

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.69/Ahd/2021
(Assessment Year: 2017-18)

Assistant Commissioner of Income Tax, Central Circle-2(4), Ahmedabad	Vs.	Darshanbhai Manubhai Patel, 20, Santosha Park Society, Nr. Jayantilal Park, Ambli Bopal Road, Ahmedabad-380058
[PAN No.AFSPP0196D]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Aarsi Prasad, CIT-DR
Respondent by:	Shri Hardik Vora, A.R.

Date of Hearing	14.03.2024
Date of Pronouncement	05.04.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals)-12, (in short “Ld. CIT(A)”), Ahmedabad in Appeal Nos. CIT(A)-12/AHD/95/CC-2(4)/2019-20 vide order dated 23.02.2021 passed for Assessment Year 2017-18.

2. The Revenue has taken the following grounds of appeal:-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the protective addition of Rs.19,71,00,000/- made as unexplained investment u/s. 69 of the I.T. Act without going into the decision in the case of substantive addition made.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the AO is not justified in making the impugned addition by restoring to the provisions contained in section 292C of the I.T. Act.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO.

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4. *It is, therefore, prayed that the order of Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent.”*

3. The brief facts of the case are that the assessee is an individual who derives income from salary, house property, business income, capital gains and other sources. He filed his return of income for the year under consideration disclosing income at Rs. 1,71,01,110/- on 31.10.2017. A survey under Section 133A of the Act was conducted in the case of Maruti Nandan Developers on 16.02.2018 at their business premises. During the course of survey, certain loose paper sheets were found and impounded from the said business premises. Statement of Shri Shailesh Ramanlal Patel, Accountant of Marutinandan Developers was recorded during the course of survey. The Assessing Officer observed that an entry at Sr. No. 22 of Page 1 of Annexure A-1 impounded during the course of survey mentioned an amount of Rs. 19,71,00,000/- against which “DM” was written. Shri Shailesh Patel, Accountant of surveyed party of M/s. Marutinandan Developers in his statement had stated that DM in the said entry stood for Darshan Manubhai Patel i.e. the assessee. Subsequently, Shri Ketan Ratilal Patel (Partner of Marutinandan Group) endorsed the statement of Shri Shaileshbhai Patel. However, during the assessment proceedings of Shri Ketanbhai R Patel, he filed a letter dated 27.12.2019, and submitted before the Assessing Officer that the words “DM” at Sr. No. 22 of Page 1 stood for “Divine Marutinandan” a proposed scheme of Marutinandan Developers and that the words “DM” had nothing to do with Darshan Manubhai Patel. However, during the course of assessment of the assessee, the Assessing Officer observed that though Shri Ketan Ratilal Patel had owned up the entry No. 22 at Page No. 1 of Annexure A-1 as his

investment in project Divine Marutinandan, which did not materialize, however, Ketanbhai Patel has failed to file revised return taking into consideration the above investment as part of his total income. In view of the above, sanctity cannot be accorded to the statement of Shri Ketanbhai Patel. Therefore, in order to protect the interest of the Revenue, the Assessing Officer made addition of Rs. 19,71,00,000/- in the hands of the assessee, on “protective basis”, treating the same as unexplained investments under Section 69 r.w.s. 115BBE of the Act.

4. Before CIT(A), the assessee submitted that the Assessing Officer has made the aforesaid addition solely relying on the entry in the loose paper sheets found and impounded during the survey under Section 133A carried out in the case of unrelated third party and by relying on the statement recorded during the survey of an unrelated third party (accountant of surveyed party) and made an addition of Rs. 19,71,00,000/- on protective basis. The assessee submitted that the addition is illegal since it has been made without offering an opportunity to the assessee to cross-examine Shri Shaileshbhai R Patel, whose statement has been relied upon for making the impugned addition. The assessee relied upon several judicial precedents which have held that no addition can be made on the basis of an unrelated third party, without offering the assessee an opportunity to cross-examine the such person. The assessee submitted that denial of an opportunity to cross-examine the deponent in spite of specific request made in this regard is violation of principle and natural justice and therefore, the impugned addition is not sustainable in the eyes of law, in light of the decision of Hon’ble Supreme Court in the case of **M/s. Andaman Timber Industries**

vs. Commissioner of Central Excise (Civil Appeal No. 4228 of 2006) and also the judgment in the case of **CIT vs. Odeon Builders Pvt. Ltd. in SLP No. 9604-9605 dated 21.08.2019**. Secondly, the assessee submitted that loose paper sheets found and impounded during the course of survey under Section 133A in case of an unrelated third party has no evidentiary value in the case of the assessee and the assessee relied upon the decision of Hon'ble Supreme Court in the case of **CBI vs. VC Shukla and others 35 SSC 410** and also in the case of **Common Causes vs. Union of India 77 taxmann.com 245 (SC)** in this regard. Thirdly, the assessee submitted that Shri Ketanbhai Ratilal Patel, the main person / partner of Marutinandan Developers and other group concerns has without any ambiguity owned up the loose paper sheets found and impounded during the course of survey and admitted that loose paper sheets belonged to Marutinandan Developers Group and had nothing to do with the assessee. Shri Ketanbhai Ratilal Patel vide letter dated 27.12.2019 addressed to ACIT, Income Tax Circle 2(4), Ahmedabad has clearly submitted that the papers in question belong to Marutinandan Developers and that the letters DM at Sr. No. 22 of Page 1 of Annexure A-1 denotes "Divine Marutinandan" and DM was used as an acronym for the proposed scheme of "Divine Marutinandan", which was subsequently abandoned. Further, the assessee submitted that the Assessing Officer has not disputed the contents of the said letter, wherein Shri Ketanbhai Ratilal Patel has without ambiguity and in clear terms acknowledged and accepted the fact that the loose paper sheets impounded during the survey pertains to their firm and that the letters DM stand for "Divine Merutinandan" and not Darshanbhai Manubhai Patel i.e. the assessee. Further, the Assessing Officer has also not disputed the veracity

of the contents of the aforesaid letter written by Shri Ketanbhai Ratilal Patel. Further, the assessee submitted that the Assessing Officer has not brought on record any evidence to show that it was the assessee who had made the alleged investments. Accordingly, the assessee submitted that the action of Assessing Officer in making the protective addition is unwarranted especially when Shri Ketanbhai Ratilal Patel has admitted and owned up the transactions in a letter written to the Assessing Officer, the contents of which have not been disputed.

7. In view of the submissions made by the assessee, the CIT(A) deleted the additions made in the hands of the assessee, with the following observations:-

“9. I have considered the facts and surrounding circumstances carefully. I have also gone through the written submission filed by the appellant and also the case laws relied upon by the AR during the appellate proceedings. I have also carefully perused the assessment order under appeal. I find considerable force in the written submission filed by the appellant and the oral arguments put forth by the AR in the course of appellate proceedings. It is found that the impugned protective addition has been made solely on the ground that Shri Ketanbhai R Patel has not filed Revised Return of Income for the relevant period. Further, it also emerges from the oral arguments that the impugned addition on protective basis has been made by placing reliance on the alleged entries recorded on the loose paper found and impounded during the course of survey from the business premises of third party. This is on record that the appellant was not allowed an opportunity to cross examine Shri Shaileshbhai R Patel the said deponent whose statement was relied upon by the A.O. while making the impugned addition. This is an undisputed fact that the alleged loose paper sheet on which the AO had relied upon for making the impugned addition was not found in the possession and control of the appellant. It is held in the case of Common Cause vs Union of India (supra) that computer print outs, loose paper sheets, print outs from the pen drives etc. are not admissible evidences under the Indian Evidence Act. In the case of Andaman Timber Industries (Supra) and also in the case of Odeon Builders (supra) in which the Hon'ble Supreme Court has held that an addition made on the basis of statement of Third party without affording the assessee an opportunity to cross examine a deponent whose statement has been relied upon for making the addition is not sustainable in the eyes of law. Having regard to the totality of the facts and circumstances of the case and respectfully following the judgement of the Supreme Court cited supra and also the

judgement of the High court and ITAT including the jurisdictional ITAT relied upon in the written submission filed by the appellant, I don't find any justification in making the impugned addition albeit on protective basis by the A.O.

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15. *I have carefully considered the written submission made by the appellant in the course of appellate proceedings. I have also gone through the assessment order under appeal in this regard. It is worthwhile to state that when the person surveyed has duly acknowledged, admitted and accepted that the transactions recorded on the impounded loose papers i.e. pages 1 and 2 of Annexure A/1 found and impounded during the course of survey were carried out by the said Shri Ketan R Patel, the undisputed emerging fact legal position is that any profit or gains arising from such transaction shall be taxable in the hands of the person concerned. Moreover, Shri Ketan R Patel has categorically stated that the appellant namely Darshanbhai Manubhai Patel is in no way connected to the transactions referred to the Annexure A/1. In view of this the action of the AO in making addition on the protective basis in the case of the appellant on the ground that Shri Ketan R Patel has not filed a revised return of income is misconceived and misdirected. It has further been noted that the AO himself is not convinced prima facie about the taxability of impugned amount in the hands of the appellant in absence of corroborative evidence. Besides the owning up of the transaction by Shri Ketan Patel made the facts abundantly clear that there was no ground for adding the same in the hands of the appellant. However, the AO still went ahead for making the addition on protective basis for the sake of making the addition somehow. Therefore in view of the above discussions and surrounding facts I don't find any ground for making an addition on protective basis before making any substantive additions thereof in the hands of other person.”*

8. The Department is in appeal against the order passed by Ld. CIT(A) deleting the addition made in the hands of the assessee on protective basis.

9. In appeal before us, the Ld. D.R. placed reliance on the observations made by the Assessing Officer in the assessment order. The Ld. D.R. submitted that the accountant of Marutinandan Developers (surveyed party) has clearly given a categorical statement that the term “DM” pertains to the words “Darshan Manubhai Patel” i.e. the assessee. Further, the D.R. submitted that there no documentary evidence whatsoever has been found which would show that there was any project by the name of “Divine Marutinandan”, which has allegedly been abandoned. Therefore, in view of

the categorical statement of the accountant of Marutinandan Developers and also the fact that there is nothing on record to suggest that any project by the name of “Divine Marutinandan” ever existed, which was stated to have been abandoned, clearly, the investments pertained to the assessee and therefore, Ld. CIT(A) erred in deleting the additions made in the hands of the assessee on “protective basis”. In response, the Counsel for the assessee relied on the observations made by Ld. CIT(A) in the appellate order.

10. We have heard the rival contentions and perused the material on record.

11. On going through the facts of the instant case, and the observations made by the Ld. CIT(A) in the appellate order, we are of the considered view that Ld. CIT(A) has not erred in facts and in law in deleting the additions made in the hands of the assessee on protective basis. This is for the reason that the additions were made in the hands of the assessee, solely on the basis of statement of Shri Shailesh Ramanlal Patel, accountant of Marutinandan Developers, without offering the assessee an opportunity to cross-examine the said person. Secondly, the main person i.e. partner of Marutinandan Developers, whose premises were searched, has categorically stated that the words DM stand for Divine Marutinandan, a project of Marutinandan Developers, which was later abandoned. Further, Shri Ketan Ratilal Patel has specifically stated that the assessee Shri Manubhai Darshan Patel has nothing to do with the aforesaid investments made in the said project and all the investments in the said project belonged to Shri Ketan Ratilal Patel himself. Ld. CIT(A) has correctly observed that the contents of the said letter written by Shri Ketanbhai Ratilal Patel to the concerned

Assessing Officer have not been disputed by the Department at any stage of the proceedings. Further, the Assessing Officer has not brought on record any concrete evidence to prove that the words DM stand for Darshan Manubhai Patel, and no evidence has been brought on record to show that it was the assessee who had made investments in the said project. Further, in the assessment of Shri Ketanbhai Ratilal Patel, the words DM have been accepted to denote “Divine Marutinandan”, a project of Shri Ketanbhai Patel. Accordingly, looking into the instant facts, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

12. In the result, the appeal of the Department is dismissed.

This Order pronounced in Open Court on	05/04/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 05/04/2024

TANMAY, Sr. PS

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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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad