

आयकर अपील अाधिकरण, अहमदाबाद ढयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
' B ' BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2042/AHD/2015

ढधायण वष/Asstt. Year: 2010-2011

Dr. Prahladbhai Mohanbhai Parmar C/o Shubham Multi Speciality Trauma Centre, 145/1129 Kalapinagar, Nr. Kalapinagar Bus Stop, Kalpainagar Ahmedabad PAN: ACHPP0859P	Vs.	ITO, Ward-9(3), New Ward-4(2)(4) Pratyaksh Vera Bhawan, Ambawadi. Ahmedabad-380006.
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(Applicant)	(Respondent)
Assessee by :	Shri Anil Kshatriya & Shri Rupesh Mehta, A.Rs
Revenue by :	Ms Sonia Kumar, Sr. D.R

सुनवाई का ताराख/Date of Hearing : 27/06/2019

घोषणा का ताराख /Date of Pronouncement: 24/07/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-4, Ahmedabad dated 08/05/2015 (in short 'Ld.CIT(A)') arising in the matter of assessment order passed under s. 144 of the Income Tax Act, 1961 (here-in-

after referred to as "the Act") dt.04/03/2013 relevant to the Assessment Year 2010-2011.

The assessee has raised the following grounds of appeal.

1. *On the facts and circumstances of the case the Ld. CIT (A) failed to appreciate the fact that your appellant was neither the owner of the property at Ahmedabad nor the proprietor of the concern on which the survey had been conducted. Therefore, we request the Hon'ble ITAT to delete the entire addition made on this ground.*
2. *On the facts and circumstances of the case the Ld. CIT (A) failed to appreciate the fact that the entire addition had been made on estimated basis under assumptions and presumptions without putting a single evidence on record showing such expenditure incurred by your appellant except statement recorded during survey u/s 133A by the Id. AO. And therefore, we request the Hon'ble ITAT to delete the entire addition made by Id. AO on this ground.*
3. *On the facts and circumstances of the case the Ld. CIT (A) failed to appreciate that the Id. AO had issued remand report mechanically without verification of the copy of details submitted before him through the Ld. CIT(A). The Ld. CIT(A) had also rejected all the submission grossly without verification of the evidences. Since this is not permissible in law we request the Hon'ble ITAT to accept the evidences and delete the entire addition on this ground.*
4. *Your appellant craves leave to add, alter, amend, and/or delete any grounds as mentioned above during the course of appeal hearing.*

The only issue raised by the assessee is that the learned CIT (A) erred in confirming the addition made by the AO for 2.37 crores on account of unexplained investment.

2. Briefly stated facts are that the assessee in the present case is an individual and practicing Doctor. The assessee is running a multi-specialty hospital and trauma centre under the name and style of M/s Shubham at Ahmedabad and a nursing home at Dehgam. There was a survey carried out at the premises of the assessee in Ahmedabad dated 22/09/2009. The assessee

in the statement recorded at the time of survey has admitted vide question No. 8 that he has made investment in the hospital and nursing home located at Ahmedabad and Dehgam aggregating to Rs. 2,37,19000.00 only. The assessee at the time of survey admitted unaccounted investment to the tune of 1.67 crores and for the balance amount of 70 lakhs he requested to file the relevant details in view days. But the assessee has neither furnished any details nor offered the same in the income tax return despite the fact that the assessee was given several opportunities during the assessment proceedings. Accordingly, the AO framed the assessment under section 144 of the Act by treating the sum of Rs. 2.37 crores as unexplained investment. Hence, the amount of Rs. 2.37 crores was added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A).

3. The assessee before the learned CIT (A) submitted that the land on which the Shubham multi-speciality hospital and trauma centre is running belongs to Smt. Deviben Parmar. As such Smt. Deviben Parmar has given her property on rental basis to Bhimrao charitable trust which was running Shubham multi-speciality hospital and trauma centre. As such, the assessee was not the owner of Shubham multi-speciality hospital and trauma centre. The assessee was only managing trustee of Shubham multi-speciality hospital and trauma centre. Accordingly, the assessee claimed that he has not made any investment in the Shubham multi-speciality hospital and trauma centre.

3.1 The assessee in support of his contention filed the evidences regarding the ownership of the property and Shubham multi-speciality hospital and trauma centre.

3.2 The learned CIT (A) called for the remand report vide letter dated 3rd September 2014 from the AO who in turn objected on the admission of the additional evidences filed by the assessee vide letter dated 18th September 2014. As per the AO there was no condition satisfied by the assessee for the admission of the additional evidences in pursuance to the provisions of rule 46A of Income Tax Rule.

3.3 The AO without prejudice to the above also submitted that the assessee was required to furnish the necessary details to justify the investment made in the hospital at Ahmedabad and the clinic at Dehgam. But the assessee failed to furnish the same.

3.4 The assessee in his rejoinder submitted that there was no incriminating document found during the survey regarding the impugned investment in the hospitals and clinic. He admitted the undisclosed income of 1.67 crores under stress and to avoid the harassment.

3.5 The assessee also submitted that there was no sufficient opportunity provided by the AO during the remand proceedings for furnishing the requisite details.

3.6 As such, the assessee furnished certain details on 3rd March 2015 before the AO which was in the nature of the additional evidences.

3.7 But the learned CIT (A) noticed that there was given sufficient opportunities to the assessee to file the additional evidences under rule 46A of Income Tax Rule but the assessee failed to furnish the same. Therefore he refused to admit the additional evidences. However the learner CIT (A) in the

interest of justice considered these additional evidences while adjudicating the issue on hand.

3.8 The learned CIT (A) further found that the property on which the Shubham multi-speciality hospital and trauma centre was running was registered in the name of the wife of the assessee. As per the statement recorded at the time of survey the assessee claimed to have made investment in such properties. Therefore the learned CIT (A) was of the view that the investment in the property is registered in the name of the wife represents the income of the assessee.

3.9 The learned CIT (A) also found that had the assessee been harassed by the survey team, then he should have written the same to Income Tax Authorities. But he has not done so.

3.10 The learned CIT (A) also found that the copies of the bills filed by the assessee in support of the investment in Shubham multi-speciality hospital and trauma centre were in his name.

In view of the above the learned CIT (A) after making the detailed observation confirmed the order of the AO.

Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

4. The learned AR before us filed a paper book running from pages 1 to 318 and submitted that the additional evidences have not been considered by the AO which were crucial to decide the issue on hand. Similarly the Id. AR

also claimed that the assessee is not the owner of the Shubham multi-speciality hospital and trauma centre, therefore the question of treating the undisclosed investment therein in his hands does not arise. Accordingly, the learned AR before us prayed to refer the matter to the AO for the fresh adjudication as per the provisions of law.

5. On the other hand, the learned DR did not raise any objection if the matter is set aside to the file of the learned CIT (A) for fresh adjudication as per the provisions of law.

6. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the case relates whether the assessee has made any undisclosed investment in Shubham multi-speciality hospital and trauma centre and the clinic as discussed above. On perusal of the order of the authorities below, we find certain issues that require consideration as detailed below:

- i. Whether the assessee is the owner of the Shubham multi-speciality hospital and trauma centre at Ahmedabad and the clinic at Dehgam.
- ii. The basis adopted by the survey team regarding the undisclosed investment in the hospitals as discussed above.
- iii. Whether the impugned investment was made during the year.
- iv. Whether the assessee was given sufficient opportunities during the remand proceedings to produce the necessary documents in support of his claim. It is because the notice for the remand report was issued vide letter dated by the learned CIT-A dated 3rd September 2014. The AO subsequently issued letter to the assessee dated 5th September 2014 fixing the date of hearing 12th September 2014. The AO furnished the remand report vide letter dated 18th September

2014. As per the assessee, the AO has given 3 days time to furnish the necessary details which was not sufficient enough especially in the month of September where the chartered accountants were busy in filing the income tax return.

- v. Whether the investment made in the plots where Dehgam hospital was situated was taxable in the year under consideration as the learned CIT (A) has given the finding that such investment was made in the year 2007-08.

6.1 In the light of the above discussions, we are of the view that the entire facts of the case need to be examined afresh by the AO as per the provisions of law. Accordingly, we are inclined to set aside the order of the learned CIT (A) to the file of the AO for fresh adjudication as per the provisions of law and without getting influenced by the order of the learned CIT (A) as well as the remand report furnished by the AO. As such the AO will frame the assessment de novo. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

7. In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 24/07/2019 at Ahmedabad.

**-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 24/07/2019
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