

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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos. 1360-1361/AHD/2019
निर्धारण वर्ष/Asstt. Years:2008-2009 & 2009-10

Shri Arvind Punabhai Patel, A 306, Mangal Jyot, Opp. Aristo Ville, Joghpur Cross Road, Satellite, Ahmedabad-380015 PAN: AGGPP5322A	Vs.	I.T.O., Ward(3)(3)(12) Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri M.S. Chhajed, A.R
Revenue by :	Shri Atul Pandey, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **26/09/2022**
घोषणा की तारीख / **Date of Pronouncement**: **07/10/2022**

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned two appeals have been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-3, Ahmedabad, dated 24/06/2019 arising in the matter of assessment order passed under s. 144 r.w 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2008-2009.

2. The assessee has raised the following grounds of appeal.

1. *The order passed by the Ld.CIT(A) is against law, equity.*
2. *The Ld.CIT(A) has erred in law and on facts in upholding the validity of re-opening of assessment as reopening was made without independent application of mind and relying on the information receive from DDIT (Inv.)*
3. *The Ld.CIT(A) has erred in law and on facts in upholding the validity of reopening of assessment in absence reason for re-opening recorded by the Ld.AO*
4. *The Ld.CIT(A) has erred in law and fact in upholding addition made by the Ld.AO u/s.69 of Rs.23,91,095/-*
5. *The appellatant craves liberty to add, amends, alter or modify all or any grounds of appeal before final appeal.*

3. The issue raised by the assessee in ground no. 4 is that the Ld. CIT(A) erred in upholding the addition made by the AO for Rs. 23,91,095/- under the provision of section 69 of the Act.

4. The facts in brief are that the assessee in the present case is an individual and proprietor of M/s Spot Finance and Sport Corporation. The assessee was maintaining two bank accounts in Bapunagar Mahila Co-operative bank Limited bearing A/c No. 986 and 211. Both the bank accounts of the assessee were credited on the maturity of the fixed deposits amounting to Rs. 23,91,095/- only. On question about the maturity of the fixed deposit, the assessee failed to make any satisfactory explanation and therefore the AO added the same as unexplained investment u/s 69 of the Act.

5. Aggrieved assessee preferred an appeal to the Ld. CIT(A). The assessee before the Ld. CIT(A) among other contentions submitted that the AO has nowhere mentioned about the FDRs made by him. As such, the AO has ignored the fact that these FDRs were made in the bank account of different parties in earlier assessment years. But at the time of maturity, the bank account of the assessee was credited. As such, there was no fixed deposit made by the assessee out of his bank account. To this effect, the assessee furnished the details of the parties in whose accounts

the FDR were created along with the date of FDR and the amount. However, the AO without noticing this fact has made the addition in the hands of the assessee.

6. The Id. CIT(A) called for the remand report from the AO who submitted that the addition has been made by the AO u/s 69A of the Act but inadvertently the section 69 was mentioned in the Assessment Order. According to the AO, the merely mentioning the wrong section doesn't make the addition un-sustainable. The Ld. CIT(A) after considering the submission of the assessee has confirmed the order of the AO by observing as under:

*The appellant plea that A.O has made addition u/s.69 of the Act as unexplained investment and sec. 69 can only be invoked when appellant makes an investment, while in the captioned assessment, the assessee had not made any investment, assessee has received proceeds of the investment, in this connection, the contention of the | assessee is not acceptable, as there might be error in quoting section but the unaccounted income has to be brought to tax. The A.O while passing assessment order has inadvertently written section 69 instead of 69A_Section 2928 of the Act comes to the rescue of the AO as quoting of section 69 instead of 69 A cannot be reason for the invalid addition. The appellant plea that only the peak amount should be considered instead of entire proceeds of FDS is not acceptable as the same is not applicable in this case as the amount once withdrawn is not re-deposited. Each time there is new credit entry in bank account in the form of FD maturity. The appellant plea that whole proceeds of FDRs cannot be considered as income of assessee and only the net income from FDRs will be the income of the assessee is not acceptable as proceeds of benami FDs have been credited in bank account of the assessee, it is a case where unaccounted funds have been introduced in regular books of the assessee. During appellate proceedings also appellant could produce any concrete evidence to establish his claim. In absence of any justification and any reply from the appellant the amounts credited in the account No.986 of Rs.12.12,404/- and in account No.2121 of Rs. 1 1. 78. 691/- held in the name of Spot Finance, Prop. Arvsndbhai Punabhai Patel are treated as unexplained investment of the appellant u/s.69A of the IT Act, 1961. The addition made by the AO is held to be in order and therefore, the addition of Rs. 23,91, 095/- is confirmed. Thus, the ground of the appellant is **dismissed**.*

7. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

8. The Ld. AR before us filed a paper book running from pages 1 to 75 and made the various contention including the contention that the FDRs were made in the earlier Assessment Years. Therefore, if any addition is to be made that has to be made in the year in which such FDRs were created. It is known that the bank account of the assessee was credited on account of maturity of the fixed deposits

and the amount of maturity of the fixed deposit does not represent the income as it comprises the principal amount and interest. As such it is only the source of the investment which can be brought to tax under the provisions of section 69 of the Act and not u/s 69A of the Act. The Ld. AR further contended that no addition is warranted on account of maturity of fixed deposit.

9. On the other hand the Ld. DR vehemently supported the order of the authorities below

10. I have heard both the parties and perused the materials available on record. There is no dispute to the fact that the bank account of the assessee was credited for the amount of Rs. 23,91,095/- on account of maturity of the deposit in the year under consideration. These Fixed deposits were created in the earlier year in the bank account and in the name of different parties. The details of the parties along with the amount and date of fixed deposit are available pages 20 to 22 in the appellate order. On perusal of the details of the FDR, I find that these FDR were created in the earlier year and therefore if any addition is warranted then it can only be in the year in which such FDRs were created and not in the year of the maturity of fixed deposit. It is for the reason the investment was made in the earlier year and which was matured in the year under consideration. As such the amount matured in the year under consideration does not represent the unexplained investment merely on the reasoning that it was credited in the bank account of the assessee. In my considered view, it the source of money which has been used for the purpose of the FDR and the same can only be brought to tax and that too in the year in which such FDR were created. Thus, after considering the necessary fact as discussed above, I set aside the findings of the of Ld. CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is allowed.

11. As the assessee has succeeded on merit, I do not find any reason to adjudicate the other ground of appeal raised by the assessee challenging the validity of the assessment framed u/s 147 r.w.s. 143(3) of the Act. Hence this ground becomes infructuous and thus dismissed.

12. In the result, the appeal filed by the assessee is partly allowed.

13. Now coming to the ITA No. 1361/Ahd/2019 for A.Y. 2009-10. The assessee has raised the following grounds of appeal.

1. *The order passed by the Ld.CIT(A) is against law, equity.*
2. *The Ld.CIT(A) has erred in law and on facts in upholding the validity of re-opening of assessment as reopening was made without independent application of mind and relying on the information received from DDIT (Inv.)*
3. *The Ld.CIT(A) has erred in law and on facts in upholding the validity of reopening of assessment in absence reason for re-opening recorded by the Ld.AO*
4. *The Ld.CIT(A) has erred in law and fact in upholding addition made by the Ld.AO u/s.69 of Rs.38,16,900/-*
5. *The appellants crave liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.*

14. At the outset we note that the issues raised by the assessee in his grounds of appeal for the AY 2009-10 are identical to the issues raised by the assessee in ITA No. 1360/AHD/2019 for the assessment year 2008-09. Therefore, the findings given in 1360/AHD/2019 shall also be applicable for the year under consideration i.e. AY 2009-10. The appeal of the assessee for the assessment 2008-09 has been decided by us vide paragraph No. 13 of this order partly in favour of the assessee. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2008-09 shall also be applied for the year under consideration i.e. AY 2009-10. Hence, the grounds of appeal filed by the assessee is hereby partly allowed.

15. In the result, the appeal filed by the assessee is partly allowed.

16. In the combined result, both the appeals filed by the assessee are partly allowed.

Order pronounced in the Court on 07/10/2022 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 07/10/2022
Manish (True Copy)