

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.3604/Ahd/2015
Assessment Year : 2011-12

Hemal Manubhai Patel Plot No.746/2 Sector No.6/B Gandhinagar 382 006.	Vs	ITO, Ward-2 Gandhinagar.
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(Applicant)		(Responent)
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Assessee by :	Shri S.N. Divatia, Advocate
Revenue by :	Smt.Leena Lal, Sr.DR

सुनवाई की तारीख/Date of Hearing : 30/05/2022

घोषणा की तारीख /Date of Pronouncement: 08/07/2022

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the assessee against order dated 23.10.2015 passed by the Commissioner of Income-tax (Appeals), Gandhinagar relating to the Asst.Year 2011-12.

2. Though the assessee raised multiple grounds, effective ground is in two folds viz. (i) disallowance of land leveling expenses of Rs.27,64,744/-, and (ii) unexplained cash credits of Rs.3,70,224/-.

3. Brief facts of the case is that the assessee is an individual and filed a return of income for the Asst.Year 2011-12 on 20.10.2011 and admitted income from other sources of Rs.7,20,914/-. The said return was processed under section 143(1) of the Income Tax Act,

1961 ("the Act" for short), and thereafter the case was selected for scrutiny assessment and notices under section 143(2) of the Act were issued from time to time. Only after seventh hearing notice, the assessee has started participating in the assessment proceedings by filing replies. During the assessment year, the assessee sold a piece of land at Adalaj, Gandhinagar for total consideration of Rs.65 lakhs. The assessee claimed a total expenses of Rs.58,14,544/- viz. cost of acquisition of Rs.28,38,000/-, stamp-paper and other charges of Rs.2,11,800/- and cost of land leveling expenses of Rs.27,64,744/- and the balance amount of Rs.6,85,456/- has been offered as income under the head "income from other sources". The AO disallowed expenditure of Rs.27,64,744/- and held that the expenditure has been incurred for the land to make saleable cannot be allowed as deduction from the sale consideration. Break-up of the expenditure is as follows:

<i>Particulars</i>	<i>Amount</i>
<i>Cleaning of farm and for farming</i>	<i>50,000</i>
<i>Rent regarding water and electricity maintenance</i>	<i>25,830</i>
<i>Payment for construction of security cabin, bathroom, electricity</i>	<i>31,000</i>
<i>Construction of electrical room, security cabin.</i>	<i>75,000</i>
<i>Payment for Sand leveling</i>	<i>1,51,000</i>
<i>Payment for Sand leveling</i>	<i>300,000</i>
<i>Advance payment for purchase of fenching</i>	<i>125,000</i>
<i>Purchase of fenching</i>	<i>275,000</i>
<i>Final payment for fenching</i>	<i>275,000</i>
<i>Security guard salry for month of oct,nov with diwali bonus</i>	<i>15,000/-</i>
<i>Security guard salry for month of decjan.feb.</i>	<i>12,000/-</i>
<i>Security guard salary for month of march and april</i>	<i>20,000/-</i>
<i>Security guard salary for month of may and June</i>	<i>20,000/-</i>
<i>Security guard salary for month of July, august .September</i>	<i>30,000/-</i>
<i>Cash paid for borewell</i>	<i>350,000/-</i>

<i>Cash paid for ring of borewell</i>	150,000/-
<i>Estimated advance payment for borewell</i>	200,000/-
<i>Final payment of borewell</i>	140,000/-
<i>Miscellaneous work</i>	519,914/-
<i>TOTAL</i>	27,64,744

4. The AO has also found that in the liability side of the balance sheet the assessee has shown unsecured loan of Rs.1,43,96,816/-. Out of which an amount of Rs.5,09,316/- was shown from Damini Hemalbhai Patel and Rs.3,87,500/- from Wagad Concrete U. The assessee was asked vide show cause notice dated 23.12.2013 and 10.2.2014 to furnish confirmation, genuineness and capacity of the parties with regard to the above cash credit. In reply to this, the assessee simply stated *“the transaction carrying out with Damini Patel was also a business transaction, she is my wife and in the said relationship. On looking to the work and helped in the business by her we have decided to give interest to her. She has also multiple source of income and she has filed a return of that year.”* Except the above statement, the assessee has not submitted copies of the return of income filed by Damini Patel, PAN, source of income, nature of business transaction etc. Further, the confirmation letters filed by the assessee did not mention address of the parties, PAN etc. Further the signature appearing in the said confirmation was not verifiable with any supporting evidence. With regard to cash credit in the Wagad Concrete U, the assessee has submitted nothing except a confirmation of the account without any address of the parties, PAN and only signatures of one Shri Dilip. The said Dilip has also signed confirmation in the case of Shri Jayeshbhai T. Shah and Shri Ashokkumar Bhavanbhai Patel. As the assessee has not proved identity, capacity and genuineness of the cash credit, the

same has been added as income of the assessee under section 68 of the Act.

5. Aggrieved against the same, the assessee has filed appeal before the Id.CIT(A). The Id.CIT(A) on the issue of expenditure of Rs.27,64,744/- confirmed the addition as follows:

“5.3 I have considered the facts, assessment order and Submission filed by the Appellant. The brief facts are that appellant sold land at Adalaj for total sale consideration of Rs.65 lacs. From the total sale consideration, the appellant has deducted Rs.58,14,544/- comprising cost of acquisition Rs.28,38,000/-, Stamp paper and other charges Rs.2,11,800/- and cost of leveling and other expenses Rs.27,64,744/- and balance of Rs.6,85,456/- has been offered as income under the head Income from other sources. The AO has disallowed expenditure of Rs.27,64,744/- from total cost of land claimed as deduction by the appellant stating the appellant has not furnished any evidence for such expenditure. The Appellant, on the other hand, has furnished the break of total expenditure of Rs.27,64,744/- along with relevant bills and stated that expenditure has been incurred on land to make it saleable and hence shall be allowed as deduction from Sale Consideration.

On careful consideration of facts and details furnished by the appellant it is observed that expenditure of Rs.27,64,744/- mainly consists of cleaning of land, rent for water, electricity, sand leveling, fencing, salary of security guard, borewell, etc. Appellant has failed to establish that expenditure incurred by it is of capital nature to enable it to form part of cost of land. The argument of appellant that expenditure in question is incurred to make the land saleable cannot be accepted since none of the expenditure incurred on land yield long term benefit and the nature of expenditure clearly reveals that it has been incurred on year to year maintenance of land. It is pertinent to note that appellant has simply submitted vouchers and the same are without any cogent supporting evidences. The appellant has not submitted such details even before AO and not made any application under rule 46A. Therefore, I am inclined to accept that expenditure of Rs.27,64,744/- does not form part of cost of land and cannot be allowed as deduction from sale consideration of Land. Hence disallowance made by AO is sustained and the related ground of appeal is dismissed.”

6. Similarly, on the addition made under section 68 of the Act, the Id.CIT(A) confirmed the addition and partly allowed the appeal as follows:

“7.3 I have considered the facts, Assessment Order and submission made by the appellant. The AO has stated that Unsecured Loan of

Rs.5,09,316/- and Rs.3,87,500/- was shown to be received from Damini Hemalbhai Patel and Wagad Concrete respectively during the year under consideration. However the appellant has failed to prove identity, capacity and genuineness of such unsecured loans and hence the same has been treated as unexplained and added to income of the appellant. The appellant has argued that unsecured loan in question is genuine since entire amount is received through account payee cheque. Further the appellant argued that out of total Unsecured loan of Rs.509316/- received from Damini Hemalbhai Patel- Rs.1,39,092/- are received in previous year and therefore such amount cannot be treated as unexplained during the year under consideration. The appellant has relied on various case laws in support of its argument that addition u/s 68 cannot be made with respect to amounts not received during the year under consideration.

On careful consideration of facts and the details furnished by the it. is observed that the appellant has failed to prove the of the transactions entered with the above parties. The confirmations submitted by the appellant do not contain address and PAN of the parties. Also the confirmations are not acknowledged by the parties and bears signature of some unknown person. Since the appellant has failed to prove the identity, capacity and creditworthiness of the parties from whom unsecured loan has been procured during the year the primary onus caste on the appellant has not been fulfilled. Hence the addition made by the AO is sustained. However it is observed that loan procured from Damini Hemalbhai Patel during the year under consideration amounts to Rs.3,70,224/- and balance of Rs.1,39,092/- was received in preceding years and forms part of opening balance. The appellants argument that addition u/s 68 cannot be made with respect to opening balance is accepted and in case of Damini Hemalbhai Patel addition is restricted to Rs.3,70,224/- being amount received during the year under consideration. The related ground of appeal is partly allowed.

7. Aggrieved against the same, the assessee is before the Tribunal.

8. Before us, the ld.counsel Shri S.N. Divetia for the assessee reiterated the same arguments made before the lower authorities. The ld.counsel for the assessee has also filed Paper Book running into 18 pages, and pleaded that disallowance made by the AO to be deleted. In support of his submission, he relied upon the decision dated 29.9.2019 of the Coordinate Bench in the case of Jatinkumar Amrutilal Shah Vs. ACIT in ITA No.307/Ahd/2017.

9. Per contra, the Id.DR, Smt.Leela Lal appearing for the Revenue supported the order of the lower authorities, and further pleaded that it is a well considered order both by the AO and the CIT(A), therefore, it does not require any interference as the assessee has not produced any new material to substantiate claim, and accordingly prayed for dismissal of the appeal filed by the assessee.

10. We have given our thoughtful consideration of the matter, and perused material available on record as well Paper Book filed by the assessee. As it can be seen from the paper book page no.1 to 11, they are self-made vouchers prepared by the assessee. We also note that the expenditure claimed in respect of land development expenditure, all are in round figure viz. the payment of sand leveling of Rs.1,51,000/- and Rs.3,00,000/-; advance payment for purchase of fencing of Rs.1,25,000/-; purchase of fencing of Rs.2,75,000/- and final payment for fencing of Rs.2,75,000/-. There are no corresponding bills or invoices produced before us to substantiate the above claimed made by the assessee. Page no.11 of paper book is an estimate with quotation given by Mamta Industries for digging of borewell of Rs.7,50,000/-. However, this is not an invoice or bill given by the said Mamta Industries. It is simply an estimate with quotation only. There are no details of ST/GST of the party concerned in this estimate memo. Thus, these documents cannot be accepted for substantiating the claim of expenditure of borewell. The assessee has also claimed of payments made to guard salary for various parties. The same cannot be claimed as capital expenditure which is not allowable as an expenditure, as claimed by the assessee. Further, there is concurrent findings by both the Revenue authorities that the assessee could not produce proper evidence viz. invoices, bills, vouchers for claiming the above expenditures.

Further, it is noticed that the assessee filed his Return of Income in Form No.2 which is meant for individuals & HUF, NOT having income from Business or Profession. Thus, the assessee was not in clear mind to file the prescribed form and also claimed allowable expenditure, within the provisions of law. Thus, the lower authorities' finding of disallowance of Rs.27,64,744/- does not require any interference. The case law relied upon by the assessee's counsel viz. Jatinkumar Amrutilal shah (supra) is clearly distinguishable with the facts of the present case wherein the assessee produced proper invoice, bills, etc. in support of the expenses incurred by that assessee. Thus, the grounds raised by the assessee are hereby rejected.

11. Now coming to the addition made under section 68 of the Act, the assessee placed before us page no.17 to 18 from the Paper Book being confirmations of the accounts by Shri Jayesh Shah and Wagad Concrete U. This confirmation reads as follows:

"Given below is the details of your Accounts as standing in my/our books of accounts for the above mentioned period.

Kindly return 3 copies stating your I.T. Permanent A/c.No. duly signed and sealed, in confirmation of the same. Please note that if no reply is received from you within a fortnight, it will be assumed that you are accepted the balance shown below"

12. As stated in this confirmation accounts, PAN of the party was not furnished and one "Mr.Dilip" has signed on this document. The assessee also failed to produce Return of Income and bank statement relating to these transactions. Thus, the assessee failed to prove identity of the creditors and their capacity and genuineness of the transactions. It is well settled principle of law that onus of proving the source of the sum of money said to have been received

by an assessee is on the assessee to prove identity, genuineness and credit worthiness of the party as held by the Hon'ble Supreme Court in the case of Kale Khan Mohammad Hanif Vs. CIT., 50 ITR 1 (SC). Having not discharged the initial onus of proving identity, credit-worthiness and genuineness of the transaction of cash credit, the additions made by the lower authorities do not require any interference. Thus, the grounds raised by the assessee are hereby rejected and the appeal of the assessee is dismissed.

13. In the result, appeal of the assessee is dismissed.

Order pronounced in the Court on 8th July, 2022 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

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

Ahmedabad, dated 08/07/2022

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