

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

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
And  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 270/AHD/2017  
निर्धारण वर्ष/Asstt. Year: 2012-2013

Desert Infraspace Ltd., 202, Shymak Complex, Behind Kamdhenu Complex, Polytechnic, Ahmedabad.  PAN: AAECD0517E	बनामVs	Income Tax Officer, Ward-1(1)(4), Ahmedabad.
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(अपीलार्थी /Appellant		(प्रत्यर्थी /Respondent)
Assessee by :		Shri Sudhir Mehta, AR
Revenue by :		Ms. Ketaki Desai, Sr.DR

सुनवाई की तारीख/Date of Hearing : 24/09/2024  
घोषणा की तारीख/Date of Pronouncement: 09/10/2024

आदेश/ORDER

PER NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee as against the order of Learned Commissioner of Income Tax(Appeals), Ahmedabad, (in short "the Ld. CIT(A)") dated 08.11.2016 for Assessment Year 2012-13

2. The brief facts of the case are that the assessee had filed his return of income for A.Y 2017-18 on 29.09.2012, declaring total income of

Rs.1,03,146/. The assessment was completed u/s.143(3) on 21.01.2015 at the total income of Rs.80,57,150/-. In the course of assessment, the AO had made addition in respect of unexplained share capital, unaccounted unsecured loan, unexplained investment and on account of unsubstantiated expenses.

3. Aggrieved with the order of the AO, the assessee has filed an appeal before the First Appellate Authority, which was decided vide impugned the impugned order and the appeal of the assessee was dismissed.

4. The initial appeal filed before this Tribunal by the assessee was also dismissed vide ITA No.270/Ahd/2017 dated 22.03.2023. The assessee had filed an appeal before the Hon'ble Gujarat High Court and the Hon'ble Court vide order dated 11.07.2024 has remanded the matter back to the Tribunal. The Hon'ble High Court had also directed the assessee to deposit a cost of Rs.25,000/- with the Department and to produce the challan before the Tribunal at the time of first hearing. Accordingly, the assessee has furnished the challan dated 09.08.2024 towards payment of cost of Rs.25,000/- imposed by the Hon'ble Court.

5. The first ground taken by the assessee is against the addition of Rs.25,00,000/- on account of share capital. The assessee company was incorporated during the year on 14.12.2011 and it had raised share capital of Rs.25,00,000/-, during the year. It was explained that the share capital was contributed by the two Director namely Hiteshbhai Balubhai Shah and Poojan Hiteshbhai Shah @ Rs.12,50,000/- each. Before the AO no evidence

to prove the creditworthiness and genuineness of the share capital was furnished and, therefore, the AO had made the addition.

6. Shri Sudhir Mehta, the Ld. AR explained that the copy of the return of income of both the Directors was filed before the AO. He contended that since the company was incorporated during the year and share capital was contributed by two of the Directors, the AO was not correct in doubting the genuineness of the share capital receipt during the year. He further submitted that the additional evidences in the form of balance-sheet and cash book of two Directors who contributed to the capital and that of the assessee-company was also filed before the Ld. CIT(A) which was not taken cognizance by him.

7. Per Contra Ms Ketaki Desai, Sr. DR supported the order of the AO and the Ld.CIT(A).

8. We have considered the rival submissions. The assessee had submitted that the name, PAN and copy of return of the two Directors who had contributed in share capital. These evidences in itself does not establish the genuineness and creditworthiness of the share applicants. At the same time the additional evidences filed before the Ld. CIT(A) were not taken cognizance and no remand report was called for from the AO. Since the identity of the two Director share applicants was established and if the AO was not satisfied with the genuineness and credit worthiness of the shareholders, action should have been taken in their individual hands rather than in the hands of the company. In view of these facts, we deem it proper to set-aside the matter to the file of the AO to verify the evidences

brought on record by the assessee before the Ld. CIT(A). The AO is directed to verify the genuineness and creditworthiness of two Directors who had contributed to the share capital during the year. The ground is allowed for the statistical purposes.

9. The second ground pertains to the addition of Rs.5,00,000/- on account of unexplained unsecured loan. The assessee has taken loan of Rs.5,00,000/- from Bhavna Hitesh Shah. The assessee had filed a copy of confirmation and return of income of Bhavna Hitesh Shah before the AO. However, the AO was not satisfied with the evidences brought on record for the reason that this does not prove the genuineness and creditworthiness of the transaction.

10. The Ld.AR submitted that the assessee had also filed ledger account and bank statement along with a confirmation and copy of return of income of the loan creditor.

11. Per Contra, Ms. Ketaki Desai, Ld.CIT.DR supported the order of the AO and the Ld.CIT(A).

12. We have considered the rival submissions. It is found that the AO has acknowledged that the assessee filed letter dated 06.01.2015 and furnished copy of confirmation and return of income of Bhavna Hiteshbhai Shah from whom loan of Rs.5,00,000/- was accepted during the year. Under the circumstances, the AO has not given any reason to doubt the genuineness and creditworthiness of the loan transaction. Ms Bhavana Hitesh Shah had disclosed income of Rs.32,81,800/- in her ITR for A.Y. 2012-13 and had also

confirmed loan of Rs.5,00,000/- given to the assessee through banking channel. The copy of the bank statement was also brought on record. Considering these facts, we do not find any reason to doubt the genuineness and creditworthiness of the loan transaction of Rs.5,00,000/- taken from Bhavan Hiteshbhai Shah. Therefore, the addition of Rs.5,00,000/- in respect of unsecured loan is deleted as the assessee had discharged its onus to establish the genuineness and creditworthiness of the loan transaction. The ground taken by the assessee is allowed.

13. Third ground pertains to the addition of Rs.36,00,000/- u/s. 69 of the Act. The assessee had purchased an immovable property for Rs.1,10,00,000/- during the year. It was found that the consideration of Rs.36,00,000/- was paid in cash. According to the AO the source of cash payment for purchase of property was not properly explained and, therefore, the addition of Rs.36,00,000/- was made u/s.69 of the Act.

14. Shri Sudhir Mehta, the Ld. AR explained that the cash payment towards purchase of land was duly mentioned in the sale deed and the cash payment was also reflected in the books of accounts of the assessee. According to the Ld. AR the entire sale consideration including the cash payment was properly recorded in the books of the assessee, in support of which the cash book of the assessee and ledger for land and building were also brought on record in the course of appeal proceeding.

15. Per Contra, Ms. Ketaki Desai, Ld. Sr. DR submitted all the evidences were not filed before the AO and that the additional evidences filed before the Ld. CIT(A), were not taken into account.

16. We have considered the rival submissions. From the copy of the sale deed brought on record it is found that the total sale consideration was Rs.1,10,00,000/- out of which payment of Rs.36,00,000/- was made by cash on four different dates. Further this cash payment was also found reflected in the copy of cash book brought on record. However, the cash book and ledger account for land and building was filed only before the Ld.CIT(A), who had not called for any remand report from the AO in this respect. In view of this fact, we deem it proper to set-aside the matter to the file of the AO to verify the source of cash payment of Rs.36,00,000/- made by the assessee for purchase of land. If the cash payment is found duly recorded in the books of accounts of the assessee and the source of cash payment is also found explained, then no addition is required to be made in this respect. The AO is directed to re-decide the matter after examining the evidences as produced by the assessee. The assessee should be allowed a proper opportunity of being heard in the matter. The ground of the assessee is allowed for the statistical purposes.

17. The next ground pertains to disallowance of various expenses to the extent of Rs.13,54,000/-. The AO had disallowed the employee benefit expenses of Rs.6,44,000/- and other expenses of Rs.7,10,000/- as no supporting evidences in respect of these expenses were produced. The Ld. AR submitted the additional evidences in the form of cash book, salary-wages and bonus account, Directors remuneration and other expenses were filed before the Ld. CIT(A). He submitted that the additional evidences were not considered by the Ld.CIT(A) and the matter was decided ex-parte.

18. Per Contra, the Ld. Sr. DR Ms. Ketaki Desai, supported the order of the AO and the Ld. CIT(A).

19. We have carefully considered the rival submissions. The AO had disallowed the employee benefit of Rs.6,44,000/- and other expenses of Rs.7,10,000/- for the reason that no supporting evidences in respect of these expenses were filed. On the other hand, the evidences filed before the Ld. CIT(A), was not considered by the Revenue at all. In the interest of justice, we deem it proper to set-aside the matter to the file of the Ld. AO. The assessee is directed to produce the evidences in support of disallowance of employee expenses and other expenses as made before the AO. The AO is directed to re-decide the matter after examining the evidences as produced by the assessee. The ground of the assessee is allowed for statistical purpose.

10. In the result, the appeal filed by the assessee is partly allowed and also allowed for statistical purposes.

**Order pronounced in the Open Court on 9<sup>th</sup> October, 2024 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(NARENDRA PRASAD SINHA)  
ACCOUNTANT MEMBER**

**(True Copy)**

अहमदाबाद/Ahmedabad, दिनांक/Dated 09/10/2024  
*Manish, Sr. PS*

