

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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1695/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2012-2013

I.T.O, Ward-2(2)(2), Ahmedabad.	Vs.	Hemantkumar Chhabildas Patel, 78, Kalhar Exortica, Near Science City Road, Soal, Ahmedabad-380060. PAN: AFTPP3706J
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(Applicant)		(Respondent)
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Assessee by :		Ms Nupur Shah, A.R
Revenue by :		Shri Shramdeep Sinha, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **10/08/2022**
घोषणा की तारीख /**Date of Pronouncement**: **21/10/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeal)-10, Ahmedabad, dated 04/09/2019 arising in the matter of Assessment Order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2012-2013.

2. The Revenue has raised the following grounds of appeal:

1. *The Ld.CIT(A) has erred in law and on facts in deleting the addition made by the Assessing Officer of Rs.1,00,00,000/- with regard to unexplained investment u/s.69 of the Act, and addition of Rs.1,50,00,000/- in respect of unexplained cash credit u/s.48 of the Act without properly appreciating the facts of the case with regard to the identity of the creditors, creditworthiness of creditors and genuineness of the transaction?*
2. *The appellant craves leave to amend alter any ground of add a new ground, which may be necessary.*

3. The interconnected issue raised by the Revenue is that learned CIT-A erred in deleting the addition made under section 69 and 68 of the Act for Rs. 1 crore and 1.5 crore.

4. The assessee is an individual and has not filed return of income for the year under consideration. The AO received information that the assessee has made investment in Mutual Fund for Rs. 1 Crore and the payment for the same was made from the bank account held with Axis bank. Based on the information, the assessment was reopened by issuing notice under section 148 of the Act. During the assessment/reassessment proceeding, the question was posed to the assessee to explain the source of the investment. It was explained that he and his wife sold a property for Rs. 1,01,01,100/- and the proceeds of the same were utilized for making investment in the units of Mutual fund.

5. However, the AO found that the assessee has received 4 different cheques amounting to Rs. 12.5 lakh each from the buyer of property but the same was not deposited in the axis bank account from where investment in MF was made. Thus, the AO held that the assessee failed to establish the source of investment and made addition of Rs. 1 crore under section 69 of the Act.

5.1 Likewise the AO found that the Axis bank account of the assessee was credited for an amount aggregating to Rs. 1,54,50,000/- detailed as under:

Sr.No.	Date	Description	Amount
1.	02/05/2011	RTGS Maheh K Patel	24,00,000
2.	18/07/2011	RTGS-Paramyug Land	15,00,000
3.	21/07/11	RTGS-Paramyug Land	12,00,000
4.	27/12/11	By clg./30250/0	50,00,000
5.	27/12/11	By clg./30251/0	50,00,000
6.	04/02/12	Dhara J Patel	3,50,000
Total			1,54,50,000

5.2 The assessee was asked to explain the source of deposit as prescribed under the provision of section 68 of the Act. The assessee only furnished confirmation from one party. Thus, the AO in absence of necessary details treated the amount credited in the bank account as unexplained cash credit and made addition of Rs. 1.50 crores to the total income of the assessee.

6. The Aggrieved assessee carried the matter before the learned CIT (A) who allowed the appeal of the assessee by observing as under:

I have carefully considered the assessment order, grounds of appeal raised and submission of the appellant. The appellant submitted evidences along with submission which are examined and considered for arriving at the decision.

Observations made by A.O. have been examined. The appellant was maintaining joint account with wife in Axis Bank such as No. 911010010385207. A statement of bank account has been placed on record wherein the amount of Rs. 1,00,00,000/- is appearing in deposit side of Axis Bank Account No. 911010010385207 during the year under consideration. The appellant was having joint property with the wife which has been sold as per sale deed copy on record. Copy of sale deed is enclosed as Annexure-A and is on record. This land is situated at. Survey No.18/1 Paiki and 18/3 paiki TP Scheme No. 1/B Final Plot No.376 Paiki and sold for consideration of Rs.1,01,01.100/- Assessee had also submitted bank statement of Axis Bank Ltd. in which deposit of Rs. 50,00,000/- + 50,00,000/- = 1,00,00,000/- is getting reflected on dated 27.12.2011. Further, it is observed that the appellant had received sale consideration as under:

SN	Amount	Payment Made To	Description
1	12,50,000/-	Hemant C. Patel	Ch.No.029078 dated 26/12/2011 From Tejashbhai Gunvantbhai Patel
2.	12,50,000/-	Hemant C. Patel	Ch.No.044833 Dated 26/12/2011 From Roger Krishnanbha Patel
3.	12,50,000/-	Hemant C. Patel	Ch.No.029117 dated 26/12/2011 From Krinaben Ashokbhai Patel
Total	50,00,000/-		

All above cheques total in to Rs.50,00,000/- were deposited in Axis Bank Ltd Account No.911010010385207 which is cleared on dated 27/12/2011. Further, it is observed that the wife Premilaben H. Patel had received sale consideration as under:

SN	Amount	Payment Made To	Description
1.	12,50,000/-	Premilaben H. Patel	Ch. NO.029079 Dated 26/12/2011 ! From Tejashbhai Gunvantbhai Patel
2	12,50,000/-	Premilaben H. Patel	Ch. NO.044834 Dated 26/12/2011 I From Roger Kishanbhai Patel
3	12,50,000/-	Premilaben H Patel	Ch. NO 0291 16 Dated 26/1 2/2011 I From Nakul Pravinbhai Patel
4	12,50,000/-	Premilaben H. Patel	Ch.No.042402 Dated 26/12/2011 From Krinaben Ashokbhai Patel
Total	50,00,000/-		

All above cheques have been cleared on 27-12-2011 in the impugned Axis Bank account held jointly with wife. Consequently, the investment of Rs.1,00,00,000/- in DPS Blackrock Mutual Fund on Dt.05/01/2012 from credit balance lying with Axis Bank Lt. Account No.911010010385207 is explained investment from deposit resulting from the sale of immovable property as stated above. Therefore, the addition of the investment of Rs.1,00,00,000/- toward mutual fund is wrongly treated as unexplained investment u/s.69 by the AO and the same is hereby deleted.

Further the AO has observed in para 5 that the assessee had made deposit of Rs.1,50,00,000/- which are unexplained cash credit. The details of Axis bank Ltd account has following credit entries:

Sr.N	Date	Description	Amount
1	02/05/2011	RTGS Mahesh K. patel	24,00,000/-
2.	18/07/2011	RTGS-Paramyug land	15,00,000/-
3.	21/07/2011	RTGS-Paramug Land	12,00,000/-
4.	27/12/2011	By CLR./30250/0	50,00,000/-
5.	27/12/2011	By CLR./30251/0	50,00,000/-
6.	04/02/2012	Dhara J patel	3,50,000/-
		Total	1,54,50,000/-

The appellant has submitted explanation for these amounts as under:

On dt. 01/05/2011 Assessee's wife Premilaben H Patel has received by RTGS from Mahesh K. Patel of Rs.24,00,000/- Assessee has received and submitted confirmation from Mahesh K. Patel during assessment proceeding.

Copy of bank statement of Mahesh K Patel for above amount of Rs.24,00,000/- are enclosed herewith and well explained by the assessee so addition of Rs.24,00,000/- Assessee had received and submitted confirmation from Parmyug Land during assessment proceeding. Copy of bank statement of Paramug Land for above amount of Rs.15,00,000/- and Rs.12,00,000/- are enclosed herewith and well explained by the assessee so addition of Rs.15,00,000/- and 12,00,000/- deserves to be deleted.

On Dt. 04/02/2012 Dhara J Patel had given Rs.3,50,000/- by way of transfer from her bank account with Axis bank Ltd. and assessee had given by cheques various amount to Dhara J Patel in the beginning of the year from Axis bank ltd account itself and AO has accepted this credit and has not added this amount in the assessment order also.

Copies of above accounts have been placed on record as per Annexure-C and have been examined. All the above entries are explained by the appellant and examined as per ratio laid down in the case of Jute Corpn. Of India Ltd. 187 ITR 688 (SC) and the comments are as under:

<i>Sr.No.</i>	<i>Date</i>	<i>Description</i>	<i>Amount</i>	<i>Remarks</i>
<i>1</i>	<i>02/05/2011</i>	<i>RTGS, Mahesh K. Patel</i>	<i>24,00,000/-</i>	<i>The deposit by specific person and explained.</i>
<i>2</i>	<i>18/07/2011</i>	<i>RTGS- Paramyug Land</i>	<i>15,00,000/-</i>	<i>The deposit by specific person and explained.</i>
<i>3</i>	<i>21/07/2011</i>	<i>RTGS- Paramyug Land</i>	<i>12,00,000/-</i>	<i>The deposit by specific person and explained</i>
<i>4</i>	<i>27/12/2011</i>	<i>ByCLR./30250/O</i>	<i>50,00,000/-</i>	<i>Sale of land in joint name with wife already explained above.</i>
<i>5</i>	<i>27/12/2011</i>	<i>ByCLR./30251/O</i>	<i>50,00,000/-</i>	<i>Sale of [and in joint name with wife already explained above.</i>
<i>6</i>	<i>04/02/2012</i>	<i>Dhara J Patel</i>	<i>3,50,000/-</i>	<i>Not questioned by AO.</i>
<i>i</i>		<i>Total</i>	<i>1,54,50, 000/-</i>	

More over looking assessee's explanation regarding the nature and source of cash credits appearing the bank statement of Axis Bank Ltd are well explained by the appellant and all are genuine and correct so the case laws stated by learned A O. are not applicable in this case.

Thus looking at above explanation regarding the nature and source of cash credits appearing the bank statement of Axis Bank Ltd are well explained by appellant and are found genuine. The Authorized Representative discussed the ratio laid down by jurisdictional High Court in the case of CIT V/s Ranchhod Jivabhai Naknava reported at 208 Taxmann 35 wherein it is held –

"Once the Assessing Officer gets hold of the PAN of the lenders, it was his duty to ascertain from the Assessing Officer of those lenders, whether in their respective return they had shown existence of such amount of money and had further shown that those amounts of money had been lent to the assessee If before verifying of such fact from the Assessing Officer of the lenders of the assessee the Assessing Officer decides to examine the lenders and asks the assessee to further prove the genuineness and creditworthiness of the transaction, in our opinion, the Assessing Officer did not follow the principle laid down under Section 68 of the Income Tax Act.

If on verification, it was found that those lenders did not disclose in their income tax return the transaction or that they had not disclosed the aforesaid amount, the Assessing Officer could call for further explanation from the assessee to prove the genuineness of the transaction or creditworthiness of the same However, without verifying such fact from the

income tax return of the creditors, the action taken by the Assessing Officer in examining the tenders of the assessee • was a wrong approach Moreover, we find that those lenders have made inconsistent statement as pointed out by the Commissioner of Income Tax (Appeals) and in such circumstances, we find that both the Commissioner of Income Tax (Appeals) and the Tribunal were justified in setting aside the deletion as the Assessing Officer, without taking step for verification of the Income Tax Return of the creditors took unnecessary step of further examining those creditors. If the Assessing Officers of those creditors are satisfied with the explanation given by the creditors as regards those transactions, the Assessing Officer in question has no justification to disbelieve the transactions reflected in the account of the creditors In other words, the Assessing Officer had no authority to dispute the correctness of assessments of the creditors of the assessee when a coordinate Assessing Officer is satisfied with the transaction.

We, thus, find that in the case before us the Tribunal below rightly set-aside the deletion made by the Assessing Officer, based on erroneous approach by wrongly shifting the burden again upon the assessee without verifying the Income Tax return of the creditors. The position, however, would have been different if those creditors were not income tax assesseees or if they had not disclosed those transactions in their income tax returns or if such returns were not accepted by their Assessing Officers."

The onus has been discharged by the appellant. The confirmations have been filed giving PAN No. of the creditors and bank statement copy has been placed on record. The creditworthiness of the creditor(s) cannot be decided by the AO of the appellant. In fact, the AO of appellant can get the matter investigated through the AO of the creditors. The AO of appellant cannot become AO of the creditors,!! is not the case of AO that the impugned amount is appellant's own money generated out of books of account and the same is introduced in its books of accounts through bogus creditors. If that is so, what evidences AO has collected to place it on record. Once confirmations have been filed, further action, if any, is required to be taken in case of creditor and not in case of appellant. Explanation about 'source of source' or 'origins of origin' cannot be asked from the appellant while making inquiry under section 68 as per ratio laid down in the case of DCIT v. Rohini Builder (2002) 256 ITR 360 (Guj):

"Mere identification of the source of the creditors even without evidence as to the nature of the income could justify acceptance, where the assessee has given the GIR number / PAN of the creditor and also shows that the amounts were received by account payee cheques It was further held that it is not necessary, that there should be an explanation as to the source of the money on the part of the creditors in every case."

Reliance is also placed on another case i.e. CIT vs. Dharamdev Finance Pvt. Ltd. 43 Taxmann 395 (Guj.) wherein it is held "No addition on account of cash credits could be made, where assessee had given PAN of creditors, their confirmations and their bank statements which established their credibility"

There are other case laws supporting the case of the appellant as under:

- i) Murlidhar Lahorimal Vs CIT 280 ITR 512 (Guj.)*
- ii) CIT Vs Pragati Co-op. Bank Ltd. 278 ITR 170 (Guj)*
- iii) CIT vs. Orissa Corporation Pvt. Ltd 159 ITR 78 (SC)*
- iv) CIT vs SanjayK Thakkar Tax Appeal Nos.524 of 2004, 525 and 526 of 2004 and 579 to 583 of 2003 dated 12-9-2005 (Guj HC)*
- v) ITO Vs Kailpar Credit & Mercantile Pvt Ltd. in ITA No.421/Aha/2008 (ITAT, Ahd.)*

*I am not inclined to accept the findings of the A.O. Appellant can't be punished **for default, if any, of related party** as it has been held in CIT Vs. CARBO IND HOLD LTD 244 ITR 0422 (Cal) such as "if share broker, even after issue of summons does not appear, for that reason the claim of assessee should not be denied, especially in the cases when the*

existence of broker is not in dispute, nor the payment is in dispute Merely because some broker failed to appear, assessee should not be punished for the default of a broker and on mere suspicion the claim of assessee should not be denied." The plethora of evidences on record cannot be ignored.

*In view of facts of the case and the ratio laid down by case laws (Supra), the addition made by the AO of Rs. 1,50,00,000/- u/s. 68 of the I. T. Act, 1961 is hereby deleted. Under the circumstances, in my opinion, the conditions to invoke provisions u/s 68 are not existing in this case. The ground No.2 of appeal is accordingly **allowed**.*

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

8. The learned DR before us vehemently supported the stand of the AO by reiterating the findings contained in the assessment order which we have already adverted to in the preceding paragraph. Therefore we are not repeating the same for the sake of brevity.

9. On the other hand, learned AR before us filed a paper book running from pages 1 to 207 and vehemently supported the stand of the Id. CIT-A by reiterating the findings contained in the appellate order.

10. We have heard the rival contentions of both the parties and perused the materials available on record. The controversy before us relates whether the investment made in the unit of mutual fund for Rs. 1 crore was from the known/explained source of income or not. Similarly, the amount of Rs. 1.5 crore credited in the bank of the assessee has been explained or not based on tangible materials. Admittedly, the addition was made by the AO under section 69 of the Act for investment made in the mutual funds which was made from the Axis Bank account, jointly held by the assessee along with his wife. In this regard, we note that there was the sale of property by the assessee and his wife for Rs. 1,01,01,100/- and the sale consideration was received by the assessee and his wife to the tune of Rs. 1.00 crore in the bank account. The learned CIT-A has given categorical finding that the amount of sale consideration received by the assessee and his wife has been credited in the Axis Bank account by cheque clearing dated

27-12-2011 for Rs. 50 Lakh each. The finding given by the learned CIT-A with respect to the investment made by the assessee in the mutual fund has not been controverted by the learned DR at the time of hearing. Therefore, we do not find any reason to interfere the finding of the learned CIT-A.

10.1 Besides the above, we also note that there were gross credit in the bank of assessee for Rs. 1,51,00,000.00 which was treated as unexplained credit by the AO. At the outset, we note that the gross receipt of ₹1.51 crores was inclusive of Rs. 1 crore which was received against the sale of land but the AO has erroneously treated the same as unexplained cash credit under section 68 of the Act. Thus, the amount of ₹1 crore was erroneously added by the AO 2 times. Firstly the amount of investment made by the assessee for ₹1 crore in the mutual fund as unexplained investment and secondly the amount received against the sale consideration of land of ₹ 1 crore by treating the same as unexplained cash credit. We have already deleted the addition made on account of unexplained investment by holding the same was made out the amount of Rs. 1 crore credited in the bank account dated 27-12-2011 received as sale consideration by the assessee against the sale of property. Now the issue is limited to the amount of Rs. 51 lakh credited in the bank of the assessee out of which AO has made addition to the extent of ₹ 50 lakhs only as detailed below:

<i>Sr.N</i>	<i>Date</i>	<i>Description</i>	<i>Amount</i>
1	02/05/2011	RTGS Mahesh K. patel	24,00,000/-
2.	18/07/2011	RTGS-Paramyug land	15,00,000/-
3.	21/07/2011	RTGS-Paramug Land	12,00,000/-

10.2 In this regard, we note that the impugned amount was shown as loan by the assessee and his wife which was received from the parties as discussed above. The assessee in support of such loan has furnished the details such as copy of confirmation and bank statement of parties.

10.3 Thus, from the above details, it is transpired that the assessee has discharged the onus impose under section 68 of the Act by furnishing the necessary details of the parties. Therefore to our understanding no addition is warranted. Accordingly we do not find any reason to interfere in the finding of the learned CIT-A. Hence the ground of appeal of the revenue is hereby dismissed.

11. In the result the appeal filed by the revenue is **dismissed**.

Order pronounced in the Court on 21/10/2022 at Ahmedabad.

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

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

Ahmedabad; Dated
Manish

(True Copy)
21/10/2022