

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 252/Ahd/2019
Assessment Year 2015-16**

Shantilal M. Patel F-102, Indraprashth Tower, Nr. Drive In Cinema, Memnagar, Ahmedabad-380052 PAN: ADPPP6168E (Appellant)	Vs	The ITO, Ward- 4(1)(2), Ahmedabad (Respondent)
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Appellant by : None
Respondent by : Shri A.P. Singh, CIT/D.R.

Date of hearing : 03-08-2022
Date of pronouncement : 24-08-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Assessee against the order dated 28.12.2018 passed by the Commissioner of Income Tax (Appeals)-4, Ahmedabad, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2015-16.

2. The brief facts of the case is that the assessee is an individual and also a Director of Sunder Van Bhoomi Vikas Limited as well as Advocate and practicing at Gujarat High Court. For the Assessment Year 2015-16, the assessee filed his Return of Income on 17.08.2015 declaring total income of Rs. 3,98,670/-. The case was selected for limited scrutiny for the following issues:

- (a) low income in comparison to very high interest expenses
- (b) Substantial increases in capital in a year and
- (c) high interest low income and high investments.

2.1 Thus the statutory notice u/s. 143(2) of the Act was issued on 02.08.2016 and duly served upon the assessee. Thereafter a show cause notice dated 04.12.2017 issued to the assessee to furnish the source of increase in proprietor's capital at Rs. 79,67,61,174/-. The assessee has not made any response to the show cause notice. Hence a revised show cause notice issued on 20.12.2017 requesting the assessee to furnish the details of investment of Rs. 50,95,48,737/- with supporting evidences on investment in the various funds/FDs/shares, etc. The assessee filed its reply dated 26.1.22017 submitting the above investment of Rs. 50,95,48,737/- not related to the current Assessment Year 2015-16, but carry forward balance from the Assessment Year 2014-15 and no question making addition u/s. 69 namely unexplained investment by the assessee. The Id. A.O. has not accepted the above reply, on the ground that the Return of Income filed by the assessee for the Assessment year 2013-14 and 2014-15 wherein the assessee has shown NIL amount in column 2 of "Application of funds" in Part A-BS of balance sheet in both the assessment years. As the

investment has not reflected in these two assessment years, thus the submission of the assessee, the investments are carry forward from the Assessment Year 2014-15 is not acceptable. However the assessee has not explained the source of capital of Rs. 79,67,61,174/-. The assessee has not provided any explanation and therefore the same is added as unaccounted income of the assessee.

3. Aggrieved against the assessment order, the assessee filed an appeal before the Ld. CIT(A). The ld. CIT(A) has given nine opportunities of hearing from 26.06.2018 to 20.12.2018. The ld. CIT(A) also called for a remand report and forwarded to the assessee on 30.12.2018 calling for assessee's comments if any, by 20.1.2018. However the assessee has not replied to the above notice also. Hence the ld. CIT(A) confirmed the additions made by the Assessing Officer of Rs. 79,67,61,174/- and thereby dismissed the appeal as follows:

5. DECISION: I have carefully considered the assessment order and the submissions of the appellant. The remand report sent by the AO has been perused. The AO was asked as to how you have verified the balance-sheets in this case when the appellant is not required to upload the balance-sheet in departmental system. The AO has submitted that P & L account and balance-sheet can be requisitioned during assessment proceedings which was required to be furnished by the appellant for verification. The AO filed a copy of IT Returns saying that the proprietor's capital was shown at Rs.79,67,61,174/- for A.Y. 2015-16 i.e. the year under consideration with the comment that same was shown as NIL for year ending on 31.03.2014 and 31.03.2013(contention found to be correct as per copy of return of income downloaded from the departmental system and enclosed with remand report). Therefore, the AO had made out a case as if the proprietor's capital has increased from NIL to Rs.79,67,61,174/-. As the appellant could not explain the total credits in proprietor's capital of Rs.79,67,61,174/-, 'the same was added as Unexplained Income in assessment order. However, without admitting the AO had made remark on certain balance-sheets for A.Y.2013-14,

A.Y. 2014-15 and 2015-16 which are allegedly showing the capital account as under:

	As on 31/03/2013	As on 31/03/2014	As on 31.03.2016
Shantilal M. Patel Capital Account	48,00,28,531.00	55,62,28,077.00	59,68,78,928.00

Therefore, further clarification from the AO was requested in view of jurisdictional ratio laid down by Apex Court in the case of Jute Corporation of India Ltd. 187 ITR 688(SC). The AO further clarified the issue as under:

"2. In continuation of this office report dated 12/11/2018, it is to submit that on further verification of the case records it was found that the assessee had prepared multiple balance sheets for the said period ending on 31/03/2015. Copy of the said balance sheets as available on record are enclosed herewith. It may further be submitted here that the authenticity of the said Balance Sheets itself is questionable as they are prepared by assessee itself and not certified or verified by any independent auditor. Your good office may kindly appreciate that the said balance-sheets hardly have any evidentiary value and cannot be definitely used by the assessee to claim any relief at this stage.

3. It is also submitted that the figures of addition of Rs.79.67 crores, were based on claim made by assessee in its return of Income first time in AY.2015-16. The assessee had failed to establish the genuineness of the same in spite of multiple opportunities given. Moreover, the assessee has not able to establish that most of the balance-sheet items were carried forward from last year by any independent and credible evidence. Hence, sum of the said amounts were added being unexplained cash credit. The undersigned is enclosing copies of all balance-sheets filed (Multiple self made balance-sheets some of which pertain to same year!) so that the facts on records be appreciated by your good office. The copies of return of Income are also enclosed so that it may be appreciated that the said sums were claimed for the first time by the assessee in AY.2015-16 and hence addition can be made only in this AY.

4. In view of the above, it is requested that the additional evidences submitted by .the assessee should not be admitted under rule 46A that during the course of assessment proceedings, the assessee was given sufficient opportunities to furnish details. Without prejudice to the admissibility of additional evidences, It is submitted that the undersigned is willing to attend before your goodself whenever called so, to apprise your good office of the factual matrix involved in this matter."

It is mentioned that there is no application under Rule 46A from the appellant. It was on my own volition I called report u/s.250(4) so as to get some analysis done on anything related to the assessment on record. Further, the appellant has not filed any rejoinder to the remand report desired by 20.12.2018 and the tapai was checked even today to see if there is any response filed. There is no soft copy of response uploaded in the system as checked today.

The AO's objection to the admission of additional evidences is already rejected and evidence now on record are being taken into consideration. But the issue raised by the AO of multiple balance-sheets for same assessment year, is found to be correct for A.Y. 2014-15, therefore, justifying his contention of unreliability of such evidences.

However, the addition to capital in year under consideration remained unexplained in spite of number of opportunities provided as noted in para 3 of this order. I have gone through the facts in assessment order and the statement of facts submitted by the appellant carefully. The appellant was given number of opportunities by the AO and now by this office during appellate proceedings. However, the issue relating to addition to capital account of Rs.79,67,61,174/- remained unexplained.

Mere unsubstantiated explanation would not absolve assessee, burden is on him to prove has been held 208 ITR 668 (Bom.) & 185 ITR 49 (SC). Consequently, the addition of Unaccounted income of Rs.79,67,61,174/- in assessment order, is hereby confirmed. The ground of appeal is dismissed.

4. Aggrieved against this ex parte order, the assessee has filed the present appeal before us and raising the following Grounds of Appeal:

1. The Learned Commissioner of Income Tax Appeal-4, Passed Order Against order of Assessing officer has grossly erred in assessing the total income at Rs.79,71,59,844/- by making various additions on estimation basis of unaccounted income. Your appellant submits that all details and evidences called for had been provided during the course of assessment proceedings. Under the circumstances, there is no justification in making such a high pitch assessment and estimating the total income. It is therefore submitted that the said order be held as bad in law and be cancelled. It is submitted that it be so held now.

2. The learned commissioner of income tax appeal, against order passed by assessing officer has erred in making addition of Rs.79,67,61,174/- as unaccounted and undisclosed Income U/s 69 of the Income Tax Act on the ground

of its genuineness. Your appellant submits that it has fulfilled all the ingredients of section 68 of the Income Tax Act. It has proved identity, creditworthiness and genuineness of the transaction. Under the circumstances, the addition made is illegal and therefore requires to be deleted. It is submitted that it be so deleted now.

3. The appellant craves for leave to add, alter or amend any of the ground of appeal on or before the final date of hearing.

4. To stay the demand till the disposal of Appeal.

4.1. This appeal is posted for hearing for 11th time today, none appeared on behalf of the assessee. Earlier this case was fixed for hearing on 18.05.2022 and hearing notice was directed to be serve through Ld. Departmental Representative and duly served upon the assessee on 26.04.2022. However this Bench was not functioning on 18.05.2022, the case was adjourned to 30.06.2022. None appeared on behalf of the assessee. Therefore the case is adjourned today but none appeared on behalf of the assessee. None appeared on behalf of the assessee in the previous other hearing dates also. Thus the assessee is not interested in pursuing this appeal, therefore this appeal is disposed of with the help of the Ld. D.R. There is no details, evidence, records field by the assessee before the lower authorities or any Paper Book before this Tribunal.

4.2. It is appropriate to quote at this stage the legal maxim “VIGILANTIBUS, NON. DORMIENTIBUS, JURA SUBVENIUNT” which means, law will help only those who are vigilant. Law will not assist those who are careless of his/her right. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefits of law. Thus law confers rights on persons who are

vigilant of their rights. The assessee could not demonstrate the reasons for non-appearance before the lower authorities as well as before this Tribunal. In the absence of any further details before us the appeal is deserved for dismissal in spite of eleven opportunities given by this Tribunal and nine opportunities given by the Ld. CIT(A) before passing the appellate order. Further the assessee has not produced any materials, documents in support of his Grounds of Appeal filed before us. In the absence of the same, the grounds raised by the assessee could not be adjudicated and appeal filed by the assessee is hereby dismissed.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 24-08-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 24/08/2022

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

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद