

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 2239/Ahd/2017
Assessment Year 2014-15**

The Dy. CIT, Central Circle-1, Aayakar Bhavan, Race Course Circle, Baroda-390007 (Appellant)	Vs	M/s. Shreeji Enterprises, Trivia Complex, Opp. Natubhai Centre, Race Course, Vadoara-3900007 PAN: ACEFS6227K (Respondent)
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**Assessee by: Shri Sunil Talati, A.R.
Revenue by: Shri James Kurian, CIT-D.R.**

Date of hearing : 26-07-2022
Date of pronouncement : 19-10-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-12, Ahmedabad in Appeal no. CIT(A)-12/1145/CC-1/14-15 vide order dated 27/07/2017 passed for the assessment year 2014-15.

2. Department has taken the following grounds of appeal:-

“(1) On the facts and circumstances of the case and in law, the Ld.CIT(A), Ahmedabad has erred in deleting the addition of Rs.11,00,00,000/- made to the returned income on account of Undisclosed net income.

(2) On the facts and circumstances of the case and in law, the Ld.CIT(A), Ahmedabad has erred in deleting the addition of Rs. 44,80,634/- made to the returned income on account of Interest expenses on unexplained cash credit.

(3) On the facts and circumstances of the case and in law, the Ld.CIT(A), Ahmedabad has misunderstood the word "unaccounted income" stated by the assessee's partner in the statement u/s.131 of the I. T. Act, 1961 and has wrongly held the "unaccounted income" declared as "gross receipts". The partner in his statement has categorically stated that Rs. 11 crore declared by him is unaccounted income in addition to regular income of firm for F.Y. 2013-14 (A.Y, 2014-15).

(4) On the facts and circumstances of the case and in law, the Ld.CIT(A), Ahmedabad has failed to appreciate the fact that the disclosure was made on the basis of the incriminating documents impounded during the course of survey. The above income would never have been disclosed in the books of account if the survey action

had not been carried out, and the Ld.CIT(A) also ignored the facts that the disclosure of the "NET INCOME" was made and not the "GROSS RECEIPTS". The said receipts have been introduced in the books of account in the form of CASH deposited in the accounts. The undisclosed income is net of incurring all the relevant expenses. Therefore, no deduction on account of expenses towards this net income is allowable.

(5) On the facts and circumstances of the case and in law, the Ld. CIT(A), Ahmedabad has failed to appreciate and ignored the facts that since the unsecured loans received by the assessee from the Kolkata based companies found unexplained, the interest expenses of Rs. 44,80,634/~ on such loans also could not be allowed as deduction.

(6) On the facts and circumstances of the case, the Ld.CIT(A) ought to have upheld the additions Rs.11,00,00,000/- and Rs.44,80,634/- made by the AO to the returned income of the assessee.

(7) It is, therefore, prayed that the order of the Ld.CIT(A)-12, Ahmedabad may be set aside and that of the A.O. may be restored to the above extent.

(8) The appellant craves leave to add, amend, alter, edit delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."

3. The brief facts of the case are that the search was carried out under section 132 of the Act in the Bafna Panchal group of cases 07-01-2014. The assessee firm had come into existence in August, 2012. The assessee had constructed a commercial scheme consisting of shops/offices in the name of 'Trivia' at Race Course, Baroda. During the course of survey, statement was recorded of one of the partners, Shri Snehal Patel in which he declared approximately 11 crores as undisclosed/unaccounted income of the assessee firm M/s Shreeji Enterprises for assessment year 2014-15. The AO observed that in the return of income, the assessee has disclosed the above amount of ₹ 11 crores on the receipts side and claimed substantial expenses against the above disclosure made by the partner of the assessee firm. The AO enquired from the assessee as to why the above income of ₹ 11 crores disclosed during the course of survey proceedings should not be again added to the total income on "Net" basis without granting any further expenditures against the same. After taking the submissions of the assessee on record, the AO concluded that the disclosure of net income of ₹ 11 crores was made during the course of search and thus represented the gross receipts of the assessee. The above undisclosed income of ₹ 11 crores is net of incurring all the expenses. Therefore, no deduction on account of expenses towards this "net" income is allowable to the assessee. Further, the AO observed that the assessee has claimed expenses of the unsold units against the above net undisclosed income. The assessee has shown gross receipts of ₹ 21,03,48,798/-including the disclosure of ₹ 11 crores and declared profit of ₹ 1,26,72,377/-in the profit loss account. If the amount of this net undisclosed income of ₹ 11 crores is reduced from the profit shown during the year, there will be a total loss of ₹ 9,73,27,623/-in the year under consideration.

This clearly proves that the assessee has claimed expense of units for which sale receipts are not shown during the year under consideration. In view of the above observations, the AO held that the assessee has failed to disclose amount of ₹ 11 crores, as undisclosed 'net' income during the course of survey proceedings. The AO also held that the assessee has reduced its profits by resorting to claiming expenses of unsold units or showing no profit/no loss on the units. Further, the assessee has estimated its closing WIP stock as per its convenience, with intention to reduce the net income. In view of the above circumstances, the AO made addition of ₹ 11 crores to the total income of the assessee on account of undisclosed 'net' income.

4. In addition to the above, the AO observed that in the order under section 153C r.w.s. 143 (3) of the Act, for assessment year 2013-14, addition of ₹ 4.10 crores was made to the total income of the assessee on account of unexplained cash credit under section 68 of the Act. As the above deposits are not explained, as per the provisions of section 68 of the Act, the interest expenses on such unexplained loans/ deposits are also not allowable as deduction. Accordingly, the AO made addition of ₹ 44,80,634/- to the total income of the assessee on account of disallowance of interest expenses of the unexplained cash credits.

5. In appeal before Ld. CIT(Appeals), with respect to the disallowance of interest of ₹ 44,80,634/- paid on unexplained deposits of ₹ 4.10 crores, Ld. CIT(Appeals) allowed relief to the assessee on the ground that the issue of cash credit has already been decided by him in favour of the assessee, by way of order dated 27-07-2017 for assessment of 2013-14. Accordingly, Ld.

CIT(Appeals) directed the AO to allow the interest expenditure incurred of ₹ 44, 80, 634/-, with the following directions:

“3.3 I have already dealt with issue of cash credit in the order dated 27/7/2017 for A.Y. 2013-14, I have held that the deposits received by appellant of Rs.4,10,00,000/- from the five companies are fully explained and there is no case for making additions u/s 68. Once these deposits are held to be genuine and received from outside parties and used for the purpose of business, the Interest paid on such deposits has to be allowed u/s 36(l)(iii) of the Act. In view of this, I direct the A.O. to allow the Interest expenditure incurred of Rs.44,80,634/-.”

6. With respect to the addition of ₹ 11 crores on gross basis by the AO, during the course of appeal, the assessee submitted that the assessee firm offered total construction income by way of contract receipts of ₹ 10,03,48,798/-and also separately offered income of ₹ 11 crores as “other receipts” being the undisclosed income for assessment year 2014-15, in its books of accounts, thereby disclosing total income of ₹ 21.03 crores as receipt from construction business and the same can be seen from the copy of the audited accounts of the assessee. Further, the assessee also submitted that the partner of the firm who has made disclosure of ₹ 11 crores, has nowhere stated in the statement recorded that the disclosure made by him, is “net” of all expenses. Further, the assessee submitted that there is no provision under the Income Tax Act that the legitimate expenditures incurred towards unaccounted income cannot be allowed to the assessee.

Accordingly, the assessee submitted that there are there is no justification for making such huge addition of ₹ 11 crores on “gross basis”, specifically in the case where the assessee has *suo moto* disclosed an amount of ₹ 11 crores in its profit loss account, and thus adding of the same amount to the total income of the assessee for the year amounts to “double addition or repetitive addition”, which is not permissible in the eyes of law. Further, the assessee submitted that complete details regarding direct as well as indirect expenditures, incurred by the assessee during the year along with the comparison in the earlier years was filed before the Ld. A.O. for his consideration. The genuineness of all these expenditures have not been doubted by A.O. and the AO after detailed scrutiny of expenses, did not dispute or disallow any of the expenditures. Accordingly, assessee submitted that it had correctly shown the entire receipts of the undisclosed sale proceeds in respect of sale of flats and correctly debited actual genuine expenditures incurred for the construction of these flats. The assessee submitted that the AO has neither rejected nor disbelieved the books of accounts even after detailed scrutiny. The AO could not identify any item of expenditure being excessive, unreasonable or bogus. The assessee therefore submitted that when the assessee has disclosed all the receipts truly and correctly and claimed all the expenses also truly and correctly and wholly and exclusively for the purpose of business, particularly when the AO has accepted the book result by not rejecting them under section 145A of the Act, the repetitive addition of ₹ 11 crores cannot be made.

7. In light of the submissions made by the assessee, Ld. CIT(Appeals) allowed the assessee's appeal in respect of this addition of ₹ 11 crores, with the following observations:

*“6.3 I have carefully gone through the assessment order, all written submissions and details filed and have perused the chart and annexure. The first and foremost factual aspect is that assessee has disclosed a sum of Rs. 11,00,00,000/- during the course of survey in the statement recorded on 25/10/2013. In reply to Question No. 7, the partner of the appellant firm Shri Snehal K. Patel has admitted Rs.10,68,00,000/- as cash receipts pertaining to hold status and bookings as worked out from the papers found out during the survey (page 71 to 74). In answer to question No. 8, he has stated that "Cash of Rs 10,68,00,000/- has been received on booking of Trivia Project and not a part of books of accounts and further stated that after the consent of all other partners, Rs. 10,68,00,000/- is voluntarily disclosed as undisclosed/unaccounted income of the firm for AY.2013-14 and I further disclose Rs.32,00,000/- for any omission or deficiency in loose paper or books of accounts . He finally stated that I voluntarily disclose Rs. 11,00,00,000/- as unaccounted income in addition to regular income of the firm for A.Y. 2014-15. Thus what has been disclosed by the partners of the firm is additional income in nature of undisclosed receipts. This undisclosed receipts has been specifically offered and showed in audited accounts separately as 'Other Receipts'. **Once this has been clearly and separately shown as other receipts, there cannot be question of making addition of very***

same income again separately in assessment order while computing the total income. If A.O. wanted to add Rs. 11,00,00,000/- as net income, then he was required to delete Rs. 11,00,00,000/- or reduce it from the income as shown/offered in the books of account . This has not been done by the A.O. and he has retained the additional disclosed income of Rs 11,00,00,000/- as shown in the books of accounts and has further added Rs.11,00,00,000/- while computing the total income. I concur with the submissions made that the appellant has not stated that Rs. 11,00,00,000/- is net income as earned by the firm for A.Y. 2014-15 as being concluded by the AO in the assessment order. What was found out during the survey in the loose paper and what has been disclosed in the statement was actually undisclosed receipts of Rs. 11 00,00,000/- which were in nature of unaccounted money received in cash for booking and sale of shops and offices over and above regular receipts shown in the books. Had there been no survey and no discovery of incriminating documents during the operation, this cash receipt would not have been brought in the books by the appellant and there would have been loss booked for the financial year. This Rs. 11,00,00,000/- only has been now disclosed by the assessee in the books of accounts on credit side of P & L A/c.”

8. The Department is in appeal before us against the above aforesaid reliefs provided by the Ld. CIT(Appeals) to the assessee. The Department has taken various grounds of appeal, but largely the same can be divided into

two grounds raised by the Department. The same are being dealt with in the succeeding paragraphs.

Deletion of addition of ₹ 11 crore made to the returned income on account of undisclosed income:

9. Before us, the Department relied upon the observations made by the AO in the assessment order. The Department submitted that the Partner in their statement has categorically stated that ₹ 11 crores declared by him is unaccounted income in addition to regular income of the firm for assessment a 2014-15. The DR submitted that the Ld. CIT(Appeals) ignored the fact that the disclosure of the “net income” was made and not the “gross receipts” by the Partner of the assessee firm. Therefore, no deduction on account of expenses towards the “net income” disclosed during the survey is allowable.

10. In response, the counsel for the assessee submitted that this amount of ₹ 11 crores represents undisclosed booking money/other contract receipts, received by the assessee outside the books of accounts. The counsel for the assessee drew our attention to page 11 of paper book II and submitted that the amount of 11 crores has already been offered by the assessee as “other contract receipts” in the profit and loss account for assessment a 2014-15. Since, the same forms part of the undisclosed sale proceeds offered for taxation in the return of income and accordingly the expenses incurred in earning the same are allowable against the same. He further drew attention to pages 65-67 of the same paper book and submitted that these are the details of expenditures claimed by the assessee during the impugned year

against the aforesaid income of ₹ 11 crores, which have not been disputed/doubted by the AO after detailed scrutiny during the course of assessment proceedings. He further submitted that in the statement made by the Partner of the assessee firm, he nowhere stated that it is in “net” income of the assessee which is being disclosed and therefore the assessee is eligible to claim expenses against the same, which were not doubted by the AO during the course of detailed scrutiny assessment. Further, bringing to tax the amount of 11 crores again on “Gross basis” would amount to double taxation, which is not permissible in law. Accordingly, Ld. CIT(Appeals) has not erred in facts and in law in deleting the addition made by the AO on this count. Regarding the interest disallowance of ₹ 44,80,634/-, the counsel for the assessee submitted that since in the immediately preceding year, Ld. CIT(Appeals) for assessment year 2013-14 has held that the deposits received by the assessee amounting to ₹ 4.1 crores from five companies stands duly explained, accordingly interest paid on such deposits has also to be allowed to the assessee under section 36(1)(iii) of the Act. The counsel for the assessee produced copy of the order passed by Ld. CIT(Appeals) for assessment year 2013-14 for our perusal.

11. We have heard the rival contentions and perused the material on record. In our view, with respect to the addition of ₹ 11 crores as unexplained income outside the books of accounts, we observe that the issue in this connection is twofold: firstly, it is observed that this amount has already been offered to tax by the assessee in the return of income under the head “other receipts”. Therefore, Ld. CIT(Appeals), in our view has correctly held that the said amount cannot be brought to tax as gross receipts

in the hands of the assessee company again, since the same would amount to double taxation of the same receipts. The second issue for consideration is whether the expenses against the same are to be allowed, or whether it can be inferred from the statement of the Partner of the assessee firm that the said amount represents “net income” of the assessee firm, and accordingly no further expenses may be allowed against the same. In our view, Ld. CIT(Appeals) has correctly observed that from the statement recorded of the Partner of the firm, it cannot be inferred that the said amount of ₹ 11 crores represents “net income” of the assessee firm, and therefore, the assessee is not eligible to claim any expenses against the same. Once the position is admitted that the assessee has offered the undisclosed sum of ₹ 11 crores in the return of income, and during the course of detailed assessment, the assessing Officer has not doubted the genuineness of expenses claimed in the return of income, then such expenses should be allowed against the undisclosed income of ₹ 11 crores offered by the assessee in the return of income. Accordingly, in our considered view, Ld. CIT(Appeals) has not erred in facts and in law in granting relief to the assessee in respect of this addition of ₹ 11 crores referred to above.

Deletion of addition of ₹ 44,80,634/- towards interest expenditure incurred:

12. With respect to the relief granted by the Ld. CIT(Appeals) towards interest expenditure of ₹ 44,80,634/- u/s 36(1)(iii) of the Act, the counsel for the assessee has produced before us the copy of the order passed by Ld. CIT(Appeals) for assessment year 2013-14, in which the Ld. CIT(Appeals)

has accepted that deposits received by the assessee amounting to ₹ 4.10 crores from five companies are fully explained and there is no case for making addition under section 68 of the Act. In this connection, it would be helpful to reproduce the relevant extracts of the order for assessment a 2013-14:

“Undoubtedly the assessee has received deposits from these five companies who are not regular. NBFC companies or dealing in big business activities, nonetheless they exist and are assessed to Income tax and are regularly filing their Income statement with the Income Tax Department and the Registrar of Companies. The A.O. has not been able to bring any evidence that unaccounted cash was paid by the appellant and in turn received the appellant such deposits through banking channels. If the AO had doubted the creditworthiness of such companies or had any doubts about the sources of their income, fund, capital & reserves of such companies, he could have made further inquiries in respect of these companies. It is high time that such shell companies properly investigated and appropriate actions are taken on them, but when appellant had obtained short term advances from these companies and both receipts and payments are by account payee cheques and duly confirmed, I am of the opinion that addition can be made of such amount of deposits as unexplained income u/s 68 in the hands of appellant recipient. It is not for the appellant to prove source of source in such a case and it is for the Income tax to find out how these lending companies were in a position to give such amount. In absence of any such material or evidences adverse presumption cannot be made and addition u/s 68 cannot be made. In view of the

jurisdictional High Court decision and other decisions cited and mentioned by the Ld, AR, I am of the opinion that assessee has discharged Ms burden fully with regard to proving the identity, genuineness of these deposits and accordingly the addition, made of Rs. 4,10,00,000/- cannot be sustained. The A.O. is directed to delete the same.”

13. In view of the above, since the Ld. CIT(Appeals) in the immediately preceding year has accepted the deposits from five companies as genuine and further in the present year, Ld. CIT(Appeals) has also allowed the assessee's claim of expenditure under section 36(1)(iii) of the Act, with respect to the above interest expenditure, we find no infirmity in the order of the Ld. CIT(Appeals), while granting relief the assessee.

14. Accordingly, the Department's appeal on this issue is hereby dismissed.

15. In the result, the Department's appeal is dismissed.

Order pronounced in the open court on 19-10-2022

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT
Ahmedabad : Dated 19/10/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
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