

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

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

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1437/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2012-13

M/s.Earth Stone Infraspace P.Ltd. 56-B, Sthanak Vasi Jain Soc Usmanpura Ahmedabad 380 013. PAN : AANCS 0645 P	Vs	ITO, Ward-2(1)(1) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Chajjed, AR
Revenue by :	Shri B.P. Srivastava, Id.DR

सुनवाई की तारीख/Date of Hearing : 01/05/2019

घोषणा की तारीख /Date of Pronouncement : 03/05/2019

ORDER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-2, Ahmedabad dated 21.03.2017 passed for the Asstt.Year 2012-13.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming the addition of Rs.7,51,000/- which was added by the AO with the aid of section 68 of the Income Tax Act, 1961.

3. With the assistance of the Id.representatives, I have gone through the record carefully. It emerges out from the record that during the course of scrutiny assessment the Id.AO noticed that cash credit appearing against nine persons/entities amounting to Rs.49,01,000/-. He made addition of the above amount with the aid of section 68 of the

Act. The assessee has submitted various details which have been gone through by the Id.CIT(A) and remand report was called for. The Id.CIT(A) in detailed order examined all cash credits and thereafter confirmed the addition *qua* three creditors only. The finding recorded by the Id.CIT(A) reads as under:

“(vi) The appellant has shown the deposit of Rs.5,00,000/- from Shri Bipin Kumar Trivedi. In the appellate proceedings, the appellant has neither submitted the confirmation nor the bank statement and ITR copy of the aforesaid depositor. Simply the ledger account copy from the books of appellant and appellant’s bank statement copy has been produced which does not prove any of the ingredients of section 68 of the Act. In spite of granting the sufficient time, even the appellant has failed to submit the copies of the aforesaid records as an additional evidence which conclusively prove that the appellant was unable to prove such credits. Even in the bank statement of the appellant, the credit of Rs.5,00,000/- was with the narration of clearing only and name of the depositor is even not found mentioned therein. Thus, it is not known whether the said cheque has come from the bank account of the appellant or from others. In absence of such verification, the addition made by the AO is found correct and justified and hence the same is confirmed.

(vii) The appellant has shown the credit of Rs.50,000/- in the name of Kalpana Trivedi and in support the appellant has only submitted the confirmation without any PAN. Even no bank statement copy and ITR copy have been submitted by the name of Jyotindra Prasad Oza appellant. Since the appellant has failed to prove the identity, genuineness and creditworthiness of the depositor, therefore, the three conditions of section 68 does not get fulfilled and hence, the addition made by the AO is found correct and justified and same is confirmed.

(viii) The appellant has shown the credit of Rs.2,01,000/- in the confirmation has been signed by Jyotindra Prasad Oza/Chaitali Trivedi. However, confirmation has been signed by Jyotindra Prasad Oza and not by Chaitali Trivedi from whom the appellant has shown the loan. No PAN number / ITR copy has been submitted of the depositor, therefore, the identity and genuineness is not proved by the appellant. Even the appellant has submitted the bank statement of Shri Jyotindra Prasad Oza in which nowhere the deposit amount of Rs.2,01,000/- has been debited. Therefore, the genuineness of the deposits remained unproved. Even the

AO has observed that this unsecured loan has been taken from Chaitali Trivedi but the confirmation has been given by Shri Jyotindra Prasad Oza along with his bank statement. Therefore, there was no nexus between the deposits shown and the details submitted by the appellant. For want of proof in respect of identity, genuineness and creditworthiness, the addition in respect of this unsecured loan is found correct and justified and hence the same is confirmed.

3.10. Here it is worth to mention that in respect of depositor namely Bipin Kumar Trivedi, Kalpana Trivedi, Jyotindra Prasad Oza as discussed above, the respective depositors have failed to submit even their bank statement copy and ITR copy and the same has been adversely observed by the AO in his remand report. A copy of such remand report has been provided to the appellant in the present appellate proceedings for his rejoinder. But by misrepresenting the facts, the appellant once again wrote in the rejoinder about the submission of the aforesaid details which is factually incorrect. Neither in the written submission nor in the rejoinder the appellant has submitted the aforesaid copies of the documents which have been brought on record by the AO in the remand report but the assessee has attempted to mislead the facts which are against and observed while taking the decision in the preceding paras."

4. A perusal of the above would indicate that the Id.CIT(A) has confirmed the addition on the ground that the assessee failed to discharge onus put upon it by virtue of section 68 of the Income Tax Act. Section 68 contemplates that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by the assessee is not, in the opinion of the AO satisfactory, then the sum so credited in the accounts may be treated as income of the assessee of that previous year.

5. Question before me is, whether the assessee has failed to explain ingredients of section 68 or not? The Id.counsel for the assessee drew my attention towards pages no.40 to 58 of the paper book wherein

confirmation from all these three creditors along with bank statements were placed on record. These confirmations are on the ledger account of the assessee. In other words, the balance shown in the assessee's account have been confirmed by the creditors. Apart from the above, the assessee has demonstrated that these amounts have been repaid to them in subsequent years through account payee cheque. For example, Rs.5 lakhs was paid to Bipinkumar Trivedi on 22.2.2013 through cheque no.57401. Copy of the bank statement of the Oriental Bank of Commerce has been placed on record. Similarly, on 23.2.2013 a sum of Rs.2.50 lakhs were paid to Kalpana Trivedi. After taking into consideration these evidences, coupled with confirmation given by the creditors, I am satisfied that the assessee has fulfilled all the ingredients of section 68. Mere non-submission of the copy of the income-tax return should not be a ground for rejecting the explanation of the assessee, when it has demonstrated that loans have already been repaid. Therefore, I allow this ground and delete the impugned addition.

6. In the result, appeal of the assessee is allowed.

Pronounced in the Open Court on 3rd May, 2019.

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

Ahmedabad; Dated, 03/05/2019

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