

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI T. R. SENTHIL KUMAR, JUDICIAL MEMBER**

I.T.A. No.116/Rjt/2019
(Assessment Year: 2012-13)

M/s. Makson Ceramic Pvt. Ltd., C/O. D.R. Ahia, "Om Shri Padamlaya", Nr. Trikamayji Haweli, 16-Jagnath Plot, Dr. Yagnik Road, Opp. Imperial Hotel, Rajkot-360001	Vs.	ITO Ward-2, Morbi
[PAN No.AADCM4129L]		
(Appellant)	..	(Respondent)

Appellant by :	Written Submission
Respondent by :	Shri B. D. Gupta, Sr. DR
Date of Hearing	21/11/2022
Date of Pronouncement	23/11/2022

O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

This appeal is filed by the assessee against the order dated 14.03.2019 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot (in short "CIT(A)") arising out of the assessment order dated 31.03.2015 passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the A.Y. 2012-13.

2. The brief facts of the case is the assessee is a company engaged in the business of manufacturing of glazed tiles. For the A.Y. 2012-13 the assessee filed its Return of Income on 27.09.2012 declaring a net loss of

Rs. 39,10,370/-. The return was taken for scrutiny assessment the Assessing Officer found that the assessee company had taken a deposit of Rs. 2,00,000/- from Vyomaben Hareshkumar (Minor). The assessee was asked to give source of giving loan by Minor Vyomaben Hareshkumar. However, the assessee has not offered any concrete explanation or not submitted any evidences regarding the deposit made by minor and the same was added as unexplained income under Section 68 of the Act. Similarly the Assessing Officer asked for the difference of Rs. 3,48,093/- in unsecured loans, the assessee admitted the mistake and agreed to make addition of Rs. 3,48,093/-. The Assessing Officer found that expenses of Rs. 13,656/- is debited in Profit & Loss Account towards LPG interest expenses. The Ld. A.R. submitted that no TDS in respect of LPG interest. Therefore, the same is disallowed under Section 40(a)(ia) of the Act and added the same at the income of the assessee. Thus, the Assessing Officer determined the loss of Rs. 33,48,620/-.

3. Aggrieved against the same, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). During the appellate proceedings the assessee submitted the assessee was already having old balance in the name of Vyomaben Hareshkumar (Minor) of Rs. 5,00,000/- and during the Financial Year the assessee received Rs. 2,00,000/- more from that person. Vyomaben Hareshkumar had balance of Rs. 3,50,786/- as on 04.05.2011 in the Savings Bank Account No. 2080 maintained with the Co-operative Bank of Rajkot, out of that Rs. 2,00,000/- was deposited to the assessee. The Ld. CIT(A) held that the copy of the PPF Pass Book filed by the assessee in the case of Vyomaben Hareshkumar is pertaining to the year 2006 and the same

has no relevance, so far as the sources of loan of Rs. 2,00,000/- given to the assessee's concern. Further the above bank details were not furnished by the assessee during the assessment proceedings, therefore, the addition of Rs. 2,00,000/- was confirmed as unexplained income of the assessee. The CIT(A) held that the loan account and the salary account are separate and the difference of Rs. 3,48,093/- has been found by the Assessing Officer in the unsecured loan account. Further the so called statement the assessee was never filed before the Assessing Officer at the time of assessment stage for verification. Therefore, the CIT(A) confirmed the addition of Rs. 3,48,093/- being the difference in unsecured loan under Section 68 of the Act. Regarding the addition of Rs. 13,656/- under Section 40(a)(ia), the assessee has simply submitted that the addition needs to be deleted, without offering any explanation. Hence, the same was also confirmed by the CIT(A).

4. Aggrieved against the same the assessee filed appeal before us raising the following grounds of appeal:

“1. The Ld. CIT(A) has erred in law and facts in confirming addition/disallowance of Rs. 5,61,749/-. The addition / disallowance needs deletion.

1.2. The Ld. CIT(A) has erred in law and facts in confirming addition/disallowance of Rs. 2,00,000/- in respect of unsecured loan. The addition/disallowance needs deletion.

1.3 The Ld. CIT(A) has erred in law and facts in confirming addition/disallowance of Rs. 3,48,093/- in respect of difference in unsecured loan. The addition/disallowance needs deletion.

1.4 The Ld. CIT(A) has erred in law and facts in confirming addition/disallowance of Rs. 13,656/- U/s. 40(a)(ia) in respect of TDS on interest expenses. The addition/disallowance needs deletion.

2. The Ld. CIT(A) has erred in law and facts in confirming addition/disallowance of Rs. 5,61,749/- based on position which he described erroneously. The addition/disallowance needs deletion.

3. *The Ld. CIT(A) has erred in law and facts in confirming addition/disallowance of Rs. 5,62,749/- ignoring the details furnished before him. The addition/disallowance needs deletion.*

4. *The Ld. CIT(A) has erred in law and facts in confirming addition/disallowance of Rs. 5,61,749/- based on presumption and cermices. The addition/disallowance needs deletion.*

5. *Taking into consideration the legal, statutory, factual and administrative aspects, no addition/disallowance of an amount of Rs. 5,61,749/- ought to have been made. The addition/disallowance need deletion.*

6. *Without prejudice, the assessment made is bad n law and deserves annulment.*

7. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided at assessment level. The assessment needs annulment.*

8. *Without prejudice, no adequate, sufficient and reasonable opportunity has been provided at appeal level. The assessment needs annulment.*

9. *The appellant craves leave to add/alter/amend and/or substitute any or all ground of appeal before the actual hearing takes place.”*

5. None appeared on behalf of the assessee, however, a written submission was also filed by the assessee. The assessee in its written submission reiterate the same arguments made before the Ld. CIT(A).

6. The Ld. D.R. appearing for the Revenue submitted that the matter to be remanded back to the file of the Assessing Officer for fresh verification. Since the some of the documents were not produced at the time of assessment orders.

7. We have given our thoughtful consideration and perused the material available on record. It is clearly seen from the assessment order, the assessee was given several opportunities by issuing notice and duly served on the assessee. However, the assessee has not responded to the show-cause notice issued by the Assessing Officer; thereby the

Assessing Officer passed this assessment order. We further see from Ld. CIT(A) order that he confirmed all the additions by stating that the documents were not produced before Assessing Officer during assessment proceedings. In our considered view, the Ld. CIT(A) ought not have confirmed the additions, when the assessee produced same material on record. In order to meet the ends of justice, it is appropriate to set-aside the matter back to the file of the Assessing Officer to make verification of records/documents and then pass a speaking order. Therefore, we set-aside the case, back to file of the Assessing Officer to pass fresh assessment order. Needless to say, the assessee should furnish all the relevant documents and cooperate with the Assessing Officer for passing the assessment order.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Court on 23.11.2022 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad, dated 23/11/2022

Tanmay, Sr. PS

TRUE COPY

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 प्रतिआयकर अपीलीय अधिकरण राजकोट/DR,ITAT, Rajkot,
6. गार्ड फाईल /Guard file.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot