

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC-2” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.220/Ahd/2021
Assessment Year: 2012-13**

Dev Synthetics Pvt. Ltd.,
503, New Cloth Market,
O/o. Raipur Gate, Raipur,
Ahmedabad – 380 002.
[PAN – AADCD 6066 F]
(Appellant)

vs.

The Income Tax Officer
Ward – 1(1)(4), Ahmedabad.

(Respondent)

Appellant by : Shri Astha Maniar
Respondent by : Shri C.S. Sharma, Sr. DR

Date of hearing : 17.06.2022
Date of pronouncement : 13.07.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the order dated 17.08.2021 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for A.Y. 2012-13.

2. The grounds of appeal are as under:

- “1. The Ld. CIT(A), NFAC, Delhi erred in law and on facts in dismissing the ground of the Appellant challenging the reopening of the assessment for the reasons recorded by the AO.
2. The Ld. CIT(A), NFAC, Delhi has further erred in law and on facts in rejecting the contention of the assessee that the reassessment proceedings are bad in law and deserves to be quashed.
3. The Ld. CIT(A), NFAC, Delhi erred in law and on facts in confirming the action of the AO of placing reliance on the statement of one Shri Om Prakash Bihani without granting opportunity of cross examination which was specifically demanded by the Appellant.
4. The Ld. CIT(A), NFAC, Delhi erred in law and on facts in confirming the addition of Rs.4,51,045/- made by the AO u/s. 68 of the Act.

3. The assessee company has filed its return of income on 30.09.2012 declaring total income of Rs.30,690/-. The case was reopened after recording the reasons and after obtaining necessary approval from PCIT vide letter dated 23.03.2019. Notice under Section 148 of the Act was issued on 25.03.2019. Vide letter dated 22.04.2019 the assessee submitted that the assessee filed its return of income on 11.04.2019 and requested for copy of reasons recorded. Vide letter dated 09.05.2019 the assessee was provided a copy of reasons recorded for reopening. The assessee furnished objections against reason for reopening vide letter dated 09.07.2019 and the same was duly considered and a speaking order was passed on 15.07.2019. The Assessing Officer observed that this case was reopened on the basis of information received from ADIT (Inv), Unit-5 Kolkata wherein it was reported that M/s. Shree Ambika Service whose proprietor is Shri Om Prakash Bihani was maintaining various bank accounts in which huge cash were deposited. The funds so received in the account being paid to several firms by way of clearing cheques below the reporting threshold limit of Rs.50,000/-. The statement was recorded of Shri Om Prakash Bihani on 24.02.2019 by ADIT (Inv), Kolkata. An amount of Rs.4,51,045/- was routed to M/s. Dev Synthetics Private Limited from the bank accounts maintained by Shri Om Prakash Bihani. In response to show cause notices dated 11.09.2019 and 21.09.2019 the assessee furnished written submissions. The Assessing Officer after observing that the assessee has not proved the genuineness of the transactions as well as did not provide any addresses of persons from whom the assessee claimed to have made sales, the assessee received unexplained cash credit under Section 68 of the Act and thus the Assessing Officer made addition of Rs.4,51,045/-

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the reasons recorded by the Assessing Officer for reopening was not just and proper as the same are totally based on the information received from ADIT (Inv), Kolkata and that of statement of Shri Om Prakash Bihani and there was no enquiry independently made by the Assessing Officer before reopening of the assessment. The Ld. AR submitted that the reasons for reopening are not based on law deserves to be quashed. Ld. AR further submitted that merely relying on the statement of Shri Om Prakash Bihani without granting opportunity of

cross-examination is not just and proper and the assessee should have been given opportunity of cross-examination of Shri Om Prakash Bihani. Ld. AR on merit submitted that the assessee has given all the details related to the cash deposits and the sales before the Assessing Officer as well as CIT(A) but the same were not taken into account by the Assessing Officer as well as CIT(A). The Ld. AR relied upon the following decisions:

- i) Andaman Timber Industries vs. CCEX (2015) 62 taxmann.com 3 (SC)
- ii) PCIT vs. Kanubhai Maganlal Patel (2017) 79 taxmann.com 257 (Guj)
- iii) CIT vs. Indrajit Singh Suri (2013) 215 Taxman 581 (Guj)
- iv) H R Mehta vs. ACIT 387 ITR 561 (Bom)
- v) Marudhar Polycot (India) Pvt. Ltd. vs. DCIT in ITA No. 301/Ahd/2018
- vi) Arceli Reality Ltd. vs. ITO in ITA No. 6492/Mum/2016 (Mum. Tri.)
- vii) Kishanchand Chelaram vs. CIT 125 ITR 713 (SC)
- viii) Appropriate Authority vs. Vijay Kumar Sharma 249 ITR 554 (SC)
- ix) Heirs & LHS of Late Laxmanbhai Patel vs. CIT 327 ITR 290 (Guj)
- x) CIT vs. Ashwani Gupta 322 ITR 396 (Del.)
- xi) CIT vs. SMC Share Brokers Ltd. 288 ITR 345 (Del.)
- xii) CIT vs. Geetanjali Education Society 174 Taxman 440 (Raj.)

The Ld. AR further submitted that without prejudice to the above submissions, the ledger account of M/s R G Textile placed at page no. 79, 80 of the paper book reveals that there is an opening debit balance of Rs. 6,58,350/- which represents sales made to the said party in earlier year. Out of the same, the first four entries of Rs. 40,000/-, Rs. 40,000/-, Rs. 40,000/- and Rs. 29,775/- alleged to have been received from the bank account of Shri Bihani are treated as unexplained and the balance credits aggregating to Rs. 3,87,183/- received from the same party were treated as genuine. This shows that the Assessing Officer has placed sole reliance on the statement of

Shri Bihani for coming to a conclusion that the assessee received the unexplained money.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A). Ld. DR further submitted that the details of sales at no point of time were filed before the Assessing Officer which can be categorically seen from paragraph no.3.5. As regards to reopening of assessment and the reasons, Ld. DR submitted that the reasons were properly recorded after taking due approval from the PCIT. The ADIT (Inv), Kolkata and the information given by him has given a prima facie reasons to the Revenue for reopening the case and thus reopening is just and proper.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that re-opening of the assessment is not just based on ADIT's (Inv), Kolkata information but also the details given by information as well as the statement Shri Om Prakash Bihani co-relate with the Bank deposits in assessee's case. Thus, the reopening is just and proper and hence ground nos.1 & 2 are dismissed.

8. As regards reliance on the statement of Shri Om Prakash Bihani without granting opportunity of cross-examination, it can directly be seen that in the present case the statement given by the Shri Om Prakash Bihani was in consonance with the assessee's case as the assessee company accepted the fact that the amounts mentioned were received in Bank account on the similar date. Though in common cases the cross-examination of the persons whose statement is taken as a basis is required as per Evidence Act, but the Income Tax Statute is explained statute which never expects mandatory procedure as per the procedure course given in India but is based on due process of law and principle of natural justice. The assessee has been given opportunity of hearing thus the principle of natural justice was followed by the Revenue Authorities. The cross-examination cannot be asked as a right in each and every case by the assessee. In fact, there was substantial evidence and the acceptance by the assessee himself that the said amounts mentioned in the reasons were received in bank account on similar date makes Revenue's case even more stronger. For taking one of the basis of the statement of Shri Om Prakash Bihani while making the addition but the statement *per se* was not the sole basis for making addition and thus cross- examination was not mandatory. The case laws submitted by

the Ld. AR are on the different footing as in those cases statement was sole criteria for additions, but in the present assessee's case, it is not the sole criteria/ basis for making additions. In fact, the submission of the Ld. AR that the entries in ledger account of M/s R G Textiles confirms that the addition is based solely upon the statement of Shri Om Prakash Bihani is not correct as the entries in those books were never supported by the assessee with the other documents that the transactions were between assesses and the said party. Thus, ground no.3 is dismissed.

9. As regards addition of Rs.4,50,045/- made by the Assessing Officer under Section 68 of the Act, the assessee has failed to give the said details in consonance with the deposits made by the concerned person i.e. Shri Om Prakash Bihani in respect of the transactions entered with the other parties. The details given of the sales were not of Shri Om Prakash Bihani but some other parties and the payment received was from Shri Om Prakash Bihani. This fact was not proved incorrect by the assessee through its documents before the Assessing Officer. Thus, genuineness creditworthiness and identity of the sales transactions were at no point of time proved by the assessee before the Assessing Officer during the assessment proceedings. Hence, addition made by the Assessing Officer is just and proper.

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

Order pronounced in the open Court on this 13th day of July, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 13th day of July, 2022

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*