

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 250/RPR/2019
निर्धारण वर्ष / Assessment Year : 2014-15

Bhagyaarna Gems & Jewellery Pvt. Ltd.
G.B Plaza, Sadar Bazar,
Raipur-492 001 (C.G.)
PAN : AAECT0981A

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-4(1), Raipur.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Shri Choudhary N.C. Roy, Sr. DR

सुनवाई की तारीख / Date of Hearing : 06.07.2023
घोषणा की तारीख / Date of Pronouncement : 18.08.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee company is directed against the order passed by the CIT(Appeals)-II, Raipur, dated 28.11.2019, which in turn arises from the order passed by the A.O. u/s.143(3) of the Income-tax Act, 1961 (for short 'Act'), dated 23.12.2016 for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. On the facts and circumstances of the case, the Id CIT(A) has erred in sustaining the addition of Rs.1,10,00,000/- on count of income surrendered at the time of survey.
2. On the facts and circumstances of the case, the Id CIT(A) has erred in sustaining the addition of Rs.9,000/- on the count of differences in cash found at the time of survey.
3. On the facts and circumstances of the case, the Id CIT(A) has erred in sustaining the additions without giving proper opportunity which is against principle of natural justice.
4. The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.”

Also, the assessee has raised an additional ground of appeal which reads as under:

- “1. On the facts and circumstances of the case and in law, assessment made u/s143(3) dt.23-12-16 & notice issued u/s143(2) dt.24-9-15 by Id AO, (i.e., ITO-4(1), Raipur) is invalid, bad in law, since, Id AO was not having valid jurisdiction u/s.124(1) rws.2(7A) to assess the assessee-Co for AY14-15, when the 'case' has been transferred from ITO-4(1), Kolkata to ITO-1(1), Raipur on 14-10-14 in absence of order u/s127 by the competent authority; assessment order passed would

be invalid, bad in law and hence, is liable to be quashed for want of valid jurisdiction."

2. After arguing for some time, the Ld. AR has sought liberty not to press the additional ground of appeal. Considering the concession above of Ld. AR, the **additional ground of appeal No.1** is dismissed as not pressed.

3. The directors of the assessee company had placed on record their respective "affidavits" dated 25.03.2019 wherein it is, among other things, stated by them that the survey officials had, in the course of the survey conducted u/s.133A of the Act, coerced them for making a disclosure of undisclosed income aggregating to Rs.1.10 crore in their respective individual hands and had, recorded their statements the contents of which were beyond their understanding. It is further stated that though they tried to explain the source of their respective investments to the survey officials, they had forcefully obtained the disclosures while recording their statements during survey action. To sum up, by filing the affidavits, the directors had retracted from the respective disclosure of undisclosed income made by them in their statements recorded during the survey proceedings.

4. We have perused the deposition of the directors mentioned above in their respective "affidavits" in the backdrop of the observations of the lower authorities. As noticed by us hereinabove, the A.O while framing assessment

vide his order passed u/s.143(3) dated 23.12.2016, i.e., much after the culmination of the survey proceedings on 11.10.2013, had while recording the statement of Shri Haresh Kumar Advani u/s. 131 of the Act dated 11.10.2013 confronted him with his statement recorded during survey proceedings. In reply, it was stated by Shri Haresh Kumar Advani that he had gone through and found the same to be correct. Apart from that, in response to Question No.5 as to whether the surrender was obtained by survey officials by any force or coercion, it was stated by him in negative and affirmed that the statement was given by him voluntarily. Also, Shri Haresh Kumar Advani had, in reply to Question No.6, once again provided the bifurcated details of the disclosure of Rs.1.10 crore that was made in the individual hands of three directors. Further, in reply to Question No.9, as to whether or not there was any retraction from the statement wherein undisclosed income was offered, he had stated in negative.

5. Considering the aforesaid factual position, the facts stated by the directors in their "affidavits", as mentioned above, do not inspire any confidence. Not only have the directors in their respective statements offered the amount mentioned above as their undisclosed income and agreed to pay tax on the same, but as observed by us hereinabove, Shri Haresh Kumar Advani, thereafter in the course of the assessment proceedings, had in his

statement recorded u/s 131 of the Act once again confirmed that the disclosures in the course of survey proceedings were made voluntarily. Based on the facts above, the factual position to the contrary stated by the directors in their “affidavits” mentioned above cannot be accepted.

6. Succinctly stated, the assessee company which trades in silver/gold jewellery and is a franchisee of M/s. Asmi Jewellery (Gitanjali Group Entity) had e-filed its return of income for A.Y.2014-15, declaring an income of Rs. Nil. Subsequently, the case of the assessee company was selected for scrutiny assessment u/s. 143(2) of the Act.

7. Survey proceedings u/s.133A of the Act were conducted on the assessee company on 11.10.2023. No books of account were found in the course of the survey proceedings. Survey officials came across unexplained investment aggregating to Rs.1.10 crore, as under:

1. Unexplained investment in stock	: Rs.1,00,00,000/-
2. Unexplained investment as franchisee fees	:Rs. 3,00,000/-
3. Unexplained investment in furniture	: <u>Rs. 7,00,000/-</u>
Total : Rs.1,10,00,000	

Also, cash in hand of Rs.4,73,000/- was found during the survey proceedings.

8. Statements of the directors of the assessee company, viz. Shri Haresh Kumar Advani, Smt. Tamanna Advani and Smt. Mansi Advani were recorded u/s.131 of the Act, wherein they disclosed Rs.1.10 crore concerning the discrepancies mentioned above in stock, franchisee fee, and furniture. The directors, in their respective statements recorded in the course of survey proceedings, had stated as under :

(A). Shri Haresh Kumar Advani :

9. In his statement recorded u/s.131(1) of the Act dated 11.10.2013, he stated that the aforesaid initial investment of Rs.1.03 crore (supra) comprised of, viz. (i) his share of investment: Rs.33 lac; and (ii) the balance investment that was sourced out of funds of the shareholders of M/s. Top Flow Property Pvt. Ltd., Kolkata (i.e., the earlier name of the assessee company): Rs. 70 lac. On being queried as to how the funds were received from the shareholder above, it was stated by him that he and the other two directors, viz. Smt. Tamanna Advani and Smt. Mansi Advani had given cash to a person at Raipur, which, thereafter, was routed back to the coffers of the assessee company through RTGS/Cheques. In his reply to Question No.4, he categorically admitted that the investment of Rs.70 lac (supra) with the assessee company was the undisclosed income of his and the other two directors, viz. Smt. Tamanna Advani and Smt. Mansi Advani. Elaborating

further, he stated that an amount of Rs.33 lacs that he had invested with the assessee company was sourced out of, viz. (i) out of funds received from his firm i.e. M/s. Sai Traders (old firm); and (ii) balance amount from his account (savings). However, as he could not substantiate his claim based on documentary evidence, he admitted the same as his undisclosed income in reply to Question No. 10 of his statement. Regarding the source of the balance investment of Rs.70 lacs, he stated that his share of investment in the said amount was Rs. 37 lac. Accordingly, on the basis of abovementioned admission, Shri Haresh Kumar Advani admitted his undisclosed income (self) of Rs. 70 lacs [Rs.33 lacs + Rs.37 lacs]. It was stated by him that the aforesaid undisclosed income of Rs.70 lacs (supra) that he had earned during the F.Y.2013-14 would be offered by him for tax. For the sake of clarity, the relevant extract of the statement of Shri Haresh Kumar Advani is reproduced as under:

प्रश्न ⑥ आपकी कंपनी का Initial Investment कितना था? कृपया बताइए।
 उत्तर > इस Company में Initial Investment ₹ 1,03,00,000/- किया गया है, जिसमें मेरा योगदान 33,00,000/- रूप मेरा हिस्सा है। शेष 70,00,000/- रूप पुरानी Company Tapflow Preciposity Pvt. Ltd., रघुनाथपुर, कोलकाता (पश्चिम बंगाल) जिसका अंश नाम Bhagyaarna Gems & Jewellery Pvt. Ltd. के Shareholder में मेरा आया है।

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प्रश्न ⑧ Shareholders से आया धन किस तरह से कंपनी के खाते में आया ?

उत्तर → मेरे अलावा हमारी कंपनी के अन्य दो directors द्वारा Cash Amount रात्रपुर के किसी व्यक्ति को दिया गया। फिर वह राशि हमारी Company के बैंक खाते में विभिन्न बैंक खातों के माध्यम से RTGS और Cheque के जरिए transfer किए गए।

प्रश्न ⑨ उपरोक्त जवाब से यह प्रतीत होता है कि यह Investment, ₹ 50,00,000/- आपकी Company की अधोषिक्त आय है, कृपया स्पष्ट करें।

उत्तर → जी हाँ, व उपरोक्त राशि हमारे अलावा कंपनी के अन्य दो directors गौरी गान्धी आडवाणी तथा तमन्ना आडवाणी की अधोषिक्त आय है।

प्रश्न ⑩ आपने प्रश्न संख्या ⑥ के उत्तर में बताया है कि Initial Investment में आपका हिस्सा 33,00,000/- रूप है। कृपया इस राशि का स्रोत बतायें।

उत्तर → उपरोक्त 33,00,000/- रूप की राशि मेरी पुरानी सहे M/s Sai Traders के Account और मेरे Account (Saving) से ली गयी थी। मेरे इसके स्रोत का कोई साक्ष्य या प्रमाणित दस्तावेज देने में अक्षम है। यह मेरी अधोषिक्त आय है।

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प्रश्न (12) आपके द्वारा घोषित कुल unaccounted income
70,00,000/- रूप है। इस पर आपका बचा क्या है?

उत्तर -> 70,00,000/- रूप को मैं अपनी अघोषित आय के रूप में
घोषित करता हूँ तथा इस आय पर आने वाली कर शक्ति को
सह्यता अका करूँगा। यह आय वित्तीय वर्ष 2013-14 में अर्जित की जा रही है।

(B) Smt. Tamanna Advani :

10. At the very outset, she had stated that an initial investment of Rs.1.03 crore was made in the assessee company. It was stated by her that she had made an investment of Rs.13 lacs towards the purchase of furniture of the assessee company. On being queried about the source of the initial investment, it was stated by her that she had made an initial investment of Rs. 13 lacs as capital. Apart from that, she stated that she had made a further investment of Rs.7 lacs towards purchase of furniture of the assessee company. Accordingly, she admitted having invested Rs.20 lacs with the assessee company. On being queried about the source of her investment of Rs.20 lacs, she stated that the same was sourced out of speculation profit that was garnered over the year. As she could not substantiate the source of her investment based on documentary evidence, she admitted the same as her undisclosed income for the year under consideration. i.e. F.Y.2013-14. It was

further stated by her that she would duly pay taxes on the aforesaid undisclosed income of Rs.20 lacs (supra). For clarity, the relevant extract of the statement of Smt. Tamanna Advani (supra) recorded during the course of survey proceedings is reproduced as under:

90.2. Bhagyaarna Gems and Jewellery Pvt. Ltd में initial investment के तौर पर कितना एन निवेश किया गया था ?

उ०. Initial Investment के तौर पर इस company में Rs. 1,02,00,000/- का निवेश किया गया था। इसके अलावा Rs. 13,00,000 furniture के लिए भी invest किया था।

90.4. 90.2 के उत्तर में बताये गए Initial Investment को खोल बताएँ ?

उ०.4. इस उत्तर में बताए गए initial investment में मैंने Rs. 13,00,000/- capital के तौर पर निवेश किया था। इसके अलावा furniture के लिए मैंने Rs. 7,00,000/- और इस company में लगाए थे। इस तरह मैंने कुल मिला कर Rs. 20,00,000/- का निवेश मैंने इस company में किया है।

Q.6. आपने अपने बयान में कहा कि आपने Bhagyaarna Gems & Jewellery Pvt. Ltd. में ₹. 20,00,000 का निवेश किया है। कृपया इस धन का स्रोत बताएं? यह धन मैंने speculation profit से कमो है। इस विषय में पत्र में किसी भी प्रकार के तथ्य या प्रमाणित दस्तावेज प्रस्तुत करने से असमर्थ हूँ। यह धन मैंने share capital के रूप में Bhagyaarna Gems & Jewellery Pvt. Ltd. में लगाया था।

Q.7. उपरोक्त उत्तरों से यह पता चलता है कि आपने बताई हुई रकम आपकी अधोचित आय है? कृपया स्पष्ट करें? जी हाँ यह मेरी अधोचित आय ही है। इस आय मैंने इसी F.Y. 2013-14 में अर्जित किया है।

Q.8. क्या आप और कुछ कहना चाहते हैं?

हो. मेरी ₹. 20,00,000 की अधोचित आय है जिस पर Income Tax Department, आयकर अधिनियम के तहत कार्यवाही करेगी और जो भी कर आता है उसे मैं भरने के लिए तैयार हूँ।

मैंने उपरोक्त 3 पृष्ठों का बयान पूरी तरह देखा पढ़ा एवं समझा और उसे पूर्णतः सत्य मानते हुए अपने पूरे दंड में बिना किसी दबाव के हस्ताक्षर किए।

(C) Smt. Mansi Advani :

11. It was stated in her statement recorded during survey proceedings u/s.133A of the Act that she had invested Rs.20 lacs with the assessee company. On being queried as to why the amount of Rs.20 lacs which she did not reveal in her income tax return, may not be treated as her undisclosed income, it was admitted by her that the said amount was her undisclosed income garnered during the F.Y. 2013-14. Also, it was categorically stated by her that the aforesaid undisclosed income of Rs.20 lacs would duly be offered for tax.

12. During the course of assessment proceedings, it was observed by the A.O. that the assessee company had not offered the undisclosed income of Rs.1.10 crore for tax in its return of income for the year under consideration. The A.O. summoned Shri Haresh Kumar Advani, director of the assessee company, and recorded his statement u/s.131 of the Act. Shri Haresh Kumar Advani controverting the allegation that was earlier raised before the A.O, that his statement was recorded under pressure which had resulted in the surrender of additional income, therein, fairly admitted that neither there was any force or coercion on the part of the department in the course of survey proceedings nor the amount that was surrendered was retracted. On the contrary, Shri Haresh Kumar Advani once again provided the bifurcated

details of the undisclosed income of Rs.1.10 crore that was surrendered in the course of survey proceedings, viz. (i) Shri Haresh Kumar Advani (self): Rs.70 lac; (ii) Smt. Tamanna Advani: Rs.20 lac and (iii) Smt. Mansi Advani: Rs.20 lac.

13. Observing that though the director of the assessee company had both in the course of survey proceedings and in his statement recorded u/s.131 of the Act had admitted the surrendered income of Rs.1.10 crore, but had not offered the same for tax during the year under consideration, the A.O made an addition of the entire amount to the returned income of the assessee company. Also, it was observed by the A.O. that cash of Rs.4.73 lacs was found during survey proceedings, out of which an amount of Rs.4.64 lacs was related to the recorded sale transactions. As regards the balance amount of Rs.9000/-, the assessee though claimed that the said discrepancy was due to the sales returns, but the A.O did not find favor with the explanation above and made an addition of Rs.9000/- to the assessee's returned income. Accordingly, the A.O. vide his order passed u/s.143(3) of the Act dated 23.12.2016 determined the income of the assessee company at Rs.1,10,09,000/-.

14. Aggrieved the assessee carried the matter in appeal before the CIT(Appeals) but without success. The CIT(Appeals), finding no infirmity in the view taken by the A.O, had upheld the same by observing as under:

2.2 I have gone through the submission of the appellant and also perused the assessment order. As per the above facts, in the course of survey operation in the premises of the assessee company a total amount of Rs. 1.1 crores was surrendered by three directors of the assessee company as undisclosed income on behalf of the company. Shri Haresh Kumar Advani Director surrendered Rs. 70 lakhs in his statement dated 11.10.2013 at question no. 12 as under :-

प्रश्न :- आपके द्वारा घोषित कुल unaccounted income 70,00,000/- रू० हैं। इस पर आपका क्या कहना है?

उत्तर - 70,00,000/- को मैं अपनी अघोषित आय के रूप में स्वीकार करता हूँ तथा इस आय पर आने वाली कर राशि को अदा करूँगा। यह आय वित्तीय वर्ष 2013-14 में अर्जित की गई है।

प्रश्न :- क्या आप अपने एकाउंटेड श्री कन्हैया वाधवानी द्वारा दिनांक 11/10/2013 को दिये गये बयान पर सहमत हैं?

उत्तर - जी हाँ अपने एकाउंटेड श्री कन्हैया वाधवानी द्वारा दिनांक 11/10/2013 को दिये बयान से पूरी तरह सहमत हूँ।

Smt Tamanna Advani director has surrendered Rs. 20 lakhs in her statement dated 11.10.2013 as question no. 8 as under :-

प्रश्न :- क्या आप और कुछ कहना चाहते हैं?

उत्तर - मेरी रू० 20,00,000/- की अघोषित आय है जिस पर इनकम टैक्स डिपार्टमेंट, आयकर अधिनियम के तहत कार्यवाही करें और जो भी कर आता है उसे मैं भरने के लिए तैयार हूँ।

Smt Mansi Advani director has surrendered an amount of Rs. 20 lakhs in her statement dated 11.10.2013 at question no. 4, 5 & 6 as under :-

प्रश्न :- भाग्यारना जेम्स एण्ड ज्वेलरी प्रा०लि० में आपने कितना निवेश किया है इस निवेश का स्रोत क्या है?

उत्तर - मेरे द्वारा भाग्यारना जेम्स एण्ड ज्वेलरी प्रा०लि० रायपुर में 20.00 लाख का निवेश किया गया है। इस 20.00 लाख रूप्यों के स्रोत विगत वर्षों की जमा पूंजी है जो आयकर विवरणी में नहीं दिखाए गए हैं।

प्रश्न :- कृपया बताइयें कि उपरोक्त 20.00 लाख रूप्यों को जो आपने अपनी आयकर विवरणी में नहीं दिखाया है, क्यों न अघोषित आय के रूप में माना जायें?

उत्तर - जी हाँ राशि 20.00 लाख रूप्यों को मैं अपनी अघोषित आय स्वीकार करती हूँ जो वित्तीय वर्ष 2013-14 में अर्जित की गई है।

प्रश्न :- क्या आप कुछ और कहना चाहती हैं?

उत्तर - रुपये राशि 20.00 लाख को मैं अपनी अघोषित आय स्वीकार करत हूँ तथा मैं इस आय पर आने वाली कर राशि को सहर्ष अंदा करूंगी ।

The amount of surrendered income has not been offered by the assessee in its return of income. The AO has allowed several opportunities to the assessee to explain the source of the income. The director Shri Haresh Advani and his CA appeared before the AO. In response to letter dated 02.12.2016 u/s 142(1) it has been replied on behalf of the assessee that the surrendered amount is shown in books of the accounts of the assessee. However, the surrendered amount has not been reflected in the final income of the assessee which has been shown as NIL. It has not been explained how and in what way the surrendered amount has been shown in the books and still the income of the assessee is NIL. In view of the above facts the addition is hereby sustained.

3.0 Next issue is regarding of addition of Rs 9000/- on account of cash. As against the sale of Rs 4,64,000/- the physical cash of Rs 4,73,000/- was found. Assessee not produced any document and has not explained the excess cash. The addition is therefore sustained.

15. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

16. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

17. Admittedly, it is a fact borne from the record that discrepancies of Rs.1.10 crore (supra) were found in the survey proceedings conducted on 11.10.2013. As stated by the Ld. AR, assessee company had commenced its business only a few days back prior to the survey, i.e., w.e.f. 07.10.2013. On being queried about the unexplained investment in stock/franchisee fee/furniture, it transpires from the record that the respective directors of the assessee company, viz. Shri Haresh Kumar Advani, Smt. Tamanna Advani and Smt. Mansi Advani had, in their statements, admitted that the said investment was sourced out of their respective undisclosed income, which they had categorically offered for tax for the year under consideration as under:

1. Unexplained investment in stock	: Rs.1,00,00,000/-
2. Unexplained investment as franchisee fees	:Rs. 3,00,000/-
3. Unexplained investment in furniture	<u>:Rs. 7,00,000/-</u>
Total : Rs.1,10,00,000	

On a careful perusal of the facts, as had been elaborated by us hereinabove, the bifurcated details of the undisclosed income that the directors mentioned above had offered in their respective hands is culled out as under:

Sr. No.	Name of the Director	Particulars
1.	Shri Haresh Kumar Advani	<p>(i) Rs.33 lacs : Investment that he claimed to have been made with the assessee company, which in turn was stated to have been sourced from M/s. Sai Traders (Old firm) and out of his account (savings), which, without supporting evidence, was offered by him as his undisclosed income for the year under consideration.</p> <p>(ii) Rs.37 lacs (out of Rs.70 lacs) : He stated that the amount of Rs.70 lacs was sourced out of funds received from shareholders of M/s. Top Flow Property Pvt. Ltd., Kolkata (i.e. erstwhile name of the assessee company). On being queried as to how the amount of Rs.70 lac was received from the shareholders, he stated that he a/w. remaining two directors viz. Smt. Tamanna Advani and Smt. Mansi Advani, had given cash to some person belonging to Raipur, which amount was thereafter received back in the coffers of the assessee company through RTGS/Cheque.</p>
2.	Smt. Tamanna Advani	<p>(i) Rs.20 lacs: It was categorically stated by her in her statement recorded during the survey proceedings that she had invested in two tranches, viz. (i) investment towards capital: Rs.13 lacs; and (ii) investment towards furniture of the assessee company: Rs.7 lacs. On being queried about the source of the abovementioned amount of Rs.20 lacs (supra), she stated that the same was speculation profit that she had earned during the year under consideration. As she could not substantiate the source of her income described above, the said amount was offered by her as undisclosed income for the year under consideration, i.e., F.Y.2013-14, on which she had agreed to pay the corresponding amount of tax.</p>
3.	Smt. Mansi Advani	<p>(i) Rs.20 lacs: In her statement recorded in the course of survey proceedings u/s.133A of the Act, it was</p>

		categorically stated by her that she had invested Rs.20 lacs with the assessee company, which in turn, was sourced out of her past savings. As she could not substantiate her claim mentioned above, she offered the amount of Rs.20 lacs as her undisclosed income for the year under consideration, i.e., F.Y.2013-14. She had further agreed to pay corresponding taxes on the same.
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18. On a careful perusal of the statements of the directors of the assessee company, viz. Shri Haresh Kumar Advani, Smt. Tamanna Advani and Smt. Mansi Advani; and statement of Shri Haresh Kumar Advani recorded u/s. 131 of the Act by the A.O. during the assessment proceedings, it transpires that income of Rs.1.10 crore (supra) was admitted by them as their respective undisclosed income (as culled out by us hereinabove). In sum and substance, the directors, as mentioned above, on being queried about the source of investment of Rs.1.10 crore, had in unequivocal terms stated that the same was sourced out of their respective undisclosed income, viz. (i) Shri Haresh Kumar Advani: Rs.70 lacs; (ii) Smt. Tamanna Advani: Rs.20 lacs and (iii) Smt. Mansi Advani: Rs.20 lacs. The respective directors disclosed Rs.1.10 crore (supra) qua the undisclosed income they garnered during the year under consideration and not in the hands of the assessee company. The A.O. had grossly erred in observing that the assessee company had disclosed Rs.1.10 crore during the survey proceedings. As noticed by us hereinabove, it is not

only that the directors mentioned above in their respective statements had offered the above amounts aggregating to Rs.1.10 crore (supra) as their respective undisclosed income, but Shri Haresh Kumar Advani (supra) had further, in his statement recorded by the A.O u/s.131 of the Act on 14.12.2016, i.e., in the course of assessment proceedings, had once again in reply to Question No.6, stated that the disclosure mentioned above of Rs.1.10 crore that was made during the survey proceedings u/s.133A of the Act was made concerning the undisclosed income of the directors of the assessee company.

19. In our considered view now, when the source of the investment towards unexplained stock/franchisee fee/furniture was duly explained to have been made out of the investment made by the directors, as admitted by them in their respective statements, though out of their undisclosed income, the same cannot be held as an unexplained investment in the hands of the assessee company. Our conviction above is fortified on a perusal of Section 69 of the Act, which therein contemplates that it is only when the assessee does not explain the nature and source of the investments; or the explanation offered by him is not in the opinion of the A.O satisfactory, the value of the investment may be deemed to be the income of the assessee of such financial year. As the aforesaid factual position that had been canvassed by the directors of the assessee company, i.e., investments towards unexplained stock/franchisee

fee/furniture was sourced out of their undisclosed income, had neither been controverted by the lower authorities nor anything proving to the contrary has been brought to our notice by the Ld. DR, therefore, we find no justification for the A.O. to have held the investments mentioned above as having been sourced out of an unexplained source in the hands of the assessee company.

20. As observed by the **Hon'ble Supreme Court** in the case of **ITO vs. Ch. Atchiah (1966) 218 ITR 239 (SC)**, the Income Tax Officer can and must tax the right person and the right person alone. The Hon'ble Apex Court observed that the "right person" means the person who is liable to be taxed, according to law, concerning a particular income. It was further observed that the expression "wrong person" is used as the opposite of the expression "right person." Based on its observation above, the Hon'ble Apex Court had concluded that merely because a wrong person is taxed concerning a particular income, the A.O. is not precluded from taxing the right person concerning that income.

21. Based on the aforesaid settled position of law, we believe that now when the respective directors, viz. Shri Haresh Kumar Advani, Smt. Tamanna Advani and Smt. Mansi Advani had, in the course of survey proceedings, admitted their undisclosed income aggregating to Rs.1.10 crore (supra), which had sourced the investment towards stock/franchisee fee/furniture of the

assessee company; therefore, the respective amounts of undisclosed income as admitted by the said directors could have only been looked into and brought to tax in their respective hands and not in the hands of the assessee company before us. In sum and substance, now when the directors of the assessee company had admitted their undisclosed income, which in turn had soured the investments made in the assessee company, there was no justification for bringing the said amount to tax in the latter's hand. The right person to be subjected to tax, if any, were the individual directors who had admitted that the abovementioned investments were sourced from their undisclosed income garnered during the year under consideration.

22. We, thus, in terms of our observations above, are of the considered view that the amount of Rs.1.10 crore (supra) was liable to be looked into by the A.O in the hands of individual directors for the reason that they had duly admitted the same as their undisclosed income for the year in question. Considering the aforesaid factual position, the A.O. is directed to bring to tax the aforementioned undisclosed income of Rs.1.10 crore (supra) as per extant law in the hands of the directors, viz. Shri Haresh Kumar Advani, Smt. Tamanna Advani and Smt. Mansi Advani as per Section 150 of the Act. Thus, the **Ground of Appeal No.1** raised by the assessee is allowed in terms of our observations above.

23. We shall now deal with addition of Rs.9000/- made by the A.O. as unrecorded cash found during survey proceedings. As observed by us hereinabove, cash in hand of Rs.4,73,000/- was found during survey proceedings on 07.10.2013. On being queried, the assessee claimed that the same was sourced from the sales up to the survey date. As the sale bills till 07.10.2013 aggregated to Rs.4,64,000/-, the A.O. called for an explanation regarding the source of the balance amount of Rs.9000/-. In reply, it was claimed by the assessee that the deficit as per sale bills was on account of sale returns. As the assessee had failed to fortify his claim, the A.O. added the amount mentioned above of Rs.9000/ to the returned income of the assessee.

24. As the Ld. AR for the assessee had failed to come forth with any explanation concerning the addition mentioned above of Rs.9000/- sustained by the CIT(Appeals); therefore, we uphold the same. Thus, the **Ground of appeal No.2** raised by the assessee is dismissed in terms of our observations above.

25. As the Ld AR has advanced no contention regarding Ground of Appeal No.3, i.e., concerning his claim that the CIT(Appeals) had passed the order without affording proper opportunity to the assessee company, the same is

dismissed as not pressed. Thus, the **Ground of appeal No.3** raised by the assessee is dismissed in terms of our observations above.

26. **Ground of appeal No.4**, being general in nature, is dismissed as not pressed.

27. In the result, the appeal of the assessee is partly allowed in terms of our aforesaid observations.

Order pronounced in open court on 18th day of August, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 18th August, 2023
SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Raipur (C.G.)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.