

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1200/Ahd/2024

(निर्धारण वर्ष / Assessment Year : 2017-18)

J K Associates Vikram Plaza, Nr. Vishwakarma Mandir, Chandlodia, Ahmedabad - 382481	बनाम/ Vs.	ITO Ward 4(2)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AALFJ9737G		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Parin Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Rignesh Das, Sr. DR

Date of Hearing	25/11/2024
Date of Pronouncement	05/12/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 03.06.2024 for the Assessment Year 2017-18.

2. The brief facts of the case are that no return of income was filed by the assessee for the A.Y. 2017-18. An information was received by the AO that the assessee firm had purchased immovable property of Rs.1 Crore during the F.Y. 2016-17 relevant to A.Y. 2017-18. In the absence of any return filed by the assessee, the source of investment by the assessee in the immovable property remained unexplained. Therefore, the proceedings under Section 147 of the Income Tax Act, 1961 (in short

‘the Act’) was initiated by the AO after recording proper reasons. The reopened assessment proceeding was completed u/s.147 r.w.s. 144B of the Act on 25.03.2022, wherein addition of Rs.1 Crore was made in respect of unexplained investment in the immovable property.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which was decided by the Ld. CIT(A) vide the impugned order. The addition as made by the AO in respect of unexplained investment in the property was confirmed by the Ld. CIT(A) and the appeal of the assessee was dismissed.

4. Now, the assessee is in second appeal before us. The following grounds have been taken in this appeal:

- “1. *The order passed by lower authorities is bad in law and required to be quashed.*
- 2 *The reopening is bad in law and required to be quashed.*
- 3 *Ld. NFAC erred in law and on facts in issuing notice u/s 148 of the Act without recording escapement of income merely to verify the same with reason to suspect.*
- 4 *Ld. NFAC consider to fact that there is no addition on issue for which case was reopened accordingly and other addition made by him does not survive and required to be quashed.*
- 5 *Ld. NFAC erred in law and on facts in confirming addition of Rs. 1,00,00,000/- u/s 68 of the Act ignoring submission appellant. of the*
- 6 *Ld. NFAC ought to have consider fact section 68 has application that no and accordingly no addition has been warranted.*
- 7 *Ld. NFAC erred in law and on confirming facts in addition ignoring fact that AO ought to have issued notice u/s 133(6) of the Act to partners rather than making addition in firm's case.*
- 8 *Ld. NFAC ought to have consider fact that the addition lies in the hands of partners as appellant establish onus cast in section 68 on him.*

9 Ld. NFAC erred in upholding invocation of section 115BBE of the Act.

10 Charging of Interest u/s 234A,234B,234C & 234D are unjustified.

11 Initiation of penalty proceedings u/s 271AAC is unjustified.”

5. The first four grounds taken by the assessee are in respect of reopening in the case u/s.147 of the Act. Shri Parin Shah, the Ld. Counsel for the assessee submitted that the AO had not recorded any specific reason for escapement of income and, therefore, the reopening was bad in law. Further that, no addition was made by the AO on the ground on which the case was reopened by the AO and, therefore, no other addition could have been made. The Ld. Counsel relied upon the decision of *Hon'ble Gujarat High Court in the case of CIT vs. Mohd. Juned Dadani (30 Taxmann.com 1) (Guj.)* in this regard.

6. Per contra, Shri Rignesh Das, Ld. Sr.DR submitted that the AO had not only recorded specific reason for escapement of income in respect of unexplained investment in immovable property but an addition of Rs.1 Crore was also made in the assessment order on account of unexplained investment in the immovable property. He, therefore, submitted that the decision of *Hon'ble Gujarat High Court in the case of Mohd. Juned Dadani (supra)* was not applicable in the facts of the case.

7. We have carefully considered the rival submissions. The undisputed facts of the case is that no return of income was filed by the assessee for the A.Y. 2017-18. The AO had reopened the case to examine the source of investment in immovable property of Rs.1 Crore made by the assessee. Further, not satisfied with the explanation of the assessee an addition of Rs.1 Crore was also

made in the assessment order in respect of unexplained investment in the immovable property. It is, thus, found that the AO had made the addition in respect of only issue on which the case was reopened u/s.147 of the Act. Under these facts and circumstances of the case, the decision of *Hon'ble Gujarat High Court in the case of Mohd. Juned Dadani (supra)* is not at all found applicable to the facts of the present case. The grounds taken by the assessee against the reopening of the case are devoid of merit and are, therefore, dismissed.

8. The next four grounds pertain to merit of addition of Rs.1 Crore made by the AO in respect of unexplained investment in the immovable property. Shri Parin Shah, Ld. AR explained that the source of investment in the immovable property was duly explained by the assessee before the AO as well as before the Ld. CIT(A). He submitted that the property was acquired out of capital contribution made by 12 partners of the firms and the details of amount contributed by the individual partners along with their confirmations was filed before the AO. It was further explained that the partners had made withdrawals from other firms as well as taken loan from other entities for making capital contribution to the assessee firm. The Ld. AR submitted that the identity, genuineness and creditworthiness of the partner's contribution towards acquisition of property was duly established. Therefore, the AO was not correct in making addition in the hands of the assessee firm. The Ld. AR further submitted that in case the AO was not satisfied with the explanation of the assessee, then the addition should have been made in the hands of the individual partners but not in the case

of assessee firm. In this regard, he relied upon the decision of the *Hon'ble Gujarat High Court in the case of PCIT vs Vaishnodevi Refoils & Solvex [2018] 89 tax man.com 80(Gujrat)*.

9. Per contra, Shri Rignesh Das, Ld. Sr. DR submitted that there were many inconsistencies and discrepancies in the documents submitted by the assessee in the course of assessment proceeding which has been highlighted in the assessment order. The assessee was allowed opportunities to provide further clarification and to submit additional evidences, which was never complied by the assessee. In the circumstances, the AO had rightly made the addition in the hands of the assessee firm.

10. We have carefully considered the rival submissions. The explanation of the assessee was that the property was acquired out of capital contribution of Rs.1.10 Crores by 12 partners of the assessee firm. The capital account of the partners along with their income tax returns and bank statements were also filed by the assessee. It was further explained that the partners had made withdrawals from other firms and also taken loan from other entities for making capital contribution to the assessee firm. The AO was not correct in rejecting these evidences filed by the assessee as self-serving documents. The assessee has discharged its onus by explaining the source of investment made in the immovable property. It is not that the amounts were borrowed by the assessee from 3rd parties; rather all the fund had come from its own 12 partners in the form of their capital contribution. It was held by the *Hon'ble Gujarat High Court* in the case of *Vaishnodevi Refoils & Solvex (supra)* that if the AO was not convinced about the creditworthiness of the partner who had

made capital contribution, the enquiry had to be made at the end of the partner and not against the firm. In the present case also, the assessee had discharged its onus to explain the source of investment in the immovable property. The confirmation of the partners was also filed in this regard. If the AO was not satisfied about the creditworthiness of the partners, then the enquiry was required to be made at the end of the partners. No addition in respect of unexplained capital contribution made by the partner can be made in the hands of the firm. We, therefore, are of the considered opinion that the assessee had discharged its onus to explain the source of investment in the immovable property. Accordingly, the addition of Rs.1 Crore made by the AO in respect of unexplained investment in property is deleted. The grounds taken by the assessee are allowed.

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

This Order pronounced on 05/12/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad; Dated 05/12/2024

S. K. SINHA

True Copy

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रहित/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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad