

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

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

**ITA No.329/RJT/2016
Assessment Year: 2009-10**

The Income Tax Officer,
Ward – 1(3), Jamnagar.

(Appellant)

vs. Shri Rajubhai N. Gorania,
56-57, Khodiyar Colony,
Nr. Samundra Sales,
Opp. Khodiyar Temple,
Jamnagar.
[PAN – AJCPG 7521 N]
(Respondent)

Assessee by : Shri Chetan Agarwal, AR
Revenue by : Shri B.D. Gupta, Sr. DR

Date of hearing : 19.01.2023
Date of pronouncement : 03.02.2023

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the Revenue against order dated 08.06.2016 passed by the CIT(A), Jamnagar for the Assessment Year 2009-10.

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

- “1. *The Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs.1,23,97,938/- made by the Assessing Officer on account of unexplained deposits in bank accounts.*
2. *The Ld. CIT(A) erred on facts and in law in holding that the assessee was prevented by sufficient cause from attending the assessment proceedings and thereby admitting additional evidences u/r. 46A of the Income Tax Rules, 1962.*
3. *The Ld. CIT(A) erred on facts and in law in deleting the addition of Rs.32,34,568/- made by the Assessing Officer on account of unexplained investment in purchase of plot.*
4. *on the basis of the facts and circumstances of the case, the learned CIT(A) ought to have upheld the order of the Assessing Officer.*

It is therefore prayed that the order of the CIT(A), Jamnagar may kindly be set aside and that of the Assessing Officer be restored."

3. The assessee did not file return of income for the year under consideration. The assessment proceedings under Section 147 of the Income Tax Act, 1961 was initiated and notice under Section 148 of the Act was issued to the assessee on 27.03.2015, but no response was given by the assessee. The Assessing Officer issued several notices/opportunity letters to the assessee but the assessee did not reply the same. The Assessing Officer made addition of Rs.1,23,97,938/- in respect of cash/cheque deposit in bank account of HDFC bank and Bank of Baroda during the year under consideration. The Assessing Officer also made addition of Rs.32,34,568/- in respect of purchase of plot of land jointly with eight other joint purchasers for which the assessee did not furnish source of payment for purchase of the property.

4. Being aggrieved by the Assessment Oder, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) erred in admitting the additional evidences under Rule 46A of the Income Tax Rules, 1962. The Ld. DR further submitted that the deletion of the addition of Rs.1,23,97,938/- on account of unexplained deposits in bank accounts was not justifiable as the assessee could not bring anything before the Assessing Officer to justify his claim despite giving several opportunities. The Ld. DR further submitted that as regards ground no.3, the CIT(A) has not looked into the land development and large amount of cash withdrawn and credited. Therefore, the CIT(A) is not justified in deleting the addition on account of unexplained investment in purchase of plot.

6. The Ld. AR relied upon the order of the CIT(A) and submitted that the Assessing Officer has made addition on estimated income in respect of purchase of land and in respect of cash/cheque deposit in the bank account. The assessee has given all the details before the CIT(A) upon which the CIT(A) has called remand report wherein the Assessing Officer has not given any adverse remarks.

7. We have heard both the parties and perused all the relevant material available on record. Related to admission of additional evidence under Rule 46A of the I.T. Rules, 1962, the CIT(A) has rightly admitted the additional evidence as the assessee was not able to participate in the assessment proceedings due to genuine reasons. As regards addition on account of cash/cheque deposits in bank accounts, the assessee has given the details before the CIT(A) in respect of cash and cheque transactions which has been reproduced from page nos.4 to 11 of the order of the CIT(A). The CIT(A) in fact has verified every single transaction and has given its remarks to that extent and after taking cognisance has deleted the addition and directed the Assessing Officer to adopt Net Profit at 5% on the said contract receipt. Thus, the CIT(A) has not deleted it entirely but has taken a plausible view with the proper reasoning. Therefore, there is no need to interfere with the same. Hence, ground nos.1 & 2 are dismissed.

8. As regards ground no.3, the CIT(A) has taken cognisance of the remark of the Assessing Officer made in the remand report and has given reason as to why the assessee was prevented for not filing the evidences during the assessment proceedings. The CIT(A) has explained that the assessee has paid the consideration for purchase of land from Bank of Baroda and plot was also duly reflected in balance sheet for which the assessee submitted ledger account of plot from books of account. Thus, the transaction was duly explained and the source of payment for purchase was also explained for which no adverse remark was given by the Assessing Officer in his remand report. Hence, ground no.3 is dismissed.

9. As regards ground nos.4 & 5, the same does not require adjudication.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 3rd February, 2023

Sd/
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 3rd day of February, 2023

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Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Rajkot Bench, Rajkot