

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH

(Virtual Court)

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

**ITA No. 1893/Ahd/2014
Assessment Year 2009-10**

Sarfarazkhan Sarvarkhan Pathan, Ahmedabad PAN: ACRPP5552H (Appellant)	Vs	The ITO, Ward-7(1), Ahmedabad (Respondent)
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**Revenue by: Shri S.S. Shukla, Sr. D.R.
Assessee by: Shri P.D. Shah, A.R.**

Date of hearing : 27-01-2021
Date of pronouncement : 22-03-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal for A.Y. 2009-10, arises from order of the CIT(A)-XIV, Ahmedabad dated 28-03-2014, 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. That the learned Commissioner of Income Tax (Appeals) has erred in law and facts by confirming the action of the passing of the assessment, which is against natural justice order and therefore the order passed by the learned AO is required to quashed.

2. That the learned Commissioner of Income Tax (Appeals) has erred in law and facts by confirming the addition to the extent of Rs.51,66,058/- u/s 68 of the Act and therefore the learned Assessing officer be directed to delete the addition u/s 68 while computing the total income.

3. That the learned Commissioner of Income Tax (Appeals) has erred in law and facts by confirming the addition to the extent of Rs. 50,09,528/- as unexplained investment u/s 69B of the Act and therefore the learned Assessing officer be directed to delete the addition u/s 69B while computing the total income.

4. That the learned Commissioner of Income Tax (Appeals) has erred in law and facts by confirming the addition to the extent of Rs. 3,18,20,663/- out of Sundry Creditors and therefore the learned Assessing officer be directed to delete the addition while computing the total income.”

3. The brief fact of the case is that return of income declaring total income at Rs. 4,91,619/- was filed on 28th August, 2009. The case was subject to scrutiny assessment. A notice u/s. 143(2) of the Act was issued on 27th August, 2010. The relevant facts pertaining to the issues contested in the appeal are discussed while adjudicating grounds of appeal filed by the assessee as follows:-

Ground No. 1 (is of general nature)

4. During the assessment, the Assessing Officer has provided a number of opportunities to the assessee including issues of show cause notices. However, the assessee has failed to furnish requisite detail and explanation to discharge his onus for various issues during the course assessment proceedings. Therefore, we do not find any infirmity in the decision of Id. CIT(A) holding that sufficient number of opportunities were granted to the assessee before finalization of assessment, therefore, this ground of appeal of the assessee stands dismissed.

Ground No. 2 (Addition to the extent of Rs. 51,66,058/- u/s. 68 of the Act)

5. During the course of assessment, the Assessing Officer has repeatedly asked the assessee to furnish evidence like name, PAN, identification, copy

of return of income, bank account/statement and confirmation in respect of all unsecured loans. But no such details were submitted by the assessee during the course of assessment proceedings. Consequently, the Assessing Officer has made addition of Rs. 3,32,87,504/- of the amount credited in the books of account of the assessee pertaining to unexplained loan. During the course of appellate proceedings before Id. CIT(A) the assessee has submitted additional evidences for the reason that because of search action conducted by DRI (Department of Revenue Intelligence) on 12th Nov, 2011 at assessee premises, he could not submit the detail. The Id. CIT(A) has accepted the additional evidences furnished by the assessee under rule 46A of the Income Tax Rule. A remand report was called from the Assessing Officer. In the remand report, the Assessing Officer has accepted the contention of the assessee that there was opening balance of unsecured loan to the amount of Rs. 1,69,17,281/- which was comparable from the balance sheet of the assessee for assessment year 2008-09. The Assessing Officer has also reported that M/s. Alka India Ltd. one of the lenders has also furnished form of contra-account and also confirmed that it had made transaction with the assessee company. The Assessee has submitted name, address, PAN, confirmation and the unsecured loan to the amount of Rs. 71,040/- was accepted through cheque after taking into consideration the remand report of the Assessing Officer. The Id. CIT(A) has deleted the addition of the aforesaid amount totaling to Rs. 2,81,21,446/- (Rs. 1,69,17,281+ Rs. 1,11,33,125/- +Rs. 71040/-), therefore, Id. CIT(A) has upheld the addition to the extent of Rs. 51,66,058/-.

Ground No. 3(Addition to the addition to the extent of Rs. 50,09,528/- as unexplained investment u/s. 69 of the Act)

6. During the course of assessment, the Assessing Officer has repeatedly asked the assessee to furnish the detail of source of investment of Rs. 45,06,20,441/- in stock exchange. During the course of assessment, the assessee has not explained the nature of share transaction along with supporting material. As per the submission submitted, it was noticed that these share transactions were made through share brokers M/s. B. Lodha Securities and Barghava Lodha Stock Brokers Ltd.. The peak of the investment made was worked out to the amount of Rs. 1,47,39,724/- and the peak of investment made through other brokers was worked to the amount of Rs. 7,43,602/-. Since the assessee has not filed the supporting detail, therefore, the Assessing Officer has treated peak investment made through share brokers to the amount of Rs. 1,54,83,226/- (Rs. 1,47,39,724/- + Rs. 7,43,602/-) as unexplained investment u/s. 69B of the Act.

7. During the course of appellate proceedings before the Id. CIT(A), the assessee has pleaded that the Assessing Officer has made incorrect addition since major part of investment in shares was made through books of account of M/s. S.V. Enterprises and also explained the source of investment. The assessee has submitted before Id. CIT(A) that he could not furnish such detail during the course of assessment because his books of account were impounded by the DRI. During the course of remand report, the Assessing Officer after verification of the books of account submitted that assessee has made payment to M/s. Lodha Securities of Rs. 1,04,73,698/- duly recorded in the audited books of account from disclosed sources. The Assessing Officer has also submitted that on further verification, the broker has confirmed these transactions in response to the notice u/s. 133(6) of the Act.

Considering the aforesaid facts and remand report of the Assessing Officer, the Id. CIT(A) has restricted addition to the amount of Rs. 50,09,528/- u/s. 69B of the Act

Ground No. 4 (confirmed the addition to the extent of Rs. 3,18,20,663/- out of sundry creditors)

8. During the course of assessment, the assessee has failed to furnish contra account and confirmation of outstanding balance shown as sundry creditors to the amount of Rs. 3,61,00,157/-. Therefore, the Assessing Officer has treated the same as unexplained and added to the total income of the assessee. In the remand report, the Assessing Officer has submitted that he has not received confirmation from the parties after issuing letter u/s. 133(6) to the creditors. The assessee in rejoinder to remand report submitted that he has furnished various details including confirmation of sundry creditors before the Assessing Officer and also submitted that such creditors were paid in next year evidencing his bank account ledger account of the parties. However, the Id. CIT(A) has deleted the amount Rs. 42,79,494/- in the cases of two sundry creditors and confirm the remaining outstanding balance of sundry creditors to the amount of Rs. 31,820,663/- reiterating the facts reported by the Assessing Officer that relevant confirmations were not filed by the parties.

9. During the course of appellate proceedings before us, the assessee has filed additional evidences inadvertently stating under rule 27 of the ITAT Rule instead of stating rule 29 of the ITAT Rule. In the affidavit for admission of additional evidences, the assessee has submitted that these

documents could not be filed before authorities below on account of the reasons beyond control of the assessee viz. (a) arrest of the assessee during the assessment proceedings (b) impounding of books of account by DRI and (c) non-cooperation of such parties on account of financial reasons. Considering the specific circumstances listed above mentioned in the affidavit the additional evidences filed by the assessee are accepted under rule 29 of the ITAT rule.

10. Heard both the sides and perused the material on record. Assessment in the case of the assessee was completed u/s. 143(3) of the Act on 16th December, 2011. During the course of appellate proceedings, the search action was carried out by the DRI (Director of Revenue Intelligence) on 12th Nov, 2011 at the premises of the assessee. Further, in the affidavit it is reported that assessee has been arrested during the course of assessment proceedings and his books of account were impounded by the DRI as a result assessee could not make full compliance before authority below. It is demonstrated from the aforesaid facts that because of non-availability of the records and involvement of the assessee in the DRI proceedings the required information and relevant detail on the issue investigated by the Assessing Officer during assessment proceedings could not be filed. It is also noticed that assessee has filed additional evidences in respect of all the three grounds of appeal contested in this appeal. In the light of the above facts and circumstances, we consider it appropriate to restore these issues to the file of Assessing Officer for adjudicating de-novo after taking into consideration the additional evidences filed by the assessee and after providing adequate opportunity to the assessee. Therefore, Ground No. 2 to 4 filed by the

assessee are restored to the file of Assessing Officer for fresh adjudication as directed above.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 22-03-2021

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT
Ahmedabad : Dated 22/03/2021

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