

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER,

आयकर अपील सं./ITA No. 08/Rjt/2020
निर्धारण वर्ष/Asstt. Years: 2011-2012

Santoshkumar Jayantilal Sharma, Block No.M, Bajrang Wadi-10, Jaliyan Park, Jamnagar Road, Rajkot-360006. PAN: BMXPS6608C	Vs.	I.T.O., Ward-2(1)4, Rajkot.
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Assessee by :	Shri Vivek Chavda, A.R
Revenue by :	Shri B.D. Gupta, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **08/09/2022**
घोषणा की तारीख / **Date of Pronouncement**: **11/11/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-2, Rajkot, dated 11/11/2019 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 2011-12.

2. The only issue raised by the Assessee is that the Ld.CIT(A) erred in confirming the addition made by the AO for Rs. 5 lacs treating the same as unexplained investment.

3. The facts in brief are that the assessee in the present case is an individual and engaged in the business of trading in shares and commodities. The AO during the assessment proceedings found that the assessee has made investment of Rs. 5 lacs but the source of the same was not explained. Thus, the AO treated the same as unexplained investment and made the addition of Rs. 5 lacs to the total income of the assessee.

4. Aggrieved assessee preferred an appeal to the Ld. CIT(A) and contended that the sum of Rs. 5 lacs was received from the company namely Marwadi Finlease Pvt Ltd. which has been used for making investment in the bonds and the debentures. The assessee further contended that the entire amount was refunded to the company namely Marwadi Fin-lease Pvt Ltd. along with the amount of profit for Rs. 5,13,504/- only.

5. However, the AO in the remand report submitted that the confirmation filed by the assessee, issued by Marvadi Finlease Pvt Ltd, does not contain the cheque number and the date. Thus, the AO was of the view that such confirmation filed by the assessee cannot be admitted.

6. The AO without prejudice to the above has also opposed to admit the additional evidence as there was afforded reasonable opportunity to the assessee, during the assessment proceedings. As such, there was no violation of the provision of Rule 46 A of Income Tax Rules.

7. The assessee in his rejoinder has furnished the necessary details of the cheque number with date to the Ld.CIT(A) vide letter dated 09/04/2019.

8. However, the Ld. CIT(A) rejected the contention of the assessee and confirmed the order of the AO by observing as under.

Having considered facts and circumstances of the case I find merit in contentions of Assessing Officer that the assessee had been provided enough opportunity during assessment and there was no contention on behalf of assessee that he had received any loan from Marwadi Finlease Pvt. Ltd. the assessee has not satisfied any of the conditions laid down in rule 46A for admission of additional evidences. In my considered opinion the said evidences do not merit admittance and no cognizance of the same can be taken. Without prejudice to this, it is also noteworthy that so called confirmations by Marwadi Finlease Pvt. Ltd. simply says that Rs.5 lakhs was given as loan to assessee to subscribe to IPO bonds IPO during the period 21/02/2011 to 31/03/2011. Such confirmation lacks any evidentiary value as it is also not comprehensible as to why the assessee would receive the cheque of Rs. 5 lakhs from Marwadi Finlease Pvt. Ltd. and return profit to it when the profit belonged to assessee santoshkumar Jayantilal Sharma, A.Y. 2011-12.

Considering the above facts and circumstances of the case and finding the additional evidences inadmissible as well as lacking merit the impugned additions is confirmed. The grounds of appeal is rejected.

9. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us. The Ld. AR before us filed a paper book running from pages 1 to 10 and contended that the all the necessary details were furnished before the Ld. CIT(A) in support of the investment made by him. As per the detail, the source of investment was duly explained which were received from the company namely Marvadi Finlease Pvt. Ltd.

10. The Ld. AR fairly agreed that the confirmation was not filed during the assessment proceedings due to the reason that he was unable to obtain the same from the party. Accordingly, it was prayed by the Ld. AR that the additional documents have been submitted before the Ld. CIT(A) for the purpose of the adjudication.

10.1 The Ld. AR further submitted that none of the authorities below has cross verified the confirmation from the party about the transaction shown by the assessee in his books of accounts despite having all the necessary details and requisite power under the statue. Thus, the Ld. AR submitted that no addition in

the given facts and circumstances is warranted on account of unexplained investments.

11. On the other hand, the Ld. DR before us vehemently supported the order of the authorities below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. The first controversy arises for our adjudication whether there was reasonable cause which prevented the assessee to file the requisite detail during the assessment proceedings. In this regard we note that the assessee has filed the confirmation letter from the party namely Marvadi finlease Pvt Ltd. Thus, the detail which was filed by the assessee cannot be said that it was readily available with the assessee. It is for the reason that it was to be obtained from the third party, thus if any delay in furnishing the confirmation has been made by the confirming party, the assessee cannot be punished in such delay. Thus in the interest of justice and fair play, we are of the view that the Ld. CIT(A) ought to have admitted such additional evidence under rule 46A of Income tax Rule.

12.1 Moving further, we also note that both the authorities below i.e. the AO as well as the Ld. CIT(A) have also given finding on the additional documents filed by the assessee which have been discussed above. Such additional document filed by the assessee was disbelieved by both the authorities without confronting the other party. In other words, if the contention presented by the assessee with the assistance of the confirmation letter, then it is the duty of the authority below before rejecting the same to make cross verification from the concerned party. Thus, in our considered view, no defect can be pointed out merely on the basis of procedural lapses in the confirmation letter such as non-mentioning of cheque number and the date.

12.2 We are also not ignorant to the fact that the assessee on one hand claimed to have made investment in the bonds and debentures on behalf of the third party

namely Marvadi Finlease Pvt Ltd. which was also refunded on maturity along with the income earned on such investment. This can be verified from the confirmation of the accounts furnished by the assessee which is placed on pages 4 to 5 of the paper book. Thus, it emerges that the assessee was acting as a custodian for making investment but surprisingly the assessee has offered income earned as such investment to tax in his individual capacity which is contrary to the facts presented by the assessee.

12.3 Be that as it may be, the confirmation filed by the assessee has not been rejected by the authorities below based on the cogent reason, therefore we are of the view that the assessee has made investment out of the money borrowed from Marvadi Finlease Pvt Ltd. and thus no addition is warranted in the given facts and circumstances. Hence, the ground of appeal of the assessee is allowed.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 11/11/2022 at Ahmedabad.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER
(True Copy)

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 11/11/2022
Manish