

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**SHRI T.R SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.68/Rjt/2020

निर्धारण वर्ष/Asstt. Year: 2016-17

Shri Jayantilal Bachubhai Thumar, Tirth Complex, Opp. Raj Petrol Pump, Canal Road, Rajkot-360001.  <b>PAN: ABKPT3852C</b>	Vs.	Income-tax Officer, Ward-2(1)(4), Rakot.
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(Applicant)		(Respondent)
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Assessee by :	Shri Rashmin Vekaria, A.R
Revenue by :	Shri K.L Solanki, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **19/07/2023**

घोषणा की तारीख /**Date of Pronouncement:** **16/10/2023**

**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), Rajkot-2, (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s.143(3) of the Income Tax Act 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-17.

2. The first issued raised by the assessee is that the learned CIT(A) erred in confirming the addition of loan and advances given for Rs. 96.1 Lacs only.

3. The facts in brief are that the assessee in the present case is an individual and engaged in the practice of law. The Assessee for the year under consideration filed loss return amounting to ₹5,29,646/- and same was selected under scrutiny assessment. The AO during the assessment proceeding found that the assessee has given loans and advances to certain persons aggregating to Rs. 96.1 Lacs. However, the assessee only provided name and mobile number of such persons and when such persons were contacted through telephone, they denied having any transaction with assessee. As such, the assessee failed to furnish the requisite details such as address of parties, ledger copy, their confirmation and parties bank statement, cash book and bank book etc. to verify the genuineness of the loans & advance given. Thus, the assessing officer treated such loans & advance given by the assessee as unexplained investment under section 69 of the Act and added to the total income of the assessee.

4. The aggrieved assessee preferred an appeal before learned CIT(A).

5. The assessee before the learned CIT(A) submitted that to invoke the provision of section 69 of the Act, there should be 3 essential conditions which must be satisfied. The first condition is that there should be investment made by the assessee which was not found recorded in the books of accounts whereas in his case the advance given to the parties were duly recorded in books and the same were also submitted during the assessment proceedings. The second condition is that the unaccounted investment should have been made in the previous year relevant to assessment year under consideration. But the assessee has given advance to the parties in the F.Y. 2011-12, 2012-13 and 2013-14 which can be verified from bank statements available on record whereas relevant previous year to current assessment year is 2015-16. Thus, the second condition has also not been satisfied. The third and last condition is that upon finding of

unaccounted investment in the P.Y. the assessee offers no explanation or explanation offered by him was not found satisfactory. But the assessee has substantiated the loan and advances by providing bank detail from where advance have been given. Therefore, the addition cannot be sustained.

6. However, the learned CIT(A) confirmed the order of the learned CIT(A) by observing as under:

*During the appeal proceeding the appellant submitted the same confirmation which were submitted before the Assessing Officer and they are thoroughly examined and found that it bears only name of the person the mobile number and address. It merely speaks that they have taken loans for certain amount from Jayantibhai B Thumar. None of them have any identity proof nor have any PAN number therefore the confirmation submitted are found to be non-genuine. Considering this it is held that the appellant is not able to establish the genuineness of such advances given. Accordingly it is held that assessee fails in doing the advances to be genuine. Accordingly I upheld the action of Assessing Officer disallow sum of Rs.96,10,000/-. The ground of appeal on this account is therefore dismissed.*

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

8. The learned AR before us reiterated the submissions made before the lower authorities by referring to the respective order.

On the other hand, the learned DR before us vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee has given loans and advances to certain parties and earned interest income on loans and advances given to such parties. As such, the assessee during the assessment proceeding has provided the detail of loans and advances in connection with the dispute of quantum of interest income offered by the issue. This fact can be verified from the observation of the AO for treating the advances as unexplained investment which reads as under:

*6.1 On verification of submission made by the assessee regarding receipt from various person. The assessee vide his submission dated 28.11.2018 submitted that, confirmations*

*of the persons to whom loans were provided are attached herewith. However, on verification of these confirmation it is found that, the assessee has only provided Name of the person and mobile number of persons only. The undersigned has try to contact to the persons however most of person rejected the transaction made with the assessee. Therefore, vide this office show cause notice dated 29.11.2018 issued and served upon the assessee. The relevant para of the notice are as under:*

9.1 Thus, on one hand, the revenue has accepted the interest income earned by the assessee from loans & advances given to impugned parties but on the other hand, treating the impugned loans & advances as unexplained investment of the assessee. In our considered opinion the revenue cannot take different stand for interest income as well as loans & advances from where interest income accrued.

9.2 Be that as may be, the revenue has treated loan & advances given by the assessee as his unexplained investment under section 69 of the Act. The provision of section 69 of the Act reads under:

***69.** Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.*

9.3 From the perusal of the provision of section 69 of the Act, it is discernible that in case an assessee is found to have made investment in any previous year, but such investment was not recorded in the books of account maintained by the assessee, then such unaccounted investment may be deemed as income of the assessee for such previous year. In the case of the present assessee, there is no allegation or finding of both lower authorities that the loans & advances given by the assessee to earn interest income were recorded in books of account maintained by him since earlier years. Further, there no finding that these loans & advances were given by the assessee in previous year relevant to assessment year under consideration. On the contrary, the assessee before the learned CIT(A)

demonstrated that these loans and advances were given by him in the earlier years. Thus, the condition to invoke the provision of section 69 of the Act was not satisfied. Therefore, in our considered opinion, such loan & advances cannot be treated as unexplained investment under section 69 of the Act in the year under consideration. Therefore, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the addition made by him. Accordingly, the ground of appeal of the assessee is hereby allowed.

10. The next issue raised by the assessee is that the learned CIT(A) erred in not deciding the ground relating to allowances of loss claimed in the return of income.

11. At the outset, we note that the leaned AR for the assessee at the time hearing before us submitted that the assessee has directed the learned AR not to press the impugned issue. Hence, we hereby dismiss the impugned ground of appeal of the assessee as not pressed.

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

**Order pronounced in the Court on 16/10/2023 at Ahmedabad.**

**Sd/-**  
**(T.R SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**(True Copy)**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 16/10/2023  
*Manish*