीओरसे /Assessee by	Shri Hemant Suthar - CA	
राजस्वकीओरसे /Revenue by	Shri B.P.K. Panda - Ld. Sr.DR	
सुनवाईकीतारीख/ Date of hearing:	21.02.2019	
उद्घोषणाकीतारीख/Pronouncement on	27.02.2019	

**आदेश /O R D E R**

**PER KUL BHARAT, JM:**

1. This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeal)-3 [*in short "CIT (A)"*], Vadodara, dated 05.01.2016 pertaining to the assessment year 2010-11.

2. The Revenue has raised the following grounds of appeals:-

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in deleting the addition of Rs.78,74,274/- on account of undisclosed income.*

1.1 *The Ld. CIT(A) erred in ignoring the fact that the assessee did not get his books of account audited u/s 44 AB of the Act, through it was mandatory, and , the assessee did not submit any supporting evidences in support of his claim of expenses totaling to Rs.82,40,443/- which renders the claim of the assessee inadmissible.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the addition of Rs.1,18,450/- on account of unexplained investment in motor car for which source of investment was not proved.*
3. *On the facts and in the circumstances of the case and Ld. CIT (Appeals) erred in deleting the addition of Rs.37,000/- on account of unexplained investment in the form of cash deposits by accepting that the assessee had the financial capacity, by overruling the fact that the assessee was unable to show any evidence regarding the source of investment.*
4. *The appellant craves to add to, amend or alter the above grounds as may be deemed necessary”.*

3. Briefly stated facts are that assessee filed a return of income declaring total income of Rs.3,42,670/-. The case of the assessee was picked up for scrutiny and the assessment Under Section 143(3) of the Income Tax Act, 1961 [in short “the Act”] was framed vide order dated 11.03.2013. The Assessing Officer during the course of Assessment proceeding noticed that gross receipts of the assessee for the assessment year 2010-11 was Rs.88,60,487/-. However, the assessee had disclosed gross receipt of Rs.6,20,044/- in the return of income submitted by him. After considering the reply of the assessee and the material available on record made an addition of Rs.82,40,443/- being undisclosed receipts. The Assessing Officer further noticed that the assessee made payment of Rs.1,18,450/- in cash for buying a vehicle Indica. The Assessing Officer treated the same unexplained and added in the total of his income. Further, the Assessing Officer also noticed that the assessee had received unsecured loan of Rs.5,80,000/-. The

Assessing Officer treated the same as unexplained made addition, the Assessing Officer disallowed the expenditure of Rs.37,000/- and added into the total income of the Assessee. Hence, the Assessee computed total taxable income at Rs.93,88,560/-.

4. Being aggrieved, assessee preferred an appeal before Ld. CIT (A) who considering his submissions partly allowed the appeal. Thereby, the Ld. CIT (A) restricted the addition in respect of undisclosed gross receipts at the rate of 8% and in respect of the additions Ld. CIT(A) deleted addition related to purchase of Indica car in cash and disallowance of expenditure. Revenue is in appeal against restriction and deletion of addition.

5. In respect of Ground No. 1, The Ld. Departmental Representative (DR) vehemently argued that the Ld. CIT(A) was not justified in deleting the additions made by the Assessing Officer. He submitted that Ld. CIT(A) ought not to have estimated profit of 8% and could not have allowed expenditure thereof. He submitted that admittedly the assessee has failed to disclose true particular of receipts and has been changing his stand in respect of the receipts. Ld. CIT(A) failed to appreciate the facts the assessee himself has declared net profit at Rs.3,42,670/- on the gross receipt of Rs.6,20,044/-. He submitted that the assessee has failed to furnish requisite details in support of his claim of expenses.

**6.** On the contrary, Ld. Counsel for the assessee submitted that in profit and loss account the assessee had duly disclosed his receipts. It was merely computation of gross receipts which was computed at Rs.6,20,044/-. He contended that the assessee is engaged in the business of hire of vehicles. The assessee does not own any vehicle for giving on hire, therefore, he submitted that the Ld. CIT(A) estimated the profit. He submitted that contention of the Ld. DR that the assessee himself has declared a higher profit is misplaced. In fact, the assessee first computed the gross receipts and thereafter computed net profit.

**7.** We have heard the rival contentions perused the material available on record and gone through the orders of the authorities before. The assessee is engaged in the business of hiring of vehicle is not disputed by the Revenue. There is nothing placed on record suggesting that the assessee himself was having vehicles, moreover the receipts as found from the TDS are treated correct. The Assessing Officer himself has adopted receipts as per TDS certificate.

**8.** The Ld. CIT(A) has estimated the profit at the rate of 8% that appears to be lower in the given facts and circumstances where the assessee has failed to furnish documents about the expenditure made in earning in such income. We, therefore, modify decision of the Ld. CIT(A) by directing Assessing

Officer to compute profit at 12.5% against the 8% as adopted it by the Ld. CIT(A). This ground of the Revenue appeal is partly allowed.

**9.** Ground No. 2 is against deletion of addition of Rs.1,18,450/- the Ld. Departmental Representative(DR) supported the order of the Assessing Officer and on the contrary Ld. Counsel for the assessee submitted that Ld. CIT(A) has rightly deleted in addition as the assessee has sufficient cash to make investment.

**10.** We have heard the rival contentions perused the Ld. CIT(A) has decided the suit of Para 8 of his order as under:

*“The second ground of appeal of the appellant is that on the facts and in the circumstances of the case and in law, the Ld. AO has erred in making an addition of Rs.1,18,450/- towards cash payment made to Shraddha Motors Pvt. Ltd for purchase of Indica (DLS) treated as unexplained investment on the ground that the appellant could not produce the satisfactory evidence in support of source of such cash payment. As per this ground of appeal the impugned addition of Rs.1,18,450/- is in complete disregard of law and facts and, therefore, the same be deleted. With regard to this ground of appeal, the AR of the appellant vide his submission has mainly stated that the appellant had produced the cash flow to the AO and which was not accepted by him on the ground that there is an opening balance of Rs.7,96,136/-. As per the AO in absence of audited accounts, the same cannot be accepted. It is submitted by the AR that the appellant is regularly filing his returns of income for several years and the return of income for A.Y 2009-10 was also furnished and therefore the opening balance in the cash book for the year could not be doubted. The findings of the AO with regard to addition of Rs.1,18,450/- as given in the assessment order and also the submission of AR of the appellant have been considered. Though, books of accounts of the appellant for the*

*year under consideration are not audited and therefore the same cannot be said to be reliable. But the appellant has been filing his return of income for several years as stated by the AR and he had also produced the cash flow to the AO for the year under consideration. Considering these facts, the availability of cash of Rs.1,18,450/- in the hands of the appellant at the beginning of the year i.e. as on 01/04/2009 cannot be out rightly denied more particularly in view of the fact that the amount of Rs.1,18,450/- as invested in Indica is not that big. In view of these facts, the addition of Rs.1,18,450/- as made by the AO is hereby deleted.”*

**11.** The above finding of the fact is not controverted by the Revenue by placing in contrary material on record. Therefore, we do not see any reason to interfere in the founding of the Ld. CIT(A) shows hire ground raised by the Revenue is dismissed.

**12.** Ground no. 3 is against deleting the addition of Rs.37,000/- on ground of unexplained investment in the form of cash deposit. Ld. Departmental Representative(DR) supported the Assessing Officer and on contrary Ld. counsel for the assessee supported the order of the CIT(A). He submitted that all relevant evidence in support was duly furnished. Therefore, the Assessing Officer was not justified in making addition.

**13.** We have heard the rival contentions perused the material available on record and gone through the order of the authorities below. We find that the Ld. CIT(A) has given a finding on facts that the amount was duly reflected in cash book. This cash is not rebutted by the Revenue. Therefore, we do not

see any reason to interfere in this finding. This ground of appeal is dismissed.

**14.** Ground No. 4 is general nature needs no separate adjudication.

**15.** In the result, appeal of the Revenue in ITA. No. 857/A/2016 is partly allowed.

**16.** The order pronounced in the open court on 27.02.2019

Sd/-  
(O P MEENA)  
(ACCOUNTANT MEMBER)

Sd/-  
(KUL BHARAT)  
(JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 27<sup>th</sup> Feb, 2019/S.Samanta, PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat