

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘SMC’

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

आयकर अपील सं./ ITA No. 773/Ahd/2016

निर्धारण वर्ष/Assessment Year: 1988-89

Banner Builders P.Ltd. 18, New Alkapuri Society Gulbai Tekra Ambawadi Ahmedabad 380015. PAN : AABCB 8794 Q	Vs	ACIT, Cent.Cir.1(1) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Suketu Shah, AR
Revenue by :	Shri O.P. Pathak, Sr.DR

सुनवाई की तारीख/Date of Hearing : 18/03/2019

घोषणा की तारीख /Date of Pronouncement : 22/ 03/2019

ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-1, Ahmedabad dated 16.12.2015 passed for the Asstt.Year 1988-1989.

2. Original grounds of appeal taken by the assessee were not in consonance with Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 - they are descriptive and argumentative in nature. The assessee was directed to concise its grounds of appeal, hence, fresh grounds of appeal were submitted by the assessee. It has taken three grounds of appeal, out of which ground no.3 is general ground of appeal, which does not call for recording of any specific finding.

3. In the first ground of appeal, grievance of the assessee is that the Id.CIT(A) has erred in confirming the addition of Rs.1,45,000/-.

4. Brief facts of the case are that an assessment order was passed under section 144 of the Income Tax Act on 26.3.1991 determining total income at Rs.5,85,491/- against returned loss of Rs.15,187/-. This order was set aside by the Id.CIT(A) on 13.10.1992. A fresh order was passed by the AO on 31.3.1994, which was challenged before the Id.CIT(A) who dismissed the appeal by way of an *ex parte* order. The ITAT has set aside the order of the Id.CIT(A) and remitted the matter back to the Id.CIT(A) for fresh adjudication. By way of impugned order, the Id.CIT(A) has decided the appeal of the assessee.

5. During the course of assessment proceedings, it revealed to the AO that the assessee has received share application money for the preferential shares from 15 parties. The total amount received by the assessee was Rs.2,95,000/-. According to the AO, he has carried out an inquiry on the basis of remand report called by the CIT(A). In this inquiry, certain share applicants specifically denied having given any share application money to the assessee. The finding of the Id.CIT(A) in this respect deserves to be noted:

“2.2. / have gone through the assessment order, submission of assessee and details filed by the appellant. Appellant has given name and address details of all the persons from whom appellant has received share capital. However, some persons appeared before assessing officer. Out of the above persons appeared were Kiran R Desai, Va/mik Nanavati, Nilaben Nanavati, Vikram H raval, Vijay M Raval, Devang D Bhatt, Girish S Solanki and they have refused any such transactions. Accordingly, share capital shown as received from these persons totaling to Rs.1,45,000/- is confirmed as unaccounted cash credit and appeal of the assessee to this extent is dismissed. However, I found that for other amount totaling to Rs.1,50,000/- all details including name and address are given to assessing officer. Total amount of Rs, 80,000/- is received through cheque from Bhavesh J Dalai, Minaxi K Khatri, Parul Khatri, KamalkarD Chokulkar, Madhavi S Chokulkar and full address of the

contributors are given to assessing officer. Further, Ashok Bhatt and Bharti Bhatt from whom share capital of Rs.50,000/- was received, have given these amount through demand draft to the appellant Their addresses are given to assessing officer and assessing officer was also able to trace latest address of these persons. Further, Mr Purushottam Patel, who has given capital of Rs. 20,000/- had appeared before assessing officer and confirmed that he has made investment on advice of a friend. No contrary facts were brought on record by assessing officer. Accordingly following the ratio laid down by Hon'ble Supreme Court in decision of Lovely Exports (cited supra), the addition made of Rs. 1,50,000/- received from these persons as unaccounted cash credit, is deleted.”

6. The Id.counsel for the assessee submitted that the assessee has given identity of the share applicants. As per the decision of Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports P.Ltd., 216 CTR 195, the AO should have made inquiry in their cases, but he could not make addition in the case of the assessee. On other hand, the Id.DR relied upon the order of the Revenue authorities.

7. On due consideration of the facts of the case, we are of the view that once the applicants have denied having given any amounts to the assessee, then what sort of inquiry could be made in their cases. The assessee failed to discharge onus cast upon it by virtue of section 68 of the Income Tax Act. Hence, Id.CIT(A) has rightly appreciated the facts and has rightly confirmed the addition to the extent of Rs.1,45,000/-. We do not find any merit in the first ground of appeal.

8. In ground no.2, the assessee has pleaded that the Id.CIT(A) has erred in confirming the addition of Rs.41,505/-. The finding of the Id.CIT(A) with regard to this ground reads as under:

“2.3. Assessing Officer has further observed that in the seized cash book, some amount was written in pencil as Rs. 75,393/- and Rs. 85,893/- and observed that closing cash balance as 85,893/-. He has added difference

of two amounts at Rs. 41,505/-(85,893 - 44,388(cash balance in books)) as unexplained.

2.4. In the course of Appellate Proceedings before me the appellant has submitted that there is no such addition made in original assessment proceedings. It was submitted in the original assessment that the Company was in the process of Computerization of the accounts and the closing entries were recorded in Computer. Statement of Adjustment entries and the final Trial Balance were furnished in support of the averments. After detailed inquiry assessing officer in the original assessment proceedings was of the opinion that addition on this count should not be done. Accordingly no addition is required to be made in the fresh assessment

Without prejudice, it is submitted that assessing Officer himself is accepting the fact that in the cash book found during search, cash balance is not properly drawn. He has discussed different possible cash balances as different stages in assessment order. Under the circumstances he assumes one of the figure (Rs. 85,893/-) written with pencil in the cash book as closing cash balance, made comparison of the same with assessee's books of accounts and added to the difference of hypothetical figure and closing cash balance as per books of accounts is highly arbitrary and liable to be

2.5 / have gone through the assessment order, submission of assessee and papers filled by assessee. Assessing Officer has made addition on the basis of material found during the course of search. Assesses is not able to controvert search material with conclusive contrary evidence, hence, this remain to be explained. In the absence of any contrary material on record, this addition amounting to Rs. 41,505/- is hereby confirmed. This ground of appellant is dismissed.”

9. Evidence was found during the course of search showing the closing cash balance at Rs.85,893/-. The case of the assessee is that it has made payment of Rs.35,000/- to Banner Investments which is not reflected in the trail balance sheet. When the accounts were computerised then this amount was shown as not available in the cash balance. The AO did not accept this contention of the assessee on the ground that the assessee failed to show any evidence indicating the payment of Rs.35,000/- to M/s.Banner Investment. In other words, it has not filed any confirmation from Banner Investment. The search was conducted at

Banner Investment also. Its books of accounts also seized and no entry of any cash having received from the assessee was found. Considering the above facts, we are of the view that the Id.CIT(A) has rightly confirmed the addition. We do not find any merit in this ground of appeal. It is dismissed.

10. In the result, appeal of the assessee is dismissed.

Pronounced in the Open Court on 22nd March, 2019.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

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