

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH
(Conducted Through Virtual Court)
**Before: Ms. Annapurna Gupta, Accountant Member
And Shri TR Senthil Kumar, Judicial Member**

**ITA No. 1280/Ahd/2017
Assessment Year 2013-14**

Jayesh Vasantbhai Shah, 20/239, Adarsh Nagar, Near Vijay Nagar, Naranpura, Ahmedabad- 380013 PAN No: 8DRPS4685N (Appellant)	Vs	The ITO, Ward-2(2)(2), Ahmedabad (Respondent)
---	----	--

**Appellant by : Shri Sakar Sharma, A.R.
Respondent by : Shri J.L. Bhatia, Sr. D.R.**

Date of hearing : 10-02-2022
Date of pronouncement : 20-04-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-10, Ahmedabad, (in short referred to as CIT(A)), dated 07-06-2019, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2013-14.

2. The solitary issue in the present appeal relates to addition made of unexplained investment in purchase of immovable property amounting to Rs. 1,41,11,375/-.

3. The facts pertaining to the issue are that the assessee had invested Rs. 1,51,11,375/- in purchasing land, out of which 12,50,000/- was paid by cheque and the balance 1,38,61,375/- by cash. During assessment proceedings the assessee was asked to explain the source of cash invested, which he stated that was generated from his business of trading in grey cloth/textiles out of his turnover of Rs. 1,41,66,648/- during the year. The Assessing Officer (A.O.) noted that against the purported sale of grey cloth, the assessee had made purchases amounting to Rs. 1,39,24,960/- from five different parties, all on credit, making no payment during the year. To verify the genuineness of the claim of purchases made, notices u/s. 133(6) of the Act were issued to the parties two of whom denied having made any transaction with the assessee while to the remaining three, the notices returned unserved. The assessee was asked to produce the remaining parties and was also informed regarding the denial by the two parties to the transaction with the assessee. In response the assessee furnished copy of statement and purchase bill of all these parties but did not produce the parties before the A.O. The assessee was once again asked to produce the parties for verification, however he did not do so. Thereafter an Inspector was deputed to carry out spot enquiry with respect to the activities of the five parties from whom purchases were made by the assessee and the enquiries revealed that no such parties existed on the given address, none carried out any business activity in the personal name or the proprietary concern. Therefore a detailed show cause notice was issued to the assessee. The assessee did not file any reply to the same and the A.O. accordingly held that the assessee's explanation of the source of investment made in cash for purchase of the impugned land was only a concocted story and a sham and that the source of investment in land therefore remained unexplained. He accordingly added the amount of investment made in cash in the said land amounting to Rs. 1,44,11,375/-, to the income of the assessee as unexplained investment.

4. The matter was carried in appeal before the Ld. CIT(A) where certain additional evidences were furnished by the assessee. The same were sent to the A.O. for his comments, after considering which the additional evidences were admitted and the Ld. CIT(A) thereafter, after making a detailed discussion vis-à-vis each party concerned, upheld the order of the A.O. that the purchase transactions were all unsubstantiated and bogus and the assessee had not conducted any transaction of purchase and sale of grey cloth so as to justify his investment in land in cash from the same.

5. Aggrieved by the order of the Ld. CIT(A), the assessee has come up in appeal before us raising the following grounds:

- 1. The Ld. CIT (A) erred on facts and in law in confirming addition of Rs. 1,41,11,375/- for alleged unexplained investment in purchase of immovable property.*
- 2. The Ld. CIT (A) erred on facts and in law in not appreciating the additional evidences furnished and admitted under Rule 46A.*
- 3. The Ld. CIT (A) erred on facts and in law in ignoring remaining part of rejoinder dated 28/03/2017 and thus taking a contrary view than the material already brought to his notice.*

6. Before us the contention of the ld. Counsel for the assessee was that the evidences filed by him before the A.O. and the Ld. CIT(A) also ,including the additional evidences, duly substantiated his contention of the purchases being genuine and therefore the cash sales made out of the same explained the investment in cash in land. Our attention was drawn to various documents filed before us in the voluminous paper books in two volumes comprising in all of 413 pages. As under:

- (i) Purchase register
- (ii) Copies of purchase bills
- (iii) Transport receipts
- (iv) Ledger accounts
- (v) Confirmations

(vi) Copies of ITRs

(vii) Copies of appellant's bank statement evidencing payment to creditors through account payee cheque etc.

Sr. No.	Brief particulars of Documents relied upon	Page Nos.
1.	Bank Statement of appellant evidencing payment to creditors i.e. Mansi Trading Co., Hemal Trading Co., Chita Tax Fab, Ekta Cotton Mills & Vraj Corporation	270-271
2.	Leder account, bank statement and ITR acknowledgement of Mansi Trading Co prop Lalji bhai Mavjibhai Dang	272-277
3.	Ledger account, bank statement and ITR acknowledgement of Hemal Trading Co., prop Anjuben Laljibhai Dand	278-281
4.	Ledger account, bank statement and ITR acknowledgement of Chita Tax Fab prop Shravan Prabhudas Lohara	282-286
5.	Ledger account, bank statement and ITR acknowledgement of Ekta Cotton Mills prop Ashaben Pradipbhai parmar	287-290
6.	Ledger account, bank statement and ITR acknowledgement of Vraj Corporation prop Pradeepbhai Shakrabhai Parmar	291-295
7.	Cash book from the books of appellant for the period 01/04/2012 to 31/03/2013	296-299

6.1 The ld. D.R. however relied on the order of the A.O. and CIT(A).

7. We have heard both the parties and carefully gone through orders of the authorities below. We have also gone through every document filed before us in the paper books comprising in all of 439 pages. The limited issue is whether the assessee had discharged his onus of proving the source of his cash investment in land

purchased during the year of Rs. 1.41 crores as being sourced from cash sales made by him in his business of trading in grey cloth etc.

8. We may point out that the revenue has dismissed this explanation of the assessee and found it to be ingenuine for the reason that while the assessee claimed to have made all recoveries on the sales made entirely in cash, no payment to the creditors were made for purchases made during the year. Further repeated enquiries by the A.O. by issuing notices u/s. 133(6) of the Act to the purchase creditors and also on the self-enquiry revealed that the parties did not exist at the stated addressed. In some cases, the parties denied entering into these transactions with the assessee. The primary contention of the assessee before us is that it had submitted confirmation of these parties alongwith copies of acknowledgement of their return of income and also copies of bank statement reflecting payment made to them in subsequent year. That it had also placed copies of bills of purchases along with bills of transportation relating to the same and had therefore sufficiently discharged its onus of proving the genuineness of the transaction.

9. On considering all the contentions made before us and the voluminous documents filed, we agree with the Ld.CIT(A) that the assessee has failed to discharge his onus of proving the genuineness of his explanation of source of cash for investment in land as being out of the business carried out by him. His explanation considered in totality and in the light of facts relating to it, we agree with the Ld.CIT(A), appears highly improbable, implausible and unconvincing and a concocted story.

10. As per the assessee's explanation the entire sale consideration of his business of trading in grey cloth was received in cash and this amount was invested in land. The facts on record relating to this explanation lead to very absurd inferences. .

The pertinent facts are that:

- the investment in immovable property SRO Ahmedabad-13 was made by the assessee on 05.09.2012.
- The total cost of purchases of the property was Rs. 1,51,11,375/-, being 1,37,48,225/- being the consideration, Rs. 12,25,000/- stamp duty paid thereon and Rs. 1,38,150/- the registration fees.
- Out of the above, an amount of Rs. 12,50,000/- was paid by way of cheque and the balance 1,38,61,375/- in cash on various dates from 04.05.2012 to 05.09.2012 as per the admission of the assessee himself before the Ld. CIT(A) vide communication dated 04.05.2016 placed before us at paper book at page no. 344 to 367 is as under: Table (345):

Sr. No.	P.B. Page No	Date of payment	Amount paid in cash	Name of Bank & Cheque No.	Amount paid through Cheques	Total
1.	36	04/05/12	1000000		0	1000000
2.	36	04/05/12	0	Cheque No. 518451 drawn on SBI, Vijaynagar Branch, Naranpura, Ahmedabad	250000	250000
3.	37	04/05/12	0	Cheque No. 518452 drawn on SBI, Vijaynagar Branch, Naranpura, Ahmedabad	250000	250000
4.	37	09/07/12	250000	C-	0	250000
5.	37	09/07/12	0	Cheque No. 518458 drawn on SBI, Vijaynagar Branch, Naranpura, Ahmedabad	250000	250000
6.	37	30/07/12	2500000		0	2500000
7.	38	04/08/12	3748225		0	3748225
8.	38	27/08/12	0	Cheque No. 518459 drawn on SBI, Vijaynagar Branch, Naranpura, Ahmedabad	500000	500000
9.	38	01/09/12	2500000		0	2500000
10.	38	01/09/12	2500000		0	2500000
		Total	12498225		1250000	13748225
11.	-	05/09/12	138150	Registration Fees	0	138150
12.	26	05/09/12	490000	Stamp Duty	0	490000

13.	27	05/09/12	735000	Stamp Duty	0	735000
1		Grand Total	13861375,		1250000	15111375

- The explanation of the assessee was that the cash investment in land was sourced out of sale consideration realized of Rs.1,41,66,647/- and certain withdrawals from banks and opening balance as per cash flow statement. As per the summary of cash book submitted by the assessee himself to the CIT(A) vide his communication dated 4/05/2016 at paper book page no. 346 as under:

Source of Cash Receipt	Amount	Application of available Cash Funds	Amount
Opening Balance	471890.00	Amount deposited in State Bank of India	544000.00
Sale consideration realised	14166647.80	Amount deposited in Union Bank of India	1000.00
Amount withdrawn from State Bank of India	285000.00	Salary Paid	24000.00
		Household Withdrawals	297000.00
		Petrol & Conveyance	12680.00
		Payment for Land	12498225.00
		Payment of Registration Fees to Sub-Registrar	138150.00
		Payment of Stamp Duty	1225000.00
		Closing Balance	183482.80
Total	14923537.80	Total	14923537.80

- The financial statement of the assessee comprising of his trading and profit of loss account for the impugned year and his balance sheet duly audited u/s. 44AB of the Act and placed before the Assessing Officer during assessment

proceedings and placed before us at paper book page no. 8 to 19 reveal that the total turnover of the assessee for the year was 1,41,66,648/-.(Profit and loss account at paper book page no. 16.)

11. What emerges from the above facts, is that the assessee's entire business was undertaken only upto the date of purchase of land ,i.e for five months only upto 05-09 2012 .That subsequently, for the rest of the year comprising of seven months no business was carried out by him.

12. Moreover while in the impugned year the assessee has returned actual profits from his business to tax, maintaining complete books of accounts, for the preceding and succeeding years, he opted for presumptive taxation scheme u/s 44AD of the Act and accordingly has not maintained any books of accounts. His letter to the AO dated 06-07 2015 ,placed before us at P.B 4 states the fact of opting for presumptive taxation in A.Y 2012-13,i.e the preceding year, further evidenced with copy of ITR and computation of income for the said year placed at P.B 5-7.. While copy of Return of Income and Computation of Income for A.Y 2014-15, the succeeding year, placed before us at P.B 414-420 evidences the fact of taxes paid on presumptive basis in the next year.

15. The returns filed for the said two years reveal very meager turnover of the assessee in those years being Rs.22,35,600/- in A.Y 2012-13 and Rs.24,85,200/- in A.Y 2014-15 as compared to the huge turnover of Rs.1,41,66,648/-in the impugned year. This extraordinarily huge turnover in the impugned year, all in cash and thus not capable of verification, and all achieved in five months only, appears incredulous as compared to turnover of the entire preceding and succeeding year. Coupled with it is the fact that by not so maintaining books for the preceding and succeeding year, the verification of any account /transaction with the said two years is totally precluded.

16. Coupled with this is the fact that no payment at all was made to the creditors during the year. The Ld.CIT(A) has noted that these parties have issued continuous bills to the assessee and that there was a pattern in purchases wherein after purchasing from one party the assessee moved to another. The Ld.CIT(A) has rightly noted that the parties apparently sold to the assessee only since the bills are continuous, and how could they possibly have survived without receiving any payment in the whole year.

17. Further the assessee's contention that the creditors were paid off in the next year substantiated with the bank account of the next year also creates doubt since the perusal of the same reveals that it is a different bank account not reflected in the books of the assessee despite being used for business purposes and reflecting substantial balance as at the end of the year. The veracity of the bank statement, as a consequence, is doubted.

18. The copy of the bank statement was placed before us at paper book page no. 254. We have gone through the same and we note that the said bank statement is of the Union Bank of India. The contents of the bank statement reveal that on 14th March, 2013 i.e. during the end of the impugned year itself, there was no balance in the account and subsequently on the 15th March 2013, first transaction of cash deposited of Rs. 1,000/-. On 18th March the assessee has purportedly deposited four cheques of 11,50,000/-, taking the balance in the account as at the end of the year to 2,46,01,000/- . The bank statement also mentions it as a Saving Bank, General account.. But the financial statement filed by the assessee reveals that the only bank account maintained by the assessee was with State Bank of India reflecting a balance of Rs. 5,830/- (PB-15 balance sheet reflecting bank account - Note-6,

18.1 PB-18 showing Note-6 of the audited balance sheet detail of bank account being , State Bank of India amount of Rs. 5,830/- .) This bank account in the Union Bank of India from which all payments were made to the creditors in the subsequent year and therefore apparently was his main business bank account, surprisingly finds no mention in the balance sheet, despite the same reflecting a substantial balance of Rs.46,01,000/- as at the end of the year. Further the Id. CIT(A) has noted that that it is not clear from the narration in the bank statement that payments were made to the impugned purchases creditors. Ld.Counsel for the assessee was unable to controvert the same.

19. The assessee we find has also explained the nature of the amounts received in this bank account to the Assessing officer vide Letter dated 18.01.2016 as being unsecured loan taken from the following four parties. (PB-2 Page 257)

S.NO.	NAME	PAN NUMBER	BALANCE AS ON 31/03/2013
1.	RAJESHKUMAR HARIBHAI THAKKAR	ACDPT5407F	11,50,000
2.	SANJAYKUMAR HARIBHAI THAKKAR	ACDPT5397G	11,50,000
3.	AMITKUMAR PRAVI NCH ANDRA THAKKAR	ADHPT5102G	11,50,000
4.	JAYDEV RAJENDRASING KUSHWAH	AGIPK9887D	11,50,000
	TOTAL		46,00,000

19.1 Copies of their confirmation was also filed placed at paper book page no. 261 to 267. Again surprisingly these loans amounts find no mention in the balance sheet of the assessee which mentions the only loan liability of Rs.7 lakhs pertaining to unsecured loans taken from Santosh Singh and Shri Sai Krupa Trading of 7 lakhs each. (PB-18).

20. The inquiry by the department also regarding the purchase creditors inspires no confidence in the explanation of the assessee, since in response to inquiry letter issued u/s 133(6) of the Act at the address given by the assessee as well as purchase invoice, two out of the five creditors denied having any transaction with the assessee while to the remaining three the letters remained unserved. Also on the spot inquiry conducted by the Inspector deputed revealed none of the parties carrying out business activity as stated by the assessee.

21. As for the acknowledgement of returns of income of the creditors filed by the assessee the Ld.CIT(A) has noted that except for proving that these parties did exist they did not prove anything else relating to the transaction. He has noted that the returns of income are in the individual names of the parties and did not even affirm the fact as canvassed by the assessee before us that these parties carried out trading operation in the names of firm as stated above. Nor do they affirm the fact of the transaction of purchases made by the assessee from them during the year. Ld.Counsel for the assessee was unable to controvert the above facts noted by the Ld.CIT(A).

22. Considered in totality therefore the explanation of the assessee for cash generated through its business throws unconvincing ,and unverifiable facts relating to the entire transaction ,i.e both relating to the turnover and purchases and the evidences filed do not inspire confidence in the explanation of the assessee, to the effect that :

- a) the business in the impugned year was carried on only upto the date of investment in land, for a period of five months only, generating incredulously huge turnover all in cash and hence unverifiable, in the said short period as compared to the meager turnover of the preceding and succeeding years, of which years no financial data was maintained by the assessee making it virtually impossible to verify any fact of the impugned year from those years,.

b) And no payment at all was made to the creditors during the year ,which creditors on inquiry either denied having any transaction with assessee or were not found at the stated address ,and to whom purportedly payment was made in the subsequent year by banking channels through a bank, the transactions to creditors therefrom being not verifiable, and which bank account finds no mention in the balance sheet of the assessee despite having substantial balance at the end of the year and being used admittedly for business purposes for making payment to creditors.

23. The claim of the assessee of source of cash investment in land being out of business carried out by him, we agree with the lower authorities, fails the test of human probability. And the evidences filed by the assessee therefore of purchase bills, transport bills, income tax returns of the creditors, bank statement reflecting payment to creditors in subsequent years, therefore, we agree with the Ld.CIT(A),does not help in lending any credibility to the assesses explanation.

23.1 We therefore uphold the order of the Ld.CIT(A) rejecting the assesses explanation for source of cash investment in land of Rs1,41,11,375/- as not being genuine and accordingly therefore upholding the addition made on account of unexplained investment in land to the said extent.

24. Grounds of appeal of the assessee are dismissed.

25. In effect, Appeal of the assessee is dismissed.

Order pronounced in the open court on 20 -04-2022

Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER True Copy
Ahmedabad : Dated 20/04/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER