

-आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ- अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH 'SMC'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI PRADIPKUMAR KEDIA, ACCOUNTANT MEMBER**

*आयकर अपील सं./ ITA No.1649/Ahd/2015*

*निर्धारण वर्ष/Asstt. Year: 2010-11*

Shri Vidyasagar B. Shah 5/61, Parishram Park Nr. Bapu Dargh Gorwa, Baroda.	Vs.	ITO, Ward-2(6) Baroda.
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<i>(Applicant)</i>		<i>(Respondent)</i>
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Assessee by	:	Smt. Kinjal Shah, AR
Revenue by	:	Shri Aoitya Shukla, Sr.DR

*सुनवाई की तारीख/Date of Hearing* : 08/03/2019

*घोषणा की तारीख/Date of Pronouncement:* 25/03/2019

**आदेश/O R D E R**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-5, Baroda dated 20.2.2015 passed for the Asstt.Year 2010-11.

2. Brief facts of the case are that the assessee has filed his return of income electronically on 31.3.2011 declaring total income at Rs.10,47,110/-. His case was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. The Id.AO has passed an assessment order under section 143(3) on 4.3.2013. He made three additions viz. –

a)	Additional Capital	Rs.11,32,500/-
b)	Disallowance u/s.40A(3)	Rs. 37,931/-
c)	Disallowance on a/c of wages	Rs. 2,50,000/-

3. Dissatisfied with order of the Id.AO assessee carried the matter in appeal before the Id.CIT(A). It was contended by the assessee that during the assessment proceedings, he was unable to lay his hand on the relevant evidence. Therefore, an application was moved for seeking permission to lead additional evidence. The Id.CIT(A) rejected the contentions of the assessee on the ground that so far as addition of Rs.11,32,500/- is concerned, the assessee has agreed for this addition before the AO and therefore prevented the AO to make further inquiry. Therefore, the assessee cannot take this issue in appeal. With regard to the labour and wages payment, the Id.CIT(A) concurred with the AO.

4. Before us, the assessee has raised three grounds of appeal along with additional grounds. In the first three grounds, ground no.3 is general grounds of appeal on which no specific finding is required to be recorded. In ground no.2, the assessee has pleaded that the Id.CIT(A) has erred in confirming addition of Rs.2,50,000/- which was added by the AO out of wages and salary expenses.

5. It emerges out from the record that the assessee has claimed an expenses of Rs.91,04,857/- towards wages and labour charges. On an *ad hoc* basis, the Id.AO disallowed Rs.2,50,000/-. The AO was of the view that the assessee failed to produce complete month-wise details of salary payment. At the time of

hearing, the Id.counsel for the assessee did not press this ground of appeal on account of smallness of the amount involved in this issue. Hence, this ground of appeal is rejected.

6. In ground no.1, the grievance of the assessee is that the Id.CIT(A) has erred in confirming the addition of Rs.11,32,500/-. *Qua* this ground of appeal other additional grounds taken by the assessee are relevant. In the additional ground, the assessee has pleaded that the Id.CIT(A) has not entertained application made under Rule 46A of the Income Tax Rules. The Id.counsel for the assessee submitted that, before the Id.CIT(A) an application to seek permission to adduce additional evidence was filed. The assessee has annexed his affidavit and contended that on account of certain dispute with M/s.Rishi Construction, a partnership firm, he could not produce relevant evidence. However, before the Id.CIT(A) in order to demonstrate the source of capital contribution, he has contended that a sum of Rs.5,07,500/- was taken as a loan in personal capacity and Rs.6,25,000/- was withdrawn from the firm where the assessee is a partner. The Id.counsel for the assessee further contended that the assessee has filed PAN, copy of the bank statement, copy of partnership deed, acknowledgement of income-tax return along with computation statement and other details. On the strength of these details, it could be demonstrated that the assessee has sufficient sources, out of which it could be proved that capital was introduced by the assessee.

7. On the other hand, the Id.DR relied on the orders of the Revenue authorities. He contended that once the assessee has

agreed for addition before the AO, then he has no right to challenge that order.

8. We have duly considered rival contentions and gone through the record carefully. There is no doubt that before the Id.AO the assessee was unable to produce any evidence demonstrating source of funds available for introduction of capital. He agreed for the addition before the AO. But in the statement of facts filed before the Id.CIT(A) he indicated the source of funds and also pleaded that on account of certain unavoidable circumstances, he could not produce these details. He has demonstrated that there was a dispute with partners in the partnership firm and he could not get the details showing withdrawals from the firm. It is true that admission made by the assessee before the AO could make the case against him, because by admitting certain facts, he prevented the AO to make investigation. But if it is demonstrated that such admission was on account of misconception of law or misconstruction of facts or under some coercion, then on the basis of such admission, addition ought not to be made. There might be some negligence at the end of the assessee while conducting the proceedings before the AO, but punishment in the shape of tax liability on the addition of Rs.11.00 lakhs plus, is disproportionate to negligence committed by the assessee. He has sought to produce relevant details for explaining source, thus, the Id.CIT(A) in the interest of justice, ought to have exercised power available under sub-clause (4) of Rule 46A of the Income Tax Rules and ought to have permitted the assessee to produce those evidences. The assessee has demonstrated as to why he agreed for the addition, because he was not having requisite details from the

partnership firm as well as PAN of the persons from whom loan was taken. Considering all these details, we are of the view that orders of the Revenue on this issue deserve to be set aside. We allow this ground of appeal and set aside both the orders, and remit this issue to the file of the Id.AO for fresh adjudication. Needless to mention, the assessee shall be at liberty to produce any evidence in support of his case. This ground is accordingly allowed for statistical purpose.

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

Order pronounced in the Court on 25<sup>th</sup> March, 2019.

Sd/-  
(PRADIPKUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER