

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

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.562/Ahd/2024
(Assessment Year: 2016-17)

Komal Ketan Shah, C/O. M.S. Chhajed & Co. C.A., Kamal Shanti, Nr. Sardar Patel Statue, Ahmedabad-380014	Vs.	Income Tax Officer, Ward-5(3)(1), Ahmedabad
[PAN No.BEPPS4922B]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Hem Chhajed, A.R.
Respondent by:	Shri B. P. Srivastava, Sr. DR

Date of Hearing	18.12.2024
Date of Pronouncement	24.01.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi vide order dated 30.01.2024 passed for A.Y. 2016-17.

2. The assessee has taken the following grounds of appeal:-

“1. The order passed by the Ld. CIT (A) is against law, equity & justice.

2. The Ld. CIT(A) has erred in law and on facts in upholding validity of order passed by the Ld. AO, when reopening of assessment is bad and illegal as reasons for reopening of assessment is not provided and on incorrect facts.

3. The Ld. CIT(A) has erred in law and on facts in upholding validity of reopening of assessment though Ld. PCIT has granted mechanical approval u/s 151 of the Act.

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4. *The Ld. CIT(A) has erred in law and on facts in upholding validity of reopening of assessment order passed by the Ld. AO no notice was issued U/S 153C of the Act and by relying upon the information/documents pertains/relate to found at the premises of third party.*

5. *The assessment order passed by the Ld. A.O. is bad and illegal as no cross examination was provided to the appellant.*

6. *The Ld. CIT(A) has erred in law and on facts in upholding addition made by the Ld. A.O. of Rs. 99,85,000/- U/S 69 of the Act.*

7. *The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.”*

3. The brief facts of the case are that the Assessing Officer observed that assessee had made cash payment of Rs. 99,85,000/- during the impugned assessment year and the assessee had not accounted for the above cash payment in the books of accounts. Accordingly, the Assessing Officer initiated re-assessment proceedings on the assessee. The Assessing Officer observed that a search / survey action under Section 132 of the Act was conducted in the case of Rajyash / Samarth Group, Ahmedabad. On perusal of details and information, the Assessing Officer was of the view that the assessee had made payment of on-money in cash amounting to Rs. 99,85,000/- which was not accounted in the books of accounts of the assessee. The Assessing Officer held that assessee failed to prove the source of investment of Rs. 99,85,000/- and therefore, the above amount was deemed to be the income of the assessee under Section 69 of the Act.

4. In appeal, Ld. CIT(A) dismissed the appeal of the assessee with the following observations:

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“5.24 The appellant has been arguing only on the point of procedure, but has not given any evidence in support of the source of 99,85,000. A substance explanation explaining the source of such investment would have been more in favour of the appellants stand than questioning the process. The appellant has not done anything to prove the source of such investment.

5.25 There is an entry in books of account of Rajyash/ Samarth Group, in the name of appellant and it is duty of appellant to satisfy the AO on this account regarding the sources. The onus is on appellant to satisfy the AO that it has valid sources to make an investment of 9985000. the appellant has thus grossly failed to do so.

Regarding the year of taxability it is very clear that it belongs to assessment year 2016-17.

6.0 In the result, the order of AO is confirmed and appeal of the appellant is dismissed.”

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A).

6. Before us, the Counsel for the assessee submitted that re-assessment proceedings had been initiated in the instant facts on an incorrect presumption of facts. The Counsel for the assessee drew our attention to “reasons for reopening the assessment” and pointed out that in the said reasons the Assessing Officer has reopened the assessment of the assessee by noting that the assessee, Ms. Komal K. Shah had made investment of Rs. 99,85,000/- in the scheme of “Reevera” and made profits of Rs. 31,12,075/-. Before us, the Counsel for the assessee submitted that no booking had been made by the assessee in the scheme of “Reevera” and no profits were made in any property as alleged in the 147 notice. Secondly, in the “reasons for reopening the assessment”, the Assessing Officer has also mentioned that Shri Jigar Shah made investment of Rs.

4,97,075/- in the scheme of “Rise”. The Counsel for the assessee submitted that the assessee does not know any Jigar Shah and therefore, the entire scheme of re-assessment has been initiated on an incorrect presumption of facts. Further, the Counsel for the assessee submitted that the assessee had specifically sought for opportunity of cross-examination, but no opportunity of cross-examination was ever provided to the assessee. Further, the assessee had also requested the concerned Assessing Officer to provide copy of documents relied upon him for reopening the assessment, however, despite the specific request of the assessee, such documents were not furnished to the assessee so as to allow the assessee to rebut the same. The Counsel for the assessee submitted that re-assessment proceedings were also initiated by the concerned Assessing Officer for the succeeding assessment year as well and the “reasons for reopening the assessment” in the succeeding assessment year were also identical i.e. that the assessee had made unaccounted investment amounting to Rs. 99,85,000/-. Accordingly, the Counsel for the assessee submitted that the Assessing Officer had no clarity as to in which year the assessee had made investments by paying on-money of Rs. 99,85,000/- and therefore, for this reason as well, the reasons are erroneous and liable to be set-aside. In sum and substance, the Counsel for the assessee submitted that there is not even an iota of evidence prove that the assessee had made any investment in project (Reevera) and the entire re-assessment proceedings have been initiated on an incorrect presumption of facts.

7. In response, the Ld. D.R. placed reliance on the observations made by the Assessing Officer and CIT(A) in their respective orders. Further, Ld. D.R. submitted that the assessee had filed a meagre return of income and hence the assessee could not prove its creditworthiness to make the aforesaid investment.

8. We have heard the rival contentions and perused the material on record.

9. On going through the contents of the order, we observe that the contention of the assessee is that she has not made investment in any project by the name of "Reevera" and accordingly, there was no question of making any profit on such sale of unaccounted investment. On going through the contents of the assessment order, it is observed that Ld. Assessing Officer has not pointed to any specific "sale deed" nor has he pointed out as to which specific property was purchased by the assessee. In the order passed under Section 147 of the Act, no details of property, sale deed, name of the seller from whom the assessee purchased the property and details of subsequent sale in which the assessee had allegedly made profit of Rs. 31,12,075/- were mentioned. The Counsel for the assessee has categorically submitted that he has not made investment in any scheme "Reevera" and from the assessment records as well, there is no mention of which specific property the assessee had made investment in and in what manner the assessee had made profit of Rs. 31,12,075/- on subsequent sale of such property. The assessment order is silent on the details of property, there is no mention of sale deed and there is no mention

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of how assessee made subsequent profit of Rs. 31,12,075/-. Accordingly, in light of the above facts, we are of the considered view that the very basis of initiating proceedings under Section 147 of the Act are on an incorrect presumption of facts and accordingly, the order passed under Section 147 of the Act is liable to be set-aside.

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

This Order is pronounced in the Open Court on 24/01/2025

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad; Dated 24/01/2025

TANMAY, Sr. PS

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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)-
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