

IN THE INCOME TAX APPELLATE TRIBUNAL, "SMC" BENCH, SURAT  
BEFORE DR. A. L. SAINI, AM

आयकर अपीलसं./ITA No.471/SRT/2023

(निर्धारण वर्ष / Assessment Year: (2010-11)

(Virtual Court Hearing)

Darshit Developers C/o Kashmiraben Shaileshbhai Patel/ Bhagwati Bunglowes / Maninagar Society, Tithal Cross Road, Valsad-396001	Vs.	Income Tax Officer, Ward-5, Valsad Room No.204/Palak Arcade, Near Pali Hill, Tithal Road, Valsad-396001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAGFD 5807 L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	Shri Rajesh Upadhyay, AR
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाईकीतारीख/Date of Hearing	05/09/2023
घोषणाकीतारीख/Date of Pronouncement	22/09/2023

**आदेश / ORDER**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2010-11, is directed against the order passed by the National Faceless Appeal Centre, Delhi (in short "NFAC/ld. CIT(A)"), dated 07.07.2023, which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 19.12.2017.

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

*"1. Ld. CIT[A], NFAC, DELHI has erred in law and on facts to upheld A.O's reopening u/s 147 and issue of notice u/s 148 of the Act ignoring the fact and law that incorrect information received from DDIT[Inv.] does not give jurisdictional to the A.O for invoking reassessment proceedings us/ 147 of the Act.*

*2. Ld. NFAC, Delhi has erred in law and on facts to upheld addition of partner's capital of Rs.12,50,000/- [Shilpaben Shah] as well as another partner's capital Rs.12,50,000/- [Nipaben Shah] + Total Rs.25,00,000/- ignoring the fact that there was no business activity of firm in the year under assessment as well as partner's capital contribution cannot be treated as income of the firm considering facts of appellant's case."*

3. First I shall take Ground No.2 raised by the assessee, which relates to addition of Rs.12,50,000/- in the hands of assessee-firm. Brief facts *qua* ground No.2 are that assessee is a partnership- firm and filed its return of income for assessment year (A.Y.) 2010-11 on 26.03.2011, declaring Nil income. The DDIT (Inv.), Valsad had intimated to the assessing officer that Smt. Kashmira Shailesh Shah had purchased non-agricultural land of Rs.2,05,00,000/- at Gundlav, Valsad, in financial year 2009-10 and she is a partner in the firm “M/s Darshit Developers” (*assessee-firm*). During the year, Smt. Kashmira Shailesh Shah had withdrawn a sum of Rs.24.50 lakh from M/s Darshit Developers and source of the said investment were not explained before the DDIT (Inv.) Valsad, therefore the said information was passed to Assessing Officer. Accordingly, assessee`s case was re-opened u/s 147 of the Act and notice u/s 148 was issued on 30.03.2017. In response to this notice, assessee-firm has filed reply on 26.04.2017 in which it was requested to treat the return of income for A.Y 2010-11, filed on 26.03.2011, vide receipt No.202904450260311. In this letter, it was requested to supply the reasons recorded. The reason recorded was provided by Assessing Officer, vide letter, dated 02.05.2017. The notices u/s 142(1) and 143(2) of the Act were issued to the assessee. In response to these notices, the assessee has filed objections letter on 19.06.2017 and said objection was disposed of by Assessing Officer, vide letter dated 23.06.2017.

4. Thereafter, the Assessing Officer issued a notice to the assessee to explain the transaction. In response, the assessee has filed the written submission before the assessing officer on 29.09.2017, which are reproduced below:

*“(9) Details as stated in Sr.No.8, in respect of Nipaben B. Shah cannot be supplied as such details are not available with us. Although, her name, address, PAN areas under:*

*Name: Nipaben Bhavinbhai Shah*

Address: AT and Post Pariya Velvagad, Taluka-Pardi, Jillo-Valsad; PAN : BHLPS 2832M

(10) Details as stated in Sr.No.8, in respect of Shilpaben S Shah cannot be supplied as such details are not available with us. Although, her name, address, PAN are as under:

Name: Shilpaben Sunilbhai Shah

Address: AT and Post Pariya Velvagad, Taluko-Pardi, Jillo-Valsad;

PAN:- AAMPS3974P”

5. However, the Assessing Officer rejected the contention of the assessee and observed that the assessee has not provided the details regarding capital introduced by Nipaben shah and Shilpaben Shah in the partnership- firm, therefore, a letter u/s 133(6) of the Act was issued on 06.10.2017 to both the partners. In response to the same a reply u/s 133(6) of the Act, were received by the Assessing Officer, from above both the partners on 23.10.2017. In reply, both the partners have given details of capital introduced during the year. The details of the same are as under:

Date of cash/cheque deposited	Amount	Date of cheque given to the firm	Amount
15.10.2009	5,00,000 (cash)	16.10.2009	5,00,000
03.11.2009	3,00,000 (cash)	04.11.2009	3,00,000
05.11.2009	5,00,000 (cheque transfer)	05.11.2009	4,50,000

From the above details, it was observed by the Assessing Officer that in the above bank account Nipaben Shah partner of the firm had deposited total cash of Rs.8,00,000/- and received cheque from others of Rs.5,00,000/-, out of which she has introduced the capital of Rs.12,50,000/- in M/s Darshit Developers, in which she is a partner. The assessing officer held that assessee has not provided sufficient explanation, therefore Assessing Officer made addition to the tune of Rs.12,50,000/- as undisclosed capital of the partnership firm (M/s Darshit Developers).

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before NFAC/Ld. CIT(A) who has confirmed the action of Assessing Officer, observing as follows:

*“2.3 Having considered the appellant submission and facts of the case, it is found that the appellant has not provided any evidence regarding source of capital introduced in the firm. I find no incongruity in the assessment order and therefore this addition is confirmed.”*

7. Aggrieved by the order of NFAC/Ld. CIT(A) the assessee is in further appeal before this Tribunal.

8. I have heard both the sides and gone through the relevant material on record. Shri Rajesh Upadhyay, Learned Counsel for the assessee, begins by pointing out that addition was made in the hands of partnership firm, in respect of capital introduced by one of the partners, (*Nipaben B Shah*) in the partnership -firm, namely M/s Darshit Developers. The Ld. Counsel argued that the capital contribution made by one of the partners, (*Nipaben B Shah*), has been examined by the Assessing Officer in her personal assessment (*vide page 73 of paper book*). In the personal assessment of partner, (*Nipaben B Shah*), which was framed by the Assessing Officer under section 143(3) r.w.s. 147 of the Act, wherein the Assessing Officer made addition stating cash deposit Rs.8,00,000/-, capital introduced in partnership firm, which was also treated by the Assessing Officer, as unexplained in the hand of the assessee-partner (*Nipaben B Shah*). Therefore, Id Counsel contended that amount of Rs.8,00,000/- has already been suffered tax in the hands of partner (*Nipaben B Shah*), therefore, it should not be taxed again in the hands of partnership -firm (*M/s Darshit Developers*). Besides, the amount of Rs.4,50,000/- was given by Nipaben B Shah, to the partnership-firm (*M/s Darshit Developers*) by cheque, therefore the genuineness of the said amount should not be doubted. The Id Counsel, therefore contended that when the addition was made in the hands of Nipaben B Shah, partner of M/s Darshit Developers, then for the same amount, the addition should not be made again, in the hands of partnership firm, (*M/s Darshit Developers*) which has resulted into double addition/double taxation of the same amount.

9. The Ld. Counsel took me through paper book page-6 and contended that Assessing Officer has not made addition in the hands of other partners, namely, Shilpaben S Shah. The Shilpaben S Shah has also contributed an amount of Rs.12 lakh to partnership firm, (*M/s Darshit Developers*). However, the Assessing Officer has not made addition in the hands of the partner Shilpaben S Shah. Therefore Ld. Counsel contended that it is the discrimination made by the Assessing Officer, which is not acceptable.

10. The Ld. Counsel also argued that the partners have contributed the amount to the partnership- firm (*M/s Darshit Developers*) and therefore capital contribution cannot be taxable in the hands of partnership-firm, (*M/s Darshit Developers*). That is, the capital contribution made by the respective partners should not be taxable in the hands of the partnership-firm (*M/s Darshit Developer*), however, it can be taxed in the hands of individual partners. For that, Ld. Counsel relied on the judgment of Hon'ble jurisdictional High Court in the case of CIT vs. Pankaj Dyestuff Industries in Income Tax Reference No.241 of 1993 dated 18.01.2010, wherein it was held as follows:

*“We have considered the reasoning of the Tribunal on this issue and we have also gone through the decision of this Court in the case of CIT vs. Pankaj Dyestuff Industries (supra). This court has observed in the said decision that both the appellate authorities have found that the assessee had discharged the primary onus which was on it by offering explanation, which has not been found to be incorrect or false in any manner. The Court further observed that the interest of the Revenue is also safeguarded as the Income Tax Officer has been given the liberty to consider the said credits in the hands of the partners if he is not satisfied with the sources of investment of cash credits in the accounts of the partners. Aft e observing this, this Court held that, it is not possible to find that the order of the Tribunal suffers from any infirmity, which would require interference at the hands of this Court. The Court, therefore, held that the Tribunal was right in law and on facts in deleting the addition of Rs.87,250/- being deposits in the accounts of the partners. This decision is squarely applicable in the facts of the present assessee and, hence, we are of the view that the Tribunal was justified in confirming the order of CIT(A) in deleting the addition of Rs.20 lacs in the hands of the respondent assessee. We, however, make it clear that it is open for the Revenue to consider the said credits of Rs.20 lacs in the hands of Smt. Paraptiben Choksi, if the Assessing Officer is not satisfied with the sources of investment of cash credit in the account of said Smt.*

*Praptiben Choksi. In any case, the question of law proposed by the Revenue in the form of Question No.(B), reproduced hereinabove, cannot be said to be the substantial question of law.*

*12. In the result, the Appeal is summarily dismissed.”*

11. On the other hand, Learned Sr.DR for the Revenue reiterated the findings of the lower authorities. The Ld. Sr-DR for the Revenue also argued that assessment has been re-opened based on the information received from the Investigation Wing, therefore reasons recorded by the Assessing Officer is based on the report of the Investigation Wing, which is a valid information, hence there is no any infirmity in the reasons so recorded by the Assessing Officer.

12. On merit, Ld. Sr-DR stated that assessee has not submitted enough material to prove the genuineness of the transactions.

13. I note that Assessing Officer has made the addition in respect of capital contribution made by one of the partners and said amount has already been taxed in the hands of the individual partner Nipabem B Shah. I also note that since the ownership of the money remains with the individual partner, therefore addition should not have been made in the hands of the partnership firm (*M/s Darshit Developers*). I observe that there are three partners in the firm, out of which, two partners, namely Nipaben B Shah and Shilpaben Shah have contributed Rs.12.50 lakh each in the firm during financial year 2009-10. However, in the hand of Shilpaben S. Shah, in her individual assessment, no addition was made by Assessing Officer, whereas, in the hands of other partner, namely Nipaben B Shah, the Assessing Officer made addition and the same amount was added in the hands of partnership firm (*M/s Darshit Developers*), which is not tenable, as the impugned amount has already been taxed in the hands of individual partner.

14. I have also observed that based on the above facts the issue is squarely covered in favour of assessee by the order of the Co-ordinate Bench of ITAT Delhi, in the case of ACIT Circle-51(1) New Delhi vs. M/s Ambika Enterprises in ITA No.31/Del/2020, wherein the Tribunal had laid down the following ratio:

*“5. Per contra, Ld. Counsel for the assessee relied upon the order of the Ld. CIT(A). He submitted that the capital has been introduced by partner of the firm. In this regard, Ld. Counsel for the assessee relied upon the various case laws reads as under:*

- i) *Allahabad High Court in the case of Kesharwani Sheetalya Sahson vs. DCIT in ITA No.17 of 2007 order dated 24.04.2020.*
- ii) *Gujarat High Court*
  - a) *Commissioner of Income-tax v. Pannkaj Dyestuff Industries, rendered on 6.7.2005 in Income tax Reference No.241 of 1993.*
  - b) *PCIT-4 vs. VAISHNODEVI REFOILS AND SOLVEX IN Tax Appeal No.846 of 2017 order dated 28-11-2017*
- iii) *Madras High Court: in the case of CIT vs. Taj Borewell [2007] 291 ITR 232 (Mad)*
- iv) *Telangana & Andhra Pradesh High Court: in the case of CIT vs. M. Venkateswara Rao and other [2015] 370 ITR 212 (T&AP)*
- v) *Punjab & Haryana High Court: in CIT vs. Metal and Metals of India (2007) 208 CTR 457 (P&H)*
- vi) *Rajasthan High Court: the Rajasthan High Court in CIT v. Kewal Krishna and Partners [2009] 18 DTR 121 (Raj) has also taken similar view.*
- vii) *Madhya Pradesh High Court” Commissioner of Income Tax v. Metachem Industries [2001] 245 ITR 160 (MP) and it was held that according to Section 68 the burden was on the ae to satisfactorily explain the credit entry in the books of account of the previous year and in a case where satisfactory explanation had been given by establishing that the amount had been invested by a particular person, be he a partner or any individual then the burden of the assessee firm is discharged and the credit entry could not be treated to be income of the firm for the purposes of income tax.*
- viii) *HONOURABLE Tribunal VIEW ON THE SAME ISSUE:-*
  - 1) *ITAT Delhi in the case of Alliance Engineers & Construction ITA 6180/Del/2015 order dated 15.02.2019*

- 2) *ITAT Chennai in the case of Nityashuda Combines vs. ITO order dated 6 May 2022 in ITA 576, 577/Chn/2020*
- 3) *ITAT Ahmedabad in the case of ITO vs. Uma Cotton Industries in ITA No.446/Ahd/2011 order dated 25-09-2014*
- 4) *ITAT Kolkata in ITO Ward-40(4) vs. Bajaj Roadways in ITA 2023/Kol/2016 order dated 04.07.2018.”*

*6. We have carefully consider on both sides and perused the materials available on record. We find that in this case there is no ambiguity about the identity of the partner and capital introduced from him. In such circumstances if the AO was of the opinion that the amount is not proved in the hands of the partner, he should have consider it in his individual hands and not in the hands of the firm. This view is duly supported by Hon'ble Madhya Pradesh High Court in the case of CIT vs. Metachem Industries 245 ITR 160. Hence, following the aforesaid precedents, we do not see any infirmity in the well reasoned order of the Ld. CIT(A), same is thereby upheld.”*

15. It is abundantly clear from the above judgment of Co-ordinate Bench of ITAT Delhi, in the case of M/s Ambika Enterprises (supra) that if the amount has not proved in the hands of partner, the Assessing Officer may make addition in the hands of concerned individual partner and not in the hands of partnership- firm. Therefore, based on this fact and legal precedent applicable to the fact of the assessee, I delete the addition made by Assessing Officer.

16. As the entire addition has been deleted by me, therefore ground No.1 raised by the assessee, challenging re-assessment proceedings u/s 147 r.w.s. 148 is rendered academic and infructuous, hence does not require adjudication.

17. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 22/09/2023.

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

सूरत / Surat दिनांक/ Date: 22/09/2022  
DKP (Sr. PS Outsourcing)

**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

*// True Copy //*

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat