

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "सी", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" C " BENCH, AHMEDABAD

सुश्री सुचित्राकाम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1726/Ahd/2024  
निर्धारण वर्ष / Assessment Year : 2017-18

The DCIT-2(1)(1) Ahmedabad	<u>बनाम/ v/s.</u>	Tatva Buildcon 1, Vraj Vihar Apartment, 2, Gopal Baug Society Bhairavnath Road Maninagar Ahmedabad - 380 008
स्थायी लेखा सं./PAN: AAIFT 8076 F		

<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Chirag R. Shah, AR
Revenue by :		Shri Rignesh Das, Sr.DR

सुनवाई की तारीख /Date of Hearing : 07/01/2025  
घोषणा की तारीख /Date of Pronouncement: 09/01/2025

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, AM:**

This appeal by the Revenue arises from the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"], dated 13/08/2024 for the Assessment Year (AY) 2017-18, allowing the appeal of the assessee against the assessment order dated 27/12/2019, passed under Section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] by the Assessing Officer [hereinafter referred to as "AO"].

**Facts of the Case:**

2. The assessee filed its return of income on 30.10.2017 declaring total income of Rs.39,19,800/- for the AY 2017-18. The case was selected for complete scrutiny under CASS for examining the details of unsecured loans. A notice under Section 143(2) of the Act was issued on 28.09.2018, followed by various notices under Section 142(1) of the Act, requiring the assessee to provide information about unsecured loans received during the year. Total unsecured loans amounted to Rs.8,71,03,982/- from 83 parties. The AO required the assessee to furnish Confirmations from creditors, Income Tax Returns (ITRs) of creditors and Bank statements to establish the creditworthiness and genuineness of the transactions. The assessee provided partial information, including confirmations and bank statements for 43 out of 83 parties. For the remaining 40 parties, no sufficient documentation was furnished at the time of assessment proceedings. After examination, the AO held that Complete details (confirmation, bank statements and ITRs) were submitted only for Rs.38,66,088/- of the unsecured loans and therefore Loans amounting to Rs.8,32,37,894/- were treated as unexplained cash credit under Section 68 of the Act due to non-submission of sufficient documentary evidence. The assessee claimed an interest expenditure of Rs.62,82,725/- on unsecured loans. Since the AO treated Rs.8,32,37,894/- of the loans as unexplained, he proportionately disallowed the corresponding interest of Rs.51,64,842/-. The AO invoked Section 115BBE, taxing the unexplained credit at 60%. Penalty proceedings were initiated under Section 271AAC of the Act for unexplained income and Section 270A for underreporting of income. The total assessed income was determined at Rs.9,23,22,540/-.

3. The assessee challenged the AO's order, submitting additional evidence during the appellate proceedings, including confirmations, ITRs, and bank statements of the lenders. The CIT(A) admitted the additional evidence under Rule 46A due to the assessee's inability to furnish the documents earlier, citing limited time during the assessment stage. The CIT(A) called for a remand report from the AO to verify the additional evidence. Despite reminders, the AO failed to respond. Upon detailed examination of the evidence, the CIT(A) concluded that:

- (a) Rs.6,38,03,645/- related to "Ved Shree" and "Ved Raj" projects were not unsecured loans but inter-project business transactions supported by proper explanations and auditor certification.
- (b) For the remaining loans of Rs.1,94,34,249/-, the identity, creditworthiness, and genuineness of transactions were established through confirmations, ITRs, and bank statements.

3.1. The CIT(A) relied on several judicial precedents, including:

- CIT vs. Dharamdev Finance (P) Ltd. (2014) 227 Taxman 219 (Gujarat HC) where it was held that no addition can be made if identity, creditworthiness, and genuineness are proved through documents.
- CIT vs. Sachitel Communications (P) Ltd. (2014) 227 Taxman 219 (Gujarat HC) where it was held that If loans are accepted through banking channels and supported by PAN, confirmations, and ITRs, additions under Section 68 cannot be sustained.

3.2. The CIT(A) emphasized that the burden shifted to the AO once the assessee provided adequate evidence, but the AO failed to bring any contrary evidence or to verify the details. The CIT(A) deleted the entire addition of Rs.8,32,37,894/- and the related interest disallowance of Rs.51,64,842/-.

4. Aggrieved by the order of CIT(A), the Revenue filed an appeal before us with following grounds of appeal:

1. *Whether on the facts. and in the circumstances of the case and in law, the Ld CIT(A) was justified in deleting the addition of Rs.8.32,37,894/-on account of unexplained cash credit u/s be of the Act, without appreciating the facts of the case?*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was justified in deleting addition of Rs.51,64.842/- representing the interest expenditure attributable to the unexplained portion of the unsecured loans, without appreciating the facts of the case?*
3. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*
4. *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.*

5. During the course of hearing before us, the Departmental Representative (DR) argued that the absence of a remand report from the AO justified remanding the case back to the AO. The DR asserted that the CIT(A) should not have proceeded with adjudication without the AO's comments.

6. The Authorized Representative (AR) relied on the order of CIT(A) and emphasized that the CIT(A) provided ample opportunity to the AO, including reminders for the remand report. The AR further stated that the CIT(A) independently verified the additional evidence and recorded specific findings. The AR argued that as the CIT(A) possesses co-terminus powers with the AO, he was within his jurisdiction to decide the matter based on the available evidence.

7. Considering the facts of the case and the submissions made by both the Departmental Representative (DR) and the Authorized Representative (AR)

for the assessee, we have carefully examined the assessment order, the order of the CIT(A), and the documentary evidence placed on record. The primary issue for adjudication is whether the CIT(A) was justified in deleting the addition of Rs.8,32,37,894/- under Section 68 of the Income Tax Act, 1961, on account of unexplained cash credits and the corresponding disallowance of Rs.51,64,842/- towards interest expenditure.

7.1. After considering the detailed contentions of both parties and the judicial precedents relied upon, we find that the CIT(A) possesses co-terminus powers with the AO, as reaffirmed by many judicial precedents. This means that the CIT(A) has the authority to not only examine the issues raised during the assessment proceedings but also to conduct an independent inquiry on matters relating to the assessment, similar to the powers vested in the AO. The CIT(A) can admit fresh evidence, verify facts, and provide appropriate relief if justified by the circumstances. In essence, the CIT(A)'s role is not merely appellate in nature but also quasi-judicial, allowing for a comprehensive review of both legal and factual aspects of the case. The appellate authority is empowered to rectify errors, take additional evidence into account, and even direct fresh inquiries if required to deliver substantive justice. Importantly, these powers do not extend to discovering new sources of income but are limited to the subject matter of the original assessment.

7.2. In the present case, the CIT(A) judiciously exercised his authority by admitting additional evidence under Rule 46A of the Income Tax Rules, 1962, after being satisfied that the assessee faced genuine difficulties in producing all necessary documents during the assessment proceedings due to a short timeframe. Despite issuing multiple reminders, the AO failed to submit a

remand report to verify the additional evidence. In such circumstances, the CIT(A) undertook a detailed verification of the additional evidence submitted by the assessee, which included confirmations, ITRs, and bank statements of the lenders. The findings recorded by the CIT(A) indicate that the transactions were carried out through regular banking channels, there were no substantial cash deposits in the lenders' bank accounts immediately before the transfers and for Rs.6,38,03,645/- related to the "Ved Shree" and "Ved Raj" projects, the amounts represented inter-project financial transfers and not unsecured loans, as corroborated by a CA certificate and trading account entries.

7.3. The CIT(A) provided ample opportunity to the AO to verify the evidence but received no response. The absence of a remand report cannot be a valid reason to remand the matter back when the CIT(A) has independently verified the evidence. We find that the CIT(A) ensured compliance with the principles of natural justice. The CIT(A) relied on several decisions of the Hon'ble Gujarat High Court, including **CIT vs. Dharamdev Finance (P) Ltd. (2014) 227 Taxman 219 (Gujarat HC)** and **CIT vs. Sachitel Communications (P) Ltd. (2014) 51 Taxmann.com 205 (Gujarat HC)**. These rulings emphasize that when the identity, creditworthiness, and genuineness of transactions are established, the burden shifts to the AO to disprove the same. In this case, the AO neither conducted an inquiry nor presented any contrary evidence.

7.4. We find that the CIT(A) acted within his jurisdiction and carried out a comprehensive verification of the additional evidence. The identity, creditworthiness, and genuineness of the loans were established by the assessee, and the AO failed to bring any material to rebut the evidence.

Additionally, the amounts related to the "Ved Shree" and "Ved Raj" projects were rightly held to be inter-project financial transfers and not unsecured loans. Accordingly, the deletion of the addition of Rs.08,32,37,894/- and the disallowance of Rs.51,64,842/- by the CIT(A) is upheld.

8. In the result, the appeal filed by the Revenue is dismissed.

**Order pronounced in the Open Court on 9<sup>th</sup> January, 2025 at Ahmedabad.**

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

**Sd/-  
(MAKARAND V. MAHADEOKAR)  
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 09/01/2025

*टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/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)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, ITAT, Ahmedabad