

**आयकरअपीलीयअधिकरण, सुरतन्यायपीठ, सुरत**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**SURAT BENCH, SURAT**  
**BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**  
**आ.अ.सं./I.T.A No.299, 300 & 301/SRT/2019**

**निर्धारणवर्ष/Assessment Year: 2012-13, 2013-14 & 2014-15**

Ketan Sureshbhai Desai, 104, Gulmohar, Opp. Ridhhi Siddhi Appartments, Halar Road, Valsad-396001 [PAN: AASPD 5561 H]	Vs.	Income Tax Officer, Ward-2, Valsad.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent
निर्धारितकीओरसे /Assessee by	Shri Rajesh Upadhyay, AR	
राजस्वकीओरसे /Revenue by	Smt. Anupama Singhla, Sr. DR	
सुनवाईकीतारीख/ Date of hearing:	09.12.2019	
उद्घोषणाकीतारीख/Pronouncement on:	12.12.2019	

**आदेश /O R D E R**

**PER O.P.MEENA, AM:**

1. These three appeals filed by the Assessee is directed against the order of Ld. Commissioner of Income Tax (Appeals), Valsad [in short “the CIT(A)”] dated 30-03-2019 for the different assessment years 2012-13, 2013-14 and 2014-15 respectively.

**In I.T.A NO.300/SRT/2019/AY-2.13-14:-**

2. Ground no. 1 is against the reopening of assessment u/s.147 and issued of notice u/s.148 of the Act by the AO only on the basis of direction from ADIT, Valsad.

3. The ld. counsel referred the paper book at page 2 which is the copy of reasons recorded for reopening of assessment dated 31-10-2016 which states that as per information is possession with the

department. It is seen that the assessee has invested of Rs.4,99,588/- in cash with Bajaj Allianz Life Insurance Company Pvt. Ltd during the year under consideration i.e. financial year 2011-12 relevant to AY 2012-13. On verification of return of income filed on 31-03-2013, it is seen that the assessee has neither declared the said investments in his return of income nor shown the interest income. Therefore, the AO has reason to believe that the cash investment with Bajaj Allianz Life Insurance Company Pvt. Ltd was not offered for taxation, which resulted into escapement of income within the meaning of section 147 of the Act. The ld. counsel pointed out that the return of income dated 31-03-2013 filed by the assessee pertains to assessment year 2012-13 as reflected in paper book at page 3, hence the basis on which return has been examined by the AO is incorrect, therefore reopening of assessment is bad in law. Further, as per paper book at page 13 which is the reply to section 44AD of the Act, the investment in Insurance Policy was made out sum withdrawn from Sardar Bhiladwala Pardi Peoples Co-op. Bank Ltd., Bank account appearing in the name of M/s. S.M. Builders, which was submitted to the AO vide letter dated 24-08-2017. Therefore, reopening of assessment is not justified.

4. *Per contra*, the ld. SR. Departmental Representative (DR) submitted that from the information available in the department, the Insurance investment made in the Insurance Policy of Bajaj Allianz was not reflected in the return of income of the assessee. Therefore, the reopening of assessment has been correctly made. Further, that the

date of return of income filed in mentioned as 31-13-2013 is a typographical error whereas the amount of investment at Rs.9,99,362/- pertaining to the return of income for AY. 2013-14 has been correctly taken. Therefore, though there is a mistake in mentioning the date of return of income but the quantum as contains of escapement of income is same which should not be mentioned in the books of account, therefore reopening of assessment is in order.

5. We have heard the rival submissions and perused the relevant material available on record. We find that the return of income filed on 07-03-2014 which is wrongly mentioned as 31-03-2013 due to typographical error as the reasons were recorded. Simultaneously for the assessment year 2012-13 and 2014-15 and therefore the return pertaining to assessment year 2012-13 is wrongly considered for the date of return of income pertaining to assessment year 2013-14, whereas the amount of investment in Insurance Policy at Rs.9,99,362/- has been correctly mentioned. We further note that this amount of investment is not reflected in the return of income filed on 07-03-2014 for the assessment year under consideration. Therefore, the AO has reason to believe that income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act. In view of above these facts, we are of the considered opinion that reopening assessment is perfectly in order, therefore the same is upheld. Accordingly, this ground of appeal is therefore dismissed.

6. Ground no.2 is against the confirmation of addition of Rs.9,99,362/- being investment in Insurance policy of Bajaj Allianz Life Insurance Co. ignoring the fact that appellant has discharged his burden in terms of Section 69 of the Act and the issue has been decided against the assessee neither providing a copy of statement u/s.131 of ADIT, Valsad nor directing the AO to supply such statement and thereby violated principle of natural justice.

7. Brief facts of the case are that the assessee made investment of Rs.9,99,362/- in the Insurance policy of Bajaj Allianz during the assessment year under consideration. The assessee has explained that this said investment is made out of sum withdrawn from Sardar Bhiladwala Pardi Peoples Co-op. Bank Ltd, bank account no. 1100/556 in the name of M/s. S.M. Builders. The assessee claimed that he had withdrawn in cash from the said bank account a sum of Rs.28,26,000/- in August, 2011 and the said sum was kept with him out of which investment to Rs.9,99,362/- was made in Bajaj Allianz Insurance Pvt. Ltd. In support of this, the assessee is filed a copy of bank statement of the said bank account reflecting the withdrawals made in cash. However, the AO was not convinced with the explanation on the ground that in the assessee himself admitted in his statement recorded on u/s.131 of the Act that he had purchased the Insurance Policies of Bajaj Allianz in cash, which are not recorded in the books of account and the same is unaccounted investment made out of undisclosed sources of his profession. Further, the assessee has made withdrawals

from the business of M/s. S.M Builders in the month of August, 2011 and investment was made in Bajaj Allianz on 23-11-2012 and 19-01-2013. Therefore, no businessmen would keep cash in his hand after withdrawing the same with the loss of interest. Hence, the explanation furnished by the assessee is afterthought, therefore the AO treated the said amount of Rs.9,99,362/- as unexplained investment u/s.69 of the Act.

8. Being aggrieved, the assessee carried the matter before the CIT(A), wherein same submissions were made. It was contended that the AO has not recorded statements u/s.131 of the Act from the assessee. Secondly, there is no admission from the assessee before the AO. Thirdly, even if, he has recorded the statement then also it is during the assessment proceeding which is subsequent to reopening. Further, copy of such statement has not been provided to the assessee by the AO, therefore, there is no legal sanctity for making addition. With regard to investment of Rs.9,99,362/- made in respect of the Insurance policies, it was submitted that the assessee is one of the partners in the firm of M/s. S.M. Builders. The assessee is looking after entire business activities to the financial affairs etc., and he is also keeping cash firm with him. The firm had an account of M/s. S.M. Builders with Sardar Bhiladwala Pardi People Co-op. Bank from which the assessee has made cash withdrawals of Rs.28,26,000/- in August, 2011 and sum out of same investment was made of Rs.9,99,362/- in Bajaj Allianz Life Insurance Company Pvt. Ltd. The assessee also filed

income tax return and bank statement and balance sheet as on 31-03-2013. In support of his claim, it was further claimed that accountant had made mistake in not recording the entries of..... the books of account which was due to inadvertence. Further, provision of section 69 can be invoked if any financial year, the assessee made investment and such statement is not recorded in the books of account and there is no explanation from the assessee about the nature of sources as such investment. In the case of assessee, the only two conditions are satisfied and therefore section 69 cannot be invoked. However, the CIT(A) observed that the assessee is not filed any evidence to substantiate the claim that M/s. S.M. Builder's cash balance could have been available with the appellant for personal use and said case was used for investment in Insurance Policy for his personal name and further the assessee has admitted in his statement u/s.131 before ADIT, that cash payment for purchase of Bajaj Allianz policy was unaccounted. Accordingly, addition was confirmed.

9. Being aggrieved, the assessee has filed this appeal before this Tribunal. The ld. counsel contended that it is undisputed to fact that the assessee is partner in M/s. S.M. Builders and he is keeping cash of firm with him. He has filed a copy of bank account of Sardar Bhiladwala Pardi Peoples Co-op. Bank Ltd., Valsad Branch which is placed at paper book page 20 showing the cash withdrawals amounting to Rs.28,26,000/- from the said bank account no. 11000/556 during August, 2011. The ld. counsel also referred paper book at page 18

which is the copy of a balance sheet of M/s. S.M. Builders as on 31-03-2013, accordingly to which cash in hand has been shown at Rs.45,99,337/-. The ld. counsel contended that out of cash withdrawals, the investment in insurance policy of Bajaj Allianz Insurance Company Pvt. Ltd was made. As no interest is received for the year under assessment, hence it is not been shown in the return of income. It was also submitted that the accountant of the assessee as has made mistake in not making entry of the said investment because of reasons that the balance sheet of the firm as on 31-03-2013 reflected cash of Rs.45,99,337/-. There is no finding by the AO that the said cash utilized by the firm or any of its partner elsewhere. In view of above, the said bank account with M/s. S.B. Pardi Co-op Bank Ltd., is disclosed bank account by the firm in its books of account. Thus, the addition sustained by the ld. CIT(A) u/s.69 is not sustainable in law. As the assessee has furnished an explanation regarding nature of source of investment, further the copy of statement recorded u/s.131 of the Act by the ADIT was not supply to the assessee, therefore there is a violation of natural justice and statement without making aware of the assessee. Hence, the addition is not sustainable in the light of decision in the case of Andaman Timber Industries v. CIT (2015) (SC).

**10.** *Per contra*, the ld. Sr. DR supported the order of the lower authorities and submitted that no prudent businessmen keeps cash at

his residence, idly for show long period and same is also no evidence by the entries recorded in the books of account of the firm.

**11.** We have heard the rival submissions and perused the relevant material available on record. We find that the assessee is one of the partner in M/s. S.M. Builders and was looking after the personal affairs of the firm, the said firm was having its bank account with S.B. Pardi Peoples Co-op. Bank Ltd. It is seen from the copy of bank account, that an amount of Rs.28,26,000/- has been withdrawn in the month of August, 2011 in cash. It is not contention of the assessee that out of the said cash withdrawals the investment in insurance company amounting to Rs.9,99,362/- has been made. However, the AO disputed the explanation on the ground that there is time gap in withdrawals and investment. However, we observed that the AO has also not brought an evidence to suggest that cash withdrawals made by the firm were utilized elsewhere by the said firm. The balance sheet of the S.M. Builders reflects cash in hand of Rs.45,99,337/- meaning thereby that the firm was keeping the cash in hand, the substantial amount. Since, it is the case not the AO that assessee is not partner of the assessee and S.M. Builders. Therefore, in cash of firm only partner is keeping cash with him. In such the situation and surrounding circumstances the explanation of the assessee cannot be negated. Further, in the statement recorded u/s.131 of the Act, the assessee has admitted that he has made cash investment for purchasing the insurance policy of Bajaj Allianz. Since, the assessee was having cash

balance available with him its withdrawals from the firm, therefore this fact is against the statement of the assessee recorded by the ADIT. Further, in statement, the assessee has above stated that investment is in cash. This is correct as investment is made in cash, but when source of cash available, there cannot be considered as unexplained. Mere not regarding entry in the books does not *per se* allowed to an investment made by the assessee as unaccounted. Whereas, there are corroborative evidence of cash withdrawals from the firm and availability of the cash with the firm. Therefore, the explanation of the assessee needs to be accepted, unless same is found contrary to the facts on record. Further, before relying on the statement the AO was required to supply a copy of statement to the assessee but having not done so, the principle of natural justice is violated. Considering these facts, we are of the considered opinion that the assessee has satisfactory explained the source refers the investment made in the insurance policy is treated as explained therefore, the addition made by the AO is not justified. Accordingly, same is deleted.

**12.** Ground no. 3 is against the confirmation of Rs.30,000/- made by the AO on account of foreign tour to Dubai in cash without providing any details, evidences and a copy of statement u/s.131 of the ADIT, Valsad.

**13.** The AO noted that the assessee has admitted in his statement u/s.131 of the Act that he had expended of Rs.30,000/- for foreign

tour to Dubai which are not recorded in his books of account. Hence, sums were added an unaccounted expenditure.

**14.** Being aggrieved, the assessee carried the matter before CIT(A), wherein it was submitted that the foreign tour expenses were incurred at Rs.66,000/- which were shown in the proprietary concern M/s. R. Construction for which details for the AO and same not were considered in the assessment order. It was submitted that copy of ledger account of Roshan Construction shows that withdrawal of Rs.33,000/- each on 07-09-2012 and 17-10-2012 which were claimed by the assessee as withdrawal for foreign tour expenses. However, the CIT(A) confirmed the addition, the assessee made admission in his statement as unexplained expenditure.

**15.** Being aggrieved, the assessee filed this appeal before Tribunal. The ld. counsel submitted that the said expenditure were incurred from Union Bank of India account no.369901010028085, Mota Bazar, Valsad, which is showed that a cheque no. 087500 was issued on 17-10-2012 for Rs.33,000/- and another cheque cheque no. 087522 was issued on 17-10-2012 for Rs.33,000/-. Both these sums are accounted for in his capital account and in his proprietary account M/s. Roshan Construction. Therefore, the CIT(A) was not justified in sustaining the addition merely basis of statement of the assessee recorded before ADIT of which copy was not provided to the assessee.

**16.** *Per contra*, the ld. Sr. DR relied on the order of the lower authorities.

**17.** We have heard the rival submissions and perused the relevant material available on record. The perusal of ledger account placed at paper book page at 11 shows that the assessee withdrawn an amount of Rs.33,000/- on 07-09-2012 and another Rs.33,000/- on 17-10-2012 from Union Bank of India by cheque. These are reflected in the bank account maintained in respect of M/s. Roshan Construction, a proprietary concerned of the assessee. Therefore, source of expenditure to foreign tour expenditure is explained and justified. Therefore, the same cannot be added as unaccounted expenditure of the assessee. Accordingly, the addition sustained by the CIT(A) is deleted.

**18.** This ground of appeal of the assessee is allowed.

**In I.T.A No. 299/SRT/2019/AY-2012-13:-**

**19.** Ground no.1 is relates to reopening of assessment u/s.147 and issued of notice u/s.148 of the Act.

**20.** We have heard the rival submissions and find that the facts are identical as per assessment year 2013-14. Therefore, our finding would apply for this year also wherein we have dismissed this ground. Hence, this ground of appeal accordingly dismissed, following said findings.

**21.** Ground no.2 is against confirmation of addition of Rs.4,99,588/- being investment in insurance policy of Bajaj Allianz Life Insurance Company.

**22.** We have heard the rival submissions and perused the material available on both parties have agreed that the facts are identical as

per assessment 2013-14 as discussed in ground no.2 of the said appeal in earlier part of this order. Therefore, our finding as given in the assessment year 2013-14 would apply to this ground also, accordingly following the same this ground of appeal is allowed in favour of the assessee.

**23.** Ground no.3 is against not allowing deduction u/s.80C of the Act of the Act for Rs.1 lakh without there being any discussion in his body of appellant order.

**24.** We have heard the rival submissions and perused the material available on record. We are of the view that if the assessee is eligible making investment and claiming deduction u/s.80C, the same cannot be denied, therefore, the AO is directed to allow the same after verification.

**25.** In the result, the appeal of the assessee is partly allowed.

**In I.T.A. No. 301/SRT/2019/AY-2014-15:-**

**26.** Ground no.1 is relates to reopening of assessment u/s.147 and issue of notice u/s.148 of the Act, on the basis of direction from ADIT, Valsad.

**27.** We have heard the rival submissions and find that the facts are identical as per assessment year 2014-15. Therefore, our finding would apply for this year also wherein we have dismissed this ground. Hence, this ground of appeal accordingly dismissed, following said findings.

**28.** Ground no.2 is against confirmation of addition of Rs.4,96,324/- being investment in insurance policy of Bajaj Allianz Life Insurance Company.

**29.** We have heard the rival submissions and perused the material available on both parties have agreed that the facts are identical as per assessment 2014-15 as discussed in ground no.2 of the said appeal in earlier part of this order. Therefore, our finding as given in the assessment year 2014-15 would apply to this ground also, accordingly following the same this ground of appeal is allowed in favour of the assessee.

**30.** In the result, the appeal of the assessee is partly allowed.

**31.** In the result, the appeals of the assessee in ITA No. 299/SRT/2019/AY-2012-13 is allowed and in ITA No. 300/SRT/2019/AY-2013-14 & ITA No. 301/SRT/2019/AY-2014-15 are partly allowed.

**32.** Order pronounced in the open court on 12-12-2019.

Sd/-  
**(SANDEEP GOSAIN)**  
**JUDICIAL MEMBER**

Sd/-  
**(O.P.MEENA)**  
**ACCOUNTANT MEMBER**

सुरत/ Surat, दिनांक Dated: 12<sup>th</sup> December, 2019/ S. Samanta, PS  
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**// TRUE COPY //**

**By order**

**Assistant Registrar, Surat**