

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No: 1790/Ahd/2013 & ITA No: 289/Ahd/2018
Assessment Year 2009-10**

Income Tax Officer, Ward-2(6), Baroda	Vs	Shri Vikram Shantilal Patel 13/B Sanmati Society, Akota, Baroda. PAN: ACQPP7443J
Shri Vikram Shantilal Patel 13/B Sanmati Society, Akota, Baroda. PAN: ACQPP7443J (Appellant)	Vs	Income Tax Officer, Ward-1(2)(5), Baroda (Respondent)

**Assessee Represented: Shri Manish J. Shah &
Shri Rushin Patel, ARs.
Revenue Represented: Shri Sushil Kumar Katiar, Sr.D.R.**

Date of hearing : 03-04-2024
Date of pronouncement : 28-06-2024

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

These are appeals filed by the Assessee and the Department for the Assessment Year 2009-10 against the orders passed by the Ld. CIT(A) dated 18.03.2013 and 27.11.2017. Since facts for both

the appeals are interconnected, both the appeals are being taken up together.

2. We shall first discussed **Department's Appeal in ITA No. 1790/Ahd/2013.**

3. The Department has taken following Grounds of Appeals:

1. *On the facts and in the circumstances of the case and in law, ld.CIT (Appeals) erred in restricting addition of 41,56,400/- made on account of unexplained cash deposits in the saving bank account to 9,56,400/- without appreciating that the assessee had failed to establish the source and genuineness of cash receipts.*

2. *On the facts and in the circumstances of the case and in law, ld.CIT (Appeals) erred in deleting addition of 10,32,620/ on account of loan receipts without appreciating that assessee had failed to establish the deposits with identity of the depositors, creditworthiness and genuineness of the transactions.*

3. *On the facts and in the circumstances of the case and in law, ld.CIT (Appeals) erred in deleting addition of ₹ 71,34,329/ on account of unsecured loan without appreciating that assessee had failed to establish the deposits with capacity and identity of the depositors, creditworthiness and genuineness of the transactions.*

4. *On the facts and in the circumstances of the case and in law, ld.CIT (Appeals) erred in deleting disallowance of 3,18,833/- u/s.40(a)(ia) without appreciating that the submission of Form 15G/15H are as an after-thought and fabricated since assessee had not furnished the same during the course of assessment proceedings even though sufficient opportunity was given to the assessee to substantiate his claim with supporting evidence.*

5. *On the facts and in the circumstances of the case and in law, ld.CIT (Appeals) erred in deleting addition of 36 lacs towards investment in Mutual Funds on account of loan receipts without appreciating that assessee had not furnished the same during the course of assessment proceedings even though sufficient opportunity was given to the assessee to substantiate his claim with supporting evidence.*

6. The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary.

4. Ground No. 1: Unexplained Cash Deposits:

5. The brief facts of the case are that during the course of assessment, the assessing officer observed that the assessee made cash deposits in various bank accounts held by the assessee. The banks were Makarpura Industrial Cooperative Bank, Bank of Baroda, Makarpura Branch and State Bank of India, Baroda (though the account was opened in the name of Smt. Meeta Patel wife of the assessee, but it was operated by the assessee). On going through the details of cash deposits, the assessing officer observed that the assessee had made a large number of cash deposits for a sum of Rs.49,900/- each in the various bank accounts held by the assessee on various dates. The assessing officer observed that the assessee has been regularly depositing a sum of Rs.49,900/- in the above bank accounts, however, on being requisitioned the assessee did not furnish any cogent evidence in support of the aforesaid cash deposits. The assessing officer further observed that so far as the Saving Bank Account opened in the name of the wife of the assessee is concerned, the assessee's wife Smt. Meeta Patel is a salaried employee working with Gujarat Electricity Board and filing her return of income. However, on carrying out due verification, the assessing officer observed that Smt. Meeta Patel had not shown any cash deposits with the said SBI account. On being asked the source of such huge cash deposit, the assessee filed a paper written as "gift" and submitted that the assessee had received gift from

Shri Chandubhai Z. Patel (brother in law) for a sum of Rs.11,00,000/- and Shri Shantilal M. Patel (father) for a sum of Rs.21,00,000/-. The assessing officer was of the view that the assessee has furnished no evidence to prove that the two persons are capable of giving aforesaid gifts to the assessee. The assessing officer observe that the assessee has not submitted extract of 7/12, Sale Deed of land or any other relevant document to prove the capacity of such persons to give such huge amounts as gift. Further, the assessing officer observed that the assessee has deposited a sum of Rs.49,900/- in cash on almost daily basis and the assessee has failed to substantiate as to how these donors had given this cash as “gift” on a daily basis to the assessee. Further, the assessing officer observed that the assessee had also taken a loan from his father Shri Shantilal M. Patel and another loan from his brother in law Shri Chandubhai Z. Patel and it is unrealistic as to how the assessee has received both gift as well as taken unsecured loan from these two persons. Further, the aforesaid gift has also not been drafted by way of a proper gift deed on stamp paper and duly acknowledged by receiver. Therefore, the assessing officer was of the view that the assessee has not been able to explain the source of cash deposit earned outside the books of accounts and the so called gift deed is only an afterthought submitted at the fag end of assessment proceedings and, therefore, the assessing officer added the amount of Rs.41,56,400/- as undisclosed income of the assessee.

6. In appeal, the Ld. CIT(A) restricted the addition to only Rs.9,56,400/- by holding that the assessee has been able to prove

the identity, creditworthiness and genuineness of the balance gifts. The Ld. CIT(A) held that the source of cash deposit was out of agreement for sale of agricultural land, which was placed before the assessing officer, during the course of assessment proceedings, Accordingly, if the assessing officer was having doubts regarding the source of cash deposit, he ought to have made further enquiries into the matter. Accordingly, Ld. CIT(A) partly allowed the appeal of the assessee, with the following observations:

“3.3.1. I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer. The assessee has explained the source of deposit of Rs.21,00,000/- as gift from his father and Rs.11,00,000/- as gift received from his brother-in-law. The documents relating to receipt of gifts from these two persons are also submitted. The agreements to sale the land by both the donors were before the A.O. Sri Shantilal M. Patel, (father of the appellant) had executed agreement for sale of agricultural land on 15.03.2008 and received cash of Rs.1,01,001/- on the same date. As per the terms of the said agreement, amount of Rs. 6 lacs was received by him in April 2008, Rs.5 lacs in May 08, 8 lacs in June'08 and Rs.10 lacs in July 08. This agreement was placed before the A.O. who proceeded to make addition ignoring the vital facts of the case which were placed on record by the appellant. The onus casted upon the appellant was to prove the identity, creditworthiness and genuineness of gift. These three requirements have been duly discharged by the appellant. If there were doubts in the mind of the A.O., he should have made further enquiry from the buyers of land which was not done by him. Similarly, in case of another donor Sri Chandubhai Z. Patel (brother-in-Law of the assessee), The agreement for sale of agricultural land was made on 20.08.2008 and Sri Chandubhai Z. Patel received cash of Rs.1,01,001/- on the same date. As per the terms of the said agreement, amount of Rs.4 lacs was received by him in Sept. 2008, Rs.6 lacs in Oct. 08 and Rs.4 lacs in Nov. 08. This agreement was also placed before the A.O. and like in case of Sri Shantilal M. Patel, the identity, creditworthiness and genuineness of gift was proved by the appellant and A.O. preferred not to make any further enquiry either from the donors (of gift) or from the buyers of the agricultural land, complete details in respect of whom were available on record. The receipt of money in piecemeal by

the donors from the agreement of sale of land was main reason which prompted the appellant to deposit cash in piecemeal in his bank accounts.

3.3.2. As the appellant has discharged primary onus of proving the identity, creditworthiness and genuineness of gift and the A.O. preferred not to make any enquiry of examine any person, the addition on this count cannot be made merely on the basis of presumptions. In my opinion, the addition of the two gifts aggregating to Rs.32,00,000/- is not in accordance with the law and the same is directed to be deleted. So far as the deposit of balance amount of cash aggregating to Rs.9,56,400/- is concerned, no details regarding source of such deposits has been provided and hence, the additions of this amount as unexplained loans/deposit is upheld. The appellant, therefore, gets a relief of Rs.32,00,000/-. This ground of the appellant succeeds.”

7. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A) restricting the addition to Rs.9,56,400/. Before us, the ld. D.R. submitted that the “gift deed” furnished by the assessee was clearly an afterthought and the assessee has not at all been to establish the creditworthiness of the donors. Further the assessee has been regularly depositing a sum of Rs.49,900/- in these bank accounts on regular basis, for and which no plausible explanation has been given and clearly this was done in order to avoid reporting of such transaction by the bank to the Tax Authorities. The gift deeds were submitted at the fag end of the assessment proceedings on the plain piece of paper and same was clearly an afterthought. Further, the assessing officer has also observed that while the assessee has also taken unsecured loan from these parties (father and brother-in-law) and also has taken gifts from these parties as well, for no justifiable reason. Therefore, looking into this entire scheme of things, even the genuineness of the transaction is under serious doubt. Most importantly, while the Ld. CIT(A) has held that the assessee has been able to prove the

creditworthiness of these parties on the basis that the said gift deeds were sourced out of agreement to sale, which was furnished by the assessee before the assessing officer, but on perusal of the assessment order/assessment records, there is nothing on record to show that the assessee had provided copy of such “agreement of sale” of land before the assessing officer, during the course of assessment proceedings. Therefore, in the instant facts, the Ld. CIT(A) has only accepted the version put forth by the assessee and clearly, there is an apparent contradiction between the findings of the assessing officer while making the additions and the findings of the Ld. CIT(A) while deleting the additions. Therefore, looking into the instant facts, the Ld. D.R. submitted that since the assessee only submitted gift deed, but no sale deed agreement to sale was submitted and neither copy of the bank account of the donors was submitted at any stage of the proceedings, clearly Ld. CIT(A) has clearly erred in misdirecting himself in granting appeal to the assessee, on an incorrect presumption of facts.

8. On the other hand, the Counsel for the assessee submitted that documents relating to receipt of gifts from these two parties were submitted and the agreement to sale of land by both the donors was placed before the assessing officer. Therefore, the assessee had discharged the primary onus of proving the identity, creditworthiness and genuineness of the gifts and the A.O. preferred not to make any enquiry or examine any person. Further the Ld. Counsel for the assessee submitted that there is no requirement to pay stamp duty on cash gift. The gift is duly

confirmed by the donors in the gift letters furnished by the assessee.

9. We have heard the rival contentions and perused the material on record. On going through the instant facts, we observed that there is an apparent contradiction in the findings of the assessing officer in the assessment order and the findings of the Ld. CIT(A), while allowing the appeal of the assessee in respect of most of the additions. While Ld. CIT(A) has noted specifically that agreement to sale of land was furnished before the assessing officer during the course of assessment proceedings, clearly this fact is not coming either from the contents of the assessment order and neither from the assessment records placed before us. The assessee has not been able to conclusively prove that copy of agreement to sale of land was furnished before the assessing officer and further, the assessee has also not furnished copy of bank statement of the donors to establish that the source of such gifts made by them to the assessee was sourced out of agreement to sale. Accordingly, in our considered view, in view of the apparent contradiction between the findings of the assessing officer and Ld. CIT(A), in the interest of justice, the matter is restored to the file of assessing officer to confirm whether the donors had entered into agreement of sale in respect of certain immovable property and also to examine the copy of bank statement of the donors to confirm whether any amounts were received by the donors pursuant to such "agreement of sale", which formed the source of such amounts being given as gift to the assessee. In our considered view, from the instant facts, the assessee has not been able to establish the creditworthiness of

the donors and in our considered view, necessary verification needs to be carried out to ascertain whether the donors had the capacity to make the aforesaid gift to the assessee. Thus the ground no. 1 is restored to the file of assessing officer, with the aforesaid directions.

10. In the result, Ground No.1 of Departments' appeal is allowed for statistical purposes.

11. Ground No. 2: Ld. CIT(A) erred in deleting the addition of Rs.10,32,20/- on account of Loan Receipts:

12. The brief facts in relation to this ground of appeal are that during the course of assessment, the assessee received certain amounts totaling to Rs.10,32,620/- in two bank accounts held by the assessee. During the course of assessment, the assessing officer observed that both the bank accounts are unaccounted and have not been shown by the assessee in the books of accounts. The assessee submitted that the assessee has taken loan from two person namely Sachin Kharshikar and Shri G.G. Parikh. However, the assessee has not furnished any documentary evidence as to when this loan was taken from these two persons, no confirmation has been furnished by the assessee and the assessee has not been able to prove the creditworthiness and genuineness of the transaction. Accordingly, the assessing officer held that the deposit of Rs.10.32.620/- represents the unaccounted income of the assessee and accordingly, the assessing officer added the same to the income of the assessee.

13. In appeal Ld. CIT(A) deleted the addition with the following observations:

“4.3. I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer. It is seen that the loans have been obtained by account payee cheques. The assessee has also submitted the PAN, address, Bank Statements and confirmation of both the parties from whom the short term loans have been obtained by him. Thus, the primary burden which lay upon him for proving the genuineness of the loan has been discharged. Complete details of PAN & confirmation of the parties were placed before the A.O. during the assessment proceedings and A.O. preferred not to make enquiry from Sri G.G. Parikh and Sri Sachin Kharshikar both of whom are existing assessees. Form No. 16 were also filed by the appellant in respect of them. Hence, the addition of Rs.10,32,620/- cannot be sustained and the same is directed to be deleted.”

14. Before us, the Ld. D.R. submitted that there is an apparent contradiction between the findings of the assessing officer and findings of Ld. CIT(A) in their respective orders. While in the assessment order, the assessing officer has specifically taken note of the fact that the assessee has not filed any confirmation from these parties, on the other hand, the Ld. CIT(A), while allowing the appeal of the assessee has held that the assessee has submitted PAN, Address, Bank statement and confirmation of both the parties from whom the short term loans were taken. Accordingly, in view of the above, it was submitted that the matter may be restored to the file of assessing officer to carry out the necessary verification.

15. On going through the facts of the instant case, we observe that there is a clear contradiction between the findings of the assessing officer in the assessment order and findings of the Ld. CIT(A) in the appellate order. While in the assessment order, the assessing

officer has observed that the assessee has failed to furnish “confirmation” of the parties and the assessee has not furnished any documentary evidence to show when the loans were taken etc, in the appellate order, Ld. CIT(A) has held that the assessee has furnished all the documentary evidences, including “confirmation” of the parties and accordingly, established the genuineness and creditworthiness of the parties. In view of the apparent contradiction between the findings of the assessing officer and Ld. CIT(A), in the interest of justice, the matter is being restored to the file of assessing officer to carry out necessary verification regarding the identity, creditworthiness and genuineness of the transaction. The assessing officer is directed to verify whether the confirmation of the parties has been placed on record by the assessee and whether the other details regarding the parties i.e. their bank statement, PAN, Address, etc. is on record.

15.1 In the result, Ground No. 2 of the Department’s appeal is allowed for statistical purposes.

16. Ground No. 3: Ld. CIT(A) erred in deleting the addition of Rs.71,34,329/- on account of Unexplained Unsecured Loans:

17. The brief facts in relation to this ground of appeal are that during the course of assessment, the assessing officer added a sum of Rs.71,34,329/- as unexplained unsecured loan taken by the assessee from various parties. While making the addition, the assessing officer observed that the assessee has not been able to establish the creditworthiness and genuineness of the transaction. The Ld. A.O. observed that majority of the depositors are farmers

having small means and hailing from the same area and could clearly be influenced by the assessee into lending their names for investing capital through them. The assessing officer observed that in one of the cases, the interest was to be received by the lenders after a period of six years which clearly establishes that the transaction is not genuine. Further, the assessee has also not been furnished copy of the bank statement of the respective lenders who have invested the money with the assessee. Therefore clearly, the assessee has not been able to establish the genuineness of the transaction as the confirmation of the parties was also not furnished by the assessee.

18. In appeal, the Ld. CIT(A) allowed the appeal of the assessee with the following observations:

“5.3.17. It is an undisputed fact that all the unsecured loans have been received by the appellant account payee cheques. Further, the appellant has also paid interest on the said loans. This apart, all the said loans have already been repaid along with interest till 31" March, 2012. Further, the copies of confirmation and bank statements of all the parties have also been furnished by the appellant. From the copies of the bank statements filed it is seen that there were sufficient balance in the credit of the persons who have advanced the loans to the appellant. When identity & creditworthiness has been proved beyond doubts, there seems no occasion to disbelieve the genuineness of the loan which have been received by account payee cheques and in most of the cases, loan has been returned in full or in part during the subsequent years, again by account payee cheques together with the interest. Complete details can be seen from the table above. As all the loans stand explained by the appellant, the Assessing Officer is directed to delete the entire additions of Rs.71,34,329/-. This ground of the assessee succeeds.”

19. Before us, it has been pointed out that there is an apparent contradiction between the findings of the assessing officer and the

Ld. CIT(A). While the assessing officer has observed that the assessee has failed to file “confirmation” of the parties as well as the copy of the bank statement of the respective parties, whereas the Ld. CIT(A) has allowed relief to the assessee by observing that the assessee has filed copies of confirmation and bank statement of the respective parties and accordingly has been able to establish the identity and creditworthiness of these parties. Accordingly, in view of the apparent contradiction between the findings of the assessing officer and Ld. CIT(A), the matter is restored to the file of the assessing officer to carry out the necessary verification as to whether the copy of “confirmation” of the parties and the bank statement of the parties have been furnished by the assessee to establish their creditworthiness. Accordingly, the matter is restored to the file of assessing officer for carrying out the necessary verification.

20. In the result, Ground No. 3 of the Department’s appeal is allowed for statistical purposes.

21. Similarly, **Ground No. 4 of the Department’s appeal relates to disallowance of interest paid to various Lenders U/s 40(a)(ia) of the Act.** Since this ground is connected with ground no. 3, which has been restored to the file of assessing officer for carrying out necessary verification, accordingly, Ground no. 4 is restored to the file of assessing officer as well.

22. In the result, Ground No. 4 of the Department’s appeal is allowed for statistical purposes.

**23. Ground No. 5: Unexplained Investment in Mutual Funds
Rs.36,00,000/-:**

24. The brief facts in relation to this ground of appeal are that the assessee submitted certain details of investments in mutual funds, but during the course of assessment proceedings, the assessing officer observed that the assessee is not in a position to give details of mutual funds transactions amounting to Rs.36,00,000/- and source thereof. Accordingly, the same was added as unexplained investments made outside the books of accounts, to the total income of the assessee.

25. In appeal, the Ld. CIT(A) allowed the appeal of the assessee with the following observations:

“7.3. I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer. It is seen that the appellant has submitted the statements of mutual funds and there is no evidence in possession of the A.O. that any other investments (other than those reflected in the statements) are made by the appellant. The appellant has also explained that there have been some errors of duplication etc. in the data uploaded by the Mutual Funds for which no additions can be made in the hands of the appellant. Simply on the basis of "some" information about the investment in mutual funds by the assessee, addition cannot be made. Even the assessee has not been confronted with the information or source of information. A.O. should have conducted some enquiry from the managers of the mutual funds before proceeding to make additions in the hands of the appellant. Since the entire additions are made without any evidence in possession of A.O. or making any enquiry about the correctness of the information about the unrecorded investments by the appellant, the addition cannot be sustained and the Assessing Officer is, therefore, directed to delete the additions of Rs.36,00,000/- made. This ground of the appellant also succeeds.”

26. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A) deleting the additions. Before us, we observed that the assessee has furnished a chart in support of investments made by the assessee in various mutual funds, during the impugned year under consideration. However, we observe that the contents of the chart and the details of investments made by the assessee as coming in the chart/table furnished by the assessee is clearly at variance with the details of investments in mutual funds noted by the assessing officer during the course of assessment proceedings. We observe that at several places, there is a clear mismatch between the date of transaction as coming from the assessment order and the table furnished by the assessee. Accordingly, in the interest of justice, the issue is being restored to the file of assessing officer for carrying out the necessary verification with regards to investment in mutual funds, in the light of evidences furnished by the assessee.

27. In the result, Ground No. 5 of the Department's appeal is allowed for statistical purposes.

28. In the combined result, the Department's appeal is allowed for statistical purposes.

29. Now we come to the **Assessee's appeal in ITA No. 289/Ahd/2018.**

30. The assessee has raised the following Grounds of Appeal:

“1. The Ld. CIT(A) erred in law and on facts in confirming penalty of Rs.2,95,585/- levied by Assessing Officer u/s.271(1)(c) of the I.T. Act, 1961 without appreciating the facts and law of the case properly.”

31. The limited issue in this ground of appeal is regarding order passed by Ld. CIT(A), confirming the levy of penalty in respect of cash deposits of Rs.9,56,500/- confirming by Ld. CIT(A) in Department's appeal in ITA No. 1790/Ahd/2013.

32. Since while dealing with Department's appeal, in the preceding paragraphs, we have restored this issue to the file of assessing officer for carrying out the necessary verification, accordingly, the appeal filed by the assessee in respect of confirmation of penalty U/s 271(1)(c) of the Act is also restored to the file of assessing officer.

33. In the result, the appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 28-06-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 28/06/2024

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद