

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1587/Ahd/2024

(निर्धारण वर्ष / Assessment Year : 2011-12)

Amey Pravinbhai Brahmbhatt C/o. Divyang J Shah 201, 2 nd Floor, Devashish Complex, Nr. Regenta Central Antarim Hotel, Off. C. G. Road, Ahmedabad - 380006	बनाम/ Vs.	ITO Ward-7(1)(5), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AELPB9923J		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Divyang Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Sudhakar Verma, Sr. DR

Date of Hearing	21/11/2024
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 27.07.2024 for the Assessment Year 2011-12.

2. The brief facts of the case are that the return of income for A.Y. 2011-12 was filed on 18.07.2011 declaring income of Rs.3,87,630/-. Subsequently, an information was received by the AO that the assessee had made share transactions of Rs.49,10,402/- in penny stock scrip, namely M/s. Swarna Sarita

Gems Ltd., and that the assessee had obtained accommodation entry by trading in this share. It was further noticed that the assessee had made certain share transactions and income/loss arising on such transactions was not reflected in the return of income. Therefore, the AO recorded his reason for escapement of income and initiated proceeding u/s.147 of the Act. The re-assessment was completed u/s.144 r.w.s. 147 of the Act on 14.12.2018 at total income of Rs.11,05,630/-.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided vide the impugned order, wherein the assessee was allowed part relief.

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

- “1. *Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) has erred in confirming addition of Rs.81,000/- as undisclosed /unexplained Income?*
2. *Whether on facts and in circumstances of the case and in law, Ld. CIT(A) has erred in confirming addition of Rs. 6,37,000/- as unexplained investment?*
3. *Whether, on facts and in circumstances of the case and in law, Ld. Assessing officer has erred in issuing notice u/s. 148 of the act?*
4. *Whether, on facts and in circumstances of the case and in law, Ld. Assessing officer erred in making any addition while passing order u/s.147 of the Act?”*

5. The first ground taken by the assessee is against the addition of Rs.81,000/- on account of unexplained cash deposit. In the course of assessment, the AO had found that the assessee had made cash deposit of Rs.81,000/- in the account with

Corporation Bank, the source of which was not explained. It is found that the Ld. CIT(A) had allowed relief in respect of this addition made by the AO. A finding has been given by the Ld. CIT(A) that the assessee had withdrawn cash from his bank account and that the same amount was redeposited in the bank account. Considering the explanation and documentary evidences filed by the assessee, the Ld. CIT(A) had deleted the addition of Rs.81,000/- made by the AO on account of cash deposits. Since, Ld. CIT(A) has already allowed relief to the assessee in respect of cash deposits, **the ground taken by the assessee in this regard is infructuous and is, therefore, dismissed.**

6. The next ground pertains to addition of Rs.6,37,000/- on account of unexplained investment. In the course of assessment, the AO found that the assessee had paid sum of Rs.6,37,000/- to KIFS Trade Capital Pvt. Ltd. for transaction in shares. The assessee had not explained the source of this payment and the bank detail/statement relating to share transactions were also not furnished. Therefore, the AO had made the addition, which was upheld by the Ld. CIT(A). Shri Divyang Shah, the Ld. AR of the assessee submitted that the case was reopened by the AO to examine the alleged accommodation entry of Rs.49,10,402/- in respect of transaction in shares of M/s. Swarna Sarita Gems Ltd. However, no addition was made in respect of this transaction as the assessee had never entered into any such transaction. The Ld. AR submitted that where no addition was made by the AO on the ground on which case was reopened, it was not open for the AO to make addition in respect of any other ground which did not

form part of the reason as recorded by the AO. In this regard, he has placed reliance on the judgment of the Hon'ble *Gujarat High Court in the case of CIT vs. Mohmed Juned Dadani (2013) 355 ITR 172 (Guj)*.

7. Per contra, Shri Sudhakar Verma, Ld. Sr. DR relied upon the orders of AO and Ld. CIT(A).

8. We have carefully considered the rival submissions. A copy of the reason for reopening u/s.147 of the Act has been brought on record. It is found that the case was reopened for escapement of income in respect of accommodation entry of Rs.49,10,402/- by entering into transaction in shares of penny stock of M/s. Swarna Sarita Gems Ltd. In the assessment order there is no discussion of alleged accommodation entry of Rs.49,10,402/- taken by the assessee and no such addition has been made by the AO. Under the circumstances, when the reason on which the case was reopened was found to be incorrect, the reopened assessment proceeding should have been dropped. The Hon'ble Jurisdictional High Court in the case of *Mohd. Juned Dadani (supra)* has categorically held that a very incongruent situation would come about if the Assessing Officer were to drop the ground on which notice for reopening had been issued but to chase some other grounds not so mentioned for issuance of the notice. Further that when on ground on which the reopening of assessment was based, no addition was made by the AO; he could not make addition on some other grounds which did not form part of the reasons recorded by him. Respectfully following the ratio of the said decision, we are of the considered opinion that the AO was not

correct in making addition in respect of unexplained investment in shares, which did not form part of the reason as recorded by the AO, particularly when no addition was made in respect of accommodation entry of Rs.49,10,402 for which the case was reopened and also for income/loss arising in share transactions. Accordingly, the addition of Rs.6,37,000/- in respect of unexplained investment is deleted. **The ground taken by the assessee is allowed.**

9. The next two grounds pertain to reopening the case u/s.147 of the Act. Since, the assessee has been allowed relief on merits, the grounds raised by the assessee are only academic in nature and are, therefore, not adjudicated.

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

This Order pronounced on 05/12/2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 05/12/2024
S. K. SINHA

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

True Copy

आदेश की प्रतिलिपि अद्येषित/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