

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 570/Srt/2019 (Assessment Year: 2011-12)

**(Hearing in Virtual Court)**

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|---|--------------------------|------------------------------------|
| Mahesh Tulsidas Patel,<br>Flat No. 13 B2, Shantiniketan<br>Apartment, Sumul Dairy Road,<br>Surat-395004.<br><b>PAN No. ADSPP 3124 B</b> | Vs.                      | I.T.O.,<br>Ward 3(2)(5),<br>Surat. |
| Appellant/ assessee   |                          | Respondent/ revenue                |
| Appellant represented by  | Shri Anil K. Shah, AR    |                                    |
| Respondent represented by   | Shri J K Chandani, Sr.DR |                                    |
| Date of hearing   | 09/05/2022               |                                    |
| Date of pronouncement   | 13/07/2022               |                                    |

**Order under section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-3, Surat (in short, the Id. CIT(A) dated 13/09/2019 for the Assessment year 2011-12. The assessee has raised following grounds of appeal:

- "1. The Id. CIT(A) has erred in confirming the addition of Rs. 5,00,000/- u/s 69 on account of unexplained investment levied by AO.*
- 2. The Id. CIT(A) has passed the order without considering our written reply and order of ITAT.*
- 3. The assessee craves leave to alter, amend, delete, all or any ground of the appeal.*
- 4. The business of the assessee was closed and the necessary papers were under collection. Therefore there is a delay. Your Honour is requested to condone the delay."*

2. Perusal of record shows that the Id. CIT(A) passed the impugned order on 13/09/2019, however, the present appeal is filed on 16/12/2016. Thus, there is delay of 12 days in filing the appeal before the Tribunal.
3. The learned authorised representative (AR) of the assessee submits that there is only delay of 12 days in filing the appeal before the Tribunal. The delay occurred due to fact that the assessee has suffered loss in cheque discounting business and left to his native place. On realising that the assessee is required to file appeal against the order of Id. CIT(A), came to Surat again, however, in the mean time, the time period of filing appeal has lapsed. The Id. AR submits that non-filing of appeal within stipulated period was neither intentional nor deliberate nor with melafide intention of the assessee. The Id. AR submits that there is only 12 days delay in filing the present appeal and the Bench may take liberal view and condone the delay in filing the appeal. The assessee is really interested in pursuing his appeal on merit. The assessee has already filed his affidavit for seeking condonation of delay in filing appeal.
4. On the other hand, the learned senior departmental representative (DR) for the revenue has not seriously opposed the application for condonation of delay.
5. We have considered the submissions of both the parties and perused the record carefully. Considering the submissions of the Id. AR of the assessee

that there was no deliberate and malafide intention in filing the appeal belatedly and that the assessee is really interested in pursuing his appeal on merit. And that on coming to know about the order against him, he immediately filed appeal. Therefore, taking a liberal view, the delay of 12 x days in filing the appeal is condoned.

6. Now advertent to the merits of the case, the briefly stated facts of the case are that the case of assessee for the Assessment Year (AY) 2010-11 was reopened on the basis of information received from Investigation Wing, Ahmedabad that a search action under Section 132 of the Income Tax Act, 1961 (in short, the Act) was carried out in case of Barter Group, Ahmedabad on 04/12/2014. In the search action, incriminating evidence was seized from the said group. The incriminating evidence indicates that they have received fund in various companies in the form of share capital for providing accommodation entry, which was not genuine. The said unaccounted fund received in cash was routed into books of account in the companies in the form of share application, share capital, share premium etc. In the search action, an information was gathered that the assessee through his proprietor concern made investment of Rs. 5.00 lacs in the shares of M/s Rajendra Suri Financial Services (Gujarat) Pvt. Ltd., with Barter group which was not genuine, such investment was not shown by assessee in his regular books of accounts. On the basis of such information, the Assessing Officer

had a reason to believe that amount of Rs. 5.00 lacs for the A.Y. 2010-11 had escaped assessment within the meaning of Section 147 of the Act. The Assessing Officer reopened the case of assessee after taking proper approval of Id. PCIT-3, Surat on 27/03/2018. Notice under Section 148 of the Act was served upon the assessee. No return of income in response to notice under section 148 was filed by the assessee. The Assessing Officer recorded that despite giving ample opportunity, no compliance was made by the assessee. The Assessing Officer issued final show cause notice dated 15/11/2018 fixing the date of hearing on 26/11/2018. The Assessing Officer noted that despite service of final notice, no compliance was made by assessee. The Assessing Officer, thereafter, decided to complete the assessment under Section 144 of the Act on the basis of information/material available on record. The Assessing Officer on the basis of information that such action was carried out in Barter Group, Ahmedabad on 04/12/2014 and on subsequent date, documents were seized from secrete office of Shri Anil Hiralal Shah and Atul Hiralal Shah (premises owned by Shri Bhadresh Natwarlal Shah, brother in law of Shri Atul Hiralal Shah) situated at B-406, Wall Street-II, Near Gujarat College, Ellisbridge, Ahmedabad wherefrom loose papers, registers, diaries inventorised and PAN cards, cheque books, original stamp and seal and books of account in tally and digital data were seized as per panchnama dated 06-07/12/2014. The

other documents were also recovered indicating funds received in cash and routed in the books of account in the form of share application, share capital and share premium. On such evidences it was revealed that the assessee also made investment of Rs. 5.00 lacs as share capital in M/s Rajendra Suri Financial Services (Gujarat) Pvt. Ltd. which was found as non-genuine. Such transaction/investment was not disclosed by assessee in return of income filed for A.Y. 2011-12. On the basis of such evidence about the investment of Rs. 5.00 lacs by assessee who is a proprietary firm, the Assessing Officer treated the said investment of Rs. 5.00 lacs as undisclosed investment and made addition under Section 69 of the Act.

7. Aggrieved by the additions in the assessment order, the assessee challenged only addition under Section 69 of the Act. The assessee filed its submission in writing. In the submissions, the assessee stated that he is in the business of cheque discounting on which he earned certain commission. The re-assessment for same assessment year was completed wherein the Assessing Officer estimated addition @ 10% of entire transaction. However, on appeal before the Id. CIT(A), it was reduced to 2% and ultimately the Tribunal restricted to 0.15%. The assessee simply denied investment in any kind of share. The Id. CIT(A) after considering the submission of assessee and the assessment order held that on the basis of information received from Investigation Wing, Ahmedabad, the assessee has invested Rs. 5.00

lacs which is not shown in his regular return of income. Incriminating documents found during the search reveals that the assessee has made investment of Rs. 5.00 lacs as share capital in the name of M/s Rajendra Suri Financial Services (Gujarat) Pvt. Ltd. Hence in absence of any clarification or evidence, the addition under Section 69 was upheld. Further aggrieved, the assessee has filed the present appeal before the Tribunal.

8. We have heard the submissions of Id. AR of the assessee and the Id. Sr. DR for the Revenue and perused the material available on record. The Id. AR of the assessee submits that the assessee is in the business of cheque discounting. The case of assessee was reopened second time for the assessment year under consideration. In the first re-assessment, the assessing officer made addition of the 10% of the credits in the accounts of the assessee, however, on appeal before Id CIT(A), the additions were restricted to 2% of the total credit. Against the order of Id CIT(A), the revenue filed further appeal before Tribunal, which was registered as ITA No. 2284/Ahd/2015 wherein the assessee filed his Cross Objections (CO) being 167/Ahd/2015. The appeal of revenue was dismissed and on the CO, the coordinate bench restricted the addition to the extent of 0.15% only. The case of assessee again reopened on the basis of information of investigation wing Ahmadabad that the assessee was made investment of Rs. 5.00 lacs in M/s Rajendra Suri Financial Services (Gujarat) Pvt. Ltd. on

account of share capital. Such information was received on the basis of search action carried out on Barter Group, Ahmedabad. The Assessing Officer made addition under Section 69 of the Act.

9. The Id AR for the assessee further submits that before the Id. CIT(A), the assessee filed detailed written submission and submitted that in the re-assessment the assessing officer made addition in the income of assessee @ 2% of total credit in the bank account of assessee maintained with Bank of India, Bank of Baroda and Dena Bank. Against the addition of 2.00%, the assessee as well as revenue filed appeal before the Tribunal wherein the assessee raised CO and the Tribunal restricted the addition to 0.15%. The assessee has not made any investment in any kind of share nor introduced any amount in M/s Rajendra Suri Financial Services (Gujarat) Pvt. Ltd. The assessee made discounting of the said amount and made RTGS to his client M/s Rajendra Suri Financial Services (Gujarat) Pvt. Ltd. and got commission @ .10%. The amount is not the investment of assessee as well as it was not shown in the balance sheet of assessee ending on 31/3/2011. The Id. AR of the assessee has reiterated that the assessee has not made any investment in the share and received only commission income. The Assessing Officer has not brought any evidence on record and share application, allotment of share in the form of physical agreement, sales certificate or payment of dividend. No evidence with regard to the fact that the assessee really made

investment in share of said company. Thus, entire addition is liable to be deleted.

10. In alternative plea, it was submitted by the Id. AR of the assessee that in the first re-assessment under Section 143(3) r.w.s. 147 of the Act for the A.Y. 2011-12 completed on 27/09/2017 and the matter was carried in appeal before Tribunal wherein the addition was restricted to .15% thus, the grounds of appeal raised by assessee is covered by the decision of the Tribunal in assessee's own case for the same assessment year in ITA No. 2284 & CO No. 167 dated 07.09.2018 wherein on similar transactions, the commission income @ 0.15% was sustained.
11. On the other hand, the Id. Sr. DR for the revenue supported the order of Assessing Officer. The Id. Sr. DR for the revenue submits that the commission income of assessee was assessed in first re-assessment order under Section 143(3) r.w.s. 147 dated 27/09/2017 which was recorded in the books of assessee. The transaction under dispute which was unearthed during the search action on Barter Group, Ahmedabad, which was not recorded in the books of assessee. The assessee has not disclosed such investment or transaction in his regular books of account. The assessee has not given any explanation before the Assessing Officer. Even before the Id. CIT(A), the assessee has not filed any evidence except claiming that he is in the business of cheque discounting. The Id. Sr. DR for the revenue submits

that the assessee has failed to explain about the investment in the share capital in M/s Rajendra Suri Financial Services (Gujarat) Pvt. Ltd..

12. We have considered the rival submissions of both the parties and have gone through the orders of the lower authorities carefully. We find that on second occasion in the assessment year 2011-12, the assessment was reopened under Section 147 of the Act on 27/03/2018. The assessee was served notice under Section 148. No return of income in response to notice under Section 148 of the Act was filed. The Assessing Officer in para 4 of assessment order recorded that despite fixing the date of hearing on more than three occasions, the assessee failed to make any compliance. The Assessing Officer ultimately issued final show cause notice that in absence of any information, assessment will be completed under Section 144 of the Act. Despite serving final show cause notice, the assessee failed to make any compliance. The Assessing officer on the basis of evidence and seized material in the search action on Barter Group, Ahmedabad made addition of Rs. 5.00 lacs by holding that the assessee made undisclosed investment in the shares of Rajendra Suri Financial Services (Gujarat) Pvt. Ltd. The Id. CIT(A) confirmed the action of Assessing Officer by holding that the assessee has not furnished any explanation about the investment in Rajendra Suri Financial Services (Gujarat) Pvt. Ltd.

13. Before us, the Id. AR of the assessee submitted that the assessee is in the business of cheque discounting and has received only .10% commission on discounting of cheques/RTGS. No document of any kind including his bank account or any kind of confirmation from Rajendra Suri Financial Services (Gujarat) Pvt. Ltd or any corroborative evidence, is filed to substantiate that investment of Rs. 5.00 lacs was part of his sacrosanct cheque discounting business transaction. Thus, we do not find any merit in the submission of Id. AR of the assessee.

14. The Id. AR of the assessee in his alternative submission submitted that in the earlier re-assessment completed under Section 143(3) r.w.s. 147 of the Act on 27/09/2017 and the addition @ 10% of total turnover of his cheque discounting was made and on appeal before Id. CIT(A), it was restricted to 2%. And on further appeal before the Tribunal, the same was restricted to .15% and that the grounds of appeal is covered by the said decision. Again we are unable to subscribe the submission of Id. AR of assessee. The addition in the assessment order dated 27/09/2017 has no connection with the addition in assessment order passed under section 143(3)/147 dated 17/12/2018. The addition in the second assessment order dated 17.12.2018 is clearly based on the incriminating evidence about the investment in the share capital of M/s Rajendra Suri Financial Services (Gujarat) Pvt. Ltd. was found. We find that the assessee throughout the proceedings either before

the Assessing officer or before the Id. CIT(A) has shown a very casual approach and only submitted in pleading that the assessee was in the business of cheque discounting. The cheque discounting business was projected as '*noble profession*' and as such no addition on account of unaccounted investment can be made. Thus, in absence of any evidence, we do not find any merit that grounds raised in the appeal is covered by the decision of Tribunal in assessee's own case for A.Y. 2011-12 in ITA No. 2284 & 2285/Ahd/2015 and CO No. 167 & 168/Ahd/2015. Therefore, do not find any error or illegality in the order of the Id. CIT(A) and we uphold the same.

15. In the result, this appeal of assessee is dismissed.

Order pronounced in the open court on 13<sup>th</sup> July, 2022 and result was also placed on the notice board.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 13/07/2022

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat