

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ

**IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD**

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 187/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2013-2014

Hetal Patel, 301, Surya Building, Shree Viharbangur Nagar, Andheri Deori, Beawar, Rajasthan. PAN: AUOPP6527H	Vs.	Income Tax Officer, Ward-3(3)(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Ashokkumar Gupta, AR
Revenue by :	Ms. Saumya Pandey Jain, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **28/12/2023**

घोषणा की तारीख /**Date of Pronouncement**: **05/01/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, arising in the matter of assessment order passed under s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2013-2014.

2. The assessee has raised as many as 9 grounds of appeal. However, we first proceed to adjudicate the issue raised by the assessee in ground No. 5 raised in the memo of appeal which is reproduced as under:

Addition made of Rs.2,00,000/- by treating it as unexplained Money.

The Ld. NFAC(Appeal) has grossly erred in law & facts in confirming the addition of Rs. 2,00,000/- treating as unexplained money without bringing any corroborative material on record, while fully explained by the assessee appellate before authorities below.

3. The issue raised by the assessee is that the Ld. CIT(A), erred in confirming addition made by the AO for Rs. 2,00,000/- on account of unexplained investment without any corroborative materials.

4. Briefly stated facts are that the assessee in the present case is an individual who has not filed the income tax return. Thus, the AO initiated the proceedings u/s 147 of the Act on the reasoning that the assessee has made unaccounted investment in the property developed by M/s Dharmadev Infrastructure Ltd. As per the AO, the company namely M/s Dharmadev Infrastructure Ltd. has admitted before the settlement commission that it has received on money against the booking received from various customer for the property. As such M/s Dharmadev Infrastructure Limited has offered additional income of Rs. 88.45 crores before the settlement commission representing the money received from the customers. It was found out by the AO that the name of the assessee also appeared in the documents who has paid on money for booking the property. Accordingly, the AO made the addition of Rs. 2,00,000/- u/s 69A of the Act.

5. Aggrieved assessee preferred an appeal to the Ld. CIT(A) who confirmed the order of the AO by observing as under:

5. The above reply of the Appellant has been carefully examined and considered in detail. Further submission of the Appellant uploaded on 05/12/2022 has also been examined and considered. From the careful examination of the facts in the assessment order, it can be seen that the appellant did not file any income tax returns during the relevant assessment year. The re-assessment proceedings, in this case were initiated on account of information received from ACIT, Central circle, Ahmedabad that the appellant had paid an amount of Rs. 2,00,000/- in cash, for the purchase of property to an entity named M/s Dharmadev Infrastructure Limited, which was a company in the group namely M/s Dharmadev Group, against which Search and seizure proceedings were initiated under section 132 of the Income Tax Act, 1961, on 15/10/2013. On the basis of these search proceedings, information was revealed from documents, in respect of certain persons and entities who had paid amounts in cash, for booking properties. The appellant was one of such persons who had paid Rs. 2,00,000/-, in cash for booking the property.

6. The above information was analyzed and passed on to the assessing officer of the appellant, by the ACIT, Central Circle-2(4), Ahmedabad. It was also a fact that the appellant had not filed any income tax return during the relevant assessment year. Therefore, the reopening of the assessment under section 147/148 was legally valid reopening and the proceedings were as per the law and Act. Subsequently, the assessing

officer in assessment order dated 24/9/2021, has analyzed the facts of the case in detail and has reached the conclusion that the appellant had paid an amount of Rs. 2,00,000/-, in cash, which GUP DVOCATE was unaccounted investment as not return was filed by the appellant. Therefore, the addition of Rs.2,00,000/- was made to the nil income of the assessee. The order of the assessing officer is reasonable and correct. The order of the AO is confirmed. Appeal of the appellant is dismissed.

6. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before me.

7. The Ld. AR before me filed a paper book running from pages 1 to 54 and filed the written submission running from pages 1 to 38. The Ld. AR along with other contentions submitted that the Tribunal in identical facts and circumstances bearing ITA No.62/Ahd/2020 in the case of Urmilaben Bharatbhusan Agarwal vs. ITO, Ward-5(3)(5), Ahmedabad, dated 23/09/2022 has decided the issue in favour of the assessee.

8. On the other hand, the Ld. DR contended that the assessee has been non-cooperative in making replies during the assessment proceedings. It was further submitted that the assessee has made an investment in the property developed by Dharmadev Infrastructure Limited which was found indulged in receiving unaccounted money. Therefore, it became evident that the assessee has made investment in cash which is based on seized materials. The Ld. DR vehemently supported the order of the authorities below.

9. I have heard the rival contentions of both the parties and perused the materials available on record. At the outset, I find that in an identical issue in the case of Urmilaben Bharatbhusan Agarwal bearing ITA No.62/Ahd/2020, this Tribunal has decided the issue in favour of the assessee vide order dated 23/09/2022 by observing as under:

"7. I have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has given all the details related to purchase of property in the project of Swaminarayan Park and paid Rs.8,65,237/- in cash towards booking amount. This fact was never disputed, but the Assessing Officer analysed the same as assessee's investment in the property in respect of on money to Dharmadev Infrastructure Limited. In fact, the details of cash payment were established by the

assessee as the said amount was not paid in cash but through proper channel. Mere admission on the part of Shri Umang Hiralal Thakkar before the Settlement Commission, the assessee cannot be denied the cross examination of the said party. Thus, the Assessing Officer was not right in making addition on that basis. Therefore, appeal of the assessee is allowed.

8. In the result, appeal filed by the assessee is allowed."

9.1 Before me, no material has been placed on record by the revenue demonstrating any contrary decision of the Higher Judicial Authorities. Before me, revenue has not placed any material on record to point out any distinguishing feature in the facts of the case for the year under consideration and that of the case cited above. Thus, respectfully following the above finding, I hereby set aside the finding of the Id. CIT-A and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

9.2 As I have decided the issue on merit in favor of the assessee, I don't find any reason to deal with the other grounds of appeal of the assessee. As such, other grounds of appeal of the assessee are hereby dismissed as infructuous.

10. In the result, the appeal filed by the assessee is hereby partly allowed.

Order pronounced in the Court on 05/01/2023 at Ahmedabad.

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

Ahmedabad; Dated
Manish

(True Copy)
05/01/2023