

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

**BEFORE S/SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.744/Ahd/2018
With
Cross Objection No.174/Ahd/2019
Assessment Year :2014-15**

ITO, Ward-3(3)(2) Ahmedabad.	Vs	Shri Hemant Hiralal Shah 112, Devang Apartment, Opp: Patel Hospital Nehru Park Vastrapur Ahmedabad 380 015. PAN : ABJPS 1499 K
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/(Respondent)
Revenue by :	Shri V.K. Singh, Sr.DR
Assessee by :	Shri Karan shah, AR

सुनवाई की तारीख/**Date of Hearing** : 24/02/2022
घोषणा की तारीख /**Date of Pronouncement**: 06/05/2022

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

This appeal is filed by the Revenue against order dated 15.01.2018 passed by the Ld.Commissioner of Income-tax (Appeals)-7, Ahmedabad [for short "Ld.CIT(A)] relating to the Asst.Year 2014-15.

2. Cross objection filed by the assessee has a delay of 111 days. The assessee filed an affidavit stating that he was away from USA during the period 12.5.2019 and 05.07.2019 when Form No.36 filed by the Revenue was served on him at his address. The Form no.36

was received by his neighbour on 3.6.2019. The assessee has also placed copy of flight tickets from Ahmedabad to San Francisco dated 12.5.2019 and return journey on 4.6.2019. However, appeal papers have been handed over by the neighbor very recently, and therefore delay of 111 days in filing the CO and pleaded to condone the delay in filing CO. The assessee also produced before us copy of pass-port and visa issued by the USA. The Id.DR appearing for the Revenue has no serious objection in condoning the delay.

3. We are satisfied with the affidavit filed by the assessee, and we hereby condone the delay in filing CO.

4. Brief facts of the case is that the assessee is an individual drawing salary from partnership firm viz. Monarch Infra Venture and showing income from capital gain and income from other sources. For the Asst.Year 2014-15, the assessee filed his return of income on 29.3.2016 declaring total income at Rs.2,21,880/-. The return was processed under section 143(1) on 28.4.2016 and then taken for scrutiny assessment, since there was huge investment in immovable property as compared to the total income returned by the assessee. The assessee is working in a private firm and also partner in the firm viz. Monarch Infra Venture. During this financial year, the assessee purchased three immovable properties on behalf of the partnership firm, as one of the partners. The assessee's share as per the purchase deed in three properties is amounting to Rs.4,85,90,715/-. The AO after making detailed inquiry made addition of Rs.2,48,75,684/- on account of unexplained investment within the meaning of section 69A for cash deposit in HDFC bank. Similarly, a sum of Rs.98,70,452/- cash deposits in Kalupur Commercial Cooperative Bank Ltd. The AO also made addition of Rs.1,36,22,699/- on account of purchase of three immovable

properties wherein the assessee's share is 12.5% which has been added under section 69 of the Act. Thus, a total addition of Rs.4,83,68,835/- was made and added to the total income of the assessee; consequently levied interest under section 234A, 234B and 234C of the Act and also initiated penalty proceedings under section 271(1)(c) of the Act.

5. Aggrieved against the above assessment order, the assessee filed appeal before the Id.CIT(A). During the course of appellate proceedings, the Id.CIT(A) called for remand report from the AO and also reply to the remand report from the assessee. The same are as follow:

"I. UNEXPLAINED ADDITION U/S. 69 OF THE I.T. ACT. 1961 - RS. 2,48,75,684/-

1. The Ld. A.O has made an observation in Para 1 of the Remand Report made an observation as under:-

"From the evidences submitted before the Id. Commissioner of Income tax (Appeals) and fresh evidences produced, the assessee has received the said amount through banking channel and purchased the land. The property has been purchased by the assessee's partner and the payment has been routed through the partners account to follow the rules of Revenue department of state to purchase the land as Khedut as stated by the assessee. However case may be finalized on merits".

The Ld. A.O. after verifying additional evidences submitted under Rule 46A of the I.T. Rule, 1962 such as copy of return of acknowledgement of Return of various parties, copy of Bank statement, audited balance sheet of the M.T. Corporation at the time of remand proceedings accepted the contention of the appellant in respect of genuineness and creditworthiness of the parties from whom appellant had received unsecured loans during the year under consideration. The Ld. A.O. in his remand report has accepted the contention of the appellant and has not made any adverse comment in his remand report on account of unexplained on account of unexplained credit entries in HDFC Bank of Rs. 2,48,75,6847-. Further, the appellant has also relied upon the various judicial pronouncements of various Hon'ble High Courts & Tribunals in his Synopsis of Arguments dated 17/07/2017 submitted before your honour are as under:

i) DCIT v. Rohini Builders 256 ITR 360 (Guj.) 256 ITR 360

- ii) *CIT Vs. RanchhodJivabhaiNakhava (Tax Appeal No.50 of 2011)*
- iii) *CIT vs. Apex Therm Packaging (P.)Ltd.[2014] 42 Taxman.com 473 [Gujarat-HC]*
- iv) *CIT Vs Dharmadev Finance (P.)(Ltd.)[2014] 43 Taxman.Com 395(GUJ. HC)*
- v) *CIT Vs Patel Ramniklal Hirji [2014] 41 Taxman.Com 493/222 Taxman 15 (Mag.)(GUJ.HC)*
- vi) *CIT V Shailesh Kumar Rasiklal Mehta [2014] 41 Taxman.Com 550/224 Taxman 212 (Mag.) (Guj)*
- vii) *CIT V Rahul Vineet Traders [2014] 41 Taxman.Com 86/221 Taxman 46 (Mag.) (All.)*
- viii) *CIT V Vijay Kumar Jain[2014] 41 Taxman.Com 433/221 Taxman 180 (Mag.) (All.)*
- ix) *CIT V Sachitel Communications (P.) (Ltd.) [2014]51taxman.Com 205/227 Taxman 119 (Mag.) (Guj.) x) Commissioner Of Income Tax Vs. [2014] 51 taxmann.com 524 (Punjab & Haryana)*
- xi) *CIT vs. JaiKumarBakliwal[2014]366ITR217[Rajshthan-HC] xii) CIT vs. Shalimar Buildwell P. L [2014] 220 Taxman 138 [Allahbad-HC]*
- xiii) *Labh Chandra Bohra vs. ITO [2014] 219 CTR 571 [Rajasthan-HC]*
- xiv) *Aravali Trading Co. vs. ITO 8 DTR 199 (Raj.)*
- xv) *Nemi Chand Kothari v. CIT [2003] 264 ITR 254 (Gauhati) xvi) In Gem Palace vs. CIT (1987) 168 ITR 543 (Raj.)*
- xvii) *CIT vs. P.Mohanakala [2007] 291 ITR 278 (SC) xviii) Rollon Containers vs ITO, Hyderabad [2012]*
- xix) *COMMISSIONER OF INCOME TAX vs. LALIT KUMAR PODDAR (2015) 56 taxmann.com 462/231 Taxman 816 (Delhi)*

In view of the aforesaid facts and submission, to delete the addition made by the Ld. A.O of Rs.2,48,75,684/- as unexplained addition u/s. 69 of the IT. Act, 1961.

II. UNDISCLOSED INVESTMENT 8N CASH DEPOSITS AND TRANFER BY CHEQUE OF RS. 98,70,452/-

1. *In respect of the aforesaid addition, in the Remand Report submitted to your honour, the Ld. A.O has made the comment that the "appellant has not conclusively proved that the amounts appearing as cash deposits were actually cash on hand and there is no strong documentary evidence thereof. Since the assessee has no source of cash in his return of income and further he is only salaried employee, Therefore the cash deposits amounting Rs. 1,60,000/- is completely unexplained cash deposits. Rest amount have been routed through the banking channel and duly reflected in the bank statement. However the case may be finalized on the merits".*

2. *The Ld. A.O. after verifying additional evidences submitted under Rule 46A of the IT. Rule, 1962, at the time of remand proceedings accepted the contention of the appellant in respect of genuineness and creditworthiness of the parties from whom appellant had received unsecured loans during the*

year under consideration. The Ld. A.O. in his remand report has accepted the contention of the appellant and has not made any adverse comment in his remand report on account of unexplained credit entries in Kalupur Commercial Co. Op. Bank of Rs.98,70,452/- except cash deposits of Rs. 1,60,000/- for which appellant has to state that the said deposits have been made by the appellant from the cash available on hand and its savings. Further, the appellant has also relied upon the various judicial pronouncements of various Hon'ble High Courts & Tribunals in his Synopsis of Arguments dated 17/07/2017 submitted before your honour which have been mentioned herein above.

In view of the aforesaid facts and submission, the addition made by the Ld. A.O of alleged unexplained investment of Rs. 98,70,452/- u/s. 69 of the IT Act deserves to be deleted in toto.

III UNEXPLAINED INVESTMENT INTO THE LAND U/S. 69 OF THE I.T. ACT OF RS.1,36,22,699/-

1. In respect of the aforesaid addition, the Ld. A.O has made an observation that the "Appellant has received the said amount through banking channel and purchased the land.

The property has been purchased by the assessee and the payment has been routed through the partners account. However case may be finalized on merits".

2. The Ld. A.O. after verifying additional evidences submitted under Rule 46A of the IT. Rule, 1962 such as copy of the partnership deed, memorandum of undertaking between firm and partners at the time of remand proceedings accepted the contention of the appellant that the appellant along with other 3 farmer partners have acquired different Survey Nos. of land situated at Mouje Gam - Mulsana, Sub-Dist-Kalol and Dist. Gandhinagar in the name of following partners.

Sr. No	Name of Partner *	%of Profit & Loss Sharing Ratio	Business	% of Share in Land Acquired	PAN
1	Vinodbhai Chandulal Shah	2%	Farmer	12.5%	BERPS6385A
2	Samirbhai Vinodbhai Shah	2%	Farmer	12.5%	BEPPS4685M
3	Manishaben Vinodbhai Shah	2%	Farmer	12.5%	AWRPS2208K
4	Hemantbhai Hiralal Shah	2%	Farmer	12.5%	ABJPS1499K

The said different Survey Nos. of land were purchased out of the funds of M/s. Monarch Infra Venture for and on behalf of the firm as a farmer partner in a fiduciary capacity in terms of the partnership deed and it is shown as purchase of land under the head "Stock in Trade" in the Balance Sheet of the firm M/s. Monarch Infra Venture. The copy of ledger account of land purchased of different survey Nos. from the books of the firm M/s. Monarch Infra Venture has already been submitted as per Exhibit-III vide reply dated 20.12.2016. During the A.Y. 2011-12 the case of the M/s. Monarch Infra Ventures was selected for scrutiny assessment and the Ld. A.O. has issued various notices u/s.142 (1) of the Act and in response to the same the firm submitted all the details and after verifying all the details the Ld. A.O. had passed the order u/s. 143(3) of the IT. Act dated 21.03.2014. The copy of the assessment order of M/s. Monarch Infra Ventures for the A.Y. 2011-12 along with the copy of the balance sheet, profit & Loss account and partners' capital account for A.Y. 2011-12 are attached herewith as per Exhibit -VII of synopsis of arguments which has also been accepted by the Ld. A.O. as an additional evidence at the time of remand proceedings.

In view of the aforesaid facts and submission, the addition made by the ld.AO of Rs.1,36,22,699/- u/s.69 of the IT Act as unexplained investment in land deserves to be deleted in toto."

6. After considering the above remand report from the AO, and reply filed by the assessee, and documents placed before the ld.CIT(A), the ld.CIT(A) deleted the impugned addition of Rs.4,83,68,835/- as follows:

"4.3 I have carefully considered the assessment order, facts of the case and the submissions made by the appellant. The AO during the assessment proceedings noted that the appellant had purchased three plots of land at Sanand, District Ahmedabad along with 10 other persons. After a detailed discussion in his order, he held that the investment in this plots was not explained and he accordingly made an addition of Rs.4,83,68,835/- to the total income of the appellant. The appellant has submitted that the property purchased by him was not unexplained and was in fact purchased by him on account of being a partner in Monarch Infra Venture (MIV) and that all the payments had also been made by MIV through proper banking channels.

4.3.1 During the remand proceedings, the AO has gone through the submissions and documentary evidences furnished by the appellant and has submitted his report (reproduced in para 4.1.1 above) in which the contentions of the appellant have been analysed and discussed by him. It is seen that the AO after verifying all the necessary details has accepted the fact that the amounts of Rs.2,48,75,684/- added u/s. 69 of the Act, Rs.98,70,452/- held as undisclosed Investment in cash deposits and Rs.1,36,22,695/- as unexplained investment in land stands explained. The AO has also stated that the property has been purchased by the appellant and the payments have been made through partners account.

4.3.2 In addition to the report of the AO, it is also seen from the documents furnished by the appellant that the purchase of land stands reflected in the return of income and financial statements of MIV. I have also perused the partnership deed entered into by MIV along with various individuals and persons of which the appellant also is one at Sr. No.9 of the said list of partners. It has clearly been stated in the partnership deed that the firm i.e. MIV would provide the funds for purchase of different parcels of land which would be purchased by the said partners.

It has also been specifically mentioned in the deed that the said land will be held in the name of these partner farmers representative of the firm and that no interest or rights shall arise to their legal heirs.

4.3.3 On a perusal of all the documents and submissions made, it is clear that the appellant made the investment in property in his capacity as a partner of the firm MIV and that all the funds were made available by the firm and routed through banking channels. In his remand report, the AO had only disagreed with an amount of Rs.1.60,000/- deposited in cash in the appellant's bank account stating that the same is unexplained. However, it is seen from the submissions made by the appellant that the said deposits have been made by the appellant from cash available in hand with him. In view of the detailed discussion above, the addition of Rs.4,85,90,715/- made by the Assessing Officer is deleted.”

7. Aggrieved against the same, the Revenue is before us by raising the following grounds:

“1. The Ld.CIT(A) has erred in law and on facts in deleting the addition made by the A.O. on account of unexplained investment u/s 69A of Rs. 2,48,75,684/- for credit entries in the bank account with HDFC Bank.

2. The Ld.CIT(A) has erred in law and on facts in deleting the addition made by the A.O. on account of unexplained investment u/s 69A of Rs. 98,70,452/- for credit entries in the bank account with Kalapur Commercial Co. Op. Bank.

3. The Ld.CIT(A) has erred in law and on facts in deleting the addition made by the A.O. on account of unexplained investment u/s 69 of Rs.1,36,22,699/- for purchases of 3 properties. -

4. The Ld.CIT(A) has erred in law and on facts in stating that the A.O. has accepted the issues as explained in the remand report as the A.O. has requested to decide the issues on merits only. ;

5. On the facts and circumstances of the case, the Ld. Commissioner of Income-tax (A) ought to have upheld the order of the Assessing Officer in respect of above issues.”

8. Though the Revenue has stated that the CIT(A) has erred in deleting every addition made by the AO more particularly in ground

no.4, the Revenue has raised that the AO has accepted the issue as explained in the remand report, but the AO has requested to decide the issue on merit only. The ld.counsel for the assessee stated that the ld.AO after verifying the additional evidences submitted under Rule 46A of the Income Tax (Appellate Tribunal) Rules, 1963, such as copy of confirmation of various parties, copy of acknowledgment of return of income of M.T. Corporation at the time of assessment proceedings accepted contentions of the assessee in respect of genuineness of credit-worthiness of the parties from whom the assessee had received unsecured loans during the year under consideration. Thus, the AO has not made any adverse comments in his remand report on account of unexplained credit entries in HDFC Bank of Rs.2,48,75,684/-. Therefore, the ld.CIT(A) after following judicial precedents deleted addition made on account of unexplained addition under section 69 of the Act. Thus, the deletion does not require any interference by this Tribunal.

9. Similarly, undisclosed investment in cash deposits and transfer of cheque of Rs.98,70,452/- in Kalupur Commercial Cooperative Bank Ltd., the ld.AO in his remand report has held that cash deposits amounting to Rs.1,60,000/- is completely unexplained,, but the rest of the amount are being routed through banking channel and duly reflected in the bank statements. However, the AO requested that the case may be decided on merits. Thus, the AO has not made any specific or adverse comment on the explanation offered by the assessee. Considering the above explanation, the ld.CIT(A) deleted addition under section 69C which also does require any interference.

10. Regarding unexplained investment of Rs.1,36,22,699/-, the AO after verifying the additional evidences submitted under the Rule

46A of the ITAT Rules, such as copy of partnership deed, memorandum of understanding between the firm and the partners at the time of assessment proceedings accepted the contentions of the assessee. The assessee along with other three farmer partners have acquired different survey numbers of land situated at Mouje Gam – Mulsana, Sub-Dist-Kalol, Dist. Gandhinagar in the names of co-partners out of funds of Monarch Infra Venture for an on behalf of the firm as a farmer partner in a fiduciary capacity in terms of the partnership deed and it was also shown in the balance sheet under the head “stock-in-trade” of the firm, Monarch Infra Venture. Further, the partnership firm, Monarch Infra Venture’s regular assessment u/s.143(3) has been completed on 21.3.2014, wherein the above properties have been reflected in the copy of the balance sheet and profit & loss account and partners’ capital account of the said firm. After considering above details, the Id.CIT(A) deleted the above addition made under section 69 of the Act. This deletion also does not require any interference.

11. Per contra, the Id.DR appearing for the Revenue supported the order of the AO and pleaded to uphold the addition made by the AO.

12. We have given our thoughtful consideration and perused the materials available on record. No doubt, addition made by the AO on various counts and during the appellate proceedings these documents were being placed before the Id.CIT(A) and the Id.CIT(A) called for remand report, since additional documents were being placed by invoking Rule 46A. As it can be seen from the remand report and rebuttal filed by the assessee, the factum of the transactions were clearly brought on for each addition with documentary evidences, and also the three immovable properties stated to have been purchased by the assessee only in his capacity

as partner of the firm and the transactions were being shown as 'stock-in-trade' in its balance sheet, which is also assessed to tax and scrutiny assessment has also been passed on 21.3.2014 in the case of the partnership firm M/s.Monarch Infra Venture. Considering the above facts, the Id.CIT(A) deleted the additions made by the AO. During the course of hearing before us, the Id.DR could not able to produce any contrary view or evidence on the deletion made by the Id.CIT(A). Therefore, we are of the considered opinion that deletion made by the CIT(A) does not require any interference and grounds raised by the Revenue are hereby rejected. Consequently, cross objection filed by the assessee being in support of the order of the Id.CIT(A), becomes *infructuous*, and disposed off accordingly.

13. In the result, appeal of the Revenue and CO of the assessee are dismissed.

Order pronounced in the Court on 6th May, 2022 at Ahmedabad.

**Sd/-
(PRAMOD M. JAGTAP)
VICE-PRESIDENT**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 06/05/2022