

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. Nos: 967, 1682 & 1683/AHD/2016
& C.O. Nos: 126 to 128/AHD/2016
(Assessment Years: 2006-07, 2009-10 & 2010-11)**

ACIT, Ahmedabad	Circle-4(2),	V/S	Shri Kalpesh Atmaram Patel 17, Ganesh Park Part- II, Opp. Vishwas City Bungalows, Ghatlodia, Ahmedabad PAN No. ACIPP5510G
Shri Kalpesh Atmaram Patel 17, Ganesh Park Part-II, Opp. Vishwas City Bungalows, Ghatlodia, Ahmedabad PAN No. ACIPP5510G		V/S	ACIT, Ahmedabad
(Appellant)			(Respondent)

**Appellant by : Shri Lalit P. Jain, Sr. D.R.
Respondent by : Shri S. N. Soparkar, Sr. Advocate
with Urvahsi Shodhan**

(आदेश)/ORDER

Date of hearing : 14 -06-2019

Date of Pronouncement : 26 -06-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These three appeals and three C.Os. No. 126 to 128/Ahd/2016 have been filed by the Assessee Shri Kalpesh Atmaram Patel and the Revenue against each other. There is delay of 78 days in appeals filed by the assessee and he has filed an affidavit stating reasons for delay. We have considered the facts and heard both the parties and thereafter we are satisfied with reasons stated therein. Therefore we condone the delay of 78 days and proceed with the appeals. For the sake of convenience, we would like to dispose of all the appeals and C.Os. by way of a common order. First of all we would take up appeal of the Revenue in ITA No. 963/Ahd/2016. The Revenue has taken following grounds of appeal:

- 1). *Whether the Ld. Commissioner of Income-Tax (Appeals) has erred in law and on facts in deleting the addition made of Rs. 4,01,00,001/- on account of unexplained income.*
- 2). *On the facts and in the circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals) ought to have upheld the order of the Assessing Officer.*
- 3). *It is therefore, prayed that the order of the Ld. Commissioner of Income-Tax (Appeals) may be set-a-side and that of the order of the Assessing Officer be restored.*

2. In this case, appellant had filed his original return on 28/03/2007 showing total income of Rs. 5,27,390/- which was processed U/s. 143(1) of the Act. Thereafter, the case was reopened by issuing notice u/s 148 of the Act which was issued and served on 31.03.2013. The appellant objected to the reopening by his letter dated 10.03.2014 which was dealt with by AO by his letter dated 14.03.2014 stating that as some loose papers were found and seized from one Shri Bhikhubhai Padsala in the course of search action in his case wherein notings regarding cash receipts were found and as said Shri

- Bhikhubhai Padsala had accepted before Settlement Commission that such cash receipts were receipt pertaining to Jagatpur land, which were received from one Shri Kalpesh Patel and Shri Mukesh Patel and copies of said loose papers were supplied to the assessee and presumption u/s 132(4A) was applicable and said loose papers could, according to the A.O. be used as evidence against the assessee. And on the basis of loose papers were found and seized from Bhikhubhai Padsala and statement made by him before the searching party and disclosure made Shri Bhikhubhai Padsala before the settlement commission. Ld. A.O. made addition of Rs. 40100001/- on account of unexplained income.
3. Thereafter, assessee preferred first statutory appeal before the ld. CIT(A) who partly allowed the appeal of the assessee by holding that apart from statement of loose papers and order of settlement commission, no material is against the assessee.
 4. Ld. CIT(A) citing a judgment of Hon'ble Delhi High Court in the matter of CIT vs. Vineet Gupta (2014) 46 taxmann.com 439 (Delhi) held that declaration made by any party, before the settlement commission is not binding upon the assessee, therefore, no additions can be made in absence of any concrete evidence and granted relief to the assessee.
 5. Now by way of second appeal, revenue has come before us.
 6. We have gone through the impugned order and heard both the parties. Ld. D.R. contention is that Shri Bhikhubhai Padsala made a statement before the department that he has received the cash in question from the assessee and

same are mentioned in loose paper received and seized from the possession of Shri Bhikhubhai Padsala. And further contended that Shri Bhikhubhai Padsala has categorically declared cash received from Shri Mukesh K. Patel and on his statement Hon'ble Settlement Commission passed an order.

7. On the other hand, Id Senior Counsel, Shri S.N. Soparkar stated that nothing has been found from Shri Bhikhubhai Padsala which is in the handwriting of the assessee, no name has been mentioned of the assessee and there is no any kind of business/land deal taken place between the assessee and Shri Bhikhubhai Padsala and requested that in such cases, addition cannot be made.
8. On the direction of the Bench, assessee filed an affidavit before us stating on oath that they have not made any payment of Shri Bhikhubhai Padsala and therefore no land was purchased by them from Shri Bhikhubhai Padsala.
9. And in support of its contention, Id. A.R. cited a judgment of Hon'ble Delhi High Court in the matter of CIT vs. Gian Gupta 46 taxmann.com 372 (Delhi) wherein it is held:

Section 69, read with section 271(1)(c), of the Income-tax Act, 1961 - Unexplained investments (Immovable properties) Assessment year 2006-07 - An unsigned memorandum of understanding between assessee and a seller of land as well as an unsigned receipt issued by seller was recovered - Said MOU as well as receipt in question were found to be unsigned documents and transaction had not materialized -Whether since both Commissioner (Appeals) and Tribunal found that facts did not establish revenue's contention that unexplained investment in cash had been made by assessee, no question of law arose from order of Tribunal deleting addition on that account - Held, yes [Para 6] [In favour of assessee]

10. Ld. A.R. also cited a judgment of Hon'ble Gujarat High court in the matter of Sunrise Education Trust vs. ITO 92 taxmann.com 74 (Guj.) wherein it is held:

Section 68, read with section 147. of the Income-tax Act, 1961 - Cash credit (Bank deposits) - Assessment year 2010-11 - Assessee-trust filed its return of income declaring nil income which was accepted under section 143(1) - Later, Assessing Officer issued reassessment notice on ground that assessee-trust had deposited cash in a bank account and that no return of income was filed by assessee for relevant assessment year - It was noted that Assessing Officer in reasons recorded, proceeded on erroneous footing that assessee had not filed return at all - It was not disputed by revenue that assessee did file return of income for year under consideration which was duly acknowledged by department - Further, Assessing Officer only contended that cash deposits could only be verified through reassessment and he did not even contend that said cash deposits were not duly reflected in return filed, but that he wished to verify validity of such deposits - Whether reassessment notice for mere verification or for a fishing inquiry was not permissible - Held, yes [Paras 4 and 5] [In favour of assessee]

11. In view of the facts and circumstances of the case and series of judgment, we hold that order of Id. CIT(A) does not require any kind of interference at out end and therefore, appeal of the Revenue is dismissed.

12. Now we come to the C.O's. of the Assessee. The assessee has taken following grounds of appeal:

1. *Ld. CIT (A) ought to have quashed re - opening proceedings initiated by AO issuing notice u/s 148 without application of mind to the facts of the appellant. Ld. CIT (A) failed to appreciate that order passed by AO in absence of either 'reason to believe' as envisaged under section 147 or escapement of any income was without jurisdiction and bad in law.*
2. *Ld. CIT (A) ought to have held that Id. AO erred in law and on facts in framing assessment u/s 143 (3) r w s 147 of the Act on factually incorrect foundation.*
3. *Ld. CIT (A) erred in law and on facts in dismissing ground challenging levy of interest u/s 234A/234B & 234C of the Act.*
4. *Ld. CIT (A) erred in law and on facts in dismissing ground challenging initiation of penalty proceedings u/s 271 (1)(c) of the Act.*
The appellant craves leave to add, amend, edit, delete, change or modify all or any of the ground before or at the time of hearing.

13. Facts of the case have been discussed in the connected ITA No. 963/Ahd/2016 for the sake of brevity, we do not want to repeat the same. Ld. A.O. issued noticed for reopening of the case on the basis of information received from the Investigation Wing which had searched the premises of Shri Bhikhubhai Padsala and seized certain documents. In our considered opinion, ld. A.O. was justified in issuing notice to the assessee on the basis of material was supplied by the Investigation Wing to the A.O. of the assessee. Therefore, we dismiss C.O's. of the assessee, it is pertinent to mention here that in connected appeal, we have given relief to the assessee by dismissing the appeal of the Revenue.

14. In the result, appeals filed by the Revenue and C.O. filed by the Assessee are dismissed.

Order pronounced in Open Court on	26 - 06- 2019
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Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER **True Copy**
Ahmedabad: Dated 26/06/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad