

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

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.1327/Ahd/2019**  
**Assessment Year : 2015-16**

Shri Maheshbhai Amrutbhai Patel Shiva Sadan, Opp: Uma Sanskar Tirth National Highway-8 Chandrala, Dist. Gandhinagar PAN : ADZPP 6022 B	Vs	ITO, Ward-3 Gandhinagar.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	Shri S.N. Divatia, AR & Shri Samir Vora, AR
Revenue by:	Ms.Neeju Gupta, Sr.DR

सुनवाई की तारीख / **Date of Hearing** : 10/04/2024  
घोषणा की तारीख / **Date of Pronouncement**: 05/07/2024

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

This appeal has been filed by the assessee against the order of the Id. Commissioner of Income-tax (Appeals), Gandhinagar dated 7.6.2019 under section 250 of the Income Tax Act, 1961 ("the Act" for short) for the assessment year 2015-16.

2. The grounds raised in the appeal are as under:

*"1. The order passed u/s 250 on 07.06.2019 for A.Y.2015-16 by CIT(A)-Gandhinagar, Abad upholding the addition of Rs.37,00,000/- is wholly illegal, unlawful and against the principles of natural justice.*

*2. The Ld. CIT(A) has grievously erred in law and or on fact in not considering the fully and properly explanations furnished and the evidences produced by the Appellant with regard to the impugned addition.*

*3. The Ld. CIT(A) has grievously erred in law and/or on facts in making addition of amount of Rs.37,00,000/-treating it as unexplained cash credits u/s. 68 of the I. T. Act and added to the total income of the appellant.*

*4. The observations made and conclusion reached by both the lower authorities are prejudice to the interest of the appellant which are wholly unjustified and should be condemned, unless expressly admitted by the appellant.”*

3. The solitary issue in the present appeal relates to addition made to the income of the assessee of loans received, amounting to Rs.37 lakhs, treating them as unexplained in terms of section 68 of the Act.

4. The facts of the case are that the assessee is an individual having income from share of profit from partnership firm and also interest income. For the impugned year, the return of income was filed declaring income of Rs.1,59,270/-. The assessee's case was selected for limited type of scrutiny to examine new foreign assets in the nature of financial interest in any entity (Schedule FA of ITR). The assessee had disclosed such foreign assets in its schedule to the tune of Rs.1,13,63,991/-. During assessment proceedings, it transpired that the assessee had made investment in foreign assets during the year amounting to Rs.62,89,631/- by way of transferring this amount from Maheshbhai A. Patel(the assessee) account to Maheshbhai A. Patel (USA) account. The source of the same was disclosed as loans and advances taken from different parties. In the absence of satisfactory explanation of the source of investment so made, the AO added the entire amount of the foreign investment made during the year of Rs.62,89,631/- to the income of the assessee under section 68 of the Act as unexplained cash credits.

5. Before the Id.CIT(A), the assessee stated that he had furnished evidences of the genuineness of the source of some parties and since he was abroad during assessment proceedings could not furnish

evidences of the remaining loan creditors. He filed additional evidences to prove their genuineness. The Id.CIT(A) admitted the evidences in terms of Rule 46A of the Income Tax Rules, 1962 and after going through all the evidences found the genuineness of the source to be established with respect to loans received from one entity only, M/s.Atishay Landmark the assessee's partnership firm, amounting to Rs.25,89,631/-. The balance of Rs.37.00 lakhs was confirmed by the Id.CIT(A). Aggrieved by the same, the assessee has come up in appeal before us.

6. The parties with respect to which the source of foreign investment so attributed by the assessee has been held not genuine by the Revenue authorities are as under:

- i) Shri Sanjay bhai J. Guru of Rs.7,00,000/-
- ii) Shri Premjibhai A. Patel, Rs.10,00,000/-
- iii) Shri Sanjay Premjibhai Patel, Rs.5,00,000/-
- iv) Shri Kinjal Bharatbhai Patel/Kundaben Chandralal, Rs.3,00,000/-
- v) Shri Tejendra Jayantilal Patel, Rs.7,00,000/-
- vi) Shri Nileshkumar Amrutlal Patel, Rs.5,00,000/-
- vii) M/s.Atishay Landmark, Rs.30,00,000/-

7. The Id.CIT(A) has dealt with all these sources at para 5.3 to 5.8 of his order. We shall be taking up each source of investment dealt by the Id.CIT(A), consider the contention of the Id.counsel for the assessee, and accordingly adjudicate the issue source-wise.

8. Taking up first the amount advanced by Sh Sanjay Guru treated to be unexplained the same, is dealt with at para 5.3 of his order as under:

**“5.3 Sanjaybhai J Guru ( Rs.7,00,000/-)**

5.3.1 This person has transferred the amount of Rs.7,00,000/- on 19.07.2014 which has also been found credited in the bank account of ICICI Bank maintained by the appellant. The copy of contra account made available in the paper book at page 36 has been perused and it is noticed that the amount of Rs.7,00,000/- has been credited in the books of the appellant on 19.07.2014 and interest of Rs.88,027/- has been credited on this unsecured loan by the appellant. This copy of account has been signed by Shri Sanjayjayantilal Guru but no PAN details been made available on the confirmed account. The copy of bank account maintained with bank account maintained with Sarvodaya Co. Op. Bank Ltd., Mehsana Branch of this person has been filed. This account/is F.D. Overdraft account/and an amount of Rs.7,00,058/- has been debited and the debit balance was increased to Rs.16,12,770/- for which drawing power of Rs.19,00,000/- was granted to this bank account holder against the fixed deposits made. The copy of ITR-V has been filed for A.Y.2015-16 which reflected the returned income of Rs.2,46,220/- as per the return of income filed on 30.01.2016. Thus, the identity of this person has been proved with the genuineness of the transaction being made through banking channel. However, the third ingredient of creditworthiness cannot be proved by the appellant as this person had availed the overdraft facility against the fixed deposits who has no substantial source of income which could have generated the savings in the form of fixed deposits. Further, this person has filed the ITR-4 which is meant for the persons carrying on business or profession and therefore, he might have maintained the books of accounts and other details which were not made available even during the course of appellate proceedings. Thus, the appellant did not fully and satisfactorily discharged his onus to prove the creditworthiness of this person. The appellant did not come forward with the details of repayment of the unsecured loan so obtained in the subsequent years which strengthen the doubt that it was the appellant's own money and not required to be returned back to this person.

5.3.2 Considering the above facts, the amount of Rs.7,00,000/- claimed to have been obtained as unsecured loan from Shri Sanjaykumar Jayantilal Guru is not proved to be genuine and the addition of Rs.7,00,000/- made by the A.O. is, therefore, sustained. The part ground of appeal in relation to this addition is accordingly dismissed.

9. On perusal of the above it transpires that with respect to Sh Sanjay J Guru, the findings of the Ld.CIT(A) are that his identity and genuineness is proved and it is only his creditworthiness which remains doubtful. The reason for the same is that he found the amount of Rs.7 lacs to be advanced by him to the assessee by availing overdraft facility to the tune of Rs.19 lacs against FD in bank, which he found not justified considering the financial

status of Sh Sanjay who was noted to have filed return declaring income only of Rs. 2.46 lacs only.

10. We are not in agreement with the Ld.CIT(A) that the creditworthiness of Sh Sanjay Guru was not proved for the aforesaid reason. There arises no question of doubting the creditworthiness of Sh Sanjay particularly when it is an admitted fact that Rs.7 lacs had been advanced by him out of overdraft facility given by his bank of Rs.19lacs. How Sh Sanjay managed to get the drawing facility from bank despite his returned income being very less does not impinge upon his creditworthiness. That is an issue of further inquiry and in any case boils down to doubting the source of source, which by no stretch can lead to treating the amounts received by the assessee as unexplained.

We, therefore, reverse the findings of the Ld.CIT(A) and hold that the creditworthiness of Sh Sanjay was duly established. The identity of Sh Sanjay and the genuineness of the transaction being found to be established by the Ld.CIT(A), all three ingredients for treating the loan advanced to the assessee by Sh Sanjay Guru of Rs.7 lacs as being satisfactorily explained are fulfilled. There is no case therefore for treating the same as unexplained credit u/s 68 of the Act. The addition therefore made of Rs.7 lacs received from Sh Sanjay Guru u/s 68 of the Act is directed to be deleted.

11. Taking up next the amount advanced by Sh Premjibhai A Patel & Sanjay Premjibhai Patel of Rs. 10 lacs and Rs.5 Lacs respectively, treated to be unexplained since the assessee failed to file any document proving the identity, genuineness and creditworthiness of the persons, the same is dealt with at para 5.4 & 5.5 of his order as under:

**5.4 Shri Premjibhai A. Patel (Rs.10.00,000/-)**

*5.4.1 This person has transferred an amount of Rs.10,00,000/- on 30.03.2015 which has also been found to be credited in the bank account of*

*ICICI Bank maintained by the appellant. The appellant has expressed his inability to furnish the contra account or confirmation of account/ copy of ITR, statement of total income. Profit & Loss Account, Balance-sheet, copy of bank statement etc. so as to ascertain the identity, genuineness and credit worthiness of this person during the course of assessment proceedings and also in the present appellate proceedings. The appellant did not come forward with the details of repayment of the unsecured loan so obtained in the subsequent years which strengthen the doubt that it was the appellant's own money and not required to be returned back to this person. Thus, the appellant failed to discharge his primary onus to prove the loan transaction as genuine.*

*5.4.2 Considering the above facts, the amount of Rs.10,00,000/- claimed to have been obtained as unsecured loan from Shri Premjibhai A. Patel is not proved to be genuine and the addition of Rs.10,00,000/- made by the A.O. is, therefore, sustained. The part ground of appeal in relation to this addition is accordingly dismissed.*

**5.5 Shri Sanjay Premjibhai Patel (Rs.5,00,000/-)**

*5.5.1 This person has transferred an amount of Rs.5,00,000/- on 30.03.2015 which has also been found to be credited in the bank account of ICICI Bank maintained by the appellant. The appellant has expressed his inability to furnish the contra account or confirmation of account, copy of ITR, statement of total income, Profit & Loss Account, Balance-sheet, copy of bank statement etc. so as to ascertain the identity, genuineness and credit worthiness of this person during the course of assessment proceedings and also in the present appellate proceedings. The appellant did not come forward with the details of repayment of the unsecured loan so obtained in the subsequent years which strengthen the doubt that it was the appellant's own money and not required to be returned back to this person.*

*5.5.2 Considering the above facts, the amount of Rs.5,00,000/- claimed to have been obtained as unsecured loan from Shri Sanjay Premjibhai Patel is not proved to be genuine and the addition of Rs.5,00,000/- made by the A.O. is, therefore, sustained. The part ground of appeal in relation to this addition is accordingly dismissed.*

12. Ld.Counsel for the assessee was unable to controvert the factual finding of the Ld.CIT(A) with respect to both Sh Premjibhai Patel and Sh Sanjay Premjibhai Patel that the assessee failed to file any document to discharge the primary onus to prove the loan transaction genuine.

13. In the light of the same, we see no reason to interfere in the order of the Ld.CIT(A) treating the amount of loan received from both Sh Premjibhai Patel and Sh Sanjay Premjibhai Patel of Rs. 10 lacs and Rs.5 Lacs

respectively as not genuine and taxing it in the hands of the assessee as unexplained credits u/s 68 of the Act.

14. Taking up next the amount advanced by Sh. Kinjal Bharatbhai Patel/ Kundanbhai Chandrala of Rs. 3lacs the same is dealt with by the Ld.CIT(A) at para 5.6 of his order as under:

**5.6 Shri Kinjal Bharatbhai Patel/Kundanbhai Chandralal (Rs.3,00,000/-)**

*5.6.1 This person has transferred the amount of Rs.3,00,000/- on 30.03.2015 which has also been found to be credited in the bank account of ICICI Bank maintained by the appellant. The copy of contra account made available in the paper book at 44 has been perused and it is noticed that the amount of Rs.3,00,000/- has been credited in the books of the appellant on 31.03.2015 and no amount of interest has been credited on this unsecured loan by the appellant. This copy of account has been signed by Kinjal B. Patel whereas the account has been drawn in the name of Kundanbhai Chandralal and no PAN details have been made available on this account. However, the copy of PAN card has been filed in the paper book. The copy of bank account maintained with the Ahmedabad District Co. Op. Bank Ltd. of Chandrala(Gandhinagar) Branch of this person has been filed. This bank account has reflected the immediate credits of two amounts of Rs.1,87,800/- and of Rs.1,12,200/- so as to make the total of Rs.3,00,000/- on the date of clearance of the cheque. These two amounts appeared to be paid in cash as very faint copy of this bank account has been made available during the course of appellate proceedings. There are no details of filing ITR by this person. Thus, the appellant did not fully and satisfactorily discharged his onus to prove the genuineness as well as the creditworthiness of this person. The appellant did not come forward with the details of repayment of the unsecured loan so obtained in the subsequent years which strengthen the doubt that it was the appellant's own money and not required to be returned back to this person.*

*5.6.2 Considering the above facts, the amount of Rs.3,00,000/- claimed to have been obtained as unsecured loan from Shri Kinjal B. Patel is not proved to be genuine and the addition of Rs.3,00,000/- made by the A.O. is, therefore, sustained. The part ground of appeal in relation to this addition is accordingly dismissed.*

15. A perusal of the order of the Ld.CIT(A) reveals that the amount advanced by him has been found to be not proved genuine primarily for the reason that there was cash deposited in his bank account immediately before transferring Rs.3 lacs to the assessee as loan and the

creditworthiness of the loan creditor was not proved. No ITR or any other document being filed to prove the same.

Ld.Counsel for the assessee, except for referring to the same documents already considered by the Ld.CIT(A), was unable to dislodge the factual finding of the Ld.CIT(A) regarding cash deposit prior to advancing loan to the assessee from bank and creditworthiness remaining unproved. In the light of the same we see no reason to interfere in the order of the Ld.CIT(A) treating the amount of loan received by the assessee from Sh Kinjal Patel/ Kundanbhai Chandralal as unexplained. The addition, therefore, made u/s 68 of the Act of Rs. 3lacs allegedly received from him is confirmed.

16. Taking up next the amount advanced by Sh Tejendar Jayantilal Patel of Rs. 7lacs the same is dealt with at para 5.7 of the order of the Ld.CIT(A) as under

**5.7 Shri Tejendra Javantilal PaAtelf Rs.7.00.000/-**

*5.7.1 This person has transferred the amount of Rs.7,00,000/- on 30.03.2015 which has also been found to be credited in the bank account of ICICI Bank maintained by the appellant. The copy of contra account made available in the paper book at 39 has been perused and it is noticed that the amount of Rs.7,00,000/- has been credited in the books of the appellant on 31.03.2015 and no amount of interest has been credited on this unsecured loan by the appellant. This copy of account has been signed by this person in Gujarati whereas the ITR-V reflected the signature in English and in different way. Therefore, the signature on the confirmation is not proved to be true and beyond doubt. The copy of bank account maintained with The Ahmedabad District Co. Op. Bank Ltd. of Chandrala(Gandhinagar) Branch of this person has been filed. This bank account has reflected the immediate credits of Rs.7,00,000/- on the date of clearance of the cheque. The copy of ITR-V filed for A.Y.2015-16 on 24.03.2017 reflected the income of Rs.4,120/- only with agricultural income of Rs.4,05,493/-. Thus, the appellant did not fully and satisfactorily discharge his onus to prove the genuineness as well as the creditworthiness of this person. The appellant did not come forward with the details of repayment of the unsecured loan so obtained in the subsequent years which strengthen the doubt that it was the appellant's own money and not required to be returned back to this person.*

*5.7.2 Considering the above facts, the amount of Rs.7,00,000/- claimed to have been obtained as unsecured loan from Shri Tejendra 3. Patel is not*

*proved to be genuine and the addition of Rs.7,00,000/- made by the A.O. is, therefore, sustained. The part ground of appeal in relation to this addition is accordingly dismissed.*

17. A perusal of the findings of the Ld.CIT(A) with respect to loans advanced allegedly by Sh Tejender Patel reveals that he found creditworthiness of the said person not established noting that he had advanced loan of Rs.7 lacs but his returned income for the year was grossly insufficient to source the advance, being income of Rs. 4120 returned to tax and Rs. 4,05,493/- agricultural income. A very pertinent fact noted by him was that the advance was given out of cash deposited immediately before . Ld.Counsel for the assessee was unable to controvert the above factual findings of the Ld.CIT(A). He was also unable to explain as to how creditworthiness of Sh Tejender was established to advance loan of Rs.7 lacs when his source of income was only Rs. 4.5 lacs. Also noting the fact that Rs.7 lacs was advanced to the assessee out of cash deposited, the source of which had no explanation, we find no infirmity in the order of the Ld.CIT(A) treating the amount of Rs.7 Lacs allegedly advanced by Sh Tejenedra as unexplained credit in terms of section 68 of the Act.

18. Taking up next the amount advanced by Sh Nilesh Kumar Amritlal Patel of Rs.5 Lacs the same is dealt with at para 5.8 of the order of the Ld.CIT(A) as under:

**5.8 Shri Nileshkumar Amrutlal Patel (Rs.5,00,000/-)**

*5.8.1 This person has transferred the amount of Rs.5,00,000/- on 30.03.2015 which has also been found to be credited in the bank account of Ahmedabad District Co. Op. Bank Ltd. maintained by the appellant. The copy of contra account made available as additional evidence has been perused and it is noticed that the amount of Rs.5,00,000/- has been credited in the books of the appellant on 30.03.2015 and no amount of interest has been credited on this unsecured loan by the appellant. The copy of bank account maintained with The Ahmedabad District Co. Op. Bank Ltd. of Chandrala(Gandhinagar) Branch of this person has been filed. This bank account has reflected the immediate credit in cash of Rs.5,00,000/- on the date of clearance of the cheque. The appellant did not make available the copy of ITR-V filed for A.Y.2015-16 and the computation of total income, if the return of income, if any filed by this person. Thus, the appellant did not fully and satisfactory discharge his onus to prove the genuineness as well as the creditworthiness*

*of this person. The appellant did not come forward with the details of repayment of the unsecured loan so obtained in the subsequent years which strengthen the doubt that it was the appellant's own money and not required to be returned back to this person.*

*5.8.2 Considering the above facts, the amount of Rs.5,00,000/- claimed to have been obtained as unsecured loan from Shri Nileshkumar A. Patel is not proved to be genuine and the addition of Rs.5,00,000/- made by the A.O. is, therefore, sustained. The part ground of appeal in relation to this addition is accordingly dismissed.*

19. The Ld.CIT(A) has held the amount received from Sh.Nilesh Kumar Patel as unexplained finding that except for a contra account and bank statement of the loan creditor no other document was filed by the assessee proving his identity, genuineness and creditworthiness. No ITR of the said person was noted to be filed. Besides even the bank account was noted to reveal the loan advanced to the assessee being sourced by cash deposited immediately prior to advancing the loan.

20. Ld.Counsel for the assessee contended that confirmation of the said creditor had been filed during remand proceedings.

But that alone does not establish the genuineness of the loan advanced. The fact remains that the creditworthiness of the party was not established in any way particularly considering the fact that the loan was advanced out of cash deposited immediately prior to making the advance and no explanation of the source of cash was given.

There is no infirmity in the order of the Ld.CIT(A), we hold, treating the amount received from Sh Nilesh Ptael of Rs.5lacs as unexplained.

21. In effect therefore out of the addition made u/s 68 of the Act confirmed by the Ld.CIT(A) of loans claimed to be received by the assessee from various parties remaining unexplained, we hold the loan received from Sh Sanjaybhai Guru of Rs.7 lacs as explained and

direct deletion of addition made on account of the same. The balance addition of Rs.30 lacs is confirmed.

22. Another argument raised by the ld.counsel for the assessee before us that the additions made in the present case under section 68 of the Act were beyond the scope of the issues to be examined by the AO in a limited scrutiny type of assessment. He pointed out from para-1 of the assessment order that the case was selected for scrutiny in limited type for examining the new foreign asset in the nature of financial interest in any entity (Schedule-FA of the ITR). He contended that the addition, however, was made not on account of any investment in foreign assets, but on account of loans taken by the assessee, remaining unexplained under section 68 of the Act; that clearly, the AO enlarged his scope of assessment, and for this reason, the assessment order needed to be quashed.

23. We are not in agreement with the ld.counsel for the assessee. The addition made in the present case under section 68 of the Act is not beyond the scope the purpose for which the case of the assessee was taken for limited scrutiny. As noted above, in the facts of the present case, it was, while examining the issue of foreign assets/investments made by the assessee, which were the purpose of limited scrutiny, it transpired that the foreign assets sourced from various loans taken by the assessee, and on examination of the genuineness of the these loans, it was found that they remained unexplained. Clearly, the addition, therefore, made in the present case is linked to the issue of foreign investment made by the assessee, which was the purpose, for which the limited scrutiny was undertaken, the ld.counsel for the assessee was incorrect in stating

that the addition was on a totally different issue beyond the scope of limited scrutiny.

24. In view of the above, this argument of the ld.counsel for the assessee of the assessment order framed being beyond the scope of limited scrutiny, is dismissed.

25. In effect the appeal of the assessee is partly allowed.

**Order pronounced in the Court on 5<sup>th</sup> July, 2024 at Ahmedabad.**

**Sd/-**

**(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad, dated 05/07/2024

**Sd/-**

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**