

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASSEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2360/Ahd/2017

(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Eden Healthcare Pvt. Ltd. 301, Abhishree Complex, Opp. OM Tower, Satellite Road, Satellite Ahmedabad- 380015	बनाम/ Vs.	ITO-2(1)(1), Room No- A/407, 4 th Floor, Pratyakshkar Bhawan, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAB CE4 032 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Tej Shah, AR
प्रत्यर्थी की ओर से / Respondent by :	Shri Rajdeep Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing	25/10/2019
घोषणा की तारीख /Date of Pronouncement	18/11/2019

आदेश/ORDER

PER MAHAVIR PRASAD - JM:

This appeal has been preferred by the assessee against the order of Ld. CIT(A)-2/455/ITO, Wd. 2(1)(1)/2016-17 dated 05.09.2017 arising out of assessment order dated 28.11.2016 and assessee has taken following grounds:

"1. The Hon'ble CIT(A) has erred in upholding the addition made by learned A.O. and has added Rs. 4,00,000/- to the income of assessee on account of share application money received during the year under consideration even though primary information & evidence i.e. PAN, ITR, Balance Sheet & Bank Statements were provided for verification. The ITO/CIT(A) neither rejected nor

investigated the documents. The addition is made merely on the basis of third party information.

2. The learned assessing officer has erred law. On the facts and circumstances of the case and in the law, the ITO/CIT(A) has erred in assessing the income of the appellant at Rs. 12,67,910/-, instead of Rs. 8,67,907/- returned. As such aggregate additions of Rs. 4,00,000/- may please be deleted.

3. The learned ITO/CIT(A) has not done any investigation on his own in order to establish the fact that the amount received by the assessee was bogus and has relied on secondary information received by him.

4. Even after submission of primary evidence & information for source of fund, identity, genuineness, & credit worthiness of payer by the assessee, the learned ITO/CIT(A) relied on third party statement which is not available on record. The addition made by L'd ITO/CIT(A) stands bad in law and is required to be deleted.

5. The CIT(A) has to interpret the law liberally in view of fact & materiality based on various judgments.

6. The appellant craves leave to add, alter or amend all the above grounds of appeals at or during the course of hearing."

2. Facts of the case are that the assessee filed its return of income for A. Y. 2009-10 on 12/09/200 declaring total income at Rs.8,67,910/-. The return was processed u/s. 143(1) of the Income Tax Act, 1961. Subsequently Ld. AO received an information from the ADIT (Inv.) Unit-1, Ahmedabad vide letter dated 18/03/2015 in respect of the assessee company having received amounts to the tune of Rs.4.00.000/- from one Shri Pratik Shah, Director of Sarang Chemicals Pvt. Ltd. An its group of companies viz. S. J. Securities Ltd. as accommodation entries. The details are as under:-

Date	Cheque No.	Bank Name	Paty's Name	Debit	Name of entry giving company
01/01/2019	171422	DCB Bank	Eden Health Care	4,00,000/-	S. J. Securities

As the assessee was a beneficiary recipient of funds by way of accommodation entry and hence the credits appearing in assessee

company's bank accounts from bogus concern of Shri Pratik Shah were required to be treated as unexplained cash credits. In view of the above facts, the reasons were recorded and notice u/s. 148 of the Act dated 07/09/2015 was issued and served to the assessee company.

In response to the above notice, the assessee vide its letter dated 13/01/2016 submitted to this office on 18/01/2016 filed its submission along with the copy return of income filed voluntarily u/s. 139(1) of the Act dated 12/09/2009 and requested to treat the same as return of income against the above notice. Due change of incumbent in the office a letter dated 25/07/2016 was issued to the assessee. Further the assessee vide this office letter dated 13/10/2016 was provided with the reasons recorded for reopening and the assessee was requested to file its objection, if any, against the reopening of the assessment. The assessee did not file the objection against the reasons recorded. Notice u/s. 143(2) of the Act was issued on 01.11.2016 and a show cause letter dated 01.11.2016 was issued to the assessee requesting it to show cause as to why the impugned addition as per the reasons recorded with regard to the accommodation entries amounting to Rs. 4,00,000/- received from M/s. S. J. Securities Ltd. should not be added to the total income of the assessee company.

In response to the above, neither the assessee nor its authorized representative attended and not filed any reply. In spite of several opportunities offered to the assessee, the assessee failed to furnish any reply in response to the above show cause notice. As the assessee failed to furnish any reply, the loan of Rs. 4,00,000/- by way of accommodation entry received from M/s. S. J. Securities Ltd. is treated as unexplained cash credit u/s. 68 of the Act and the same is added to the total income of the assessee company against the order of Ld. AO assessee preferred appeal before the Ld. CIT(A) who confirmed the action of the AO.

3. We have gone through the relevant record the impugned order in this case lower authorities made and confirmed addition of Rs. 4,00,000/- on account of so-called loan by way of accommodation entries received from M/s. S. J. Securities Ltd. The assessee could not appear before the Ld. AO and stated notice was not received by him but before the Ld. CIT(A) assessee submitted all the relevant details pertaining to cash credit of Rs. 4,00,000/- which were not examined by the Ld. CIT(A) for the reason best known him. But in the interest of justice we set-aside this matter to the file of the AO to decide the matter after considering all the details which have been filed before the Ld. CIT(A) or to be filed by the assessee, thereafter, Ld. AO will decide matter in accordance with law. We also direct the assessee not to seek unnecessarily adjournment in this case.

4. In the result, appeal filed by the assessee is allowed for statistical purpose.

This Order pronounced in Open Court on

18/11/2019

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad: Dated 18/11/2019

TANMAY

TRUE COPY

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।