

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT.SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1544/AHD/2019
Assessment Year : 2011-12

Chandrakant Lavjibhai Mandanka 16/B, Mansi Avenue, Navdurga Society, Vadodara. PAN : ACLPM 1099 E	Vs.	ITO, Ward-2(3) Vadodara.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
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Assessee by :	Shri Suresh Thakkar, AR
Revenue by :	Shri Atul Pandey, Sr.DR

सुनवाई की तारीख/Date of Hearing : 24/06/2022
घोषणा की तारीख /Date of Pronouncement: 26/08/2022

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the Id. Commissioner of Income-Tax(Appeals)-5, Baroda [hereinafter referred to as "Ld.CIT(A)"] under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) dated 03.09.2019 pertaining to the Asst.Year 2011-12.

2. At the outset, it was stated that the sole issue in the present appeal pertained to addition made to the income of the assessee on account of unexplained credit under section 68 of the Act amounting to Rs.46,62,373/-. The ground reads as under:

"1. On the facts and circumstances of the case, the ld.AO is not justified both in law and on facts in invoking section 68 of

the IT Act and making addition of Rs.42,62,373/- to the total income.

It is prayed that the addition made u/s.68 of Rs.42,62,373/- be deleted.”

3. The addition made pertained to increase in the opening balance of the capital of the assessee by way of a journal entry in the name of M/s.Amar Developers and M/s Sun Corporation.

4. As transpires from orders of the Revenue authorities, the assessee was a partner in three firms viz. Krushnam Infrastructure, Sun Corporation and Amar Developers. During assessment proceedings, the assessee had filed copies of his financial statements and profit & loss account and balance sheet as on 31.3.2010 i.e. end of the preceding financial year i.e. F.Y.2009-10 and the AO noted therefrom that while his capital stood at Rs.34,19,190/-, but in the impugned year i.e. financial year 2010-11, the assessee has made certain adjustment to his capital and increased it to Rs.96,00,966/-. The assessee was specifically asked to explain this increase on account of two journal entries in the names of Sun Corporation and Amar Developers as above.

5. We have noted from order of the authorities below that the consistent explanation of the assessee for this increase in capital was on account of adjustment of the capital balance of the assessee in the accounts of these two firms and as that reflected in his own books, which had remained unreconciled since 2007. The assessee had repeatedly stated that being an individual he was earlier not maintaining any books of accounts and started maintaining books of accounts only from 2007 -08 and since then, the balance reflected as invested in these two firms remained un-reconciled and it was only after 2010 that the assessee realised the same and since it was

unable to reconcile its difference, the capital adjustment to these accounts was made by way of journal entries resulting in increase to his capital account accordingly. The assessee had repeatedly asserted that this difference in the investment in the said two firms related to period prior to 2007 and being unable to find reasons for the difference, the assessee has passed the impugned journal entries. This contention of the assessee finds mention at para 6 of the CIT(A)'s order as under:

“6. Sole ground of appeal pertains to addition u/s 68 amounting to Rs. 42,62,373/- on account of unexplained addition in capital account. Appellant is partner in three firms namely (i) Krushnam Infrastructure (ii) Sun Corporation and (iii) Amar Developers. During the assessment proceedings, AR filed audited copy of P/L and Balance Sheet as on 31.03.2010. His capital as on 31.03.2010 stood at Rs.34,19,190.29 but in subsequent F.Y. 2011-12, appellant made certain adjustment and raised her capital as on 31.03.2011 at Rs. 960096.87. AO requested the AR/appellant to explain the sudden rise in capital A/c. AO specifically requested to explain two journal entries of Rs. 7590835.43 and Rs. 137332.45 in the name of M/s Sun Corporation and M/s Amar Developers giving rise in capital A/c for the period 01.04.2010 to 31.03.2011. Thus, total capital balance is shown at Rs. 9600966.87 (Rs. 7590835.43 + Rs. 137332.45) as on 31.03.2010. Before the AO. AR submitted » copy, of ledgers but failed to submit cash flow statement, bank statement, corresponding entry in firm's books of account. AR claimed before AO that appellant was not a qualified person and his accountant could not pass certain entries in his capital A/c as reflected in firm's books. The difference is once for all adjusted as on 01.04.2010 by passing two journal entries. Before AO, AR claimed that appellant was maintaining books of account since year 2007-08 only but he could notice the anomalies only when scrutiny notice was issued to him. Even after reconciliation, difference of capital of Rs. 65,356/- in the books of the appellant with reference to books of M/s Amar Developers was detected which was claimed to be pertaining to the period prior to 31.03.2007. Similarly, after all possible reconciliation statements, there existed difference of capital of Rs. 4197017/- in the books of appellant with reference to books of M/s Sun Corporation and such difference was claimed pertaining to the period prior to 31.03.2007. Thus, total difference came to Rs. 4262373 (4197017 + 65356) to which AO considered unexplained rise in capital a/c and proceeded to add u/s 68 of the Act. Aggrieved with the addition, appeal is filed.”

6. The ld.counsel for the assessee stated that he had substantiated his explanation that the entry pertained to unreconciled balance of his capital in M/s Amar Developers and M/s Sun Corporation and that in his own books, by filing a detail

showing his capital account balances as reflected in the books of the said two firms right from year ending 2002 onwards to the current year and also the balance as reflected in his books from year ending 2007 onwards clearly bringing out the difference in the capital as reflected in the two set of books as on 01-04 2007 ,which was adjusted by way of journal entry in the impugned year. Copies of ledger account of the assesses capital in the books of the said two firms as also their Balance Sheets and copies of capital account of the assessee in its Books were filed to substantiate the amount reflected in the detail. The same were also filed before us in paper book as under:

- “2. *Statement of opening balance of capital account of appellant from books of M/s Amar Developers and M/s Sun Corporation.*
3. *Copy of Capital account of the appellant form the Books of M/s Amar Developers from F.Y 2000-2001 to F.Y.2006-2007 Balance as on 31.03.2007 Rs. 87906/-*
4. *Copy of Capital account of the appellant form the Books of M/s Sun corporation from F.Y 2002-03 to F.Y.2006-2007 Balance as on 31.03.2007 Rs. 417767/-*
5. *Appellant's trial Balances 01.04.2007 to 31.03.2008 showing balances taken of M/s Amar Developers and M/s Sun corporation and Balance sheet as at 31.03.2008*
6. *Appellant's Capital Account and Balance sheet from 01.04.2010 to 31.03.2011.*
7. *Final accounts statements of M/s Amar Developers F.Y 2006-2007*
8. *Final accounts statements of M/s Sun Corporation F.Y 2006-2007*

7. Referring to the detail at P.B 8 he pointed out the difference in capital account as reflected in the Books of the two firms and in the Books of the assessee from year ending 2007 as under:

(8)

Appellant : Chandrakant L Mandanka :- Appeal No. :- ITA/1544/AHD/2019 - Asst. Year 2011-2012

M/S AMAR DEVELOPERS

Date	01.04.2002	01.04.2003	01.04.2004	01.04.2005	01.04.2006	01.04.2007	01.04.2008	01.04.2009	01.04.2010	01.04.2011
Opening Balance in the Books of Amar Developres of Chandrakant L Mandanka (capital Balance)	24606	-43908	1451	74000	58369	87906	239201	129807	20518	364441
Balance show on Books of Chandrakant L Mandanka			0	0	0	22550	22550	360850	157850	365441
Difference			1451	74000	58369	65356	216651	-231043	-137332	0
Diff. Treated unapproved - Added as income by L'D AO						65356				

Explanation for the entry passed on 01.04.2007

In the F. Y 2007-2008 (01-04-2007)

Accountant made mistake of taking balance as per books account of the firm Balance should have been taken at Rs. 87906. instead of taking balance of Rs. 22550.

This gave difference of Rs. 65356 as on 01.04.2007

This is clerical mistake. This does not give rise to income

Explanation for the entry passed on 01.04.2010

In the Financial year 2010-2011

To correct the mismatch of balances between the firm and personal accounts , the accountant passed Journal entry of Rs. 1,37,332/-

This entry is accepted by the L'D AO after considering reconciliation from 01.04.2007- to 31.03.2011

M/S SUN CORPORATION

Date	01.04.2002	01.04.2003	01.04.2004	01.04.2005	01.04.2006	01.04.2007	01.04.2008	01.04.2009	01.04.2010	01.04.2011
Opening Balance in the Books of Sun Corporation of Chandrakant L Mandanka (capital Balance)	1,59,100.0	1,59,100.0	2,61,509.0	3,61,124.0	4,42,617.0	417767	9,74,958.0	9,45,037.1	763536	8,15,817.6
Balance show on Books of Chandrakant L Mandanka						3779250	37,79,250.0	24,52,871.0	8354371	8,15,818.0
Difference	1,59,100.0	1,59,100.0	2,61,509.0	3,61,124.0	4,42,617.0	4197017	-28,04,292.0	-15,07,833.9	-7590835	-0.4
Diff. Treated unapproved - Added as income by L'D AO						4197017				

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