

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH

**Before: Shri Rajpal Yadav, Vice President
And Shri Amarjit Singh, Accountant Member**

**ITA No. 985/Ahd/2016
Assessment Year 2010-11**

Balkrishna Purshottamdas Patel, S-56/57, Badami Coal Compound, Municipal Industrial Estate, Opp. SBI, Bapunagar, Ahmedabad-380024 PAN: AAXPP3082C (Appellant)	Vs	The Dy. CIT, Circle 11, Ahmedabad (Present jurisdiction with DCIT, Circle- 5(3), Ahmedabad (Respondent)
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**Revenue by: Shri Virendra Singh, Sr. D.R.
Assessee by: Shri Sakar Sharma, A.R.**

Date of hearing : 07-09-2020
Date of pronouncement : 07-10-2020

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal for A.Y. 2010-11, arises from order of the CIT(A), Ahmedabad-5, dated 23-03-2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has raised following grounds of appeal:-

- “1. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 14,137/- u/s. 14A of the Act.
2. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 22,85,528/- on account of alleged unexplained investment in land u/s. 69 of the Act in spite of availability of evidence that such investment was made by co-owner and not by the appellant.

3. *The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 2,55,500/- on account of alleged unexplained cash credits u/s. 68 of the Act."*

3. The fact in brief is that return of income declaring total income of Rs. 4,25,230/- was filed on 5th October, 2020. The case was subject to scrutiny assessment and order u/s. 143(3) of the Act was finalized on 28th March, 2013. The relevant facts as per the issues contested in the grounds of appeal are discussed as under:-

Ground No. 1 (Addition of Rs. 14,137/- u/s. 14A of the Act)

4. During the course of assessment, the Assessing Officer stated that assessee has shown exempt income as dividend of Rs. 3,35,994/- from investment made in shares and securities and claimed interest expenditure of Rs. 10,28,811/-. However, the assessee has not made any disallowance of expenditure incurred on earning exempt income u/s. 14A of the Act, therefore, the Assessing Officer has computed expenditure to the amount of Rs. 14,137/- attributable towards earning exempt income u/s. 14A as per rule 8D of I.T. Rule, 1962.

5. Aggrieved assessee filed appeal before the Ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee stating that Assessing Officer has correctly applied section 14A of the Act.

6. We have heard the rival contention and perused the material on record. It is noticed that Assessing Officer has incorrectly taken exempt income as Rs. 3,35,994/- while disallowing Rs. 14137/- u/s. 14A of the Act. However, the amount of Rs. 3,35,994/- was represented as investment made by the assessee as on 31-03-2010. We have gone through the paper book furnished by the assessee comprising annual account showing investment of Rs. 4,12,451/- and as on 31st March, 2009 and investment of Rs. 3,35,994/- as on 31st March, 2010. The total

exempt income of dividend was shown at Rs. 4,206/- only. The assessee has not furnished any other evidences to substantiate that no expenditure including administrative expenditure was incurred towards earning except income. We observe that lower authority has incorrectly computed the disallowance u/s. 14A r.w.r. 8D of the Act, therefore, we restrict the disallowance to the extent of dividend income of Rs. 4,206/- earned by the assessee. Accordingly, this ground of appeal of the assessee is partly allowed.

Ground No. 2 (Addition of Rs. 22,85,528/- u/s. 69 of the Act)

7. During the course of assessment, the Assessing Officer noticed that assessee has made investment in immovable property at an amount of Rs. 1,08,85,128/- jointly with Shri. Rashmikant C. Patel and Chandrikaben Rashmikant Patel. The share of the assessee in the property was of 50% which computed at Rs. 54 lacs.

8. During the course of assessment, the assessee could only explained the payment of Rs. 10 lacs made on 27th October, 2009. Therefore, the remaining amount of Rs. 44 lacs was treated as unexplained investment by the Assessing Officer and added to the total income of the assessee.

9. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has partly allowed the appeal of the assessee. The relevant part of the decision of Ld. CIT(A) is reproduced as under:-

“3.10.1. During the course of appellate proceedings, the appellant has contended that he has acquired immovable property for a consideration of Rs. 1,08,85,528/- vide purchase deed dtd. 29.10.2009. It is further submitted that as per purchase deed the appellant has 50% share in the said property and remaining 50% share is equally shared by remaining two individuals. The appellant has further contended that out of the total consideration of Rs. 1,08,85,528/- an amount of Rs.10 lakhs was paid directly by the appellant and balance of Rs.98,85,528/- has been paid by the remaining two co-owners from their bank accounts. It is further submitted that the appellant paid Rs. 24 lakhs by cheque No.85652 dtd. 7.10.2008 drawn on SRI, Bapunagar branch to one of the co-owners ShriRashmikant C. Patel who in turn made payment to the land owner from his

bank account. It is also contended that out of total consideration an amount of Rs.34 lakhs has been born by the appellant and which was explained to the AO. It is further submitted that in the present case not only the appellant has explained the sourced of investment but has also explained the investment made by him including source thereof which is also recorded in the book of accounts and therefore provisions of Section 69 have no application in the present case. The appellant has relied upon the following decisions :-

Dhakeshwari Cotton Mills 26 ITR 775 (SC)

Natu Ram PremchandVs.CIT 49 ITR 561 (All)

Kamdhenu Steel & Alloys Ltd. 206 Taxman 254 (Delhi HC) Audobindo Sanitary Stores Vs. CIT 276 ITR 549 (Ori)

The appellant has also contended that out of total investment of Rs. 1,08,85,528/-, an amount of Rs.76 lakhs was made in earlier years and amount of Rs.32,82,528/- was made during the year. Out of which Rs.22,85,528/- were invested by Shri Rttshmikant C. Patel to whom appellant had advanced a sum of Rs.24 lakhs in earlier years.

3.10.2. The facts of the case, submissions of the appellant and remand reports from the A.O. are considered. The appellant has mainly contended that source of the investment is explained and recorded in the books of accounts. It is also the contention of the appellant that out of total investment an amount of Rs.76 lakhs was made in earlier years and representing opening investment, therefore, cannot be considered for the purpose of invoking provisions of Section 69 of the Act. The AO has considered investment of Rs. 10 lakhs as explained and made addition of balance amount of Rs.44 lakhs on the ground that the assessee has failed to explain the source of that income. From the details furnished by the appellant, it is found that the appellant has said Rs.24 lakhs to the other co-owner Shri Rashmikant C. Patel in earlier year and paid Rs.10 lakhs to the seller during the year. It is further found that during the year only investment was made of an amount of Rs.32,85,528/-. The contention of the appellant that out of this Rs.22,85,528/- were invested by Shri Rashmikant C. Patel to whom appellant had advanced a sum of Rs.24 lakhs in earlier year cannot be accepted as the assessee has advanced the amount of Rs.24 lakhs in earlier years and not during the year. Therefore, the assessee has failed to explain the source of investment of Rs.22,85,528/- made during the year by the appellant, hence addition of Rs.22,85,528/- is confirmed and balance is deleted. Thus, the ground No.3 is partly allowed.”

10. We have heard the rival contention and perused the material on record. During the course of assessment, the Assessing Officer noticed that assessee has made investment in immovable property at an amount Rs. 1,08,85,528/- jointly with Sh. Rashmikant C. Patel and Smt. Chandrikaben Rashikant Patel. The share of the assessee in the property was 50% and accordingly, the Assessing Officer has computed the share of investment to the amount of Rs. 54 lacs. During the course of assessment, the assessee could not substantiate with supporting evidences the source of investment of Rs. 54 lacs made in the said immovable property. The assessee could only explain the payment of Rs. 10 lacs made on 27th October, 2009. Therefore, the Assessing Officer has added Rs. 44 lacs to the total income of the assessee as unexplained investment made by the assessee in the immovable property. At the time of appellate proceedings before the Id. CIT(A),

the assessee claimed that he had paid Rs. 24 lacs by cheque dated 7th October, 2008 to one of the co-owner Shri Rashmikant C. Patel who had made further payment to the land owner from his bank account. The assessee has also submitted that out of total investment of Rs. 1,08,85,528/- payment of Rs. 76 lacs was made in earlier years and the remaining amount of Rs. 32,82,528/- was only paid during the year under consideration. Therefore, it was contended that Rs. 76 lacs was opening investment made in the earlier years which cannot be added u/s.69 of the Act during the year under consideration. In the light of the above facts and circumstances, we observe that assessee had tried to explain the part investment made out of Rs. 76 lacs in the earlier years which had already been deleted by the Id. CIT(A). However, in respect of payment made during the previous year relevant to the year under consideration, the assessee had only explained the source of payment of Rs. 10 lacs out of the total amount of payment of Rs. 32,82,528/-. In view of the above facts, we consider no error in the decision of Id. CIT(A) in restricting the addition to the extent of Rs. 22,85,528/- since the assessee had failed to substantiate the source of this investment during the year under consideration. Accordingly, this ground of appeal of the assessee is dismissed.

Ground No. 3 (Addition of Rs. 2,55,500/- u/s. 68 of the Act)

11. During the course of assessment, the Assessing Officer noticed that assessee has shown an amount of Rs. 2,24,13,254/- as unsecured loan taken from various parties. During the course of assessment, the Assessing Officer has asked the assessee to furnish the details of unsecured loan along with supporting evidences to prove the genuineness of the said transactions. The Assessing Officer stated that till the passing of assessment order, the assessee had not submitted the details called for therefore he had treated the entire amount of Rs. 2,24,13,254/- as unexplained investment.

12. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has restricted the disallowance to the extent of Rs. 2,55,500/-. The relevant part of the decision of Id. CIT(A) is as under:-

“3.11.2. The facts of the case, submissions of the appellant and remand reports from the A.O are considered. From the details furnished by the appellant, it is very much clear that out of total deposits of Rs.2,24,13,254/-, an amount of Rs.2,14,28,772/-represents opening balances. The AO has not accepted the appellant's claim on the ground that the assessee has not furnished any such details like ledger account of these unsecured loans, copy of audit reports or abstracts of books of account pertaining to previous year indicating these transactions having taken place. The appellant has furnished the ledger account and both copy of account appearing in the books of the appellant as well as contra accounts of creditors. In the remand report, the AO has stated that letters u/s. 133(6) of the Act sent to all the creditors returned unserved which shows that these transactions are not genuine. In this regard the appellant has contended, that most of these letters were issued by the A.O. on the date of passing of the assessment order or thereafter therefore ought not to have taken an adverse view in respect of these cash credits. A perusal of remand report shows that most of these letters were issued either on 29.03,2013 or 30.03.2013 whereas the assessment order has been passed on 28.03.2003. According to Section 68 of the Act, any sum found credited in the books of the assessee maintained for any previous year may charge to income-tax as income of the assessee of that previous year if-

(i) The assessee offers no explanation about the nature of source of such sum, or

(ii) The explanation offered by him is, in the opinion of the AO not satisfactory.

Here in the instant case credits of Rs.2,14,28,772/- were taken by the assessee in earlier years. In the relevant previous year the assessee has shown only opening balance of these credits. These credit entries did not relate to the year under consideration for being considered u/s.68 of the Act. The AO could have enquired the genuineness of the credits in the year the assessee took them and could have made addition u/s.68 of the Act in that year if not found genuine.

Considering the provisions of the section and the decisions cited by the appellant, the addition of Rs.2,14,28,772/- which represents opening balances is deleted.

3.11.3 With regard to addition of Rs.9,34,570/ which represents interest credited on old loans during the year the contention of the appellant that a separate addition has been made for the interest credited during the year and this addition amounts to double taxation is acceptable. Therefore, addition of Rs.9,34,570/- is also deleted.

3.11.4 The addition of balance amount of Rs.2,55,500/- which represents new deposits during the year, the contention of the appellant is not acceptable as the assessee has failed to prove the genuineness, creditworthiness of the transactions, Hence the same is confirmed.”

13. During the course of assessment, the Assessing Officer has added the entire amount of unsecured loan of Rs. 2,24,13,254/- stating that on the date of passing order the assessee has not furnished the supporting evidences and information to prove the genuineness of the loan transaction. During the course of appellate proceedings before the Id. CIT(A), the assessee has explained along with supporting details that unsecured loan amount of Rs. 2,14,28,772/- pertained to opening balance as on 01-04-2009 which cannot be added u/s. 68 of the Act.

After necessary verification and considering the remand report of Assessing Officer, the Id. CIT(A) has deleted the opening balance of Rs. 2,14,28,772/- which was incorrectly added by the Assessing Officer u/s. 68 of the Act. However, the Id. CIT(A) has restricted the addition to the extent of loan amount of Rs. 2,55,500/- obtained by the assessee during the year under consideration. We have gone through the paper book furnished by the assessee comprising copies of confirmation letter, identity of the lender, ledger account of the depositors placed at pages 50 to 99 of the paper book. However, the Assessing Officer has not made any verification and inquiry to disprove the correctness of the information furnished by the assessee. The Id. CIT(A) has also not given any reasons and findings in support of his decision to restrict the addition in respect of loan amount of Rs. 2,55,500/- obtained during the year under consideration. We consider that the decision of Id. CIT(A) is not justified, therefore, this ground of appeal of the assessee is allowed.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 07-10-2020

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT
Ahmedabad : Dated 07/10/2020

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद