

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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1797/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2011-2012

Shailish J. Shah, 206, Anngi Appartment, Near Vardan Tower, Ahmedabad-380013. PAN: AWUPS9578D	Vs.	I.T.O. Ward-4(2)(5), Ahmedabad.
--	-----	---------------------------------------

(Applicant)		(Respondent)
--------------------	--	---------------------

Assessee by :	Shri Hardik Vora, A.R
Revenue by :	Shri M.M. Garg, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **30/11/2022**
घोषणा की तारीख / **Date of Pronouncement**: **21/12/2022**

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)-4, Ahmedabad dated 17/09/2019 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 2011-2012.

2. The assessee has raised following grounds of appeal:

1. That the Id. CIT(A) has erred in confirming addition of Rs. 1,28,050/- being investment in shares. The appellant has filed copy of bank account with explanation. The appellant has not made investment of Rs.1,98000 in the shares of Punjab and Sindh Bank Limited, The appellant has filed affidavit confirming that no investment of Rs. 1,98,000 is made in shares of Punjab and Sindh Bank Limited. The appellant therefore submits that the addition of Rs.1,28,050 be deleted.

2. That the learned CIT(Appeal) has erred in confirming addition of Rs. 1,50,000 out of addition of Rs. 4,80,000 made by assessing officer in connection with fixed deposit with State Bank Of India. The appellant respectfully submit that investment in fixed deposit is made out of savings account from sale proceeds of shares. The appellant therefore submits that the addition of Rs. 1,50,000 confirm by learned CIT(Appeal) be deleted.

3. The appellant craves leave to add , to alter or to amend any of the Grounds of appeal before hearing of appeal.

3. The interconnected issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO in part by sustaining the addition of ₹ 1,28,050.00 and 1.5 lakhs on account of investment/deposits made in the shares and FD instead of deleting the same in entirety.

4. The facts in brief are that the assessee in the present case is an individual and filed his return of income declaring an income of Rs.69,948.00 only. The AO during the assessment proceedings found that the assessee has made investment in the shares as well as made fixed deposits with the bank amounting to ₹ 1,28,050.00 and 4.80 lakhs but the assessee has failed to justify the source of such investment in shares and bank FD. Thus, the AO treated the same as unexplained investment and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT (A)

6. The assessee before the learned CIT (A) claimed to have made investment in shares only for 6,000.00 (50 shares of Punjab & bank at the rate 120 per share) which were sold at ₹ 6,431.00 only leaving a profit of Rs. 431 only in the year under consideration. Thus, there was no basis of making the addition of ₹ 1,28,050.00 on account of investment in the shares. The AO during the assessment proceedings

was requested to provide the source of the information available with him about the investment in the shares for ₹1,98,000.00. But the AO has not provided the same information and has made the addition at ₹1,28,050.00 (1,98,000-69950 i.e. income from other sources declared in the return of income). Thus, as per the assessee such addition is unwanted.

6.1 The assessee with respect to the addition made by the AO for ₹4.80 lakhs submitted that the actual amount for which the FD was made was of ₹2.40 lakhs only. The assessee in support of his contention has filed the copy of the FD issued by the bank. The assessee further submitted that the investment was made in the FD out of the sale proceeds of the shares which were held for more than 12 months and reflecting in the bank statement. Accordingly, it was contended that there was no undisclosed income of the assessee as alleged by the AO.

7. The learned CIT (A) called for the remand report from the AO who in turn submitted that the assessee has not furnished any details with respect to the investment made in the shares amounting to ₹ 1,28,050.00 and therefore the addition is liable to be made.

8. The AO in the remand report has conceded the fact that the actual amount of FD stands at Rs. 2,40,000.00 only.

9. The learned CIT (A) after considering the submission of the assessee and the remand report of the AO partly allowed the ground of appeal raised by the assessee by observing as under:

In the rejoinder to the remand report, the appellant is filing confusing facts. The fact remains that the total investment of Rs.1,98,000/- was inquired and an amount of Rs.1,28,050/- has been added as unexplained investment as the appellant was a non-filer. Any investment made through

XX

It is admitted by the AO that the addition can only be sustained upto Rs,2,40,000/- as this amount has not been explained. The submission of appellant and rejoinder to the remand report says that this investment in FD was made on 16.02.2011. Further the explanation

filed on record dated 17.11.2018 says there is cash deposited in the bank account from the past savings and no. I.T Returns upto assessment year 2010-11 have been filed as income was below taxable limit.

In view of above, a benefit of doubt is given to the appellant for Rs.90,000/- cash in hand and in my opinion, Rs.1,50,000/- remained unexplained. The addition of Rs.1,50,000/- is hereby confirmed.

10. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

11. The learned AR before us filed a paper book running from pages 1 to 23 and contended that the investment in the shares was made only for ₹ 6000 in the year under consideration. Furthermore, the AO has not provided any basis for holding that the assessee has made investment in the shares to the tune of ₹ 1,98,000 only. The learned AR in support of contention has filed the broker details and the bank statement which are placed on pages 8 to 21 of the paper book.

11.1 The learned AR with respect to the amount of money of ₹2.40 lakhs invested in the fixed deposits submitted that it was made out of the sale proceeds of the shares which were held for more than 12 months. Thus the same cannot be considered as an unexplained investment.

12. On the other hand, the learned DR vehemently supported the order of the authorities below.

13. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the case are not dispute in the present case. Therefore, for the sake of brevity and convenience, we are not inclined to repeat the same. With respect to the addition made by the AO for ₹ 1,28,050.00 on account of investment made in the shares, we note that the assessee has submitted that he has made investment only for Rs. 6,000 and not ₹1,28,050.00 as alleged by the authorities below. We further find that the assessee before the authorities below

has also requested to provide the information gathered by the AO for the investment made to the tune of ₹1,98,000 in the shares. However, none of the authority has provided such information to the assessee. In the absence of any documentary evidence from the side of the revenue, we are inclined to hold that the assessee has made investment only for ₹6000 and not of ₹1,90,000 as alleged by the authorities below. It is also significant note that the submission made by the assessee before the authorities below has also not been found bogus/false by the revenue. Thus, we do not find any basis or reason for upholding the order of the authorities below. Accordingly, we set aside the order of the learned CIT (A) and direct the AO to delete the addition made by him.

13.1 With respect to the investment made in the bank fixed deposits, we find that there were enough proceeds in the bank account of the assessee against the sale of shares and the amount was utilized out of the sale proceeds of the shares for the purpose of the bank fixed deposit. This fact can be verified from the bank statement and the brokers statement which are placed on pages 8 to 21 of the paper book. At the time of hearing the learned DR has not brought anything contrary to the material available on record. Hence, we do not find any merit in the finding of the authorities below. Thus, we set aside the order of the learned CIT-A and direct the AO to delete the made by him. Therefore, both the grounds of appeal raised by the assessee are allowed.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 21/12/2022 at Ahmedabad.

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

Ahmedabad; Dated (True Copy)
21/12/2022