

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "A", अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" A " BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.477/Ahd/2019  
Assessment Year : 2010-11

The ITO Ward-2(1) Ahmedabad	Vs	Shri Mukesh N. Shah 6, Dhvani Apartments Shahpur Vhai Centre Shahpur, Ahmedabad
PAN: AMKPS 9584 P		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
------------------------	--	--------------------------

Assessee by :	Shri Sudhir Mehta, AR
Revenue by :	Shri R.N. Dsouza, CIT-DR

सुनवाई की तारीख/Date of Hearing : 12/02/2024  
घोषणा की तारीख /Date of Pronouncement: 21/02/2024

**आदेश/ORDER**

**PER MS.SUCHITRA KAMBLE, JUDICIAL MEMBER**

This appeal is filed by the Revenue against the order dated 24/12/2018 passed by the Commissioner of Income-tax (Appeals)-2, Ahmedabad [hereinafter referred to as "CIT(A)" in short] for Assessment Year (AY) 2010-11.

2. Grounds of appeal are as under:

*"1. The Ld.CIT(A) has erred in law and on facts in restricting the protective addition to amount credited in the account of the assessee by Lunia Finlease Ltd.*

2. *The Ld CIT(A) failed to consider the circumstantial evidences brought on record by the AO indicating the role of the assessee in the bogus credit entries reflected in books of Lunia Finlease Ltd.*

3. *The Ld CIT(A) ought to have considered the protective addition as substantive addition in absence of any substantive addition made in the hands of the two proprietary concerns i.e. Shreechal Corporation and Ramdev Marketing*

4. *The Ld CIT(A) failed to appreciate that the Apex Court decision in the case of Manoranjan Das vs State of Jharkhand [650 of 1998) to determine the responsibility of a introducer in Bank Accounts was in relation to criminal proceedings and not Civil proceedings and Civil proceedings use the system of 'preponderance of probabilities' to determine the rights and liabilities of individuals whereas criminal proceedings require the accused individual's offence to be proved 'beyond reasonable doubt.'*

3. In this case, assessee has not filed return of income and the Revenue office received information from Assistant Director of Income Tax (Investigation), Ahmedabad vide letter dated 17/03/2017 that enquiry was conducted in the case of M/s.Ramdev Marketing (Prop. Ushaben Nareshbhai Shah), M/s.Shrichal Corporation (Prop. Tirupatiben Harishbhai Shah) and M/s.Lunia Finlease Ltd. It was found that there was movement of large accounts within the accounts of the same branch in a day having no economic rationale observed by the Assessing Officer. The Assessing Officer further observed that the large amounts were deposited either in cash or clearing and then transferred to other accounts and thereafter finally the whole amount remitted through clearing in the same day or next day. After recording the reasons for reopening and obtaining necessary approval from the Competent Authority dated 29/03/2017, notice u/s.148 of the Income Tax Act was issued on 30/03/2017. The same was duly served, but no reply was received from assessee, therefore, notice u/s.142(1) r.w.s.129 of the Act dated 16/06/2017 was issued and duly served upon the assessee requiring him to furnish copy of return of income filed in response

to notice u/s.148 of the Act, copy of audited books of accounts, bank details and copy of bank statements. After issuing reminder vide notice u/s.142(1) of the Act dated 24/08/2017, a show-cause notice u/s.142(1) dated 15/11/2017 was issued. The said notices were not complied by the assessee and, therefore, the Assessing Officer issued summons u/s.131 of the Act dated 24/11/2017 and served the same through affixture. Final show-cause notice dated 08/12/2017 was issued. The submission containing return of income filed on 15/12/2017 along with copy of computation of income and copy of financial statement in response to notice u/s.148 of the Act by the assessee. In the return of income, assessee has shown total income of Rs.7,63,520/- which includes the receipts as appearing in ITS data. The assessee further submitted letters dated 20/12/2017 and 21/12/2017, thereby taking a stand that he is just an introducer in the bank accounts and the transactions does not belong to him. The Assessing Officer observed that these transactions pertained to assessee as he acted as a person behind scene by becoming merely introducer in all the bank accounts to escape enquiry and litigation. Therefore, the Assessing Officer held that all the credit entries appearing in the bank accounts of the entities totalling to Rs.82,44,91,021/- should be added to his total income. The Assessing Officer held that all these entities; namely, M/s.Lunia Finlease Ltd., M/s.Shrichal Corporation and M/s.Ramdev Marketing have substantive additions in respect of credit entries in the respective bank accounts and, therefore, with a view to protect the interest of Revenue in assessee's case, protective addition of Rs.82,44,91,021/- was made u/s.68 of the Act.

4. Being aggrieved 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.DR submitted that the CIT(A) erred in law in restricting the protective addition to amount credited in the accounts of the assessee by M/s.Lunia Finlease Ltd. and failed to consider the circumstantial evidences brought on record by the Assessing Officer indicating the role of the assessee in the bogus credit entries reflected in the books of account of M/s.Lunia Finlease Ltd. The Ld.DR further submitted that the CIT(A) ought to have considered the protective addition as substantive addition in absence of any substantive addition made in the hands of the two Proprietary concerns; namely, M/s.Shrichal Corporation and M/s.Ramdev Marketing. The Ld.DR further submitted that, as per the report filed by the ITO vide e-mail dated 06/06/2023, which reproduced hereunder:

*"Sir*

*With reference to above subject, it is submitted that this office has tried it best to locate the case record of case record of Smt Tirupatiben H. Shah & Smt. Ushaben N. Shah for the A.Y. 2010-11 but exercise does not yield any significant result. The information in these two cases, as available with this office is given below:*

*Smt Tirupatiben H shah. Prop of Shrichal Corporation (BQRPS4757Q)*

*2.1 In this case partial case record of the A.Y. 2010-11 has been traced. On perusal of which it is found that that approval for the reopening of the cases of the assessee for the A.Y. 2010-11 and 2011-12 had been accorded by the PCIT-1, Ahmedabad on 28.03.2017, however no notice u/s 148 available in the record. Information received from the O/o ADIT (Inv)-2(1), Ahmedabad, Notice u/s 142(1) r.w.s. 129 dated 07.07.2017 and notice u/s. 144 dated 16.08.2017 is also available in the case record but no assessment order is there. On going through ITBA system, no demand for the A.Y. 2010-11 found.*

*22 It is further informed to you that assessment case record of the A.Y. 2011-12 is found and in the case record order u/s.144 r.w.s. 147 dated 04.12.2018, available*

*vide which addition of Rs.5,02,22,900/- for the unexplained credits in the bank account no 08060210000656 of the Uco Bank of the assessee was made. Moreover, penalty order u/s 271F and 271(1)(c) of the act, are also available on the record. On going through ITBA system, it is found that demands of above orders of A.Y. 2011-12 reflecting on the system.*

*2.3 No record of appeal is available either in case records or in the ITBA system.*

*Smt. Ushaben N Shah, Prop. of M/s Ramdev Marketing (BMPPS4956R)*

*3.1 In this case partial case record has been traced. On perusal of which it is found that approval for the reopening of the cases of the assessee for the A.Y. 2010-11 and 2011-12 had been accorded by the PCIT-1, Ahmedabad on 28.03.2017, however no notice u/s 148 available in the record. Information received from the O/o ADIT(Inv)-2(1), Ahmedabad and notice u/s 142(1) r.w.s. 129 dated 07.07.2017 is also available on the case record but no assessment order is there. On going through ITBA system, no demand of the assessment for the A.Y. 2010-11 found. However, demand of penalty u/s 271F for the A.Y. 2010-11 is reflecting on the ITBA. On going through the penalty order it is found that same was levied for the A.Y. 2012-13 but erroneously penalty order was generated for the A.Y. 2010-11.*

*3.2 It is also informed to you that demand of Rs. 26,68,910/-, u/s 144 and of Rs. 11,50,377/-, u/s 271(1)(c) the Act, for the A.Y. 2012-13 is reflecting on the ITBA.*

*3.3 No record of appeal is available either in case records or in the ITBA system."*

5.1. The Ld.DR further submitted that the CIT(A) ignored the fact that the repeated non-compliance by the assessee to the statutory notices before the Assessing Officer and not giving any explanation for the credit entries/transactions which are directly or indirectly relates to him was rightly added by the Assessing Officer. All the three entities; namely, M/s.Ramdev Marketing (Prop.Ushaben Nareshbhai Shah), M/s.Shrichal Corporation (Prop. Tirupatiben Harishbhai Shah) and M/s.Lunia Finlease Ltd. are different entities, but the assessee is a common introducer in the bank accounts of all the three different entities. The Ld.DR submitted that the assessee failed to explain how he knows all these entities which are engaged in the same account of malpractices. The Director of M/s.Lunia

Finlease Ltd. Shri Rajiv D.Shah is a neighbour of the assessee and both are residing in the same Apartments. The Ld.DR submitted that since there was no substantial addition in the other entities, the protective addition has to be confirmed by the CIT(A).

6. The Ld.AR submitted that from the perusal of the letter produced by the Ld.DR dated 06/06/2023, it is categorically pointed out that the Department has not raised any demand in case of M/s.Shrichal Corporation and no assessment order was passed in case of M/s.Ramdev Marketing. The CIT(A) has rightly deleted the addition on the ground that the Assessing Officer made the protective addition in the credit of three bank accounts merely for the reason that bank accounts were introduced by the assessee, but there is no other material other than the signature of account opening form and no evidence whatsoever that the said accounts in any way belonged to assessee. Thus, the CIT(A) has rightly confirmed the addition to the extent of Rs.1,50,000/- which has been transferred from account of M/s.Lunia Finlease Ltd. to the assessee and the protective addition in the hands of assessee to that extent only. The Ld.AR relied upon the order of the CIT(A) and further submitted that any case of M/s.Shrichal Corporation and M/s.Ramdev Marketing in subsequent assessment years the addition has been made.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the Assessing Officer made the addition *prima facie* and with the main reason that the assessee was the introducer in the bank accounts opening form for these three entities, but for M/s.Lunia Finlease Ltd., it was categorically found that the account was opened on the

application filed by the said three Directors of the said companies. In case(s) of M/s.Shrichal Corporation and M/s. Ramdev Marketing, the same was applied for opening of bank accounts and PAN Card, Driving Licence and Election Card have been submitted for KYC documents. Shri Mukesh N. Shah, i.e. assessee has signed as introducer for opening the bank account only and the Assessing Officer, at no point of time, has pointed out that the sale amount was, in fact, of the assessee's amount which is lying in these three accounts. The e-mail submitted by the Ld.DR at the time of hearing categorically mentions that the demand in case of M/s.Shrichal Corporation was reflected in the system for AY 2011-12 for unexplained credits in the bank account. As regards AY 2010-11 is concerned, no records were found. Similarly, in case of M/s.Ramdev Marketing no demand of the assessment was found, but this will not prove the case of the Revenue that the assessee is liable to the additions which are actually the additions relating to those two parties. The Department, at no point of time, has pointed out as to the credit entries appearing in all these three entities are belonging to the assessee and, therefore, protective addition cannot be held as substantive addition when the Department has not taken proper cognizance in the cases, where the substantive addition should have been done. The CIT(A) has categorically made the observation that the Assessing Officer has no evidence whatsoever that the accounts of these three companies belonged to assessee. In fact, where there was a doubt, the CIT(A) has categorically made protective addition to the extent of Rs.1,50,000/- on account of M/s.Lunia Finlease Ltd. Thus, there is no need to interfere with the finding of the CIT(A). The appeal of the Revenue is dismissed.

8. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the Court on 21<sup>st</sup> February,2024 at Ahmedabad.**

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Ahmedabad, Dated 21/02/2024

*टी.सी.नायर, व.नि.स.।T.C. NAIR, SK. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-2, Ahmedabad
5. विभागीय प्रतिनिधि,अपीलीय अधिकरण आयकर ,राजोक्त/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad