

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 Nos. 146 & 153/Rjt/2014  
Assessment Year 2005-06**

Shailesh Amrutlal Kotecha, Prop. M/s. Talenet, 6-Kanta Stri Vikas Gruh, Dhebar Road, Rajkot PAN: AGCPK0930F (Appellant)	Vs	The ITO, Ward-2(3), Rajkot (Respondent)
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**Revenue by: Shri Praveen Verma, Sr. D.R.  
Assessee by: None**

Date of hearing : 28-08-2019  
Date of pronouncement : 23-09-2019

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

The instant appeal is filed against the order of Id. CIT(A)-III, Rajkot in confirming the following three additions made by the assessing officer u/s. 143(3) of the act.

Nature of Addition	Amount (Rs.)
(i) On account of unexplained investment in fixed assets	1,56,736/-
(ii) On account of TDS difference	6,76,832/-
(iii) On account of explained cash credit u/s. 68	2,34,350/-

2. The brief fact of the case is that CIT, Rajkot has passed order u/s. 263 on 28<sup>th</sup> December, 2010 and held that the order passed by the assessing officer u/s. 143(3) of the act on 28<sup>th</sup> December, 2007 was erroneous and prejudicial to the interest of revenue, therefore, the assessment was set aside to the assessing officer for framing the same de-novo after proper inquiry and verification of the issues pertaining to addition to fixed assets, correctness of the commission offered as per TDS certificate and genuineness of unsecured loan obtained from 13 persons. During the course of assessment proceedings in consequence to order u/s. 263, the assessing officer has issued a number of letters and notices to the assessee, however, the assessee has neither attended nor furnished any detail as called for by the assessing officer, therefore, the assessing officer has finalized the assessment on the basis of material on record. The assessing officer has noticed that in the fixed asset schedule, the assessee has shown addition of five assets totaling to the amount of Rs. 1,56,736/- as mentioned at page no. 3 of the assessment order mainly on the basis of cash mode of payment for acquiring these assets. The assessee was asked to furnish the complete detail of acquiring these assets. However, the assessee has not made any compliance, therefore, the assessing officer has added the amount of Rs. 1,56,736/- as

unexplained investment. During the course of assessment proceedings, the assessing officer has also noticed that there was difference in receipts shown in the TDS certificate and the amount of receipt shown in the return of income to the amount of Rs. 6,76,832/-. In spite of giving a number of opportunities, the assessee has failed to explain the differences, therefore, the same was added to the total income of the assessee. During the course of assessment, the assessing officer has also noticed that assessee has claimed interest free unsecured loan amounting to Rs. 2,34,350/- from 13 persons apparently in cash. The assessee was asked to furnish the name, address, PAN confirmations etc. of the lenders. However, the assessee has failed to furnish the required detail to prove the creditworthiness of the loan and identity of the lenders. Therefore, the assessing officer has made addition of Rs. 2,34,350/- u/s 68 of the act as unexplained cash credit.

3. Aggrieved assessee has filed appeal before the Id. CIT(A). The appeal of the assessee was dismissed by the Id. CIT(A).

4. During the course of appellate proceedings before us, the adjournment application was rejected after taking into consideration that the assessee has filed this appeal in 2014 and the matter was adjourned 10 times and the assessee has never furnished detail and information. After hearing the Id. departmental representative and considering the material on record, it is noticed that during the course of assessment proceedings, the assessee has failed to furnish any single evidence to explain the addition made to fixed asset to the amount of Rs. 1,56,736/- and differences in the commission receipt reported in the p & L account and the amount appearing in the TDS

certificate. It is also noticed that assessee has failed to furnish even the basic evidences in support of unsecured loan amounting to Rs. 2,34,350/- to explain the identity of the lenders and genuineness and creditworthiness of the transactions as laid down in section 68 of the act. Further during the course of appellate proceedings before Id. CIT(A) in spite of giving adequate opportunity, the Id. counsel of the assessee has not furnished any detail to disprove the aforesaid additions made by the assessing officer during the course of assessment proceedings. Even during the course of appellate proceedings before us, in spite of giving a number of opportunities, the assessee has not furnished any material or document to disprove the finding of lower authorities. In the light of the above facts and circumstances, we do not find any merit in the appeal of the assessee, therefore, the same is dismissed. In the result, the appeal of the assessee is dismissed.

ITA No. 153/Rjt/2014

5. This appeal has been filed by the assessee against the order of Id. CIT(A) in confirming the penalty levied on the additions as cited above in ITA No. 146/Rjt/2014. The total amounts of penalty in respect of three additions are as under:-

- (i) Addition on account of unexplained investment of Rs. 1,56,736/-
- (ii) Addition on account of TDS difference of Rs. 6,76,832/-
- (iii) Addition on account of unexplained cash credit u/s. 68 of Rs. 234350/-

The assessing officer has stated that there was no compliance from the assessee as nothing to say in the matter. Accordingly, the penalty of Rs. 3,63,237/- was levied u/s. 271(1)(c) of the act.

6. The assessee has preferred the matter before the ld. CIT(A). The ld. CIT(A) has confirmed the penalty reiterating the facts reported by the assessing officer.

7. During the course of appellate proceedings before us, the ld. counsel has filed adjournment application which was rejected for the reason mentioned in the quantum addition appeal filed by the assessee as adjudicated above vide ITA No. 146/Rjt/2014.

8. We have heard the ld. departmental representative and perused the material on record. It is noticed that in this case, the assessing officer has made aforesaid three additions since the assessee has failed to furnish the relevant details during the course of assessment proceedings because of such default the quantum addition is justified, however, for levy of penalty u/s. 271(1)(c), the assessing officer has to substantiate that assessee has concealed the particulars of his income or furnished inaccurate particular of income. The assessee has simply levied the penalty stating that there was no response from the assessee without substantiating that assessee has concealed the particulars of income. It is also noticed that ld. CIT(A) has simply upheld the order of assessing officer for levying penalty without stating the points for determination that assessee has concealed the particulars of income. In the light of the above fact, we consider that the

lower authority has not substantiated with relevant material and finding that assessee has furnished inaccurate particulars of income, therefore, the appeal of the assessee is allowed.

9. In the combined result, appeal ITA 146/Rjt/2014 is dismissed and appeal ITA 153/Rjt/2014 is allowed

Order pronounced in the open court on 23-09-2019

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 23/09/2019**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क० प्रतिलिपि अर्पण / 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