

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER  
**आ.अ.सं./ITA No.97/SRT/2017** (AY 2013-14) &  
**आ.अ.सं./ITA No.183/SRT/2020** (AY 2013-14)  
(Hearing in Virtual Court)

|  |    |   |
|--|----|---|
| Income Tax Officer, Ward-3(1)(5), Surat, Room No.115, 1 <sup>st</sup> Floor, Anavil Business Centre, Hajira Road, Opp. Star Bazar, Adajan, Surat-395007  | Vs | Shri Sagarbhai Bijaibhai Rabari, 33-34, Ambika Nagar, Luhar Falia, Nana Varachha, Surat-395006<br><b>PAN No. ADAPR 4150 K</b> |
| Income Tax Officer, Ward-3[2][10], Surat, Room No.115, 1 <sup>st</sup> Floor, Anavil Business Centre, Hajira Road, Opp. Star Bazar, Adajan, Surat-395007 |    |   |
| <b>अपीलार्थी /Appellant</b>  |    | <b>प्रत्यर्थी /Respondent</b>   |

|   |                            |
|---|----------------------------|
| निर्धारिती की ओर से /Assessee by        | Shri Ashwin K Parekh, C.A  |
| राजस्व की ओर से /Revenue by             | Shri Ashok B. Koli, CIT-DR |
| सुनवाई की तारीख/Date of hearing         | 28.02.2023                 |
| उद्घोषणा की तारीख/Date of pronouncement | 12.05.2023                 |

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These two appeals by Revenue are directed against the separate orders of ld. Commissioner of Income-tax (Appeals)- 3 Surat [for short to as “Ld. CIT(A)”] dated 30.06.2017 and 16.03.2020. Both the appeals relate to same assessment year i.e., 2013-14, which in turn arose out of assessment orders passed by Assessing Officer under section 143(3) of Income-tax Act (Act) dated 29.02.2016 and under section 143(3)

r.w.s. 147 dated 24.12.2018 respectively. Therefore, both the Revenue's appeals are clubbed, heard together and are decided by consolidated order to avoid conflicting decisions. In ITA No.97/SRT/2017 [*in the matter of A.Y completed under section 143(3) of the Act*], wherein the Revenue has raised the following grounds of appeal:-

*“1. Whether on facts and in law, the Hon'ble CIT(A) was correct in holding that the investment in property is explained and the assessee has duly shown the source of the funds?*

*2. Whether on facts and in law, the Hon'ble CIT(A) was right in accepting evidences and documents of the assessee which were not produced before the Assessing Officer in the course of am proceedings without following the procedure laid down in Rule 46A of the I.T. Rules or taking recourse to section 250(4) of the I.T. Act?*

*3. Whether on facts and in law, the Hon'ble CIT(A) was right in holding that the accounts of the proprietary concern viz. M/s Harekrishna developers were placed before the Assessing Officer when actually the assessee had furnished misleading information about the concern being a **'firm'** and had not submitted any details of the source of funds of the concern?*

*4. Whether on facts and in law, the Hon'ble CIT(A) was justified in relying upon the decision in the case of Ranchhod J Nakhawa [208 Taxman.35 (Guj)], Rohini Builders [256 ITR 360 (Guj)] and Hingora Industries Ltd. [2019/Ahd/208 dated 12.09.2012] especially when the facts of the case of assessee are different than those case and the ae has not been able to establish identity, genuineness and creditworthiness of loans, out of which impugned investment to the tune of Rs.2,25,00,000/- has been made?”*

2. Brief facts of the case are that assessee is a proprietor of “M/s Harekrishan Developers” and engaged in the business activities of builder & developer, filed its return of income for

assessment year 2013-14 on 30.03.2014 declaring income of Rs.4,70,880/-. The case was selected for scrutiny. During assessment, the Assessing Officer noted that assessee made investment in land of Rs.2.25 crores. The assessee was asked to furnish the copy of purchase deed about the investment in land. On verification of purchase deed, the Assessing Officer found that the land was non-agricultural land and consideration of property is shown at Rs.3.03 crores besides, registration fees and stamp duty also. The Assessing Officer made a summary of entire payment of consideration in **para-4** of assessment order. On the basis of such summary, the Assessing Officer was of the view that during the relevant period of financial year under consideration, the assessee made a payment of Rs.2.25 crores only. The assessee was asked to furnish his source of investment and issued detailed show cause notice as recorded in **para-4.1** of assessment order. The Assessing Officer recorded that no reply was furnished by assessee nor any documentary evidence regarding source of investment were furnished. The Assessing Officer thereby treated the investment of Rs.2.25 crores as unexplained investment.

3. Aggrieved by the addition made by Assessing Officer, the assessee filed appeal before the Ld. CIT(A). Before Ld. CIT(A) the assessee filed detailed written submission. The submission of assessee recorded in **para-7** of the order of Ld. CIT(A), wherein the assessee in his submission, submitted that out of total consideration of Rs.3.30 crores for purchase of land and only Rs.2.25 crores was made in the year under consideration Rs.1.51 lakhs was paid in assessment year 2010-11 at the time of execution of agreement and balance of Rs.77.10 lakhs was paid in assessment year 2014-15. The assessee further explained he is engaged in business of organizing of sale of residential flats and commercial shops under the name and style of "Hare Krishna Developers". The assessee made investment in land of Rs.2.25 crores in this year, out of unsecured loan accepted in "Hare Krishna Developers" and furnished copy of bank statement of Varachha Co-Operative Bank Ltd., wherein cheque of unsecured loan was received from various depositors and were credited and payment for purchase of land was made. The copy of bank statement of Varachha Co-Operative Bank Ltd. was furnished. The assessee furnished name, address,

PAN and confirmations and balance-sheet of all depositors.

The assessee submitted that he has discharged onus lying upon him and balance-sheet of “Hara Krishna Developers” were furnished. The Assessing Officer accepted all the purchase and development expenses and work-in-progress of “Hara Krishna Developers”. The assessee again furnished the name and address of all the persons of unsecured loan. The assessee specifically stated that Assessing Officer accepted the loan as genuine, thus, the investment in purchase of land cannot be said the unexplained investment.

4. The Ld. CIT(A) after considering the submission of assessee noted that assessee purchased land for a consideration of Rs.3.30 crores, however, payment of Rs.2.25 crores was made in the year under consideration. The assessee received unsecured loan from forty-five persons aggregating of Rs.2.25 crores and entire loans amount were received in the bank account of Varachha Co-Operative Bank Ltd. The payments for purchase of property was also made from the same bank account of Varachha Co-Operative Bank Ltd. The Assessing Officer was provided details of the payments along with letter dated 23.02.2016 in response to notice dated 18.02.2016

along with copy of bank accounts. The assessee also furnished details of lenders, their names, addresses, confirmations, balance-sheet, income tax return and profit and loss account. Thereafter Assessing Officer issued notice under section 133(6) to lone (creditors). The assessee asked about all the depositors, who had not replied / responded to the notice under section 133(6) which was also filed by the said lenders directly on 12.02.2016 but no adverse finding regarding the lender / creditors were added. The Ld. CIT(A) specifically recorded that there is no disclosure about the unsecured loan in the assessment order. The Assessing Officer made addition for investment for purchase of property on the ground that it is unexplained. The basis of Assessing Officer's conclusion on finding that bank accounts are not disclosed in balance-sheet, however, the bank account shown in the balance-sheet of "Harekrishna Developers". The investment on purchase of land is made out of the bank accounts and source of the same is from unsecured loans also. Since there is no adverse finding against the unsecured loan and investment from the loan source no addition on account of investment was justified. The Ld. CIT(A) further

held that the property purchased by the assessee is his business assets and loan shown in the profit and loss account and then as work-in-progress in the balance-sheet as well as loan from other is also shown. The ld CIT(A) also noted that assessee has treated the land as 'business asset' and has shown it in the profit and loss account and then WIP in the balance sheet. The assessee has also shown loan and others of Rs. 3.69 Crore in column 2B(ii) and in column 3a(i) stock in process at Rs. 4.44 Crore. On the basis of such observation, Ld. CIT(A) deleted the entire addition. Aggrieved by the order of Ld. CIT(A), the Revenue has filed present appeal before Tribunal.

5. We have heard the submission of Ld. Commissioner of Income Tax-Departmental Representative (Ld. CIT-DR) for the Revenue and Ld. Authorized Representative (Ld.AR) for the assessee. The Ld. CIT-DR for the Revenue submits that source of funds for purchase of land was not explained by assessee before Assessing Officer though the Ld. CIT(A) accepted the explanation of assessee by holding that assessee furnished the names and addresses of the lenders. In fact, assessee failed to substantiate the source of his investment.

The Ld. CIT-DR for the Revenue prayed before the Bench reverse the order of Ld. CIT(A) and to restore the order of Assessing Officer.

6. On the other hand, Ld. AR for the assessee supported the order of Ld. CIT(A). The Ld. AR for the assessee submits that during the assessee, the assessee furnished complete details of unsecured loan and the investment for purchasing land and all the details were furnished along with return of income. The details of unsecured loans were provided to Assessing Officer vide replied dated 30.08.2015. The Assessing Officer again sought various details which were provided vide reply dated 15.02.2016 and assessee furnished complete details of lenders, including names, addresses, PAN no. and amount of unsecured loans. All the amounts were received through cheques and credited in the bank account of assessee with Varachha Co-Operative Bank Ltd. The Assessing Officer thoroughly investigated about the unsecured loans and no addition in the assessment regarding unsecured loan was made. The assessee made investment of purchase of land from the source of unsecured loan and such details were also furnished to Assessing Officer. The

Assessing Officer conveniently ignored and recorded in his order that no details were furnished. The Ld. CIT(A) after appreciating the fact that clearly held that source of investment is from the unsecured loan.

7. We have heard considered the submission of both the parties and have gone through the order of lower authorities carefully. We find that Assessing Officer made addition by simply taking view that assessee has not furnished his source of investment. Before Ld. CIT(A), assessee submitted that he has furnished complete details about the source of investment, which is mainly from unsecured loan. As per the copies of replies filed by the assessee, it seems that issue regarding unsecured loan was examined by Assessing Officer also. We find that Ld. CIT(A) after considering the submission of assessee held that Assessing Officer thoroughly investigated about the unsecured loan, however, no addition on account of unsecured loan were made by Assessing Officer. The investment of Rs.2.25 crores in purchasing land is the source of unsecured loan incurred / paid during the relevant financial year is from unsecured loan. There is no adverse finding of Assessing Officer on such unsecured loan.

The assessee discharged his onus in proving his source of investment by furnishing complete details of lenders.

8. Considering the fact categorically finding of Ld. CIT(A) that source of investment was unsecured loan, which was investigated by Assessing Officer and not added. Thus, we do not find any infirmity in the order passed by Ld. CIT(A), which we affirm. This ground of Revenue's appeal is dismissed.
9. In the result, appeal of Revenue is dismissed.

**ITA No.183/SRT/2020 (A.Y 13-14)**

10. The Revenue has raised following grounds: -

*“1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in quashing the assessment proceedings initiated u/s 147 of the Income Tax Act, 1961, by observing that re-opening of the assessment on the same issue which had been examined by the AO in original order passed u/s 143(3) of the Act is nothing but change of opinion and there was no new material received or available with the AO related to reason recorded by him, ignoring the facts that the reason for reopening was recorded on the basis of submission made by the assessee before the Ld. CIT(A) during the appellate proceeding in respect of original assessment order, which were not made available to the Assessing Officer during the original assessment proceedings?”*

*2. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that at the time of initiation of proceedings u/s 147 and issuance of notice u/s 148 of the I.T. Act, the issue was subject-matter of appeal and once the issue is subject matter of appeal during the pendency of appeal, issuance of notice u/s 148 of the I.T. Act has to be considered bad in law in view of the various case laws, inspite of the facts that the issue involved in reopening of the assessment was different than the issue in the original assessment order. Further the facts in the case laws relied upon are different and distinct from the facts of the assessee's case?”*

*3. On the facts and circumstances of the case, the learned CIT(A) ought to have upheld the order of the Assessing Officer.*

*4. It is, therefore, prayed that the order of the Ld. CIT(A) maybe set aside and that of the Assessing Officer may be restored to the above extent.*

*5. The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal whether before or during the course of hearing of the appeal.”*

11. The case of assessee for AY 2013-14 was reopened by Assessing Officer that after completing the assessment under section 143(3) of the Act, by recording reasons of reopening that addition on account of source of investment was made during original assessment. Against the addition of source of investment, the assessee filed appeal before ld CIT(A). Before Ld. CIT(A) the assessee disclosed new and fresh information that certain unsecured loans were accepted and the investment was from unsecured loan and such details of unsecured loan was not furnished by assessee. On the basis of such observation, the case of assessee was reopened under section 147 of the Act and notice issued under section 148 of the Act on 31.03.2018 for filing return of income within 30 days.
12. The assessee vide his letter / reply dated 12.04.2018 submitted that original return filed on 30.03.2015 may be

treated as return of income in response to under section 148 of the Act. The assessee requested for reasons recorded vide application dated 13.04.2018. The reasons recorded were provided to the assessee vide letter dated 17.04.2018. The Assessing Officer after serving reasons recorded proceeded for re-assessment. During the re-assessment, Assessing Officer recorded that assessee made investment in purchase of property and during the year assessee made payment of Rs.2.25 crores for purchase of land and such information was not disclosed during the original assessment. The assessee claimed that bank account shown in the balance-sheet of “Hara Krishna Developers”, a proprietary concern, of assessee. However, assessee never disclosed in his regular assessment proceedings that “Harekrishna Developers” is his own proprietary concern. In reply to question No.2, in submission dated 15.03.2016, the representative of assessee mentioned that land of Rs.3.03 crores was purchased by firm in submission dated 30.1.2015. The assessee claimed that he made investment of Rs.22,70,000/- in “Harekrishna Developers” that assessee has mislead the Assessing Officer is to be that “Harekrishna Developers” as a partnership firm

where assessee made investment of Rs.22,77,000/- only. The assessee deliberately mislead fact to Assessing Officer to believe that land has been purchased by separate entity not by assessee thereby pre-emptive any inquiry into source of unsecured loan accepted by assessee himself in the proprietary capacity. The entire fact regarding the loan having been taken in the proprietary concern claimed for the first time before Ld. CIT(A).

13. On the basis of such observation, the Assessing Officer issued detailed show cause notice dated 01.12.2018 and directed the assessee to file reply on or before 06.12.2018. The relevant portion of show cause notice is recorded in **para-6** of assessment order. In the show cause notice, the assessing officer asked the assessee as to why amount of Rs.3.19 crores should not be treated as unexplained investment of assessee. The assessee filed his reply dated 06.12.2018. In the reply, assessee explained that identification of depositors, genuine of transaction and creditworthiness of depositors were furnished along with reply dated 27.11.2018. Such issue has been examined by Ld. CIT(A) and the addition was deleted. The case of assessee

cannot be reopened on the same issue and remedy available with the Department as the case filed before Tribunal which has already been filed. Thus, reopening should be dropped. The assessee again submitted that unsecured loan accepted by “Harekrishna Developers” and invested in purchasing of land were verified in the original assessment proceedings and entire addition was deleted by Ld. CIT(A). The Department is in appeal against such order, therefore, reopening is not permitted under law. The assessee in order to comply with the notice furnished names, addresses, PAN Nos. and amount of loan.

14. The Assessing Officer on receipt of reply and details of depositors / lenders issued summons under section 131 of the Act. The Assessing Officer recorded that nobody attended in response to summons issued under section 131. The Assessing Officer held that loan givers were mere name-lenders and were persons of very small means who worked for a commission on the entries given by bank. These persons are part of syndicate, who are never traceable and addresses of them would be fictitious. The bank account would be operated by some other controllers.

15. The assessing officer in para -8 of the assessment order recorded that assessee is in the business of construction wherein in crores of rupee are received as unaccounted money in cash. Such huge cash money and requirement of investment for construction, needs arose for accounted money in the bank account. In first round the money is given to so called investor and received by way of cheque from their bank account and as such sums have been utilised by assessee in investment in construction. The assessing officer held that landers have very small means and work on commissions. The assessee failed to discharged his onus on proving the source of credit. The Assessing Officer thereby treated the entire amount of Rs.3.19 crores as unsecured loan as unexplained cash credit.
16. On appeal before Ld. CIT(A), the assessee challenged the validity of reopening as well as addition on merit of validity of reopening. The assessee filed detailed written submission dated 04.02.2020. The submission of assessee is recorded in **para-4** of the order of Ld. CIT(A). The assessee on the validity of reopening submitted that original assessment order was passed under section 143(3) of the Act on 29.02.2016. The

Ld. CIT(A) vide order dated 30.06.2017 deleted the entire addition on account of investment in land on the ground that source of investment in land are unsecured loan. The Ld. CIT(A) accepted all the loans of Rs.3.69 crores as genuine and assessee has provided the identity of depositors and genuineness of transaction and creditworthiness of creditors in the original assessment order where Assessing Officer accepted the genuineness and addition made only on account of investment of property. The Department is in appeal before Tribunal. The Assessing Officer is not empowered to reopen the case under section 147 in view of decision in the case of Chika Overseas Pvt. Ltd. vs. ITO (2011) 131 ITD 471 (Mum-Trib); ICICI Bank Ltd. vs. DCIT 246 CTR 292 (Bom) and CIT Vs Flothern Engineering Pvt Ltd 225 Taxman 223 (Mad.) The assessee also furnished detailed written submission.

17. On merit of the addition, the assessee again vide his written submission dated 24.02.2022 and submitted that reasons of reopening is based on the order of Ld. CIT(A) on same issue. The assessee furnished original assessment order passed under section 143(3) of the Act dated 29.02.2016, copy of reasons recorded and submitted that reasons of reopening

mainly raised on the ground that assessee allegedly to have misled the Assessing Officer by misrepresenting that “Harekrishna Developers” is a partnership firm. The assessee filed copy of notice dated 08.02.2016 issued by Assessing Officer wherein assessee was asked to furnish the investment of Rs.22,77,000/- in “*Harekrishna Developers*”, *proprietary concern* during the year under consideration with source of investment. On the basis of such submission, in the show cause, the assessee explained that from the contention of Assessing Officer, it is clear that Assessing Officer was aware about the fact that “M/s Harekrishna Developers” is a proprietary concern of assessee and it is not a partnership firm. The Notices issued all the depositors under section 133(6) were served, which are evident in para-4 of notices dated 08.02.2016.

18. The Ld. CIT(A) after considering the submission of assessee and order of his predecessor in appeal against the original assessment and held that details regarding the unsecured loans which is source of investment of immovable property, names, addresses, PAN Nos. confirmations copy of ITR and balance-sheets were filed before the Assessing Officer. There

was no adverse finding of Assessing Officer regarding the unsecured loan received by assessee. At the time of initiation of proceedings under section 147 of the Act and issuance of notice under section 148 of the Act dated 31.07.2018, the issue was subject-matter of appeal, during the pendency of appeal, issuance of notice u/s 148 of the Act is to be considered as bad-in-law as has been held in the case of Chika Overseas Pvt. Ltd. (supra); ICICI Bank Ltd. (supra) and in the case of Flothern Engineering Pvt. Ltd. (supra) and issue was decided by Ld. CIT(A) and the matter is presently pending before Tribunal, strangely, the Assessing Officer reopened the assessment on the same issue where he had made once the addition which have been dealt with by Ld. CIT(A) and pending before Tribunal, reopening of the assessment on the same issue which has been examined by Assessing Officer in the original assessment order passed under section 143(3) of the Act is nothing but change of opinion as has been held by various judicial pronouncements. On the basis of such observation, the Ld. CIT(A) held that reopening is nothing but a change of opinion and not legally sustainable in law. Further, no new material is received or available with the

Assessing Officer related to the reasons recorded and hence not sustainable in law. Once the Ld. CIT(A) allowed the appeal of assessee on legal issue, the adjudication on merit of addition was held became academic. Now the Revenue has filed present appeal before Tribunal.

19. We have heard the submissions of Ld. CIT-DR for the Revenue and Ld. AR for the assessee. The Ld. CIT-DR for the Revenue submits that there was no change of opinion. The order of Ld. CIT(A) is not correct as reasons of reopening was recorded on the basis of submission made by assessee before Ld. CIT(A) in respect of original assessment order dated 29.02.2016. The Ld. CIT(A) in his order dated 30.06.2017 recorded that assessee explained and submitted the names, addresses and PAN Nos. and confirmations of all the depositors vide letter dated 20.08.2015 and balance details of depositors filed on 12.02.2016 and that same were again furnished. During the original assessment, only details of five lenders were submitted, which were verified by the Assessing Officer and total amount of fine lenders only Rs.50,37,000/- , which was available in the balance-sheet. The new loan of Rs.3.19 crores was not filed before the Assessing Officer at

the time of original assessment but filed before Ld. CIT(A). Therefore, could not verify the new loan parties by Assessing Officer. The assessment was reopened on the basis of new information regarding forty-three lenders, sources of assessee was not which was filed for the first time before Ld. CIT(A). Further, assessee never disclosed that “Harekrishna Developers” is his own proprietary concern. The Ld. CIT-DR submits that reopening was not based on change of opinion but new material came to the notice of Assessing Officer only during the appellate proceedings in the original assessment order. Thus, the reopening is valid.

20. On the other hand, Ld. AR for the assessee supported the order of Ld. CIT(A). The Ld. AR submits that source of unsecured loan was verified by Assessing Officer and no addition on account of unsecured loan was made by him. The assessing officer in the original assessment made addition on account of unexplained investment. The Ld. AR for the assessee submits that the issue which was pending adjudication before Ld. CIT(A), or before Tribunal, reopening on such issue is not permissible and Ld. CIT(A) on appreciating the fact granted relief to assessee.

21. We have heard the considered the submission of both the parties and perused the orders of lower authorities carefully. We find that the assessing officer made addition of unsecured loan of Rs. 3.19 Crore by taking view that the assessee failed to discharge his onus in proving the creditworthy of the lenders and they are the part of syndicate. Notice under section 131 was issued to all the lenders but nobody attended the proceedings. As recorded above that before ld CIT(A), the assessee assailed the validity of reopening and the addition in assessment order. The ld CIT(A) quashed assessment order on the validity of reopening by taking view that at the time of initiation of proceedings under section 147 and issuance of notice under section 148 dated 31.07.2018, the issue of reopening was subject-matter of appeal. Issuance of notice under section 148 is to be considered as bad-in-law as has been held in the case of Chika Overseas Pvt. Ltd. vs. ITO (2011) 131 ITD 471 (Mum-Trib); ICICI Bank Ltd. vs. DCIT 246 CTR 292 (Bom) and CIT Vs Flothern Engineering Pvt Ltd 225 Taxman 223 (Mad).
22. The ld CIT(A) further held that assessing officer reopened the assessment on the same issue where he had made once the

addition which have been dealt with by Ld. CIT(A) and the same issue was pending before Tribunal. The issue of unsecured loan has been examined by Assessing Officer in the original assessment order passed under section 143(3), thus, reopening on the same issue, is nothing but change of opinion as has been held by various case laws. We find that the order of ld CIT(A) in quashing the reopening under section 147, on the issue which was subject matter of appeal before ld CIT(A) is based on sound legal position as has been mentioned in para-21(supra). Therefore, we don not find any infirmity or illegality in the order of ld CIT(A) in quashing the re-assessment order dated 24.12.2018 passed under section 143(3) rws 147. In the result, the grounds of appeal raised by the revenue is dismissed.

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

24. A copy of the instant common order be placed in the respective case file(s)

Order pronounced in the open court on 12/05/2023.

Sd/-

**(Dr ARJUN LAL SAINI)**

**[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]**

Surat, Dated: 12/05/2023

*Dkp. Out Sourcing Sr.P.S*

Sd/-

**(PAWAN SINGH)**

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

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