

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH, AHMEDABAD**

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

**ITA No.930/Ahd/2017
Assessment Year: 1998-99**

Shri Mohanlal Sondabhai Solanki, Prop. M/s. Deepak Onion, 85-Municipal Shopping Centre, Station Road, Mahuva - 364 290. [PAN - AFNPS 7177 Q] (Appellant)	Vs.	Income Tax Officer, Ward-6, Bhavnagar. (Respondent)
Assessee by	Shri Drunal Bhatt, AR	
Revenue by	Shri Ashok Kumar Suthar, Sr. DR	
Date of Hearing	23.02.2024	
Date of Pronouncement	22.05.2024	

ORDER

PER SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 30.01.2017 passed by the CIT(A)-6, Ahmedabad for the Assessment Year 1998-99.

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

“1.0 The grounds of appeal mentioned hereunder are without prejudice to one another.

2.0 The learned Commissioner of Income Tax (Appeals) 6, Ahmedabad (hereinafter referred to as "CIT(A)) erred on facts as also in law in not deciding appellant's ground of appeal related to passing of order u/s. 144 of the Income-tax Act, 1961 (hereinafter referred to as the "Act"). It may kindly be held that AO was not justified on facts as also in law in passing order u/s 144. The assessment order may kindly be quashed

3.0 The learned CITA) erred on facts as also in law in retaining addition of Rs.8,31,849/- being peak balance out of addition of

Rs.36,94,526/- made on account of alleged unexplained investment. The addition retained is totally unjustified on facts as also in law, which may kindly be deleted.

- 4.0 *The learned CIT(A) erred on facts as also in law in retaining addition of Rs.11,591/- out of addition of Rs.6,26,189/- made on account of alleged interest income on above unexplained investment. The addition retained is totally unjustified on facts as also in law which may kindly be deleted.*
- 5.0 *The learned cm*omega erred on facts as also in law in confirming addition of Rs.25,000/- made on account of alleged unexplained loan from Aishaben Mohmadbhai as also erred in confirming disallowance of interest paid of Rs.3,000/- on above loan. The addition confirmed is totally unjustified on facts as also in law, which may kindly be deleted.*
- 6.0 *The learned CIT(A) erred in confirming disallowance of Rs.10,500/- out of salary expenses disregarding the explanation and evidences placed on record. The disallowance confirmed is totally unjustified on facts as also in law, which may kindly be deleted.*
- 7.0 *The learned CIT(A) erred in confirming disallowances of Rs.5,383/- and Rs.3,490/- out of shop expenses and telephone expenses respectively. The disallowances being unjustified may kindly be deleted.*
- 8.0 *The learned CIT(A) erred on facts as also in law in confirming additions of Rs.2,71,141/-, Rs. 2,50,282/-, Rs. 2,33,734/- and Rs.1,55,155/- being income of Smt. Anjawaliben Mohanbhai Solanki, Shri Deepak Kumar Mohanlal, Shri Tejabhai Naranbhai and Shri Himatial Velabhai respectively on the alleged ground that these four parties are benami concerns of appellant and income there from are belonging to appellant. The addition of income of others in the hands of the appellant is totally unjustified on facts as also in law, which may kindly be deleted.*
- 9.0 *The learned CIT(A) erred in confirming addition of Rs.9,450/- being agricultural income of Smt. Ajwaliben Mohanbhai for rate purpose in the hands of appellant. The addition being unjustified may kindly be deleted.”*

3. Before us, at the outset, the Counsel for the assessee submitted that he shall not be pressing for ground nos 2, 3, 4 & 9 of the assessee's appeal. Accordingly, ground nos. 2, 3, 4 & 9 of the assessee's appeal are dismissed as not pressed.

4. Ground No.5 – The CIT(A) erred in confirming addition of Rs.25,000/- made on account of unexplained loan and interest amounting to Rs.3,000/- thereon.

5. The brief facts relating to this ground are that the Assessing Officer added a sum of Rs.25,000/- being amount borrowed from Smt. Aishaben, treating the same as not proved. The assessee submitted before the Assessing Officer that the amount was received by way of cheque. However, the Assessing Officer alleged that as on the date when the loan was obtained, the assessee had sufficient cash balance and, therefore, there was no necessity to obtain the loan and paying interest @ 18% thereon. Accordingly, the Assessing Officer added a sum of Rs.25,000/- and a further sum of Rs.3,000/- towards interest paid on such loan.

6. In appeal, the CIT(A) dismissed the appeal of the assessee on the ground that the assessee has not submitted evidences to prove that the loan taken from Smt. Aishaben was a genuine loan and even the creditworthiness and source of credit entry was not proved. Further, no confirmations and other evidences required under Section 68 of the Income Tax Act, 1961 have been submitted by the assessee. Accordingly, the Ld. CIT(A) confirmed the addition in the hands of the assessee.

7. On going through the facts of the instant case, we are of the considered view that the CIT(A), after taking into consideration all the aspects of the matter, has held that the assessee has not been able to provide any supporting evidence to prove the genuineness of the transaction or the creditworthiness of the lender. Accordingly, looking into the facts, we find no infirmity in the order of the Ld. CIT(A) so as to call for any interference. In the result, ground no.5 of the assessee's appeal is dismissed.

8. Ground Nos.6 – 7 disallowance of salary expenses, out of shop expenses and telephone expenses.

9. The brief facts relating to this ground of appeal are that during the year under consideration the assessee claimed salary expenses of Rs.38,500/- paid to three of its employees. The Assessing Officer disallowed the amount of Rs.10,500/- out of salary expense alleging that genuineness of payment was not proved. The Assessing Officer held that salary paid to Shri Narshibhai was excessive and further, he was a relative/friend of the assessee. Before the Assessing Officer, the assessee submitted that the assessee had paid salary for services rendered by such persons. Further, it was submitted that employees to whom the salary was paid were not a fulltime employee and worked for other persons as well. Further, there is nothing on record to show that the three persons to whom salaries were paid were relatives of the assessee. However, the Assessing Officer disallowed a sum of Rs.10,500/- on the ground that the salary payment was excessive. Further, the Assessing Officer also disallowed a sum of Rs.5,383/- on account of out of shop expenses and a sum of Rs.3,490/- on account of telephone expenses on the ground that personal use of the phone cannot be ruled out.

10. In appeal, the Ld. CIT(A) confirmed the additions with the following observations :-

“5.2 I have carefully considered the Assessment Order and submission filed by the Appellant. With respect to above additions made by Assessing Officer and confirmed by CIT (Appeals) in first as well as second grounds, Hon'ble Ahmedabad ITAT has set aside above issues to the file of undersigned without giving any direction. It is observed that Assessing Officer has disallowed salary expenditure on the ground that Appellant has claimed non-genuine expenditure. It is observed that during the original Assessment Proceedings as well as in set aside proceedings, Appellant has not complied with Assessing Officer's notices and even before undersigned, it has not submitted any specific details to prove that no disallowance out of salary expenses, shop expenses and telephone expense is called for. Considering these facts, in absence of any corroborative as submitted by Appellant, disallowance

made by Assessing Officer for Rs.10,500/- out of salary expenses, Rs.5,383/- out of shop expenses and Rs.3,490/- out of telephone expenses is confirmed.”

11. The assessee is in appeal before us against the aforesaid additions confirmed by the CIT(A).

12. Before us, the Counsel for the assessee confirmed that there is no allegation by the Assessing Officer that the services has not been rendered by these three employees. The only reason for disallowance is that the payment of salary is excessive. Further, with respect to other expenses, the Ld. CIT(A) has given no specific finding while confirming the order of the Assessing Officer.

13. On going through the instant facts, we are of the considered view that the additions confirmed by the Ld. CIT(A) are liable to be set aside. We find that the Ld. CIT(A) has not disputed the genuineness of the services which have been availed by the assessee and nothing on record has been brought to show that why such payment was held to be excessive. Regarding other expenses relating to telephone use and out of shop expenses, again we observe that the CIT(A) has not given any basis as to why the additions are liable to be sustained in the hands of the assessee. In the result, ground nos.6 & 7 of the assessee's appeal are allowed.

14. Ground no.8 – addition of income in the hands of the assessee on account of benami concerns.

15. The brief facts in relation to this ground of the assessee are that the Assessing Officer, during the course of survey, observed that various other concerns are functioning from the same premises where the assessee is carrying on his business. However, the Assessing Officer observed that none of the parties except the assessee are doing business from such premises.

The Assessing Officer observed that the assessee is using the name of his wife Smt. Anjawaliben (Proprietor, Krunal Enterprises) and the assessee has admitted that the assessee is doing business in the name of wife being holder of power of attorney. On carrying out necessary enquiries, the Assessing Officer observed that the assessee's wife has no knowledge of the business and all the business is being carried out by the assessee only. During the course of assessment, the assessee submitted that sum of Rs.18,500/- has been introduced to start the aforesaid business. However, the Assessing Officer observed that the amount of Rs.18,500/- is the income from agricultural property belonging to the assessee and, therefore, investment in this business has been made by the assessee itself (as Karta of the HUF to which the property yielding agricultural income belongs). Accordingly, the Assessing Officer added a sum of Rs.2,71,141/- as income of the assessee which he was doing in the name of his wife, under a power of attorney. Further, the Assessing officer also made similar additions amounting to Rs.2,50,282/- (M/s. Deepak Kumar Mohanlal) Rs.2,33,734/ (M/s. Deepak Kumar Enterprise) and Rs.1,55,155/- (M/s. Deepak Sales Agency). In all cases, the Assessing Officer gave a detailed finding that the income has been distributed by the assessee under various names, only with a view to reduce his tax liability. In all cases, the Assessing officer observed that these respective persons/parties are not carrying out their independent businesses. Accordingly, the Assessing Officer added the aforesaid amounts in the hands of the assessee.

16. In appeal, the Ld. CIT(A) confirmed the additions with the following observations:

6.3 *I have carefully considered the Assessment Order and contention of the appellant. It is observed that during the course of survey action, it was also found that Krunal Enterprise, proprietary concern of Appellant's wife was functioning from the very same premises from which Appellant is working but, none of these parties except Appellant was in fact doing business. The Appellant himself admitted that Krunal Enterprise is proprietary concern of*

Appellant's wife and he is doing business in name of his wife and his wife has no knowledge of such business. So far as income of Deepak Kumar Mohanlal is concerned, during the course of survey under Section 133A it was found that business was carrying out by appellant to reduce taxable income. So far as income of M/s. Deepak Kumar Enterprise, Prop: Shri Tejabhai Naranbhai is concerned, it was found that said party has not complied with summons issued under Section 131 of the Act. The Assessing Officer has also established that in assessment proceedings in other cases with whom above concerns have carried out transactions, in fact, appellant was known to them and not Shri Tejabhai Naranbhai which prove that transactions of Deepak Enterprises are carried out by Appellant.

- 6.4 *So far as addition made for Deepak Sales Agency, Prop, Shri Himatlal Velabhai is concerned, it is found that said person had died at relevant point in time. The Assessing Officer has also established that during the course of assessment proceedings in other cases with whom the above named concern had transactions, it was gathered that the assessee Shri Mohanbhai Sondabhai Solanki is the person known to them but the transactions were entered as per the bills received by them from the above person. These observations made by Assessing Officer are not rebutted by Appellant. The details gathered during the course of survey proceedings as well as during assessment proceedings clearly prove that transactions carried out by above four parties are in fact been carried out by the appellant and even no compliances are made by above four parties before Assessing Officer which conclusively prove that above four parties are benami concerns of Appellant and income pertaining to above four parties are rightly taxed by AO in the hands of appellant. The ground of appeal is dismissed.”*

17. Before us, so far as the addition of income in the name of wife of the assessee is concerned, Smt. Anjawaliben, the Counsel for the assessee submitted that investments have been made out of sales proceeds of agricultural produce from the land belonging to the HUF. Accordingly, the addition, if any, should have been made in the name of the HUF and not the assessee per se.

18. Regarding other additions, the Counsel for the assessee drew our attention to paragraph nos. 11.2, page no.48 of the Paper Book and submitted that the facts that several persons were carrying on business from the same

premises cannot lead to the conclusion that all such business belongs to the assessee. On considering the nature of business, there was no need for each of the parties to keep and maintain separate premises. Further, Deepak Kumar as on 01.01.1998 was a beginner in this business and the assessee being a relative and having experience in business was guiding Shri Deepak Kumar.

19. In response, ld. DR placed reliance on the observations made by the Assessing Officer/CIT(A) in their respective orders. Ld. DR submitted that the assessee has itself made statement and submitted that these four persons were operating from same premises as that of the assessee and from the facts placed on record, it was the assessee himself who was operating/running the business.

20. On going through the facts of the instant case, we observe that from the totality of the circumstances and the detailed observations made by the Assessing Officer, the assessee in the instant facts has not been able to prove that the respective persons were carrying out their independent business from the premises of the assessee. In the case of assessee's wife, the assessee has himself admitted that it was effectively the assessee who was carrying on the business in the name of his wife. Further, even with respect to the balance parties, the assessee has only given vague explanation to contend that all these persons were carrying on separate business in their independent names. Accordingly, looking to the instant facts, we find no infirmity in the order of the Assessing Officer/CIT(A) so as to call for any interference. In the result, ground no.8 of the assessee's appeal is dismissed.

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

Order pronounced in the open Court on this 22nd May, 2024.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Ahmedabad, the 22nd day of May, 2024

Sd/-
(SIDDHARTHA NAUTIYAL)
Judicial Member

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*