

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

BEFORE MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

ITA No. 250/Ahd/2018
Assessment Year : 2012-13

Emporis Projects Ltd., Shop No. 119, Model Township Recedency, Saroli Kadodara Road, Surat, Gujarat-395010 PAN : AABCN 0273 G	Vs	Income Tax Officer, Ward - 2(1)(1), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Mehul K. Patel, Advocate
Revenue by :		Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 08/05/2024
घोषणा की तारीख /Date of Pronouncement: 17/05/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER:

The present appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals)-6, Ahmedabad (hereinafter referred to as 'CIT(A)') dated 30.11.2017, pertaining to the Assessment Year 2012-13, which has arisen from the order passed by the Assessing Officer dated 30.3.2015 under section 143(3) of the Income Tax Act, 1961(hereinafter referred to as 'the Act').

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

1. *Under the facts and circumstances of the case, the appellate order passed by the Ld. CIT (A)-6, Ahmedabad is illegal being passed without any jurisdiction over the case of the appellant which was centralized with DCIT, Central Circle - 2(2), Mumbai vide order of Pr. CIT - 2, Ahmedabad on 23/09/2015 and thus, CIT(A)-48, Mumbai had jurisdiction over its case and a specific request for transfer of the same to current jurisdiction was made before the Ld. CIT(A)-6, Ahmedabad.*

2. *That the Ld. CIT(A) grossly erred in law by violating the principle of judicial consistency as well as in facts of the case in ignoring the appellate orders in the cases of other group companies wherein similar additions under Section 68 of the Act were deleted by Ld. CIT(A)-48, Mumbai and the assessment order was set-aside by the Hon'ble ITAT, Mumbai.*
3. *That the Ld. AO erred in facts of the case in making additions of share capital/ premium of Rs. 44,28,50,300/- u/s 68 of the Act which were received by the appellant during earlier years and Ld. CIT(A) grossly erred in law in confirming the said additions only on the contention that no rectification application was filed by the appellant before the Ld. AO.*
4. *That the Ld. AO erred in law in making additions of share capital/ premium of Rs. 158,91,92,900/- u/s 68 of the Act in the case of the appellant company despite the irrefutable fact that the appellant company is a conduit/ paper/ shell company.*
5. *The Ld. CIT(A) has grossly erred in law in confirming additions of Rs. 158,91,92,900/- u/s 68 of the Act in the case of the appellant company by differentiating the judgment of Hon'ble High Court of Delhi in the case of Pr. CIT vs Vijay Conductors India Pvt. Ltd. 2015-TIOL- 2337-HC-DEL-IT on the premises that in the said case the fact of being conduit company was evident from the order of Hon'ble ITS and no such order existed in the case of the appellant despite the fact that search and survey actions were undertaken on the basis of these allegations itself.*
6. *That the Ld. AO erred in facts of the case in making additions of unsecured loans of Rs. 5,37,43,270/- u/s 68 of the Act which were received by the appellant during earlier years and Ld. CIT(A) grossly erred in law in confirming the said additions only on the contention that no rectification application was filed by the appellant before the Ld. AO.*
7. *That the Ld. AO erred in law in making additions of unsecured loans of Rs. 41,51,48,270/- u/s 68 of the Act in the case of the appellant company despite the irrefutable fact that the appellant company is a conduit/ paper/ shell company.*
8. *The appellant craves leave to add, alter, modify, and withdraw any ground of appeal before or during the appellate proceedings.*

Facts of the case:-

3. The assessee company was incorporated on 24/03/1995 with an object to carry on the business of trading in equity shares, however, the company had

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nominal receipts and income till 2011. The appellant company with a view to undertake business activities and expand itself needed funds. During the F.Y. 2010-11, Sh. Shirish C. Shah who had sound knowledge in Financial and Capital market entered into the company and proposed to raise funds for the company through various products like Convertible Equity Warrants/ Preferential issue of equity shares against the traditional fund-raising options like debt. On the basis of various presentations and explaining the huge potential of value creation, company engaged the services of Sh. Shirish C. Shah. The assessee company provided him with all the relevant documents and formalities for funds raising programme. Thereafter, during the F.Y. 2010-11 itself, an application was made to the Registrar of Companies for increase of authorised share capital from Rs. 10,00,00,000/- to Rs. 45,00,00,000/- and the assessee company started receiving the share application money from several subscribers. The money raised was deployed directly under the guidance of Sh. Shirish C. Shah. He assured to the company that whatever funds are deployed/invested by him would be made available to the company as and when need arises. During the year under consideration share capital of the appellant company was increased from Rs. 15,96,42,700/- to Rs. 31,04,96,600/-, i.e., by Rs. 15,08,53,900/-. Also, the share premium was increased by Rs. 1,50,85,39,000/- Thus, the increase in share capital and share premium of the appellant company aggregated to Rs. 1,65,93,92,900/-. Out of this, Rs.44,28,50,300/- were received in FY 2010-11 and balance Rs.1,21,65,42,600/- in FY 2011-12. AO during the course of assessment u/s 143(3) of the Act, added Rs. 1,58,91,92,900/- (Rs. 1,65,93,92,900/- less: Rs.7,02,00,000/- being received during earlier years) u/s 68 of the Act. Ld. CIT(A) confirmed the addition concluding that the assessee failed to prove the identity, creditworthiness, and genuineness of the transactions. AO also concluded in his order that the company is "sham company".

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4. There were unsecured loans of Rs. 41,51,48,270/- outstanding as on 31 March 2012. Out of which Rs. 5,37,43,270/- were received in FY 2010-11 and the balance of Rs. 36,14,05,000/- were received in FY 2011-12. During the course of assessment proceedings u/s 143(3), the AO added the entire amount of outstanding loans as on 31 March 2012 u/s 68 of the Act amounting to Rs. 41,51,48,270/-. Ld. CIT(A) confirmed the addition concluding that the assessee failed to prove the identity, creditworthiness and genuineness of the transactions.

5. In case of confirmed additions pertaining to amounts received in FY 2010-11 in case of unsecured loans of Rs. 5,37,43,270/- and share capital along with share premium of Rs. Rs. 44,28,50,300/-, Ld. CIT(A) stated that the mistake should have been rectified by filing rectification application before the AO as no plea was taken before the AO. Thus, Ld. CIT(A) confirmed the said additions as no rectification application was filed by the assessee before the Assessing Officer.

6. The office of AO recorded the statement of Jayantibhai Virdas Patel u/s 131 of the Act, who was former director of the company. On the basis of the recorded statement and information uncovered by the investigation wing of Mumbai and Ahmadabad, it was revealed that the company was managed and controlled by Shirish Chandrakant Shah and he was involved in the business of providing accommodation entries. Beneficiary clients paid cash to Shirish Chandrakant Shah against cheques. To camouflage the money trail of the accommodation entries Shirish Chandrakant Shah used an infrastructure of 212 companies including 16 listed companies. These listed companies were used to provide entries of long-term capital gains by rigging price of shares.

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7. Though Shirish Chandrakant Shah was not formally associated with any of these 212 companies either as a shareholder or as a director, evidence was found during the search/survey. Post search investigations established that he exercised complete control over these 212 companies by way of engaging Dummy Directors for these shell-companies under his control at a retainer-ship of Rs. 10000 to Rs. 15000 per company per year. Statements of two main persons, who arranged multiple Directors for these shell-companies, described in detail their respective roles and the main role of Shirish Chandrakant Shah in the accommodation entries racket. In addition to the above, admission by way of notarized declarations was filed by such Dummy Directors of aforesaid companies, including 13 listed companies, (managed and controlled by Shirish Chandrakant Shah) wherein they admitted that they are mere name-lenders and were not aware about the activities of the companies in which they were (as per record of Ministry of Corporate Affairs) shown as Directors. During the course of search, statements of directors /promoters of some of the listed companies controlled by Shirish Chandrakant Shah were recorded who, too admitted that their bank accounts were used by Shirish Chandrakant Shah for layering of funds for providing accommodation entries.

8. It was admitted by Shirish Shah himself that though substantial cash was received by him as per documentary evidence, no commensurate cash deposits had been noticed/found in the 257 bank accounts used by him. Shirish Chandrakant Shah also identified the companies controlled/managed by him and the assessee company was one of them.

9. The AO reproduced extract of statements of Shirish Chandrakant Shah and other persons recorded on various dates in his order to establish their role in accommodation entries against cash and concluded that the onus to prove genuineness of these credit entries is shifted to the assessee.

On the grounds of appeal:

10. The counsel for the assessee took us through the assessment order and stated that it is quite clear that the assessee-company was only used as a conduit by Shri Shirish C. Shah to provide accommodation entries to ultimate beneficiaries and, therefore, such income could not be assessed in the hands of the assessee-company.

11. The counsel for the assessee also placed before us the assessment order of the assessee for the A.Y. 2013-14. The said order for the A.Y. 2013-14 was passed u/s 143(3) read with section 153C of the Act consequential to the search u/s 132 carried out at the various premises of Shri Shirish C. Shah. As per the said assessment order no addition was made in respect of share capital and share premium received during the corresponding previous year. For the sake of clarity, the relevant para is reproduced hereunder:-

“18. Therefore considering the overall facts of the case and seized material found from the premises of Shri Shirish C Shah and the assessee's own admission that Shri Shirish C Shah brought all the funds and deployed also, I hold that the assessee was engaged in providing accommodation entries with the help of Shri Shirish C Shah. All the income from providing entries is taxed in the hands of Shri Shirish C Shah as per the documents found during the course of search at the premise of Shri Shirish C Shah. Therefore, no separate income is taxed in respect of commission etc earned in the course of providing accommodation entries in the hands of the assessee company and its income is accepted as it is except disallowance u/s 14A etc.”

12. From the said order, it is clear that the AO has taken different and contradictory stand while dealing with the similar issue in the present case.

13. The counsel for the assessee brought to our notice following judgements of Hon'ble ITAT Mumbai in which similar issue was adjudicated:-

1. Nishottam Traders Pvt. Ltd. Vs ITO ITA No.6874/MUM/2014
2. T C Software Consultancy Pvt. Ltd. vs. ITO ITA No. 6142/MUM/2016

14. We have noted the content of these judicial pronouncements.
15. The counsel for the assessee also pointed out that the commission income earned by Shirish C Shah has been assessed in his hand by DCIT Central Circle – 2(2) Mumbai. At the same time, he could not produce any documentary evidence to that effect, as he is not privy to the same.
16. Relying on the judgments of Hon'ble ITAT Mumbai, the counsel for the assessee requested to refer the matter back to AO. On the other hand, Ld. DR relied on the order of Ld. CIT(A) and did not object to sending the matter back to AO for redeciding the matter afresh.
17. The counsel further stated that he is not pressing for the Ground No.1.
18. The other grounds are dealing with the addition on account of share capital along with share premium and unsecured loans. The point raised is as to whether any addition with respect to the impugned transactions is maintainable in the hands of the assessee-company. Notably, a search action took place on one Shri Shirish C. Shah, which revealed that the assessee-company was used as a conduit by the said person to provide accommodation entries to various beneficiaries.
19. Therefore, it is necessary to ascertain that in whose hand the income is to be assessed whether in the hands of Shirish Chandrakant Shah or the assessee. It is observed by both AO and Ld. CIT(A), that the assessee company is only providing the accommodation entries whereas the real beneficiary of the of the income from the said transactions was Shirish Chandrakant Shah.
20. We also note that there exist two contradictory assessment orders on the same issue, though for two different assessment years. So, the moot point is as to whether on the same point contradictory findings of the AO can survive in the two assessments? Firstly, in the instant assessment made u/s 143(3) of the

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Act, the AO has added the impugned amounts in the hands of the assessee-company u/s 68 of the Act, whereas in the assessment of subsequent year made u/s143(3) r.w.s. 153C of the Act, it is held that assessee-company is a mere conduit and the real income from the transactions is assessable in the hands of Shri Shirish C. Shah, and not in the hands of the assessee-company.

21. Though the two assessments are independent in the eyes of law, yet in our considered opinion, it would be contrasting that the two assessments concurrently survive with contradictory findings by the Assessing Officer.

22. Under these circumstances, we find it fit and proper to set-aside the order of Ld. CIT(A) and direct the Assessing Officer to re-visit the controversy afresh keeping in mind his stand in the subsequent assessment finalised u/s 143(3) r.w.s. 153C of the Act for the instant assessment year.

23. Thus, without going into any of the other Grounds on merit raised by the assessee before us, we set-aside the order of CIT(A) and direct the Assessing Officer to re-determine the assessment in this case afresh after giving due consideration to the findings in the reassessment proceedings finalised u/s 143(3) r.w.s. 153C of the Act and after affording a reasonable opportunity to the assessee.

24. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 17th May, 2024 at Ahmedabad.

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Ahmedabad, Dated 17/05/2024

**Et.*

Sd/-

(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि □ ग्रेषित/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, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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