

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

**BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT  
&  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 567/Ahd/2020  
(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>Shri Vardhman Ornaments Pvt. Ltd.</b> 205 & 201 A/B 2 <sup>nd</sup> Floor, Super Mall, Nr. Lal Bungalow, C. G. Road, Navrangpura, Ahmedabad - 380009	<b>बनाम/ Vs.</b>	<b>ITO</b> Ward – 4(1)(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AANCS6533N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Written Submission Filed
प्रत्यर्थी की ओर से /Respondent by :	Shri Shramdeep Sinha, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	22/07/2022
घोषणा की तारीख /Date of Pronouncement	14/10/2022

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the assessee is directed against the order dated 23.08.2019 passed by the Ld. Commissioner of Income Tax (Appeals) – 8, Ahmedabad arising out of the order dated 14.03.2015 passed by the ITO,

Ward-4(1)(3), Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2012-13.

2. There is a delay of 384 days in filing the appeal before us. The assessee has filed an application for condonation of such delay alongwith a written notes of submission. However, none appeared on behalf of the assessee at the time of call.

3. We have carefully considered the written notes of submission filed on behalf of the assessee explaining the delay in filing the appeal before us and also on merit and we have also heard the Ld. DR appearing for the Revenue. We have perused the explanation rendered by the assessee for condonation of delay where from it appears that the appeal be supposed to be filed before 14<sup>th</sup> September, 2019 when the Director of the company was taking care of his mother-in-law who was seriously ill within a period of few month the lock down was started due to Covid pandemic spread all over the world where the Director of the company Shri Atul K. Shah was also become one of the Victims. Supporting documents to this effect was duly filed before us. Upon careful reading of the same, it appears that the delay caused due to genuine reason and hence, the same is condoned.

4. The assessee has come up in appeal mainly on following grounds:

*“1. The learned CIT(A) has erred in confirming the addition of Rs.7,25,000/- as unexplained credit U/s 68 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.*

2. *The learned CIT(A) has erred in confirming the addition of Rs.1,58,300/- as undisclosed short term capital gain and that too without granting opportunity of being heard. It is therefore submitted that the addition made is illegal and therefore requires to be deleted. It is submitted that it be so deleted now.*

3. *The learned CIT(A)-8 Ahmedabad has deleted the Grounds no.4.*

4. *The learned CIT(A) has erred in confirming the ROC tax of Rs.10,235/- without granting an opportunity of being heard. It is submitted that it is business revenue expenditure allowable U/s 37 of the Income Tax act. It is submitted that it be so allowed now.*

5. *The learned CIT(A) has erred in confirming the membership fees of Rs 1,50,000/- paid to Ail India Gems & Jewellery Federation without considering the facts on record. It is submitted that the said expenditure is allowable as per the jurisdictional High court decision and therefore disallowance is illegal. It is submitted that it be so held now and disallowance be deleted now.*

6. *The learned CIT(A) has erred in confirming the car depreciation of Rs. 1,23,522/- without considering facts on record.”*

5. The first ground relates to addition of Rs.7,25,000/- as unexplained credit under Section 68 of the Act.

6. We have considered the written notes of submissions filed by the assessee, however, the Ld.DR relied upon the orders passed by the authorities below.

7. The facts of the case is this that during the year under consideration appellant has received a sum of Rs.31,25,000/- out of which the source in the hand of Shri Atul K. Shah, the Director of the company to the tune of Rs.7,25,000/-, which was contributed by him in the share capital of the appellant company could not be furnished. However, during the appellate proceedings, the bank statement from which the impugned amounts were

given to the company were duly furnished by the appellant, but, without any result. In fact, the said bank statement is also appearing alongwith written notes of submission filed before us, ledger account from the book of the appellant alongwith complete address and PAN of the said Shri Atul K. Shah and the copy of Income Tax return is also annexed to the written notes of submission filed by the appellant. We have perused the bank statement of the appellant company as well as the bank statement of Shri Atul K. Shah. It appears that the transaction carried out through the proper bank channel and the genuineness of such transactions cannot be doubted. The summary of the bank statement of the appellant company qua Shri Atul K. Shah is as follows:

<i>Date</i>	<i>Amt.Rs.</i>	<i>Bank name</i>	<i>A/c.no.</i>	<i>Name of A/c. Holder.</i>
16/03/2012	7,00,000/-Cr.	Sarvodaya Comm .co. op. Bank - Paldi, Ahmedabad.	1000721	Shri Vardhman Ornaments Pvt. Ltd.
16/03/2012	7,00,000/-Dr.	Sarvodaya Comm .co. op. Bank - Paldi, Ahmedabad.	1000030	Shri Atul K Shah.
03/02/2012	25,000/-Cr.	Sarvodaya Comm .co. op. Bank - Paldi, Ahmedabad.	1000721	Shri Vardhman Ornaments Pvt.Ltd.
03/02/2012	25,000/-Dr	Sarvodaya Comm .co. op. Bank -Paldi, Ahmedabad	1000988	Shri Atul K Shah

It further appears that the accounts of the appellant company were audited under the provision of Section 44AB of the Act wherein no such defect in fact the above fund were source from OD account of the assessee company which is running by Mr. Atul K. Shah and his proprietary concern. The bank

statement further shows various payments and receipts. Moreso, the appellant company audited under S.44AB of the Act in which no defect has been pointed out, since, once the appellant has proved the money has come from a particular source, the impugned addition cannot be made under Section 68 of the Act on account of unexplained credit, hence, the same is deleted.

8. The addition of Rs.1,58,300/- on account of undisclosed short term capital gain (STCG) has been challenged before us. The short fact leading to the issue is that the assessee sold out an immovable property being a shop premises located in Super Mall, C. G. Road, Ahmedabad for consideration of Rs.6 Lakhs on 24.05.2011. The registered sale deed shows the jantri value of such property stood at Rs.7,34,700/- which according to the Ld.AO needs to be taken as deemed sale value and finally the STCG worked out at Rs.2,26,300/-. Since Rs.60,000/- has already been disclosed as STCG by the assessee, show cause was issued as to why the difference of Rs.1,66,300/- should not be added as undisclosed STCG again in the hands of the assessee. The assessee on 27.02.2015 submitted that it has disclosed the entire sale consideration in the return of income and neither he has received the difference amount as pointed out by the Ld.AO. However, without referring the matter to the District Valuation Officer, the AO added the same to the total income of the assessee, which was, in turn, confirmed by the First Appellate Authority. There is catena of judgments that in the present facts and circumstances of the case it is the duty cast upon the Ld.AO to refer the matter for determining the fair market value. In the absence of such statutory

compliance made by the Ld.AO, we do not find the addition is justified and the same is, thus, deleted.

9. A sum of Rs.10,235/- being the ROC tax has been disallowed by the authorities below which is under challenge before us.

10. The said addition has been made pursuant to the ratio laid down in the matter of Punjab Industrial Development Corporation Ltd. vs. CIT (1997) 225 ITR 792 and also the judgment passed by Hon'ble Apex Court in the matter of Brookbond India Ltd. vs. CIT (1997) 225 ITR 798, which has not been controverted by the assessee in the written notes of submission in the absence of which, we confirm the said addition.

11. The addition on account of membership fees of Rs.1,50,000/- paid to All India Gems & Jewellery Federation has been challenged before us. It is the case of the assessee that such membership paid every periodical years has been allowed as business expenses. In that view of the matter, we do not find any justification in making such addition for the year under consideration, the same is, thus, deleted.

12. The addition of Rs.1,23,522/- on car depreciation has been challenged before us. The observation made by the Ld.AO in this regard is as follows:

*“10.1 In this respect, after much persuasion, the assessee has vide letter dated: 28/01/2015 submitted a copy of the bill evidencing purchase of such vehicle. A perusal shows that such vehicle stands in the name of Sh. Hemantkumar Amrutlal Patel with bill dated : 24/03/2012 and amounting Rs. 12,99,243/-. The Insurance papers also bear the name of this person. Accordingly, it was again issued a show cause notice dated: 13/02/2015 which reads as under :*

"-----A perusal of the bill to evidence the purchase of vehicle - XUV shows that the same stands in the name of Sh Hemant Kumar Amrutlal Patel. As such, the vehicle stands neither in name of director nor in name of the company. By this you are again provided an opportunity to prove that such vehicle was indeed purchased by the company and furnish copy of bank statement / cash book duly highlighting such transaction of investment. In absence, please show cause as to why the investment so made may not be considered to be unexplained and thus may not be added back to your total income under applicable provisions of the Act. Further, please show cause as to why the depreciation claimed on such vehicle may not be disallowed----."

10.2 In response, the assessee has vide letter dated: 27/02/2015 again submitted the copy of Registration Certificate in the name of the director of the assessee company named Sh. Atul K. Shah. It further submitted copy of the ledger account of Sh. Hemant Kumar A Patel as appearing in its books and highlighted the said transactions in the bank statement of the company.

10.3 The reply of the assessee is considered but the same is not tenable in view of the following observations:

- As per highlighted Bank statement, the transaction for purchase of XUV for sum of Rs. 14,42,058/- was dated : 14/03/2012 and was released via RTGS.
- As per bill produced, the said XUV was purchased in name of Mr. Hemant A. Patel on 24/03/2012 but for a sum of Rs. 12,99,243/- only.
- As per Registration Certificate, the said vehicle was transferred in name of the director of the assessee company on 17/04/2012 I.e. in the following FY.
- In the instant case, there was no restriction or compulsion which prevented the assessee from registering the cars in name of third person and subsequently getting it transferred in the name of the Director.
- No explanation was offered by the assessee as to why the cars had been purchased and registered in the name of its directors although the company wanted to have ownership and domain over the said cars.
- It was the directors and not the company under law who was not only the legal owners of the property (car) but were also actually using and possessing the same.

- *Where a person claims himself to be the owner of the property but does not offer any sufficient explanation for purchasing the property in someone else's name and never makes any efforts for getting its ownership or title transferred in its own name, rather allows deliberately the title registration in the name of other person, then such person cannot claim its ownership to the exclusion of the registered owner/purchaser of the property.*
- *Merely because the said cars have been shown in the balance sheet or books of account as assets of the tax payer, did not mean that the tax payer had become the owner of the same.*

*10.4 The Mumbai Bench of the Income Tax Appellate Tribunal (ITAT) in a recent case of Edwise Consultants Pvt. Ltd. Vs. ACIT (391/MUM/2011) has, inter alia, considered the matter regarding allowability of depreciation when the cars were registered in the name of the directors but were financed and recorded as assets by the company. Hon'ble Tribunal has reached the finding that depreciation shall not be allowed unless it is established that it is "beyond the control" of the tax payer to register the asset in its name. Thus, merely financing the asset shall not suffice to claim the ownership.*

*10.5 In view of the facts available on record and the discussion made herein above, it is inferred that the XUV was registered in the name of the director of the company and since the company was not the owner it did not have any right to claim depreciation on the same. Even otherwise, it is very important to consider that even the director of the company became the legal owner of the vehicle in question in the following FY i.e. on 17.04.2012. Accordingly, the depreciation claimed on such vehicle at Rs. 1,23,522/- is hereby, disallowed and added back to the total income."*

13. The Ld. CIT(A) while confirming the same observed as follows:

*"10.1 In the course of appellate proceedings, appellant contended that the car was used for the purpose of the appellant's business and furnished copy of the invoice which shows the car to be on the name of Patel Hemant kumar Amrutlal purchased on 24.03.2012 by him. However, as per the AO the car was subsequently transferred in the name of Shri Atul K, Shah the Director which fact remain uncontroverted. No details whatsoever as regards the use of the car for the purpose of the appellant's business were adduced. As the car is in the name of the director who is also engaged in the similar business separately and also there is no evidence whatsoever that it was used for the purpose of appellant's business I do not find any infirmity in the action of AO and hence, the disallowance is confirmed.*

*Penalty proceedings u/s. 271(1)(c) of the Act are initiated to furnishing inaccurate particulars of income leading to concealment of income.*

*(Addition of Rs.1,23,522/-)”*

14. In absence of any submission made by the assessee in this regard, we do not find any reason to interfere with the order passed by the authorities below, the same is, therefore, confirmed. This ground of appeal is, thus, found to be devoid of any merit and thus dismissed.

15. In the result, assessee's appeal is partly allowed.

**This Order pronounced on 14/10/2022**

Sd/-  
(P. M. JAGTAP)  
**VICE PRESIDENT**  
Ahmedabad; Dated 14/10/2022

Sd/-  
(MADHUMITA ROY)  
**JUDICIAL MEMBER**

*True Copy*

S. K. SINHA

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**