

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, AHMEDABAD  
[CONDUCTED THROUGH VIRTUAL COURT]**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. Nos. 1094&1095/Ahd/2015  
(Assessment Years: 2007-08&2008-09)

Shri Vikram Shantilal Patel  
13/B, Sanmati Society,  
Akota, Baroda-10

Vs. The Income Tax Officer  
Ward-2(6), Aayakar Bhawan  
Baroda

[PAN No. ACQPP7443J]

(Appellant)

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(Respondent)

**Appellant by :** Shri Manish Shah, AR  
**Respondent by :** Shri Vidhyut Trivedi, Sr. DR

**Date of Hearing** 27.05.2020  
**Date of Pronouncement** 08.06.2020

ORDER

**PER Ms. MADHUMITA ROY - JM:**

Both the appeals filed by the assessee are directed against the orders both dated 19.12.2014 passed by the Commissioner of Income Tax (Appeals) – 5, Vadodara for Assessment Years 2007-08 & 2008-09 respectively. Since the issues involved in these two appeals are identical and of the same assessee, these are heard analogously and are being disposed of by a common judgment.

**ITA No. 1094/Ahd/2015 (A.Y. 2007-08) is taken as a lead case.**

2. At the time of hearing of the instant appeal the Ld. Advocate appearing for the assessee submitted before us that he does not want to press

Ground No. 1 relating to reopening of assessment under section 147 of the Income Tax Act, 1961 (hereinafter referred as to 'the Act'). Hence, the Ground No. 1 is dismissed as not pressed.

3. The next effective ground is against the confirmation of addition made by the Ld. AO in treating unsecured loan of Rs. 10,50,000/- as unexplained cash credit under section 68 of the Act upon rejection of the evidences filed by the appellant.

4. During the assessment proceeding the assessee was directed to furnish confirmation along with proof of source of income of the persons from whom unsecured loans of Rs. 10,50,000/- was obtained by the assessee. However, as it appears from the order passed by the Ld. AO that in the absence of any supporting document in the form of return of income, bank statement etc. by the assessee in order to establish the identity, creditworthiness of the depositor and the genuineness of the transaction, the matter was decided against the assessee. In appeal the appellant submitted the copy of confirmations from all the parties along with the bank statement. However, those additional evidences filed before the Ld. CIT(A) were rejected in the absence of any plausible explanation forthcoming from the assessee for not producing the same before the Ld. AO, holding it violative of Rule 46A; resultantly addition was confirmed.

5. At the time of hearing of the instant appeal, the Ld. Counsel appearing for the assessee has taken us to the additional evidences so filed before the First Appellate Authority, annexed to the Paper Book filed before us being the bank statement of those different parties which was obtained by

the assessee subsequent to the assessment order. Further that the details of unsecured loans in respect of 11 parties available at Page 1 of the Paper Book; the payment made therein through cheque is also evident from the said documents. It was further submitted by the Ld. Advocate appearing for the assessee that all those parties are willing to appear before the authorities below for examination and hence he prays for setting aside the issue before the Ld. AO. On this ground the Ld. AR also relied upon the judgment passed by the Supreme Court in the matter of Basir Ahmed Sisodia vs. Income Tax Officer, reported in [2020] 116 taxmann.com 375 (SC), the judgment passed by the Delhi Bench in the matter of Padam Lal Dua vs. Income Tax Officer, reported in [2016] 76 taxmann.com 354 as well.

The Ld. DR, with all his fairness, though relied upon the order passed by the authorities below, not raised serious objection to such of the prayer made by the Ld. AR.

6. We have heard the parties and perused the relevant materials available on record.

We have carefully considered the judgment passed by the Supreme Court in the matter of Basir Ahmed Sisodia vs. ITO wherefrom it appears that upon perusal of the explanation offered by way of an affidavit and the statement of the concerned unregistered dealers recorded during the penalty proceedings establishing their identity and creditworthiness, though penalty was imposed but no negative observation was made by the appellate authority, not only penalty was deleted but also the addition made under Section 68 of the Act towards cash credit amount shown against the name of

concerned unregistered dealers has been set-aside by the Hon'ble Apex Court. We have further carefully considered the judgment passed in the matter of Padam Lal Dua vs. ITO where denial of providing opportunity to produce the additional evidences though not through appropriate application under Rule 46A, has been termed as arbitrary. We, therefore, taking into consideration the entire aspect of the matter particularly the documents annexed to the Paper Book in support of the case made out by the assessee in respect of the unsecured loan obtained from 11 parties and the payment made to those parties and the ratio laid down by the judgments cited above, of the considered opinion for the ends of justice to remit the issue to the file of the Ld. AO to decide the same afresh in accordance with law, upon giving an opportunity of being heard to the assessee and upon taking into consideration the evidence on record and any other evidence which the assessee may choose to file at the time of hearing of the matter and also upon examining the parties as narrated hereinbefore, if required. Thus, this ground of appeal allowed for statistical purpose.

7. The next ground of appeal relates to disallowance of interest of Rs. 2,36,791/- under section 40(a)(ia) of the Act rejecting the evidences filed by the appellant.

During the course of assessment proceeding, it appears, that the assessee has paid interest of Rs. 2,36,791/- to various persons. But the TDS whereupon was not paid; neither the details of TDS was filed by the assessee. Finally the AO disallowed Rs. 2,36,791/- as interest expenses under section 40(a)(ia) of the Act for non-fulfillment of TDS provision. In appeal the appellant filed copies of Form 15G received from those parties

for non-deduction of TDS as their income is below taxable limit; as such those parties were agriculturists and not assessed to Income Tax Act. However, the said copies of Form 15G since not filed before the AO the same was not accepted as additional evidences under Rule 46A by the Ld. CIT(A) and finally addition was confirmed.

8. We have heard the parties and perused the relevant materials available on record.

In our considered opinion this is a fit case to send the issue to the file of the Ld. AO for deciding the same afresh in accordance with law by providing an opportunity of hearing to the assessee who has been denied justice without any cogent reason. We do not indulge the manner in treating the assessee by the Ld. CIT(A) in view of the ratio laid down by the Hon'ble Apex Court in the case of Basir Ahmed Sisodia vs. ITO as well as Hon'ble Delhi Bench in the case of Padam Lal Dua vs. ITO as already narrated hereinabove. We thus, taking into consideration the entire aspect of the matter, find it fit and proper to remit the issue to file of the Ld. AO to decide the same afresh in accordance with law, upon taking into consideration the evidence on record and any other evidence which the assessee may choose to file at the time of hearing of the matter and upon giving an opportunity of being heard to the assessee. This ground of appeal is, thus, allowed for statistical purpose.

**ITA No. 1095/Ahd/2015(A.Y. 2008-09):-**

9. The issue involved in the particular case is identical to that of the issue already decided by us in favour of the assessee in ITA No.

1094/Ahd/2018 for A.Y. 2007-08 and in the absence of any changed circumstances the same shall apply *mutatis mutandis*. Hence, the same is allowed for statistical purpose.

10. In the combined result, assessee's appeal is allowed for statistical purpose.

<b>This Order pronounced in Open Court on</b>	<b>08/06/2020</b>
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Sd/-  
(WASEEM AHMED)  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 08/06/2020  
TANMAY, Sr. PS

Sd/-  
(Ms. MADHUMITA ROY)  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad