IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

Before: Shri Rajpal Yadav, Judicial Member
and Shri Amarjit Singh, Accountant Member

[Conducted through E-Court at Ahmedabad]

ITA No. 281/Rjt/2014
Assessment Year 2009-10

Shri Chandrasekhar N. Ayachi, Gandhidham, PAN: ABUPA6576E (Appellant)	Vs	The ACIT, Gandhidham Range, Gandhidham (Respondent)

Revenue by: **Mrs. Namita Khurana, Sr.D.R.**
Assessee by: **Shri Kalpesh Doshi, A.R.**

Date of hearing : 16-07-2019
Date of pronouncement : 31-07-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assesseeôs appeal for A.Y. 2009-10, arises from order of the CIT(A)-II, Rajkot dated 31-03-2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short ñthe Actò

2. The assessee has raised following grounds of appeal:-

"1 That, the Ld. CIT(A) has passed the order without giving proper opportunity of being heard, as the Assessing Officer has not complied with the direction given in the remand report and Ld. CIT(A) has passed the order on the basis of such incomplete remand report.
2 That, the Ld. CIT (A) has wrongly confirmed the addition of Rs. 37,02,006/- on account of unexplained deposit u/s 68 of the I.T. Act.

3 That, the Ld. CIT (A) has wrongly confirmed the addition ofRs. 12,75,542/- on account of unexplained investment u/s 69 and u/s 69A of the I.T. Act.
4 That, the findings of Ld. CIT(A) as stated above are not justified and required to be deleted."

3. The fact in brief is that return of income declaring income of Rs. 1,32,64,254/-/- was filed on 17th December, 2009. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 18th August, 2010. During the course of assessment on perusal of bank statement and detail furnished by the assessee, the assessing officer noticed various deposits reflected in the bank a/c of the assessee. The assessee has not explained the nature of credit entries appearing in his bank account in spite of repeatedly reminded by the assessing officer. The assessing officer has given a final opportunity to the assessee by issuing of letter dated 5th December, 2011 stating that assessee has not furnished even confirmation letter till date in respect of following deposits:-

Sr. No.	*Name of the depositors*	*Amount of deposit*	*Interest credited*	*Total*
1.	*Babu Shambhu Kholi*	*5,00,000/-*	*44,384/-*	*5,44,384/-*
2.	*Cosmos Construction Co*	*5,00,000/-*	*44,877/-*	*5,44,877/-*
3.	*Shailesh P. Madhvi*	*5,00,000/-*	*44,877/-*	*5,44,877/-*
4.	*Vishnusingh J Rajpurohit*	*16,00,000/-*	*1,41,238/-*	*17,41,238/-*
5.	*Hitesh Enterprise (Lachu)*	*3,00,000/-*	*26,630//-*	*3,26,630/-*
	Total	*34,00,000/-*	*3,02,006/-*	*37,02,006/-*

In spite of giving a number of opportunities, the assessee has failed to furnish even identity proof, address and any other independent evidences to prove the genuineness of the deposits reflected in the bank account. The assessing officer stated that the assesse has denied maintenance of regular

books of account therefore the deposit appeared in the bank account was treated as unexplained investment u/s. 69 of the act and alternatively considered as unexplained u/s. 69A of the act. In respect of following four depositors, the assessee has filed confirmation letters and bank statements:-

Sr. No.	*Name of the depositors*	*Amount of deposit*	*Interest credited*	*Total*
1.	*Shri Anand B. Varma*	*7,00,000/-*	*62,827/-*	*7,62,827/-*
2.	*Geetaben V. Thacker*	*2,00,000/-*	*5,086/-*	*2,05,086/-*
3.	*Shri Suresh Thacker*	*1,00,000/-*	*2,543/-*	*1,02,543/-*
4.	*Shri Vipul Raichand Thacker*	*2,00,000/-*	*5,086/-*	*2,05,086/-*
	Total	*12,00,000/-*	*75,542/-*	*12,75,542/-*

On going through the bank statements of above cited depositors, the assessing officer observed that cash of equivalent amount was deposited in the bank a/c before issuing the deposit cheque to the assessee. The assessing officer further stated that assessee has failed to adduce evidences to demonstrate that aforesaid depositors were having creditworthiness. Since the basic onus in relation to capacity of the depositors was not discharged therefore the assessing officer has made addition of Rs. 12,75,542/- as unexplained investment u/s. 69/69A of the act.

4. Aggrieved assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

5. We have heard the rival contentions and perused the material on record. The assessing officer has made addition of Rs. 37,02,006/- on account of unexplained deposit as the assessee has failed to file the basic

information i.e. confirmation, identity proof, creditworthiness in respect of capacity in respect of five depositors. During the course of appellate proceedings before the ld. CIT(A), the assessee has filed additional evidences i.e. copies of confirmation, copies of ledger accounts and copies of bank statements of the aforesaid lenders. The ld. CIT(A) has admitted those additional evidences under rule 46A of the I.T. Rule and called remand report from the assessing officer. The assessing officer has reported that depositor named Vishnu J Rapurohit had filed his return of income with ITO Ward-3(1), Jodhpur, having gross total income of Rs. 2,06,930/- for assessment year 2009-10 whereas he has advanced loan of Rs. 17 lacs to the assessee. Further, on perusal of the bank statement of other depositors cash of the equivalent amount was deposited in the bank account and the cheque of the same amount was given to the assessee as loan. It was also reported by the assessing officer that confirmation letters in respect of three depositors were un-signed.

On perusal of the material on record, it is noticed that assessee has filed copy of PAN Card, copy of confirmation, copy of income tax return, copy of ledger account in the case of the lender Shri Vishnu Singh Rajpurohit. However to disprove the facts reported by the assessee, the assessing officer has not carried out any further verification and investigation. The assessing officer has neither asked the assessee to produce the depositors for examination nor issued any summons u/s. 131 of the act to the said depositors to further prove and examine the creditworthiness of the lenders. . Regarding loan of Rs. 3,26,630/- obtained from Hitesh Enterprise, it is noticed that copy of PAN Card, copy of confirmation, copy of income tax return, copy of bank statement, copy of affidavit, copy of balance sheet of

the lender were filed with the assessing officer. The assessing officer has neither issued any summons u/s. 131 in respect of the above two parties to further verify and examine creditworthiness of the aforesaid parties to the extent of Rs. 17,41,238/- + Rs. 3,26,630/- = 20,67,868/- obtained from the above parties, therefore the addition to that extent is deleted. In respect of following three depositors

(i)	Babu Shambu Kholi	Rs. 5,44,384/-
(ii)	Cosmos Construction Company	Rs. 5,44,877/-
(iii)	Shailesh Madhuvi	Rs. 5,44,877/-

the assessee has failed to furnish the basic primary information to substantiate the genuineness of unsecured loan as the assessee has only furnished copies of confirmation and copy of ledger account but failed to furnish the other primary information like PAN, Bank Statement, Income Tax Return etc. There was no sufficient material furnished on the basis of which, the assessing officer could have independently examined the creditworthiness and genuineness of the unsecured loan claimed to be obtained from the above cited three persons. Therefore, we sustain the addition to the amount of Rs. 5,44,384/- + Rs. 5,44,877/- +Rs. 5,44,877/- = Rs. 16,34,138/- as unexplained u/s. 68 of the act. Accordingly, the appeal of the assesseee on this issue is partly allowed.

6. In respect of addition of Rs. 12,75,542/- made by the assessing officer u/s. 69 of the act as unexplained deposit, we have noticed from the material on record that assessee has filed copy of confirmation, copy of income tax return, copy of bank statement, copy of affidavit etc. in respect of all the four parties from whom the assessee has obtained deposit. The assessing

officer has neither examined those parties by issuing of summons u/s. 131 of the act to verify creditworthiness of the aforesaid parties, nor directed the assessee to produce these depositors to examine the creditworthiness of the lenders. In the light of the above facts and circumstances, the assessing officer has made the addition on assumption basis without initiating further action as cited above to controvert the material furnished by the assessee. In the light of the above infirmities and deficiencies in the findings of the assessing officer, the addition to the extent of Rs. 12,75,542/- is deleted.

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

Order pronounced in the open court on 31-07-2019

Sd/-	Sd/-
(RAJPAL YADAV)	**(AMARJIT SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad : Dated 31/07/2019

आदेश क□□त□ल□प अ□ेषित / Copy of Order Forwarded to:-

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

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot