

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Ms. Suchitra Kamble, Judicial Member

ITA No. 569/Ahd/2023
Assessment Year 2016-17

Parshotambhai Naranbhai Gevariya, Ahmedabad PAN: AEDPG8088F (Appellant)	Vs	The Income Tax Officer, Ward-5(3)(1), Ahmedabad, (Respondent)
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Assessee by: Ms. Urvashi Sodhan, A.R.

Revenue by: Ms. Saumya Pandey Jain, Sr. D.R.

Date of hearing : 03-01-2024

Date of pronouncement : 12-01-2024

आदेश/ORDER

This is an appeal filed against the order dated 05-07-2023 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment year 2016-17.

2. The grounds of appeal are as under:-

"1. Ld. CIT(A) has erred in law and on facts in upholding that the information for reopening the case u/s. 147 is not vague information though the Assessing Officer has not specified the name of person by whom amount of Rs. 30,00,000/- has been paid to the appellant at the time of initiating the proceedings and without conducting independent enquiry.

2. Ld. CIT(A) has erred in law and on facts in upholding the addition of unsecured loan of Rs. 30,00,000/- u/s. 68 of the Act, though confirmation, ITR and bank statement of the lender have been furnished during the course of assessment proceedings and utilisation thereof has been established."

3. The assessee filed his return of income for assessment year 2016-17 on 11-03-2017 declaring total income at Rs. 18,53,600/-. The Assessing Officer observed that search in the case of JSSS (Sanjay Shah & Jignesh Shah) Group of Ahmedabad took place on 11-09-2018 and it was found that Shri Rajiv V. Shah has facilitated accommodation entries amounting to Rs.64.44 crores to various beneficiaries. There was regular activity of facility of such accommodation entries by Shri Rajiv C. Shah. In search case of Dharamdev Group, Shri Umang Thakkar admitted that Rajiv C. Shah has provided accommodation entries of Rs. 85.62 crores against unaccounted cash. During Dishman group search case, executive director, Shri Chirag Thakkar accounts Manager, admitted that Shri Rajiv C. Shah has been involved in activity of providing accommodation entries against unaccounted cash/cheque for cash vis-à-vis as well. In response to notice u/s. 148 of the Act, the assessee filed return of income on 01-02-2022 declaring total income at Rs. 18,53,600. Notice u/s. 142(1) was issued to the assessee and in response to the same, the assessee furnished confirmation letter and ITRV Form of M/s. Hartron Network Ltd. to contend that these details clearly establish identity and creditworthiness of the person and genuineness in respect of receipt of unsecured loan of Rs. 30,00,000/- received from M/s. Hartron Network Ltd. After taking cognizance of the reply and the details, the

Assessing Officer made addition of Rs. 30,00,000/- as unexplained cash credit u/s. 68 of the Act.

4. Being agreed by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The ld. A.R. submitted that as regards reopening the case u/s. 147, the same is not sustainable as it is on vague information and in fact the search was conducted in case of JSSS Group, Dharamdev Group, Dishman Group but the assessment has made the addition in respect of loans from M/s. Hartron Network Ltd. There was no corporation and thus the reopening itself is bad in law. The ld. A.R. relied upon the decisions of Hon'ble Gujarat High Court in case of Varshaben Sanatbhai Patel vs. (2015) 64 taxmann.com 179 and various Tribunal's decisions on the issue of reopening. As regards ground no. 2, the A.R. submitted that the addition of unsecured loan of Rs. 30,00,000/- u/s. 68 treating the same as unexplained cash credit, the assessee received the said amount from Hartron Network Pvt. Ltd. by RTGS and for which the assessee has filed confirmation, acknowledgement of return of income and bank statement of Hartron Network Pvt. Ltd. to establish the identity of the lender, genuineness of the transaction and creditworthiness of the lender. The

assessee has invested the said loan in which the shares in Kanungo Financer Ltd. which are held in demat account of the assessee till date and share of Kanungo Financers Ltd. presently quoted on the BSE. The ld. A.R. further submitted that the said Kanungo Financers Ltd. is a public listed and the findings of the Assessing Officer that it does not exist is not justifiable. The ld. A.R. relied upon the decision of Hon'ble Gujarat High Court in case of DCIT vs. Rohini Builders (2002) 256 ITR 360. The ld. A.R. also relied upon the decision of Hon'ble Delhi High Court in case of PCIT vs. Adamine Construction Pvt. Ltd. (2018) 99 taxmann.com 44. The assessee has given all the details to establish the said loan and the investment of the said loan as well and therefore the Assessing Officer has arbitrarily rejected the explanation of the assessee on the ground that the lender has filed a loss return overlooking the source of fund evidently from the bank statement of the lender.

6. The ld. D.R. as regards ground no. 1 submitted that the Assessing Officer has rightly reopened the assessee's case as certain documents and the statements were found during the search of those three groups. Merely making addition in respect of unsecured loans cannot term the reopening invalid. As regards ground no. 2, the ld. D.R. submitted that the Assessing Officer as well as CIT(A) has rightly observed that if

the return is filed in loss by the said Hartron Network Ltd. then the creditworthiness and genuineness is doubtful. The ld. D.R. relied upon the assessment order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant materials available on record. From the perusal of the reasons for reopening, it was in respect of the search conducted on three entities and the verification is a must for these transactions and the statements made by the concerned directors and the accountants of the said groups. There was no other discrepancies pointed out by the assessee and therefore reopening is valid. Thus, ground no. 1 is dismissed. As regards ground no. 2, it can clearly be stated that the assessee has given confirmation of bank statement of M/s. Hartron Network Ltd. as well as the intention for obtaining said loan thereby saying that the assessee invested the said amount for acquiring the shares of Kanungo Financers Ltd. the Assessing Officer doubted the expenses of Kanungo Financers Ltd. but documents and details reveal it otherwise as it is an operational company. As regards, the loss return filed by the M/s. Hartrol Network Ltd., from the perusal of the bank statement and the relevant documents the said company was having sufficient balance to give the loan to the assessee at the particular period. Merely filing the loss return cannot

shake the intention of loss return company as they might have reserve funds which in the present is clearly shown in the bank statement as well as its returns (Profit and Loss account). The confirmation itself was not doubted by the Assessing Officer and therefore this transaction is properly explained by the assessee and section 68 will not come into picture. This ground no. 2 is allowed.

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

Order pronounced in the open court on 12-01-2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad : Dated 12/01/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद