आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B', अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

1. **ITA No.27/Ahd/2024**
2. **ITA No.28/Ahd/2024**

Assessment Years : 2012-13 & 2013-14 (respectively)

Ashapura Stone Industries NH No.8, Nr. GEB Sub-Station Vasad – 388 306 (Gujarat)	Vs	The Income Tax Officer Ward-3 (Now Ward-1) Anand
PAN: AAUFA 6762 D		

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri B.T. Thakkar, AR
Revenue by :	Shri Ketan Gajjar, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **06/06/2024**
घोषणा की तारीख /**Date of Pronouncement:** **11/06/2024**

आदेश/O R D E R

PER SHRI MAKARAND V. MAHADEOKAR, AM:

These two appeals by the Assessee pertain to different assessment years, but involve common issues (except quantum in appeal), and hence are being decided together for the sake of convenience and brevity. The appeals are directed against the orders of the Ld.Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre, Delhi (NFAC) - [hereinafter referred to as "the CIT(A)"], for the Assessment Years (AYs) 2012-13 and 2013-14, both dated 16/11/2023, arising out of assessment orders passed for respective Assessment Years by Assessing Officer

(hereinafter referred to as "the AO") u/s.143(3) r.w.s. 147 of the Income Tax Act,1961 (hereinafter referred to as "the Act").

Facts of the case:

2. The information was received by the AO from the office of the Dy. Director of Income Tax (Inv.), Unit-1 (2), Ahmedabad that the firm M/s. Umiya Industries, which was operated by Shri Alpeshkumar Vitthalbhai Patel, a proprietor, has provided accommodation entries to the assessee firm (M/s Ashapura stone industries) during the Financial Years (FY) 2011-12 & FY 2012-13 relevant to AY 2012-13 and AY 2013-14. On account of admission of Shri Alpeshkumar Patel, it was concluded by the AO that the assessee has availed bogus accommodation entries and the same remains undisclosed. After recording reasons for re-opening the assessment and after availing prior permission, the assessment was re-opened by AO after issuing the notice u/s.148 of the Act 31/03/2019.

2.1. In compliance to the notice issued u/s 148 of the Act, the assessee filed its reply along with copy of acknowledgment of return of income. Subsequently, notice u/s 142(1) of the Act was issued. It was observed by the AO that the Assessee had purchased machinery by paying an advance of Rs.50,00,000/- in FY 2011-12 to said M/s. Umiya Industries. The purchase of Machinery was completed in FY 2012-13 at total cost of Rs.2,16,77,985/- as per the invoice No. 91 dated 09/07/2012.

2.2. During the course of reassessment proceedings, the AO added Rs.50,00,000/- and Rs.1,66,77,985/- u/s.69 of the Act as unexplained investment for AY 2012-13 and AY 2013-14 respectively. For AY 2013-14, the AO also disallowed the depreciation of Rs.16,25,849/- claimed by the

assessee u/s.32 of the Act as the purchase of machinery was considered as bogus. While doing so, the AO primarily relied on the statement of said Shri Alpeshkumar Vitthalbhai Patel, Proprietor of M/s Umiya Industries.

3. Aggrieved by the order the Assessing Officer, the assessee filed appeals for respective assessment years before the Ld.CIT(A), who dismissed the appeal(s) of the assessee *ex-parte*, after issuing three notices in respect of both the assessment years, but the assessee failed to respond thereto. While dismissing the appeals, the Ld.CIT(A) obtained verification report from the AO.

4. Not satisfied with the orders of Ld.CIT(A) in both the AYs, i.e. 2012-13 and 2013-14, the assessee is in appeals before us, with following grounds of appeal:

<u>For AY 2012-13</u>

> *The Learned CIT-Appeals has erred in law on facts in dismissing the appeal the same is bad in law and deleted now.*
>
> *1. The Notice U/s. 148 has been issued based on borrowed opinion being illegal. The assessment proceedings be declared as void and addition of Rs.50,00,000/- be deleted now.*
>
> *2. The investment having been property recorded in books of accounts treated as unexplained investment by AO is illegal and unlawful. The same may be deleted now.*
>
> *3. The recovery of demand of Rs. 42,17,850/- may please be stayed.*
>
> *4. The penalty proceedings initiated u/s 271(1)(c) may please be directed to be dropped.*
>
> *5. Your appellant prays to add, amend, alter, modify or delete any grounds of appeal at the time of hearing."*

For AY 2013-14

The Learned CIT-Appeals has erred in law on facts in dismissing the appeal the same is bad in law and deleted now.

1. The Notice U/s. 148 has been issued based on borrowed opinion being illegal. The assessment proceedings be declared as void and addition of Rs.1,83,03,834/- be deleted now.

2. The investment having been property recorded in books of accounts treated as unexplained investment by AO is illegal and unlawful. The same may be deleted now.

3. The Learned AO has treated the purchase of machinery as bogus. The same not being so, hence the purchase of plant and machinery be treated as valid.

4. The machinery having been installed and used for the purpose of business, therefore the disallowance of depreciation of Rs.16,25,849/- is unjust and unlawful. The same may be added now and depreciation be allowed.

5. The recovery of demand of Rs.1,02,37,160/- may please be stayed.

6. The penalty proceedings initiated u/s.271(1)(c) may please be directed to be dropped.

7. Your appellant prays to add, amend, alter, modify or delete any grounds of appeal at the time of hearing."

On the grounds of appeal:

5. The Ld.Representative of the Assessee (AR) contended that the Ld.CIT(A) passed the appeal order without providing an opportunity of being heard to the assessee, which is a violation of the principles of natural justice. Furthermore, the Assessee asserted that he was not given the opportunity to cross-examine the supplier, whose statement formed the basis for the addition.

5.1. The Ld.AR submitted the following documents before us:

1. Copy of Invoice of M/s Umiya Industries for Rs. 2,16,77,985/-.
2. Letter from M/s Umiya Industries confirming the sale and receipt of advance.
3. Sanction letter of Bank for the loan which was used as source to purchase machinery.
4. Loan account statements of Karur Vysya Bank.
5. Letter of disbursement from the bank showing.
6. Letter of assessee to bank communicating a request to consider slightly older plant.
7. Valuation report of Paresh Shan & Associates certifying the valuation of old plant and machinery which was purchase by the assessee.

5.2. The Ld.AR also contented that as per section 69 of the Act, the assessee has explained the source of the investment and also recorded the purchase price of machinery in his books of accounts. Therefore, the AO was not right in making addition u/s 69 of the Act.

5.3. The Ld.Departmental Representative (DR), on the other hand, relied on the orders of lower authorities. He stated that M/s.Umiya Industries is dealing with different items, than what is invoiced to the assessee. He also contented that the assessee never objected to the proceedings of reassessment.

6. We have carefully considered the submissions of both parties and perused the material on record. It is evident that the reassessment was based primarily on the supplier's denial of the machinery supply and the alleged forgery of the invoice. The statement of the Proprietor of M/s. Umiya Industries is the only basis for addition and, the Assessee was not

given an opportunity to cross-examine the supplier, which is a fundamental right under the principles of natural justice. Moreover, the assessee has not raised its contention before Ld. CIT(A). When the assessee is explaining the source of funds and that too of bogus purchase, it is also necessary to bring on record the statement of bank's representative. If the bank has made payment to the supplier after satisfying the genuineness of supplier and after due inspection as per the terms of sanction of loan, it is very important and dependable source from the point of view assessee. When the AO has made enquiry with the bank of supplier – Dhanlaxmi Bank Ltd. for the KYC documents and address of the supplier, as mentioned in the assessment order, it was also necessary to check and establish the genuineness of source of funds used to purchase such machinery before making an addition u/s. 69 of the Act.

6.1. Considering the aforementioned facts, we are of the view that the matter requires a thorough examination with due adherence to the principles of natural justice. Therefore, we deem it appropriate to remand the matter back to the file of the Ld.CIT(A) with directions that –

- The Ld.CIT(A) shall provide the Assessee an opportunity of being heard.
- The Ld.CIT(A) shall allow the Assessee to cross-examine the supplier.
- The Ld.CIT(A) shall get the statement of the bank officer recorded regarding the loan sanctioned against the machinery with respect to its claim of bogus purchase.
- The Ld.CIT(A) shall decide the matter afresh on merits, considering all relevant evidence and submissions.

6.2. In view of the above, the impugned order of the Ld.CIT(A) is set aside and the matter is remanded back to the file of the Ld.CIT(A) for fresh adjudication in accordance with the directions stated herein. Hence, the appeal of the assessee in ITA No.27/Ahd/2024 for AY 2012-13 is allowed for statistical purposes.

7. As far as remaining appeal of the assessee, i.e. ITA No.28/Ahd/2024 for AY 2013-14 is concerned, before us, both the parties submitted that though the appeals relate to different assessment years, but the facts in the present appeal are identical and the submissions made by Ld.Representatives of the parties while arguing the case would be applicable to the present appeal of the assessee also. In view of the aforesaid submissions of both the parties, we for the similar reasons stated hereinabove while deciding the Assessee's appeal for AY 2012-13 in ITA No.27/Ahd/2024 (supra) and for the similar reasons, we allow the assessee's appeal in ITA No.28/Ahd/2024 for AY 2013-14 also for statistical purposes,

8. In the combined result, both the appeals of assessee are treated as allowed for statistical purposes.

Order pronounced in the Open Court on 11th June, 2024 at Ahmedabad.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL)	**(MAKARAND V. MAHADEOKAR)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad, Dated 11/06/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. 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)-(NFAC), Delhi
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजोकट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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