

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.287/SRT/2022

निर्धारण वर्ष/Assessment Year: (2017-18)

(Virtual Hearing)

The DCIT, Central Circle, Vapi	Vs.	Dharmesh Bharatbhai Thakkar, 402, amar Chambers, Opp. Lal School, Station Road, Valsad – 396001.
(Appellant)		(Respondent)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AARPT2933Q		

Appellant by	Shri Ashok B. Koli, CIT(DR)
Respondent by	Shri Hardik Vora, Advocate
Date of Hearing	27/06/2023
Date of Pronouncement	31/07/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the Ld. CIT(A)”], in Appeal No.CIT(A),Surat-4/10973/2016-17, dated 21.07.2022, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 26.03.2022.

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

- “(1) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.6,31,50,000/- made by the Assessing Officer on account of unexplained investment u/s 69 of the I.T. Act.*
- “(2) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.6,31,50,000/- made by the Assessing Officer on account of unexplained investment u/s 69*

of the I.T. Act ignoring the fact that the addition was made on the basis of incriminating documents in the form of notarized agreement found and impounded during the course of survey proceedings and also considering the fact that the assessee had made part payments totaling to Rs.28 lakhs through banking channel and recorded the same in his books of accounts.

- (3) *On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating the fact that though the assessee has denied to have made any such investment, as per the term and conditions mentioned in the notarized agreement, it has been clearly stated that the assessee has made payment of Rs.6,31,50,000/- in pieces through bank transfers to the bank account of the first party of the agreement, being his contribution towards the work order, and that too before the execution of the agreement and therefore, there cannot be a case of coercion for signing such agreement as it only suits the assessee as a person who made such investments.*
- (4) *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition made by the assessing officer by accepting the submission of the assessee that the notarized agreement was signed by him through coercion and threat and against which he has filed complaint with the various government/police authorities including PMO and without appreciating the fact that none of the complaints have yet reached finality or conclusion in order to accept that the said document was prepared under threat or duress and the contents of the same are not correct.*
- (5) *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.6,31,50,000/- by observing that the addition was made only on the basis of notarized agreement found in the mobile phone of the assessee and the assessee had denied having made such investment over and above Rs.28,00,000/- and this being the case, the DDIT/AO should have investigated the related facts as mentioned in the agreement to take the case to logical conclusion, without taking recourse to the provisions of Sec.250(4) of the Act which confers jurisdiction to the first appellate authority to make such further enquiries as he thinks fit or may direct the AO to make such further enquiries and report the result of the same to the CIT(A) before deciding the appeal.*
- (6) *In addition to and in alternative to Ground No. (1) to (5), on the facts and circumstances of the case in law, the Ld. CIT(A) has erred in restricting the addition made by the Assessing Officer ignoring the principles of "Human Probability Test" i.e. preponderance of probabilities which is applicable for Income Tax proceedings.*
- (7) *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.*

(8) *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. Since, all the grounds raised by Revenue are interconnected and mixed; therefore we shall adjudicate them together.

4. Brief facts, as discernible from the orders of lower authorities are that assessee has filed his return of income for assessment year (AY) 2017-18 on 28.03.2018, declaring total income of Rs.37,33,440/- and agriculture income of Rs.2,55,360/-. The return of income was processed u/s 143(1) of the Act, 1961, accepting the returned income. Thereafter, the assessee's case was selected for scrutiny and assessment was framed u/s 143(3) of the Act, on 10.12.2019 accepting the returned income. In assessee's case, a Survey u/s 133A of the Act was conducted on 14.10.2020, at the premise of M/s Bajaj Scrap Traders, Prop. Shri Dharmesh Bharatbhai Thakkar. During the course of survey proceedings, various incriminating documents were found and impounded. On verification of backup of mobile of Shri Dharmesh Bharatbhai Thakkar, a notarized agreement dated 21.12.2019, has been found and it was noticed by Assessing Officer that total investments of Rs.6,31,50,000/- was executed through the said agreement. The assessee's case was reopened after taking-approval from higher authorities and a notice u/s 148 was issued on 30.03.2021. In response to the notice u/s 148 of the Act, the assessee has filed his return of income on 23.04.2021, declaring total income of Rs.37,33,440/- and agriculture income of Rs.2,55,360/-. A questionnaire u/s 142(1) of the Act was issued on 24.10.2021 to assessee for furnishing the details/explanation to complete the assessment proceedings.

5. In response to the notices issued, the assessee has furnished online submission and other details. The assessee is engaged in the business of scrap sales in the name and style of M/s Balaji Scrap Trader & Balaji Transport. On verification of backup of mobile of Shri Dharmesh Bharatbhai Thakkar a notarized agreement dated 21.12.2019, was noticed by the assessing officer, and in the notarized agreement total investments of Rs.6,31,50,000/- was executed through the said agreement. Thus, it was observed by the assessing officer that the assessee has invested an amount of Rs.6,31,50,000/- during the F.Y.2016-17, relevant to A.Y.2017-18 which is absolutely verifiable from the agreement found during the course of survey proceedings. Vide questionnaire of Assessing Officer, dated 24.10.2021 and 23.02.2022, the assessee was requested to show cause as to why the investments of Rs.6,31,50,000/- should not be treated as his unaccounted income and added back to his total income for the year under consideration in absence of any documentary evidences.

6. In response to the notices issued, the assessee, *vide* his reply dated 26.10.2021, has submitted his submission along with capital account, bank book, cash book, statement of bank account and ledger accounts of Jatin K. Goswami and Sutesh R. Throat, related to the assessment year under consideration.

7. The Assessing Officer rejected reply of the assessee and noticed that during the course of survey proceedings various incriminating documents were found and impounded and on verification of backup of mobile of Shri Dharmesh Bharatbhai Thakkar a notarized agreement dated 21.12.2019 has been found and it was noticed that total investments of Rs.6,31,50,000/- was executed through the said agreement. Therefore, it was observed by Assessing Officer that the assessee has invested an

amount of Rs.6,31,50,000/- during the F.Y.2016-17 relevant to A.Y.2017-18 by cross verification with the agreement found during the course of survey proceedings. The copy of said agreement is reproduced by the Assessing Officer in assessment order vide page nos. 3 to 9. The assessee has denied having any sort of investment of Rs.6,31,50,000/- in the work order as mentioned in the agreement and stated that he has only made payment of Rs.26,50,000/- during FY.2016-17 Jatingiri Kanchangiri Goswami. However, reading of the agreement, it is clearly evident that all parties have made huge investments related to the work order. As per the agreement, Shri Dharmeshbhai Bharatbhai Thakkar has made investment of Rs.6,31,50,000/-. The facts of the agreements are stated by Assessing Officer in the assessment order *vide* page nos. 9 to 10 of assessment order.

8. During post survey verification, assessee Shri Dharmeshbhai Thakkar has been confronted regarding the transactions and he has admitted about the investment of Rs.26,50,000/- only which are accounted in the books of accounts of the assessee. Income Tax Returns of the assessee has been verified by the assessing officer and their particulars of returns of income are as under:

Name		Business Income	Other Source Income	Gross Total Income
Dharmesh Bharatbhai Thakkar	2013-14	1385027	328247	1713274
	2014-15	2061720	357844	2376649
	2015-16	2903474	418694	3245798
	2016-17	4417087	479089	4837520
	2017-18	3391589	524463	3893437

On verification of books of account of Shri Dharmesh Thakkar, no such huge investment of Rs.6,31,50,000/- is appearing in his accounts and there is only an amount of Rs.26,50,000/- and Rs.1,50,000/- as invested with Jatin K. Goswami and Sureshbhai Thorat, respectively is appearing

in the books of account of Shri Dharmesh Thakkar for F.Y.2016-17 relevant to A.Y.2017-18. Therefore, assessing officer presumed that the amount of Rs.6,31,50,000/- are unaccounted investment of Shri Dharmesh B. Thakkar for F.Y.2016-17 relevant to A.Y.2017-18.

9. The assessee, in order to substantiate its claim, had furnished another written submission before the assessing officer. The relevant part of the submission is reproduced below:

“Mr. Hirengiri, Mr. Jatingiri and Mr. Suresh had presented to the assessee that they were in the business of antics and had a good margin. They invited the assessee go give money for the business with a potential of huge returns. Mr. Hirengiri is husband of assessee wife's sister. Mr. Jatin is cousin brother of Hiren. Accordingly, being in relation assessee had paid by cheque an amount of Rs.26,50,000/- in the name of Jatin and had also given a cheque of Rs.1,50,000/- in the name of Suresh, long back. Out of these amounts, the assessee got back Rs. 10,50,000/- in pieces in the year 16-17 & 17-18. Thereafter, assessee stopped receiving. Aggrieved assessee filed complaint wherever possible to ensure that we get back his money. After enormous pressure they called for a meeting on the pretext of an amicable settlement. They had a readymade document printed on a stamp paper and forced the assessee to sign the said document without allowing to read it. They had threatened the assessee with dire consequences including harm to the life of the assessee and its members of the family. Therefore, the assessee had no choice but to sign the printed document of settlement without reading. Here it is noteworthy that thought this agreement purported to be a document settlement of assessee dues neither the original nor a xerox copy of the document was handed to him which itself explains the motive of the culprits. The assessee was terribly frightened and disturbed to take any contraction against those persons. In the meanwhile, the culprits sent the copy of the agreement on whatsapp of the assessee and telephonically continuously kept on threatening the assessee with dire consequences including loss of life, harm in taxation departments if he persisted with his recovery. He went into depression after the incidence. After partial recovery he made an affidavit to restore the correct facts and thereafter filed complaints in Navsari Police Station. However as the culprits had a stronghold with the police department the assessee plea was unheard. Thereafter aggrieved and feeling helpless the assessee filed a complaint with the PMO as well as the MHA for taking actions against the culprits as a measure of last resort. The complaints were filed on 28.09.2020 & 06.10.2020. The PMO/MHA directed the complaint to the chief secretary, govt. of union territory of Dadra and Nagar Haveli and sought report on 03.10.2020. The complaint after travelling from chief secretary, govt. of union territory of Dadra and Nagar Haveli to SPO office/DNH to office of sub divisional police officer and then at last landed in silvasa police station on 20.10.2020. On the same day police called the

assessee and recorded his statement. During the course of the statement assessee stated that he had paid Rs. 26,50,000/- to the culprits.

It may brought to your notice that the assessee has filed complaint to the Navsari Police station, PMO & MHA before the date of survey action took place at the premises of the assessee. The affidavit narrating the actual facts was executed before the notary on 19.02.2020. The details of the transaction were noted in the statement given before the police on 20.10.2020, much before the date the assessee came to know that any such agreement has been found by the survey party in the mobile back up taken by the survey party. Moreover, even at the time when these documents were shown by the investigating officer during the course of statement being recorded the assessee had made same replies. There is consistency in the facts, action and deeds of the assessee.

It may further be pointed out to your honour that no original or Xerox copy of document was found at my premises during the survey proceeding. If the purported document was genuine it is but natural that such document should have been available with the assessee himself. The culprits made Whatsapp to the assessee to show the arms and ammunition's which could lead to huge tax liabilities and put the assessee into the life time trouble. Otherwise, why should some other person should send a document creating debt against themselves to the creditor? This shows the malafide intentions on the part of the culprits and their action to threaten the assessee.

It is hereby submitted that the said notarized agreement dated 21.12.2019 already became null and void. That, said agreement was not materialized and paper amount as reflected in the notice as well as agreement has never taken into transaction. That agreement was not executed as per the notice amount and therefore it is not shown in balance sheet. Therefore this document should be treated as null and void and not binding on the assessee.”

10. However, the Assessing Officer has rejected the contention of the assessee noted that the assessee has furnished a copy of notarized affidavit dated 19.02.2020, copies of complaint made to PMO/MHA dated 28.09.2020 and 06.10.2020 respectively, copy of statement made before the Silvassa police and copy of statement made before the I.T. department. On-going through the above narrated statements and documents, the assessing officer observed that assessee has entered into an agreement which is dragged into litigation by the assessee before the police authorities which was not a justifiable reasons, therefore assessing officer made an addition of Rs.6,31,50,000/- by invoking the provisions of section 69 of the I.T. Act, 1961.

11. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has deleted the addition made by Assessing Officer. The Ld CIT(A) observed that investment of Rs.6,03,50,000/- alleged to have been made by the assessee, has not been proved. The said investment cannot be taxed merely on the basis of the agreement found without there being any statements from the recipients of the money or without corroboration with the banking transactions, showing flow of funds from the assessee to the other parties. Hence, Ld CIT(A) deleted the addition. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

12. Learned DR for the Revenue, argued that during the course of survey proceedings, various incriminating documents were found and impounded and on verification of the same, it was noted by the assessing officer that the assessee has invested of Rs.6,31,50,000/- through registered agreement with Shri Jatin K. Goswami and Shri Sureshbhai Thorat respectively. This fact has been narrated in the assessment order u/s 143(3) of the Act and the assessee was failed to submit the authentic documents in support of his claim. The assessee did not furnish any explanation about the notings on the unexplained investments of Rs.6,31,50,000/- mentioned in the impounded materials. Therefore, since the sources and genuineness of the said unexplained investments of Rs.6,31,50,000/- have not been explained and thus the same was treated by the assessing officer unexplained investments u/s 69 of the Act, therefore, addition made by the assessing officer may be sustained.

13. Without prejudice, and alternatively, the Ld DR stated that the matter should be remitted back to the file of the Assessing Officer to examine the agreement afresh.

14. On the other hand, Shri Hardik Vora, Ld. Counsel for the assessee, begins by pointing out that copy of agreement was taken by the Department, from the backup of the mobile phone of the assessee and such agreement has not been materialized, no any amount mentioned in the agreement has been paid or received from the respective parties. Based on the said agreement, the Assessing Officer has not specified the nature of payments, through banking channel or any other mode. Although, the Ld. DR for the Revenue submitted that the part payment was made based on the agreement, however, such part payment does not relate to the party to the contract and there was a dispute among the parties to the contract and therefore they filed the police case and civil case and ultimately the agreement so made was not executed. So, when the agreement itself was not executed by the respective parties, then there is no point to make any addition in the hands of the assessee. Hence, ld CIT(A) has rightly deleted the addition.

15. Shri Vora, also argued that request of the Ld. DR for the Revenue that the matter should be remitted back to the file of the Assessing Officer to examine the agreement afresh is not tenable because entire agreement has been reproduced by the Assessing Officer in his assessment order, and assessing officer has already considered and analyzed the agreement, moreover, based on the said agreement, the assessing officer made the impugned addition. Hence, second inning should not be given to the assessing officer, to examine the said agreement again. This way, ld Counsel contended that ld CIT(A) has passed the speaking and detailed order, considering all documents, hence the same may be upheld.

16. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. The Ld CIT(A) observed from the assessment order, that the addition has been made only on the basis of the notarized agreement found in the mobile phone of the assessee. The assessee has denied, having made the investment over and above Rs.28,00,000/- during the survey proceedings. This being the case, the DDIT/AO should have investigated the related facts as mentioned in the agreement to take the case to its logical, conclusion. As per the agreement, the assessee has paid the amount of Rs.6,31,50,000/-, out of which Rs.28,00,000/- is admitted by the assessee. The balance Rs.6,03,50,000/- which is not admitted, by the assessee is stated, to be paid through, banking channels in the agreement. In such case it was the responsibility of the DDIT/AO to find out from the parties to the agreement as to from which bank account the funds have travelled to the bank accounts of recipients. This is the core investigation for taking this case to its logical conclusion, which has not been done. The assessee has been, stating which is evident from his complaints filed before PMO, Home Ministry and Police that he was coerced into signing the said, agreement. Under these circumstances, the other parties to the agreement should have been examined to ascertain, the details of the bank transactions which are referred in the agreement. Since, these bank transactions are not proved to have been taken, place as per the agreement, therefore Id CIT(A) held that the addition cannot be made only on the basis of the agreement found in the mobile phone of the assessee.

17. The Ld CIT(A) further noted that assessing officer found a particular evidence in the form of the agreement, the contents of which the assessee has partly disputed (amounting to Rs.6,03,50,000/-). This disputed portion should have been further corroborated by the A.O with, the help of bank accounts showing transfer of funds as mentioned in the agreement so that the unexplained alleged to have been made by the assessee would have been proved beyond doubt. In the instant case, no such effort to corroborate the transaction mentioned in the agreement were made either by the DDIT or assessing officer. In fact, the other parties to the agreement were not even summoned, to ascertain whether the contents of the agreement were true. The fact that the assessee had filed the complaint against the other parties to the agreement before the PMO and the Home Ministry before date of Survey proved that the assessee was really coerced into signing agreement in absence of any other facts brought on record, contrary to submissions of the assessee. In view of the above facts, the ld CIT(A) held that the investment of Rs.6,03,50,000/- alleged to have been made by the assessee has not been proved. The said investment cannot be taxed merely on the basis of the agreement found without there being any statements from the recipients of the money or without corroboration with the banking transactions, showing flow of funds from the assessee to the other parties.

18. As regards the admitted portion, of Rs.28,00,000/- is concerned, the ld CIT(A) noted that the same is reflected in the books of the assessee in the name of Mr. Jatin K. Goswami as on. 31.03.2017 Rs.26,50,000/- and in the name of Mr. Suresh R. Thorat as on 31.03,2017, and Rs.1,50,000/-. Thus, the unexplained investment to the tune of Rs.6,03,50,000/- in the business by the assessee is not proved by AO, and as regards Rs.28,00,000/- the sources are proved which is evident from

the books of accounts maintained by the assessee. Accordingly, the addition made u/s 69 of the Act amounting to Rs.6,31,50,000/- was deleted by Id CIT(A).

19. We also find merit in the submission of Id Counsel to the effect that matter should not be remitted back to the file of the Assessing Officer to examine the agreement afresh. We have gone through the assessment order and observed that entire agreement has been reproduced by the Assessing Officer in his assessment order, and assessing officer has considered and analyzed the agreement, moreover, based on the said agreement, the assessing officer made the impugned addition, hence second inning should not be given to the assessing officer to examine the said agreement, which he has already scrutinized.

20. The said investment mentioned in the agreement, which is dump document, cannot be taxed merely on the basis of the agreement found without there being any statements from the recipients of the money or without corroboration with the banking transactions, showing flow of funds from the assessee to the other parties. Therefore, we note that said notarized agreement dated 21.12.2019 already became null and void. That, said agreement was not materialized and paper amount as reflected in the notice as well as agreement has never been executed. Besides, said agreement was not executed as per the notice amount and therefore it is not shown in respective balance sheets. Therefore, we note that said agreement should be treated as null and void in the eye of law. We have gone through the above findings of Id CIT(A) and noted that conclusion reached by Id CIT(A), are correct and admit no interference by us. That being so, we decline to interfere with the order of Id. CIT(A) in deleting

the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

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

Order pronounced on 31/07/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 31/07/2023

SAMANTA

Copy of the Order forwarded to

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

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat