

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.527/Ahd/2023  
Assessment Year: 2011-12**

Satyam Co-op. Hou. Soc. Limited., 201, 2 <sup>nd</sup> Floor, Devashish Complex, Near Regenta Central Antarim Hotel, Off. C.G. Road, Ahmedabad – 380 006. <b>[PAN – AACAS 3259 A]</b> (Appellant)	Vs.	The Income Tax Officer, Ward - 4(2)(5), Ahmedabad.  (Respondent)
Assessee by	Shri Divyang Shah, AR	
Revenue by	Ms. Saumya Pandey Jain, Sr. DR	
Date of Hearing	18.12.2023	
Date of Pronouncement	10.01.2024	

**ORDER**

This appeal is filed by the assessee against order dated 09.05.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2011-12.

2. The assessee has raised the following grounds of appeal :-

- “1. Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) erred in confirming addition of Rs.26,00,000/- on account of time deposit ?
2. Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) erred in confirming addition of Rs.3,50,000/- on account of cash deposit ?
3. Whether, on facts and in the circumstances of the case and in law, Ld. AO erred in issuing notice u/s.148 of the Act ?”

3. The assessee is a Co-operative Housing Society and has not filed return of income for Assessment Year 2011-12. On the basis of AIR information on the ITD System, the Assessing Officer found that the assessee made fixed deposits/cash

transactions in the Bank account during the Financial Year 2010-11. The assessment was reopened under Section 147 of the Income Tax Act, 1961 and notice under Section 148 of the Act was issued on 26.03.2018 directing the assessee to file its return of income. The notice was duly served upon the assessee and the assessee submitted return of income on 13.11.2018 declaring total income at Rs. Nil. Notice under Section 143(2) of the Act was issued on 20.11.2018. Notice under Section 142(1) of the Act with a questionnaire was issued on various dates but the assessee did not file any details and, therefore, the assessment was finalised under Section 144 of the Act. The Assessing Officer observed that the assessee made time deposit and cash deposit of Rs.29,50,000/- during the year under consideration but failed to submit any details and, therefore, treated the said investment as unexplained expenditure .

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that as per the AIR information, the Assessing Officer observed that the assessee made cash deposit/cash transaction in Bank Account during the Financial Year 2010-11 but in fact during the year under consideration the assessee invested in the time deposit of Kalupur Co-operative Commercial Bank Limited for an amount of Rs.13,00,000/- as on 05.05.2010. The assessee also received copy of interest certificate of time deposit for the F.Y. 2010-11 from the said Bank. From the said Kalupur Co-operative Commercial Bank Limited, as per the details given in Pass Book, it is from where the amount of Rs.13,00,000/- was debited for the purpose of the said time deposit. The said transaction is being highlighted in the Bank Pass Book. The Assessing Officer received information from individual transaction statement, but the entry of the above time deposit were made twice by mistake. During the first appellate proceedings, the assessee tried to explain this fact and the source of time deposit with the documentary evidences as the assessee received Rs.11,50,000/- from Sankalp Corporation and balance Rs.1,50,000/- is from opening bank balance and cash deposit in the bank account, but the CIT(A) has not accepted this contention and confirmed addition of Rs.26,00,000/- by the stating that the credit worthiness of Sankalp Corporation could not be proved. The Ld. AR submitted that copy of

interest certificate received from Kalupur Co-operative Commercial Bank Limited in respect of time deposit of Rs.13,00,000/- was there on record and, therefore, the mistake of double entry should have been taken into account by the CIT(A). The Ld. AR further submitted that the assessee has not received any notice, therefore, the documentary evidences in support of this contention as additional evidences could not be filed before the CIT(A). The Ld. AR submitted that the source of Rs.13,00,000/- was from the Ahmedabad Mercantile Co-operative Bank Limited and the assessee transferred surplus money of Rs.13,00,000/- from Ahmedabad District Co-operative Bank account to Kalupur Co-operative Commercial Bank Limited. The Ld. AR further submitted that Sankalp Corporation had filed return of income on 09.07.2011 declaring total income at Rs.Nil. Thus, the creditworthiness of the parties cannot be doubted merely on the ground that the said party filed Nil return of income, but the details of the said Sankalp Corporation and the bank account reveals that the said Sankalp Corporation was having sufficient opening balance. The Ld. AR further submitted that the assessee had deposited cash of Rs.72,000/- in their Bank Account maintained with Ahmedabad District Co-operative Bank Limited on 13.04.2010 out of surplus cash balance available in their cash book. The Ld. AR submitted that as regards to receivable balance of Rs.30,91,472/- from Sankalp Corporation as on 01.04.2010 it is during the construction of each units of the society are not sold instantly and, therefore, the Bank account was not opened in the name of the assessee society and the maintenance as well as the affairs of the society was handed over to independent service provider entity i.e. Sankalp Corporation to collect the maintenance and other charges on behalf of the assessee society and responsible to maintain the society properly. The Ld. AR relied upon the decision of Hon'ble Gujarat High Court in the case of Rohini Builfers (2003) 127 taxman 523 (Gujarat) wherein it is stated that the assessee is not required to explain the source of source. The Ld. AR also relied upon the order of the Tribunal in case of ITO vs. Ashok Agarwal (2012) 20 taxman.com 472 (Agra). The Ld. AR submitted that the assessee was having investment and its source which was properly explained before the CIT(A) and made the time deposit of Rs.13,00,000/- with the Kalupur commercial Co-operative Bank Limited alongwith documentary evidences and, therefore, the Ld. AR submitted that the addition of Rs.26,00,000/- may be deleted.

6. The Ld. DR submitted that the assessee has not filed any income tax return and has not established the credit worthiness of Sankalp Corporation. There was no documentary evidence related to Sankalp Corporation whether provided any service to the assessee society or not. As regards the amount of Rs.9,05,000/-, the same was also not explained and, therefore, the additions be confirmed. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. As regards to ground no.1, the contention of the Ld. AR/assessee that the assessee has made time deposit and the entry was made twice by mistake appears to be genuine as the interest certificate of time deposit is reflecting Rs.13,00,000/- itself. The Bank Statement and the credit entry in the Bank Statement clearly explains the same. As regards to source in the hands of Sankalp Corporation, the assessee has given the details related to Bank Statement of Sankalp Corporation for Financial Year 2010-11 which reflects that Sankalp Corporation has sufficient balance. The addition in respect of Rs.26,00,000/- was duly explained by the assessee before the CIT(A) but the CIT(A) has totally ignored the factual aspect as well as the details/evidences such as Bank Statement as well as confirmation, ledger account and details of amount received from Sankalp Corporation and cash deposits. Therefore, the addition made by the Assessing Officer as well as confirmed by the CIT(A) does not sustain in respect of time deposit. Thus, ground no.1 is allowed.

7.1 As regards to ground no.2, on account of cash deposit, the assessee through records has shown that the cash deposits were genuine from the collection of maintenance charges and, therefore, the same was also explained by the assessee and hence addition of Rs.3,50,000/- on account of cash deposit does not sustain. Thus, ground no.2 is allowed.

7.2 As regards to ground no.3, related to issue of notice under Section 148 of the Act, from the perusal of records, it appears that the Assessing Officer has followed due process of law while reopening the assessee's case as the assessee was not filing return of income for the particular Assessment Year. The assessee

has not pointed out any error as to the technicality of the approval as well as the reasons recorded for reopening. Ground no.3 is thus dismissed.

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

Order pronounced in the open Court on this 10<sup>th</sup> January, 2024.

Sd/-  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 10<sup>th</sup> January, 2024**

**PBN/\***

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*