

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Amarjit Singh, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 1690/Ahd/2017
Assessment Year 2012-13**

Shri. Haji Mohammadsafi Abdulrehman Shaikh, Faijila Apartment, Near Sulemani Bank, Gendigate Road, Baroda-390001 PAN: ASCPS1485M (Appellant)	Vs	The DCIT, Circle-3(1), Baroda (Respondent)
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**Revenue by: Shri/Ms. Sonia Kumar, Sr. D.R.
Assessee by: Shri Mukund Bakshi, A.R.**

Date of hearing : 12-03-2019
Date of pronouncement : 10-04-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2012-13, arises from order of the CIT(A)-2, Baroda dated 20-03-2017, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following grounds of appeals:

"1. The Ld. CIT(A)-2, Vadodara has erred in law and on facts in confirming the action of the Ld. A.O. in the addition made u/s. 68 of the Act to the extent of Rs.62,89,643/-out of the total addition of Rs. 1,36,37,643/- treating the purchases made by the appellant as non-genuine and bogus. The addition of Rs. 62,89,643/- being in complete disregard of available facts and the law is prayed to be deleted.

2. *The Ld. CIT(A)-2, Vadodara has erred in law and on facts in confirming the action of the Ld. A.O. in the addition made u/s. 68 of the Act to the extent of Rs.9,93,500/-, out of the total addition of Rs.27,71,517/- treating the credits as unexplained. The addition of Rs.9,93,500/- being in complete disregard of available facts and the law is prayed to be deleted.*

3. *The Ld. CIT(A)-2, Vadodara has erred in confirming the action of the Ld. A.O. in disallowance of interest of Rs.2,55,000/- being interest charged in excess of 12% p.a.. The interest disallowed of Rs.2,55,000/- may please be prayed to be allowed as claimed.*

4. *The Ld. CIT(A)-2, Vadodara has erred in law and on facts in confirming the action of the Id. A.O. in making adhoc disallowance of Rs. 5,91,648/- (i.e. 20% of Rs.29,58,238/-) on account of vehicle running and maintenance, interest on car loan and car depreciation by treating it as personal in nature. The disallowance being erroneous in law and in facts is prayed to be allowed as claimed."*

3. The brief fact of the case is that assessee has filed return of income on 15th March, 2013 declaring total income at Rs. 56,70,880/-. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 8th March, 2013. The assessee is engaged in the business of builder and developer. The remaining facts pertaining to the issues in the appeal are discussed as under:-

Ground No. 1 (addition on account of bogus purchases)

4. During the course of assessment, the assessing officer has called detail of purchases exceeding Rs. 10 lacs per party made during the year under consideration. The assessee has supplied the aforesaid information. Thereafter, the assessing officer has asked the assessee to furnish the confirmation from the parties from whom the purchases exceeding Rs. 1 lacs were made during the year under consideration. The assessing officer stated that assessee has not furnished confirmation from 10 parties listed at page no. 5 of assessment order from whom the assessee has claimed to have made purchase to the amount of Rs. 60,17,719/- during the year under consideration. The assessing officer has also noticed that assessee has not furnished proper confirmation from two parties from whom the assessee has made total purchases to the amount of Rs. 76,19,924/- during the year.

Therefore, the assessing officer has stated that it is not possible to ascertain the genuineness of these purchase transactions, therefore, addition of Rs. 1,36,37,643/- (Rs. 60,17,719 + Rs. 76,19,924/-) were made treating the aforesaid purchases as unexplained.

Ground No. 2 (Addition u/s. 68 of the act)

5. During the course of assessment, the assessing officer asked the assessee to furnish confirmation, copies of account of unsecured loan, Name, PAN, addresses, assessment details, copies of bank statement, copies of ledger account of creditors in his books of account. On verification of the detail filed, the assessing officer stated that assessee has failed to furnish the detail in respect of six parties mentioned at page no. 5 of the assessment order. Thereafter, on verification of the bank statement of the following parties the assessing officer noticed that there were frequent cash deposits in their bank account as under:-

“(1) Shri Asif Abdulrehman Shaikh

On verification of confirmation of Shri Asif Abdulrehman Shaikh, it is found that the assessee has credited Rs,9,93,500/- on account of "GJ 6 FD 9793 i-20 for car selling." During the course of assessment proceedings, the assessee has stated- vide submission dated 26/03/2015 that transactions of salary and purchases of motor car from Asif Abdulrehraan Shaikh. However, the assessee has not shown the same car in his balance sheet. Further, the assessee has submitted any evidence related to the selling of motor car. Moreover, the return income of Rs. Asif Abdulrehman Shaikh for A.Y. 2012-13 is Rs. 2,15,220/-. In absence of proper justification, it has become impossible to ascertain the mode of transaction, genuineness and creditworthiness of this party. The onus lied on the assessee to prove the same which was not discharged by the assessee. Therefore, it is proved that an amount of Rs. 9,93,500/- as mutinied above is unexplained cash credit and the same is added u/s. 68 of the Act to the total income of the assessee.

(2) Shri Rohan Surjibhai Barnada

Shri Rohan Surjibhai Barnada has given loan to the assessee amounting Rs. 10,00,000/- on 15/12/2011. The return income of Shri Rohan Surjibhai Barnada for A.Y. 2012-13 is Rs. 2,15,220/-. On verification of bank account No. 060752590/- in the name of Shri Rohan Surjibhai Barnda with Bank of Baroda the following cash deposits were found:-

<i>Date</i>	<i>Particular</i>	<i>Withdrawal</i>	<i>Deposit</i>
<i>02/08/2011</i>	<i>BY CASH</i>		<i>45000</i>
<i>09/08/2011</i>	<i>BY CASH</i>		<i>15000</i>

04/11/2011	BY CASH		10000
05/11/2011	BY CASH		20000
09/11/2011	BY CASH		20000
15/11/2011	BY CASH		10000
	TOTAL		3,24,000

On verification of the bank statement that he has frequently deposited cash account to give loan to the assessee. Moreover, on verification of the return of income, the credit-worthiness of Shri Rohan Surjibhai Barnda is also not proved. Further, the source of cash deposits is also not proved. Therefore, the loan taken from Shri Mayank Surjibhai Barnda of Rs.10,00,000/- is treated as unexplained cash credits and is added to the total income of the assessee.

Further, the assessee has paid interest of Rs.35,178/- on unsecured loan of Shri Roliia Surjibhai Barnda. Therefore, interest paid to Shri Rohan Surjibhai Barnda is also disallowed and added back to the total income of the assessee. Therefore, total Rs.10,35,178/- is added to the total income of the assessee.

(3) Shri Mayank Surjibhai Barnda

Shri Mayaak Surjibhai Barnda has given loan to the assessee amounting to Rs.6,86,000/- on 03/12/2011. The return income of Shri Mayank Surjibhai Barnda for A.Y. 2012-13 is Rs.2,24,420/-. On verification of bank account No. 0676010GK12642 in the name of Shri Mayank Surjibhai Barnda with Bank of Baroda, the following cash deposits were found:-

Date	Particular	Withdrawal	Deposit
10/06/2011	BY CASH		20000
02/08/2011	BY CASH		45000
09/08/2011	BY CASH		15000
17/08/2011	BY CASH		40000
04/11/2011	BY CASH		45000
05/11/2011	BY CASH		35000
09/11/2011	BY CASH		35000
-	BY CASH		27000
-	BY CASH		12000
-	BY CASH		45000
30/11/2011	BY CASH		5000
	TOTAL		3,24,000

On verification of the bank statement that he has frequently deposited cash amount to give loan to the assessee. Moreover, on verification of the return of income, the creditworthiness of Shri Mayank Surjibhai Barnda is also not proved. Further, the source of cash deposits is also not proved. Therefore, the loan taken from Shri Mayank Surjibhai Barnda of Rs.6,86,000/- is treated as unexplained cash credit and is added to the total income of the assessee

Further, the assessee has paid interest of Rs.56,839/- on unsecured loan of Shri Mayank Surjibhai Barnda, Therefore, interest paid to Shri Mayank Surjibhai Barnda is disallowed and added back to the to the income of the assessee. Therefore, total Rs.7,42,839/- is added to the total income of the assessee.”

6. Since the assessee has failed to prove the genuineness of the aforesaid loan transactions, therefore, the assessing officer has added the total amount of Rs. 27,71,517/- treating the same as unexplained cash credit u/s. 68 of the act.

Ground No. 3 (Disallowance of interest paid on unsecured loan)

7. During the course of assessment on verification of confirmation of unsecured loan in the cases of Dinaben Jajeda & Sweta B Jadeja, the assessing officer has noticed that assessee has paid interest @ 24%, however, the assessee has paid interest on unsecured loan to the other parties @ 12%. Therefore, the assessing officer was of the view that assessee had paid interest to the aforesaid two parties in excess by 12%. Consequently, the assessing officer has disallowed the claim of excess interest payment of Rs. 3,40,000/- in respect of above two parties and added the same to the total income of the assessee.

Ground No. 4 (Disallowance of depreciation)

8. During the course of assessment, the assessing officer noticed that assessee has claimed motor car expenses to the amount of Rs. 29,58,238/- during the year under consideration. On verification of the aforesaid expenditure under the head motor car claimed by the assessee, the assessing officer observed that in such type of business possibility of use of motor car

for personal purpose cannot be ruled out. Therefore, he has disallowed 20% of these expenses to the amount of Rs. 5,91,648/- and added to the total income of the assessee.

9. Aggrieved assessee has filed appeal before the Id. CIT(A) Id. CIT(A). In respect of addition on account of unexplained purchases, the Id. CIT(A) has partly allowed the appeal of the assessee and deleted the addition out of bogus purchases to the extent of Rs. 62,89,643/-. The relevant part of the decision of the Id. CIT(A) is reproduced as under:-

“ 4.1. Ground No. 1. pertains to disallowance of expenses of Rs. 1,36,37,643/- being bogus purchases. During the course of assessment proceedings, the Assessing Officer required the assessee to furnish details of more than Rs. 1,00,000/- and accordingly the details furnished was by the Assessing Officer. Then Assessing Officer required to furnish confirmation from the creditors of expenses to which, the assessee confirmation in respect of 16 parties. However, in respect of 10 parties totaling to purchases made from them amounting to Rs.60,17,719/-, no confirmation was filed. However, the confirmation filed in respect of 2 parties, from, whom purchases of Rs.76,19,924/- were made, was not proper. Accordingly, the purchases to the tune of Rs.1,36,37,643/- Rs.60,17,719 + Rs.76,19,924), were disallowed. During the course of appellate proceedings, the Ld. Authorized Representative has furnished certain additional evidences which have been examined by the Assessing Officer while preparing Remand Report as reproduced above. The purchases made from different parties disallowed by the Assessing Officer are being discussed as under-

(i) T. Square 2Media:

*From party, the assessee has shown purchases of Rs.2,11,019/-and to the quantum of purchases, the assessee has filed a Ledger claimed to be in the books of T. Square Media. Undoubtedly, the name is different from whom copy of account has been filed. The Permanent Account No. of the party as well as any other proof of identity has not been filed. There is no evidence as to whether party is assessed to tax or not. Accordingly, genuineness of purchases from this party is not conclusively proved **and hence** life disallowance made by the Assessing Officer is sustained.*

(ii) Maa Krupa Sales

The appellant has not furnished confirmation from this party for the purchases of Rs. 6,63,873/-. Only a copy of account in the books of appellant and purchase bills along with bank statement have been furnished. Mere because, the payment has been made by cheque, genuineness of purchases cannot be considered to have been established. When the Assessing Officer has demanded confirmation, the appellant has to furnish the same. Moreover, the identity and existence of this party has not been proved by the appellant and accordingly the alleged purchases have to be treated as bogus and hence the disallowance made is confirmed.

(iii) Somant Marble:

The appellant has not furnished confirmation from this party for the purchases of Rs.13,52,375/-. Only a copy of account in the books of appellant and purchase bills along with bank statement, have been, furnished. Merely because, the payment has been made by cheque, genuineness of purchases cannot be considered to have been established. When the Assessing Officer has demanded confirmation, the appellant has to furnish the same. Moreover, the identity and

existence of this party has not been proved by the appellant accordingly the alleged purchases have to be treated as bogus and thence the disallowance made is confirmed.

(iv) Shrenath Alulater:-

From this party, the appellant shown purchases of Rs. 11,00,000/-.

To support the contention of purchases, the appellant has filed copy of the account of assessee in the books of Srinath Elevators. Undoubtedly, there is variation in the name. Moreover, neither the copy of bills nor any other evidence to establish the identity and existence of the party been furnished. Thus, I hold that that purchases to the extent of Rs. 11,00,000/- from this party are not proved and hence the addition is sustained.

(v) Bhavan Tiles:-

From this party, the has claimed purchases of Rs.2,85,578/-. However, a bill of Bhavan Tiles without any dates has furnished. No other proof to prove the identity and existence of Bhavan Tiles has been filed and hence I hold that the appellant has failed to prove purchase of tiles conclusively. Thus, the disallowance by the Assessing Officer at Rs.2,35,573/- on this account is confirmed.

(vi) R.V. Patel & Associates:-

The assessee has claimed purchases from this party at Rs.2,20,600/-. However, the copy of Ledger Account furnished which is duly confirmed by R.V. Patel & Associates, shows consulting charges of Rs.50000/- only. Thus, it is clear that expenses on this account were Rs.50,000/- only as against claimed by the appellant at Rs.2,20,600/-. Hence the purchases to the extent of Rs.1,70,600/- (Rs.2,20,600 + Rs.50,000), claimed by the appellant have not been confirmed by the party. Accordingly, the Assessing Officer is directed to allow the relief to the extent of Rs.50,000/- and balance of disallowance at Rs.1,70,600/- is confirmed.

(vii) S. H. Engineers:-

The appellant has shown purchases at Rs.2,34,272/- from this party and to establish his claim, he has filed a hand written details of debit and credit entries signed by someone on behalf of S.H. Engineers. It is not known as to what types of items were purchased by the appellant from this party. The identity and existence of S.H. Engineers has not been also proved conclusively by filing documentary evidences. Therefore, I hold that the purchases to the extent of Rs.2,34,272/- remained unexplained and hence the disallowance made by the Assessing Officer is confirmed.

(viii) H.M. Pathan:-

Name of this person shown in sundry creditor with balance-outstanding at Rs.5,00,000/-. On verification of the details furnished, it is noticed that the appellant has shown unsecured loan of Rs.5,00,000/- on 15.06.2011 by two different Rs.2,50,000/- each. Since the name of this person was shown in **sundry creditors, the intention of appeal** is very to the relevant as unsecured loans are separately required to be shown in the balance sheet and he has also shown other unsecured loan accordingly. Only a confirmation without complete address, proof of identity and creditworthiness of the creditor, has been filed. The appellant has not furnished copy of his bank statement and assessment particulars of the creditor. Accordingly, I hold that the basic requirements of section 68 such as proof of identity and creditworthiness as well as genuineness of transaction have not been proved. Accordingly, the addition to the extent of Rs.5,00,000/- is confirmed as unexplained cash credit u/s. 68 instead of disallowance of purchases.

(ix) Simwala Nasim A.:

Name of this person was also shown in sundry creditor with balance outstanding with Rs.4,50,000/-. On verification of the details furnished, it is noticed that the appellant has shown unsecured loan of Rs.4,50,000/- on 13.02.2012. by cheque. Since the name of this person was shown in sundry creditors, the intention of appellant is very clear to hide the relevant facts as unsecured loans are required to be shown in the balance sheet and" he has also shown other unsecured loan accordingly. Only a confirmation- without complete address, proof of Identity and creditworthiness of the creditor,, has been filed. The appellant has not furnished copy of his statement and particulars of the creditor. Accordingly, I hold that the basic requirements of section 68 such as proof of identity and creditworthiness as well as genuineness of transaction

have not proved. Accordingly the addition to the of Rs.4,50,000/- is confirmed as unexplained cash credit u/s. 68 of disallowance of purchases.

(x) Mo. Ibrahim Abdul P.:-

Name of this shown in sundry creditor with balance outstanding with Rs. 10,00,000/-. On verification of the details furnished, it is noticed that the appellant has shown unsecured loan of Rs.10,00,000/- on 17.02.2012 and 18.02.2012 by two different cheques of Rs. 50,00,000/- each. Since the name of this person was shown in the sundry creditors, the intention of appellant is very clear to hide the relevant facts as unsecured loans are separately required to be shown in the balance sheet and the has also shown other unsecured loan accordingly. Only a confirmation without complete address, proof of identity and creditworthiness of the creditor has filed. The appellant has not furnished copy of his bank statement and assessment particulars of the creditor. Accordingly, I hold that the basic requirement so section 68 such as proof of identity and creditworthiness as well as genuineness of transactions have not been proved. Accordingly, the addition to the extent of Rs. 10,00,000/- is confirmed as unexplained cash credit u/s. 68 instead of disallowance of purchases.

(xi) Jubir Hussain U.:-

The appellant has shown purchases of Rs. 73,48,000/- from this party. On perusal of confirmed copy of contract given to the abvoe mentioned party. To support the claim of. expenditure, copy of return of Shri Jubir Hussain U. has filed wherein he has offered contract and sub-contract receipt of Rs.73,48,000/- with consequential credit of TDS at Rs.73,480/-. This party has shown total Income of Rs. 14,46,770/- to the return of income filed for the year under consideration. In view of these documentary evidences placed, on record, the expenditure incurred on sub-contract of the work, cannot, be considered as bogus and hence no disallowance on this account is called for. The Assessing Officer is accordingly directed to delete the addition made on this account.

(xii) Saeetf Patch.

The has shown, purchases at Rs.2,71,924/- from this party and to establish his claim, he has filed a hand- written details of debit and credit entries signed by someone on behalf of Saeed Patel. It is not know as-to what types of Items were purchased by the appellant from party. The identity and existence of Saeed Ppatel has not proved conclusively by filing documentary evidences. Therefore, I hold that the purchases to the extent of Rs.2,71,9247- remained unexplained and hence the disallowance made by the assessing officer is confirmed.”

10. We have heard the rival contentions on this issue. With the assistance of ld. representatives, we have perused the material on record. It is noticed that in the case of T Square 2Media, the ld. CIT(A) has sustained the addition on unaccounted purchases to the amount of Rs. 2,11,019/- as the genuineness of the purchases could not be proved since the assessee has failed to furnish any supporting relevant evidences. The ld. CIT(A) has also sustained the addition on account of unexplained purchases to the amount of Rs. 6,63,873/- made from Maa Kripa Sales since the assessee has failed to file the confirmation and other details from the aforesaid party in respect of purchase made during the year under consideration. The ld. CIT(A) has also

sustained the addition of Rs. 13,52,375/- as unaccounted purchase made from the Somani Marbles on the ground that assessee has failed to furnish the relevant supporting information. The Id. CIT(A) has also sustained the addition of Rs. 11 lacs in respect of purchases made from Sreenath Alulater as the assessee has failed to furnish the supporting evidences to establish the genuineness of the purchases made from the said party. The Id. CIT(A) has also confirmed the addition of Rs. 2,85,578/- as unaccounted purchases made from Bhabvan Tile because the assessee has failed to substantiate the genuineness of these transactions with relevant evidences. The Id. CIT(A) has sustained the addition to the extent of Rs.1,70,600/- of purchases made from R.B. Patel and Associate for want of confirmation from the said party. Similarly, the Id. CIT(A) has also sustained the purchases made from S.H. Engineering to the extent of Rs. 2,34,272/-, Rs. 5 lacs from H.M. Pathan, Rs. 4,50,000/- from Simwala Nasim, Rs. 10 lacs from Mr. Ibrahim Abdul and purchases to the amount of Rs. 271924/- from Saeed Patel on the ground that genuineness of these purchases could not be proved as the assessee failed to furnish complete documentary evidences in support of his claim.

10.1. We have gone through the paper book submitted by the assessee during the course of appellate proceedings containing details of bills and other material furnished before the assessing officer and CIT(A) during the course of assessment and appellate proceedings. In the paper book, the assessee has placed copies of confirmations of unsecured loan obtained from different parties, copies of ledger account of the loan parties, extract of bank statements and copies of PAN card etc. The assessee has also placed the copy of remand report submitted by the assessing officer stating that

complete details and information have not been furnished by the assessee in respect of 12 parties from whom the assessee has made purchases. During the course of appellate proceedings before us, the ld. counsel has submitted that some of these parties were not extending full co-operation, therefore, the required documents could not be furnished and also contended that it is not justified to disallow the whole of such purchases by treating the same as unaccounted. After perusal of the material on record, it is noticed that assessing officer has neither issued any notice u/s. 133(6) nor issued any summon u/s. 131 to the aforesaid parties to obtain the information and to carry out necessary verification and examination of the purchase transactions. Considering these material facts, we are of the view that it will be appropriate to restore this issue to the file of the assessing officer for deciding afresh after examination and verification of required material/information by issuing of summons u/s. 131 to the 12 purchases parties from whom the purchases were treated as unexplained for want of complete detail and information. Accordingly, we restore this issue to the file of assessing officer for deciding de-novo as directed above after affording adequate opportunity to the assessee.

10.2. Regarding addition of Rs. 27,71,570/- on account of unexplained cash credit shown in the name of three parties. The ld. CIT(A) has deleted the addition to the extent of Rs. 17,78,017/- in respect of unsecured loan obtained from Shir Rohan Surjibhai Barnada, Mayankurjibhai Barnada since assessee has furnished the information required under section 68 of the Act. However, in respect of loan of Rs. 9,93,500/- obtained by the assessee from Shri Ashif Abdulraman Saikh, the assessee claimed that transaction

was pertained to sale of car. In this connection, the ld. CIT(A) stated that there was no such car shown in the balance sheet and no other evidence has been furnished to prove that there was a sale of car. Therefore, the ld. CIT(A) has held the said credit entry from the aforesaid parties as bogus credit u/s. 68 of the act. During the course of appellate proceedings before us, the assessee has failed to furnish any evidence to disprove the finding of ld. CIT(A) that the aforesaid cash credit to the amount of Rs. 9,93,500/- was received on account of sale of car. The assessee has failed to furnish any relevant supporting evidences in spite of giving a number of opportunities at the time of assessment proceedings and appellate proceedings. Therefore, we do not find any reason to interfere in the decision of ld. CIT(A). Accordingly, addition to the extent of Rs. 9,93,500/- is sustained. Therefore, this ground of appeal is partly allowed.

10.3. Regarding addition of Rs. 3,40,000/- on account of excess interest paid @ 24% to two persons as against the interest rate 12% paid to all other parties by the assessee, the ld. CIT(A) has partly allowed the appeal of the assessee by considering that interest rate @ 15% will be reasonable. During the course of appellate proceedings before us, the assessee has not furnished any detailed and supporting information to substantiate the reasonableness of making interest payment @ 24% to the two parties. Therefore, we do not find any infirmity in the decision of ld. CIT(A), therefore, this ground of appeal is dismissed.

10.4. The last grounds of appeal is pertained to disallowance of vehicle expenses @ 20% to the amount of Rs. 5,91,648/- on account of personal use

and the Id. CIT(A) has sustained the disallowance stating that vehicle must have been used for personal purpose by the family members of the assessee. We have gone through the material on record on this issue and noticed that most of the expenses in respect of motor car are pertained to depreciation, interest on loan and vehicle insurance, therefore, we observe that it will be reasonable to restrict the disallowance to the extent of Rs. 10% as against 20% of the total expenditure disallowed by the Id. CIT(A), therefore, we restrict the disallowance on account of personal use of motor vehicle expenses at 10% to the amount of Rs. 29,582/-. Accordingly, this ground of the assessee is partly allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 10-04-2019

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad : Dated 10/04/2019

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क०० तलम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद