

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.231/SRT/2022

(निर्धारणवर्ष / Assessment Years: (2013-14)

(Physical Court Hearing)

Assistant Commissioner of Income-tax, Central Circle-4, Surat, Room No. 508, 5th Floor, Aayakar Bhawan, Majura Gate, Surat-395001	Vs.	Shri Chandresh Nanubhai Patel 17-18, Shiv Ashish Society, Opp Saint Mark School, Adajan, Surat-395009
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AGWPP 1288 R		
(अपीलार्थी /Assessee)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri Kiran K. Shah, CA

राजस्व की ओर से/Revenue by : Shri Vinod Kumar, Senior-DR

सुनवाई की तारीख/ **Date of Hearing** : **01/03/2023**

घोषणा की तारीख/**Date of Pronouncement** : **21/03/2023**

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2013-14, is directed against the order passed by the Ld. Commissioner of Income-tax (Appeals)-4, Surat [Ld. CIT(A) for short] dated 09.05.2022 which in turn arises out of an assessment order passed by Assessing Officer under section 147 r.w.s. 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the "Act"] dated 27.03.2022.

2. Grounds of appeal raised by the Revenue are as follows:

“[i] On facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs.2,08,17,210/- on account of unaccounted unsecured loan without appreciating the fact that the addition was made on the basis of incriminating documents found and seized during the course of search proceedings and the assessee has not shown the same either in his return of income filed or in the balance sheet under the head “unsecured loans” or under any other nomenclature for the impugned assessment year.

[ii] On facts and circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made by the Assessing Officer of Rs.2,08,17,210/- on

account of unaccounted unsecured loan merely relying upon the submission of the assessee and ignoring the fact that there was no corroborative evidences to substantiate the claims of the assessee and there is complete lack of authenticity for the unaudited balance sheet or submissions furnished by the assessee.

[iii] On facts and circumstances of the case and in law, the learned CIT(A) has erred in not appreciating the fact that the assessee has filed ITR-4 and declared income under Sec.44AD of the Act on presumptive basis and no details of unsecured were shown in the columns prescribed from the same in the return of income for the impugned assessment year.

[iv] It is, therefore, prayed that the order the Ld. CIT(A)-4 Surat may be set aside and that of the AO may be restored to the above extent.

[v] The assessee craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”

3. The facts necessary for disposal of the appeal are stated in brief. The assessee before us is an individual and filed return of income for the assessment year under consideration on 11.11.2013 declaring total income of Rs.6,09,240/-. Subsequently a search action was conducted at the residence of Shri Shankar Uttamchandani on 06.02.2020. During the search a digital data in the form of mobile of Shri Shankar Uttamchandani, desktop, laptops etc. were got imaged through computer expert the digital data in respect of Shree Kuberji Corporate House revealed a satakhat in respect of land bearing block No.258 of village Kumbhariya. The assessee has purchased a land in financial year 2012-13 and for the purchase of the said land assessee has taken unsecured loan of Rs.2,08,17,210/- from M/s Shree Kuberje Developers but no details in respect of unsecured loan has been mentioned in respect of such unsecured loan in assessee's return of income.

4. In view of the above facts, the proceedings u/s 147 of the Act was initiated by assessing officer by issuing notice u/s 148 of the Act on 31.03.2021. In response to notice u/s 148 of the Act, the assessee filed return of income on 16.08.2021 showing total income at Rs.6,09,240/-. Subsequently notice u/s 143(2) on 10.02.2022 was issued upon the assessee. In response to notice of the assessing officer, the assessee furnished submission / explanation. After this, a show cause notice issued to the assessee on 27.12.2021 which is reproduced as under:

“A search action was conducted at the residence of Shri Shankar Uttamchandani on 06.02.2020. During course of search, digital data in the form of mobile of Shri Shankar Uttamchandani, desktop, laptops etc. were got imaged through computer expert. During the course of post-search proceedings, extraction of the digital data in respect of Shree Kuberji Corporate House revealed a Satakhat in respect of land bearing block No.258 of village Kumbhariya.

On perusal of said Satakhat it is revealed that you have purchased the lands as mentioned in the table below in F.Y 2012-13 and for the purchase of the same you have taken unsecured loan of Rs.2,08,17,210/- from M/s Shree Kuberji Land Developers. Further it is also seen that you have sold the said land in the F.Y 2015-16, exactly after the completion of three years and returned the loan amount to Shree Kuberji Land Developers.

Sr.No.	Block No.	Hisa No.	O.P. area insq.mt.	F.P. area 15% in sq.mt.	Sq.yd.
1	258/9	9	1240	1054	1260.57
2	258/1	1	1605	1364.25	1631.63
3	258/13	13	136	1161.1	1388.66
4	258/10	10	1240	1054	1260.57
5	258/3	3	1403	1192.55	1426.28
6	258/11	11	1232	1047/2	1252.44
7	258/15	15	1365	1160.25	1387.65
8	258/2	12	1230	1045.5	1250.41
			10681	9078.85	10858.2

You have not furnished any of the details as called for by this office including unsecured loan of Rs.2,08,17,210/-.

In view of the above you are hereby show caused, why the above amount of Rs.2,08,17,210/- should not be treated as unexplained added to your total income for the year under consideration.”

5. In response to show cause notice, the assessee furnished reply on 05.01.2022, which is reproduced as under:

“The case has been reopened merely because loan received from Kuberji Land Developers is not verified for amount of Rs.2,08,17,210/-.

It may be noted that the above said amount is taken as payment towards various of Survey No. 258 at Kumbharia while passing an order at the time of sale of the land. The then Office assumed that since the entire amount was paid by Kuberji Land developers, the property would be deemed to be purchased by them and accordingly, the addition on LTCG was made on protective basis. In short, the amount was not considered as unsecured loan and therefore, reopening proceedings and assessment thereon are not required.

Without prejudice to the above, it is submitted that the loan was received from Kuberji Land Developers wherein the assessee is one of the partner. The said firm is assessed to tax before your goodself. The copy of ledger account both from the accounts of the assessee as well as Kuberji Developers are filed,”.

6. However, Assessing Officer rejected the contention of the assessee and noted that during the year under consideration the assessee has taken unsecured

loan of Rs.2,08,17,210/- from the Kuberji Land Developers. However, same is not reflected in the books of account of the assessee. Hence, it is clear that the said loan is unaccounted in the books of the assessee. Hence, an amount of Rs.2,08,17,710/- was added to the total income of the assessee u/s 68 of the Act.

7. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Learned CIT(A) who has deleted the addition made by the Assessing Officer.

8. Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us.

9. Before us, Learned DR for the Revenue submitted that assessee had filed the copy of the ledger account of Kuberji Land Developers and the balance sheet which showed Shri Kuberji Land Developers under the head "Creditors for Others". However, the loan taken from Shri Kuberji Land Developers which is the firm in which the assessee is the partner was very much shown in the balance sheet as on 31.03.2013. The balance sheet of the assessee as on 31.03.2013, in which the said loan appears under the head "Creditors for Others". In the balance sheet of M/s Shri Kuberji Developers as on 31.03.2013 and the said loan to the assessee also appears under the head "Loans and Advances. Since the Balance-Sheet of the assessee is not audited, hence the claim of the assessee should not have been allowed by Ld. CIT(A).

10. On the other hand, Learned Counsel for the assessee relied on the order passed by Ld. CIT(A). The Ld. Counsel argues that assessee had filed the copy of ledger account from his books of account as well as the contra account from the firm viz. Shri Kuberji Land Developers. The Ld. Counsel states that assessee had reconciled the balance with his balance sheet. Therefore Ld. Counsel submits that it is not a case where the assessee did not account for the transactions as alleged. The Ld. Counsel submits that Shri Kuberji Land Developers had purchased various plots of Block No.258 and against that they had paid most of the amount to the

seller of the land and some amount was transferred in his accounts and later on paid to the sellers. The assessee had accounted for the entire transactions either by journal entry or by the bank. Since the land was purchased in his name, the assessee had shown the amount transferred to him by the said firm as loan and on other side, the value of plots was accounted for. The assessee therefore states that the amount was shown against capital [debit balance in the firm and credit balance (loan) in assessee's balance sheet]. The Ld. Counsel, therefore, states that the transactions was duly accounted for both by the firm as well as the partner and, therefore it should not be assumed that the same is not reflected in the books of account of the assessee. The Ld. Counsel further states that all transactions regarding Shri Kuberji Land Developers are duly accounted for in the personal set of accounts and, therefore, it is not a case where the transactions are not reflected in the balance sheet as mentioned in the assessment order. The Ld. Counsel relied on the decision of Hon`ble Gujarat High Court in the case of Associated Transrail Structure Ltd. Vs. ACIT (2017) (397 ITR 573) (Guj), wherein it was held that if the amount was received by cheques and transactions were confirmed by the payer, no addition is justified u/s 68 of the Act. The Ld. Counsel further relies on the decision of Hon`ble Gujarat High Court in the case of CIT vs. Ranchhodbhai Jivabhai Nakhava (2012) 208 taxmann.com 35 (Guj).

11. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that solitary issue is relating to addition of Rs.2,08,17,210/- u/s 68 of the Act towards unsecured loan. According to the assessing officer, the assessee during the impugned assessment year had taken unsecured loan of Rs.2,08,17,210/- from the Kuberji Land Developers and as per Assessing Officer, said loan was not reflected in the books of account of the assessee, therefore Assessing Officer made addition. During the appellate proceedings, it was submitted by the assessee that he had filed the copy of the ledger account of Kuberji Land Developers and the balance sheet which showed Shri Kuberji Land Developers under the head "Creditors for Others".

However, it was submitted that the loan taken from Shri Kuberji Land Developers which is the firm in which the assessee is the partner was very much shown in the balance sheet as on 31.03.2013. During the appellate proceedings, the Id CIT(A) had gone through the balance sheet of the assessee as on 31.03.2013, in which the said loan appears under the head “Creditors for Others” and observed that balance sheet of M/s Shri Kuberji Developers as on 31.03.2013 and the said loan to the assessee also appears under the head “Loans and Advances. Based on these facts, the Id CIT(A) observed that addition of Rs.2,08,17,210/- made by the Assessing Officer towards the said loan treating the same as unexplained was not warranted, hence deleted the addition. We note that loan and advance of Rs.2,08,17,210/- is getting reflected in the Individual Balance Sheet as well as in the balance sheet of M/s Shri Kuberji Developers therefore, it is not a case that assessee has concealed the details of such loan. Based on this factual position, we do not find any infirmity in the order of Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid addition. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

12. In the result, appeal filed by the Revenue is dismissed.

Order is pronounced on 21/03/2023 by placing result on notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सुरत /Surat / दिनांक/ Date: 21/03/2023

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Sr. Private Secretary/Private Secretary/
Assistant Registrar, ITAT, Surat