

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 47/Rjt/2020
निर्धारण वर्ष/Asstt. Year: 2011-12

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| Smt. Madhaviben Nileshkumar Ganatra, 1 st Floor Tirupati Appt., Rajputpara, Rajkot-360001. PAN: ASDPG2945B | Vs. | Income-tax Officer, Ward-1(2)(5), Rajkot. |
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| (Applicant) | | (Respondent) |
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| Assessee by : | Shri D.M. Rindani, A.R |
| Revenue by : | Shri B.D. Gupta, Sr. D.R |

सुनवाई की तारीख/**Date of Hearing** : **19/04/2023**
घोषणा की तारीख/**Date of Pronouncement**: **28/06/2023**

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)-1, Rajkot, (in short "Ld. CIT(A)") 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 2011-12.

2. The assessee has raised following grounds of appeal:

1. *The Learned Commissioner of Income-tax (Appeals) -1, Rajkot erred in impliedly confirming the re-opening of assessment u/s 147 of the Act.*
2. *The Learned Commissioner of Income-tax (Appeals) -1, Rajkot erred in confirming action of assessing officer in making addition of Rs. 3,75,500/- by treating cash deposited in bank account as income from undisclosed sources u/s 69A of the Act.*
3. *The Learned Commissioner of Income-tax (Appeals) -1, Rajkot erred in confirming action of assessing officer in making addition of Rs. 2,78,583/- by treating unsecured loan obtained by the appellant as unexplained cash credit u/s 68 of the Act.*
4. *The appellant craves leave to add, amend, alter and withdraw any of appeal anytime up to the hearing of this appeal.*

3. The assessee in the first ground of appeal has challenged the validity of the reopening of the assessment framed under section 147 of the Act.

3.1 At the outset, the Id. AR fairly submitted that he has been instructed by the assessee not to press the technical issues raised in the first ground of appeal. Accordingly, we dismiss the same as not pressed.

4. The next interconnected issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 3,75,500/- and Rs. 2,78,583/- on account of cash deposits in the bank and unsecured loan respectively treating as unexplained income and unexplained cash credit.

5. The facts in brief are that the assessee in the present case is an individual and claimed to be engaged in the business of Share Trading. For the year under consideration, no return under section 139 of the Act was filed by the assessee. Subsequently, the AO received information from DDIT Mumbai that the assessee has purchased shares of M/s Arya Global Shares & Securities Ltd for Rs. 8,78,140/- which is a penny stock and utilized by various beneficiaries for accommodation entry. Thus, notice for reopening the assessment under section 148 r.w.s. 147 of the Act was issued dated 30-03-2018 against which the assessee filed return of income declaring total income at Rs. 4,580/-only.

5.1 During the assessment proceedings, the assessee was asked to explain the sources of investment in the shares of M/s Arya Global Shares & Securities Ltd. In response, the assessee submitted that she was having cash of Rs. 3,75,500/- accumulated out of earlier years income and loans from family member which were deposited in the bank. Likewise, the remaining amount of investment was representing loan taken from the parties outside family. In support of the cash deposit of Rs. 3,75,500/- out of accumulated income and loan from family members, she furnished copies of profit and loss and balance sheet for two immediately preceding assessment years i.e., A.Y. 2009-10 and 2010-11.

5.2 The AO found that the assessee in the profit and loss account for A.Y. 2009-10 and 2010-11 has shown income from tuition fee for Rs. 1,48,900/- and Rs. 1,55,800/- respectively. However, no return of income was filed for both the Assessment years. Furthermore, in the year under consideration, the assessee has not shown any income from tuition fees. Therefore, the contention of the assessee regarding accumulation of cash from tuition fee is not acceptable. Similarly, the contention of the assessee about the loan from family members for Rs. 90,000/- was not accepted because the loan was received in A.Y. 2009-10 in the form of cash and same cannot be kept as it is for making deposit in the year under consideration i.e., A.Y. 2011-12. Hence, the AO in view of the above held that the sources of cash deposit for Rs. 3,75,500/- utilized for making investment in shares was not explained.

5.3 The AO also made the addition of Rs. 2,78,583/- representing the unsecured loan from Shri Rajesh P. Jasani on the reasoning that the assessee has not discharged the onus provided under section 68 of the Act. Finally, the AO made the addition of Rs. 3,75,500/- and Rs 2,78,583/- to the total income of the assessee.

6. Aggrieved assessee preferred an appeal to the learned CIT(A) who has also confirmed the order of the AO by observing as under:

Having considered the facts and circumstance of the case I find that the case of the assessee has been finalized u/s.143(3) r.w.s 147 for AY 11-12. The assessee had not filed return of income for the current year or of any of the previous years. When asked to explain the source of cash deposits in the bank account the assessee contended that she had earned tuition income in earlier years and had received Rs.19,000/- in FY 2008-09 from relatives and she had cash on hand out of the tuition income and these unsecured loans from relatives.

The assessee also contended that he had received unsecured loan of Rs. 2,78,583/- from Shri Rajesh P. Jasani.

The AO has brought out that the contentions of the assessee are not tenable. He has brought out that while the unsecured loans from relatives are shown to have been received in FY 2008-09, the deposits have been made in FY 2011-12 i.e. after a long gap of time. The AO has also brought out that the assessee never declared any tuition income in any of the assessment years including AY 2011-12. As regards, the contention regarding receipt of unsecured loans of Rs. 2,78,583/- from Shri Rajesh P. Jasani. The AO has observed that the assessee has not submitted his address, his bank account or the copy of ITR to prove identity, creditworthiness and genuineness of transaction.

With these observations and findings the AO has made additions of Rs. 3,75,500/- and Rs. 2,78,583/-. During appellate proceedings the assessee has reiterated his earlier contentions.

Having considered the facts and circumstances of the case I find that from the confirmation letters regarding the unsecured loans of Rs. 18,000/- each from 5 relatives it is seen that while the loans are claimed to have been advanced to assessee in 2007 the confirmation are dated 13.11.2018. Besides it is not know whether the said creditors are assessed to tax and had the capacity to advance these loans and whether they are reflected in their returns of income. These loans are stated to have been advanced without interest.

It is also not known as to whether these loans have been repaid as 11 years have passed since stated advances of these loans

Looking to the totality of the fact these loans cannot be said to be genuine. Similarly, the claim of the assessee regarding tuition income is also not substantiated as neither such income has been declared in the return of income nor the activity of tuition has been established.

Therefore, the contention of the assessee regarding their be cash in hand out of past loans/ savings/ tuition income is devoid of any merit. Ground of Appeal no. 3 is therefore rejected.

As regards the addition Rs. 2,78,583/- agitated in ground of appeal no. 4 find that assessee has not discharged the onus Cass u/s 68 of proving identity of the creditor's creditworthiness and genuineness of the transaction. The addition of Rs. 2,78,583/- is therefore confirmed and th ground of appeal 4 is therefore rejected.

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

8. The learned AR before us fairly agreed that he has no detail in support of the loan taken from the party, namely Shri Rajesh P. Jasani amounting to Rs 2,78,583/- and therefore did not raise any objection to the addition made by the authorities below. However, the learned AR with respect to the cash deposit submitted that the assessee has been earning income through the tuition fees but the same was below the taxable limit in different assessment years. Therefore, the return was not filed for the earlier assessment years in which she has earned the income because the income was below the limit of taxable income. Thus, it was prayed by the learned AR addition to the extent Rs 3,75,500/-representing the cash in the bank should not be added to the total income.

9. On the contrary, the learned DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. With respect to the loan shown by the assessee for Rs 2,78,583/- we confirmed the order of the authorities below.

10.1 Regarding the cash deposit in the bank account of the assessee, it was claimed to have earned income by way of tuition, but the return of income was not filed as income was below the threshold limit provided under the income tax Act i.e. 1,60,000/- per annum. Thus, in our understanding to the extent of Accumulated fund of Rs 1,60,000/- no addition can be made by the revenue for assessment year 2011-12. It is because the assessee has been earning income by way of tuition fees for the last many years. Thus, it can be safely assumed that there was some cash balance in the hands of the assessee out of the past savings. Regarding the loan taken in cash in the earlier year, we find that the same cannot be assumed as bogus merely on the reasoning that it has been utilized to make the deposit in the year under consideration. There can be a situation where the assessee has utilized such a cash loan before depositing the same in the bank for some other purposes. It is not expected by the revenue to decide the affairs to be

managed by the assessee. As such, the assessee has furnished the necessary details about the cash loan taken from the relatives. Therefore, we are of the considered view there cannot be any addition to the total income of the assessee to the extent of cash deposit of ₹3,75,500/- only. Thus, we set aside the finding of the learned CIT(A) and direct the AO delete the addition made by him on account of cash deposit of ₹3,75,500/- only. Hence the ground of appeal of the assessee is partly allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 28/06/2023 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 28/06/2023
Manish (True Copy)