

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.391/SRT/2023

Assessment Year: (2016-17)

(Physical court hearing)

Assistant Commissioner of Income-tax, Central Circle-3, Surat, Room No.507, 5 th Floor, Aatyakar Bhawan, Majura Gate,Surat-395 001	Vs.	Bharatbhai Kanjibhai Kakadiya 27, Hans Society, Varachha Road, Varachha, Surat-395 006
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AFMPK 5646 M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपील सं./ITA No.312/SRT/2023

Assessment Year: (2016-17)

Bharatbhai Kanjibhai Kakadiya 27, Hans Society, Varachha Road, Varachha, Surat-395 006	Vs.	Assistant Commissioner of Income-tax, Central Circle-3, Surat, Room No.507, 5 th Floor, Aatyakar Bhawan, Majura Gate,Surat-395 001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AFMPK 5646 M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by	Shri Rasesh Shah, CA
राजस्व की ओर से /Respondent by	Shri Minal Kamble, Sr-DR
सुनवाई की तारीख/Date of Hearing	22/01/2025
उद्घोषणा की तारीख/Date of Pronouncement	24/03/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These cross-appeals by the Revenue and assessee emanate from the common order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 01.03.2023 by Commissioner of Income-tax (Appeals)-4, Surat

[in short 'Ld. CIT(A)'] for the Assessment Year (AY) 2016-17, which in turn arises out of assessment order passed by Assessing Officer u/s 147 of the Act dated 17.02.2022. Since facts are same, with consent of the parties, the appeals were heard together and a common order is passed for the sake of convenience and brevity.

2. The grounds of appeal raised by the Revenue are as under:

"1) On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition to Rs.26,00,000/- as against the addition of Rs.2,27,00,000/- made by the AO u/s 68 of the I.T. Act in respect of unexplained cash credit observing that the AO has not proved that the funds received as unsecured loans from the said parties actually came from the appellant and when all other credentials of the said parties are produced by the assessee despite the undisputed facts regarding receipt of accommodation entries mentioned by AO at para 5.1 and 5.2 of assessment order including the fact that during the course of survey, 150 lenders have filed their affidavit stating that their income tax files were used by the Sadhani Brothers to provide accommodation entries inform of bogus unsecured loan and also Shri Darshan P. Sadhani in his statement recorded u/s 132(4) and 131(1A) of the Act has accepted that his firm through his concerns have provided accommodation entries to various concerns.

*2) In addition to the **ground No.1**, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in restricting the addition to Rs.26,00,000/- as against addition of Rs.2,27,00,000/- despite the fact that the assessee has failed to prove genuineness of the transactions and credit worthiness of the so-called creditors, as the so-called creditors have filed their ITRs u/s 44AD of the I.T. Act and source of advance given to the assessee from unsecured loan and capital accumulated by showing nominal income.*

*3) In addition to the **ground No.1 & 2**, on the facts and in the circumstances of the case and in law, the CIT(A) has erred in restricting the addition to Rs.26,00,000/- as against addition of Rs.2,27,00,000/- observing that the differential amount of loan is returned back despite the fact that almost all entry provide beneficiary's cases, after the search, the same amount can be returned back to entry provider entity for tax evasion and such pattern of returning borrowed money through banking channel is typical in case of accommodation entry and to create façade that meets the eye.*

4) On the facts and in the circumstances of the case and in law, the CIT(A) has erred in restricting the addition to Rs.13,000/- as against the addition of

Rs.1,13,050/- made by the AO on account of commission expenses for accommodation entries despite the facts that the assessee has obtained accommodations entries in the form of unsecured loan as evident from fact of the case and the statement of Shri Darshan P. Sadhani, as also affidavits of the so-called lenders.

5) On the facts and in the circumstances of the case and in law, the Ld.CIT(A)-4, Surat ought to have upheld the order of the Assessing Officer.

6) It is, therefore, prayed that the order of the Ld.CIT(A) may be set aside and that the AO may be restored to the above extent.

7) The appellant craves to add, amend, alter substitute, modify the above ground of appeal, raise any new ground of appeal, if necessary, either before or during the course of the hearing of the appeal on the basis of submissions to be made.”

3. The grounds of appeal raised by the assessee are as follows:

“1. On the facts and circumstances of the case and in law, the learned AO, has grossly erred in re-opening the case of the appellant for the year under consideration by issuing notice u/s 148 of the Act, which is absolutely illegal and bad-in-law, requiring outright annulment.

2. On facts and circumstances of the case and in law, the learned CIT(A), has grossly erred in partly confirming the action of the learned AO in making an addition of Rs.26,00,000/- u/s 68 of the Act, in respect of unsecured loans received during the year under consideration by treating them as unexplained cash credit u/s 68, which is absolutely erroneous and incorrect, requiring outright annulment.

3. On facts and circumstances of the case and in law, the learned CIT(A), has grossly erred in partly confirming the action of the learned AO in making addition of Rs.13,000/-, alleging payment of commission @ 0.50% out of books in respect of unsecured loans availed during the year, purely on guesswork, conjectures, surmises and without any evidence, which needs to be deleted.

4.The appellant craves leave to add, amend, alter, substitute, modify in any or all the above grounds of appeal, if necessary, on the basis of submissions to be made at the time of personal hearing.”

4. Facts of the case in brief are that assessee filed his return of income for AY 2016-17 on 31.12.2016 declaring total income of Rs.6,62,990/-. Thereafter, information was received from Investigation Wing, Surat that a search and

seizure operation u/s 132 and survey u/s 133A of the Act were carried out at the residential premises of Sadhani Brothers. Various incriminating documents were impounded as per Annexures-B/19, B/106, B/112, B/117, B/119, B/155, B/163, B/230, B/267 and B/207. These Annexures are part of artificially created income-tax records of 873 persons whose bank accounts and income-tax records were managed and maintained by Sadhani Brothers. As per the Annexures, the assessee had obtained unsecured loan of Rs.3,00,00,000/- from the concerns of Sadhani Brothers. Shri Darshan P. Sadhani, in his statement u/s 132(4) and 131(1A), admitted that his source of income is commission income by filing income-tax returns of clients and providing accommodation entries to persons whoever required it on commission basis. On the basis of above information, the case of assessee was reopened u/s 147 of the Act after obtaining prior approval of Ld.PCIT (Central) Surat u/s 151(1) of the Act. In response to notice u/s 148, assessee filed return on 03.03.2021 declaring the same total income at Rs.6,62,990/-, as returned u/s 139 of the Act. The AO provided reasons for reopening, relevant seized materials and statement of Shri Darshana P. Sadhani to the assessee. After issuing various statutory and show cause notices, AO added Rs.2,27,00,000/- on account of unexplained unsecured loan. He also added Rs.1,13,500/-, being 0.5% of the above unsecured loan towards unaccounted commission expense.

4.1 Aggrieved by the addition made in assessment order, assessee filed appeal before CIT(A). It was submitted before him that the loans were received

through banking channel and appellant had given all required details including PAN, confirmation of loan, returns of income, bank statements to the AO but AO did not accept these details and made the addition. It was also submitted that out of above loans of Rs.2,27,00,000/-, loans of Rs.2,01,00,000/- were repaid through banking channel during FYs 2016-17, 2017-18 and 2019-20, which has been accepted by AO. These loans were received in the normal course of business for short period and were repaid within 2/3 years. The appellant filed various details to prove the identity, creditworthiness and genuineness of unsecured loans, which is described in a tabular form at pages 5 to 11 of appellate order. The details of loans received and repaid are also given in a table at pages 11 to 13 of the appellate order. The appellant relied on the decision of Hon'ble jurisdictional High Court in case of CIT vs. Ayachi Chandrashekhar Narsangji (2014) 42 taxmann.com 251 (Guj) and PCIT vs. Ambe Tradecorp (P.) Ltd. (2022) 145 taxmann.com 27 (Guj) and submitted that once repayment of loan is accepted by the Department, addition u/s 68 cannot be made. The submission of the assessee is reproduced at pages 14 to 21 of the appellate order. The decision of the CIT(A) on addition of unsecured loan is at para-7.7, 7.8 and 7.9 of the appellate order. The CIT(A) deleted addition of Rs.2,01,00,000/- on the ground that these loans were repaid in FYs 2016-17, 2017-18 and 2019-20, which has not been disputed by AO. He sustained the remaining unsecured loan of Rs.26,00,000/- as these loans were not paid even after seven years. The CIT(A) allowed proportionate relief on commission

expenses and sustained addition of Rs.13,000/- as against addition of Rs.1,13,500/-.

5. Aggrieved by the order of CIT(A) both Revenue and assessee filed appeal before the Tribunal. The Ld. Senior DR for the Revenue strongly supported the order of AO. He submitted that information regarding bogus loan from 38 parties were received due to search and survey action carried out at the residence and business premises of Sadhani Brothers, who had admitted providing bogus loans to various parties on commission basis. He submitted that various incriminating materials were found with Sadhani Brothers, who was maintaining nearly 900 files for providing accommodation entries to various parties. Since the addition has been made on the basis of incriminating material, the deletion by the CIT(A) is not justified.

6. On the other hand, Ld. Authorized Representative (Ld.AR) of the assessee supported the order of CIT(A). He filed two paper books and relied on various decisions in support of the action of the CIT(A). He submitted that the assessee has discharged the primary onus cast on him u/s 68 by filing details such as (i) name, address and PAN of the depositors, (ii) confirmation of the depositors, (iii) ITR acknowledgment of the depositors, (iv) computation of total income, (v) balance of the depositors and (vi) relevant extract of bank statements. The Ld. AR submitted that AO relied on statement of Sadhani Brothers, who is the tax consultant of various parties. Hence, their statement cannot be treated as evidence, particularly when statement of lenders,

recorded if any, are not brought on record. The assessee was not allowed to cross-examine Sadhani Brothers. The affidavits of lenders relied upon by AO were not supplied to the assessee. Even content of the affidavits is not reproduced in the assessment order. In absence of such details, it is apparent that the assessee has not been implicated by the impugned lenders. The Ld. AR further submitted that the so-called incriminating materials are in fact income-tax record of the lenders and do not constitute incriminating materials in the strict sense of the search provisions. No evidence was found that assessee paid cash against receipt of cheques from lenders. As per Section 292C of the Act, the materials found in course of search or survey action are presumed to be true. The Revenue has not brought any material on record to prove that the persons are mere name lenders and their income-tax records are not showing true state of affairs. Hence, revenue failed to rebut presumption u/s 292C of the Act. The CIT(A) therefore, rightly deleted addition of Rs.2,01,00,000/- and erred in confirming addition of Rs.26,00,000/- in respect of three parties as assessee has filed all requisite details to prove identity and creditworthiness of the parties and genuineness of transactions. The Ld. AR relied on the decisions in cases of (i) DCIT vs. Rohini Builders – SLP(C) 9155 of 201 (SC) (ii) DCIT vs. Rohini Builders 256 ITR 30 (Guj), (iii) PCIT vs. D&H Enterprise 72 taxmann.com 91 (Guj), (iv) CIT vs. Apex Therm Packaging (P.) Ltd. 42 Taxmann.Com 473 (Guj), (v) ITO vs. Shanti Enterprise 71 taxmann.com 275 (Guj), (vi) CIT vs. Ranachhod Jivabhai Nakhava 21 taxmann.com 159 (Guj), (vii)

Nemi Chand KothARI VS. CIT 264 ITR 254 (Guj) and (viii) CIT vs. Value Capital Services Pvt. Ltd. 221 CTR 511 (Del). The Ld. AR further submitted that assessee is not required to prove the source of the source as the amendment in this regard was brought in the Statute by the Finance Act, 2022 with effect from 01.04.2023. He also submitted that assessee has repaid loan of Rs.2,01,00,000/- of 26 parties long before the assessment was made and notice u/s 148 was issued. Only Rs.26,00,000/- from three parties were outstanding. The CIT(A) has rightly deleted addition in respect of repaid loans which is supported by decisions of Hon'ble jurisdictional High Court in case of Ayachi Chandrashekhar Narsangji (supra) and Ambe Tradecorp (P.) Ltd. (supra).

6.1 Regarding reopening of assessment, the Ld. AR submitted that though assessee did not press adjudication of the ground before CIT(A), he can raise the legal ground before Tribunal as there is no estoppel against the raising of legal ground even if assessee waives his right before the first appellate authority.

7. We have heard both the parties and perused the materials on record. We also deliberated various case laws relied upon by the parties. The assessee has raised two-fold challenges before the Tribunal i.e., (i) validity of proceeding initiated u/s 147 of the Act and (ii) merits of addition of Rs.26,00,000/- and Rs.13,000/-. On the other hand, the Revenue has raised grounds regarding deletion of unsecured loan of Rs.2,01,00,000/- out of total unsecured loan of Rs.2,27,00,000/- u/s 68 of the Act and commission expenses of Rs.1,00,500/-.

Since jurisdictional issues has been raised by the appellant, it would be proper to decide the same before proceeding to decide the issues on merit.

8. Ground No.1 raised by assessee is validity of reopening of the assessment u/s 147 of the Act. On the basis of information received from the Investigation Wing, Surat that search and seizure operation u/s 132 and survey action u/s 133A of the Act were carried out in cases of Sadhani Brothers, which resulted in collection of evidences revealing that the group was providing accommodation entries of unsecured loans and that appellant had taken bogus loans from 38 parties to the extent of Rs.3,00,00,000/-, the case was reopened u/s 147 of the Act. The AO has discussed about the incriminating materials in pages-2 to 5 of the assessment order. The case was reopened after obtaining prior approval of the Ld.PCIT(Central) Surat u/s 151(1) of the Act. In response to the notice u/s 148, assessee filed his return of income on 03.03.2020 declaring the same income as returned u/s 139 of the Act. The AO provided reasons for reopening to the assessee. Thereafter, assessee filed various details in response to the notices issued to him by AO. The AO completed assessment u/s 143(3) r.w.s 147 of the Act on 17.02.2022. During appellate proceedings before CIT(A), the AR of the appellant did not press for adjudication of this ground. Hence, ground No.1 was dismissed as not pressed by the CIT(A). Before us, the appellant has again raised similar ground. It is contended by the Ld. AR of the assessee that assessee can raise legal ground before the Tribunal as there cannot be estoppel against raising of a legal

ground even if assessee has waived his right before the lower authorities. We agree with the view of the Ld. AR of the assessee. The conditions prescribed for initiating re-assessment proceedings are mandatory and there could never be waiver of the mandatory provisions. There would be no question of waiver or acquiescence or estoppel or bar of *res judicata* being attracted because the order in such a case would lack inherent jurisdiction and would be a void order or a nullity. Hence, we admit the ground raised by the appellant. Since, the jurisdictional ground has not been adjudicated on merit and dismissed only because it was not pressed by appellant, we set aside the matter back to the file of CIT(A) for fresh adjudication in accordance with law after providing reasonable opportunity of being heard to assessee. This ground of assessee is allowed for statistical purposes.

9. Ground No. 1 to 3 of Revenue's appeal and Ground No.2 of assessee's appeal pertain to addition of Rs.2,27,00,000/- by the AO which was restricted to Rs.26,00,000/- by CIT(A). There is no dispute that assessee had received unsecured loans of Rs.2,27,00,000/- from 29 parties. However, assessee had repaid loans of Rs.2,01,00,000/- to 26 parties in FYs 2016-17, 2017-18 and 2019-20. The CIT(A) has deleted this amount by relying on the decisions of Hon'ble jurisdictional High Court in case of Ayachi Chandrashekhar Narsangji (supra) and Ambe Tradecorp (P.) Ltd. (supra). The Hon'ble Gujarat High Court in case of Ayachi Chandrashekhar Narsangji (supra) held that where Department has accepted repayment of loan in subsequent year, no addition

was to be made in the current year on account of cash credit. Similarly, in case of Ambe Tradecorp (P.) Ltd. (supra), the Hon'ble court held that where assessee took loan from two parties and he has furnished requisites material showing identity of loan givers and that assessee was not beneficiary as loan was repaid in subsequent year, no addition u/s 68 could be made on account of such loan. The repayment of loans in the present case has been accepted by the AO. The Ld. Sr-DR has not disputed above facts. Hence, following the binding decisions of Hon'ble jurisdictional High Court, we do not find any infirmity in the order of CIT(A) in deleting addition of Rs.2,01,00,000/-.

9.1 As regards addition of unsecured loan of Rs.26,00,000/- sustained by the CIT(A), it is seen that the addition was upheld only on the ground that the loans are still outstanding even after seven years. The Ld. AR of the assessee submitted that it had filed all requisites details to establish the identity and creditworthiness of the lenders and genuineness of the transactions. The details submitted were: (i) name, address and PAN of the depositors, (ii) confirmation of the depositors, (iii) ITR acknowledgment of the depositors, (iv) computation of total income, (v) balance of the depositors and (vi) relevant extract of bank statements. He has also relied upon various decisions which are mentioned at para-6 of this order. We find that the CIT(A) has sustained the addition only on the ground that the loans were not repaid even after seven years. Such finding is not in accordance with law or any specific provisions of the Act. It may, however, be mentioned that remission of

cessation of liability is chargeable to tax u/s 41(1) of the Act, if the necessary conditions precedent for application of Section 41(1) are satisfied. The CIT(A) has not discussed the matter in the light of provisions of Section 41(1) of the Act. On the other hand, assessee has *prima facie* produced various documents in respect of identity and creditworthiness of the parties and genuineness of the transactions. These details were not examined by the CIT(A), which he was required to consider before deciding the issue. In view of these facts, we set aside the order of CIT(A) to the above extent and remit back to the file of CIT(A) to decide the issue of unsecured loans of Rs.26,00,000/- afresh in accordance with law after affording adequate opportunity of being heard to assessee. The assessee is directed to furnish all requisite details as and when called for by CIT(A). Ground No.2 of assessee is allowed for statistical purposes.

9.2 In the result, deletion of unsecured loan of Rs.2,01,00,000/- is upheld and addition of Rs.26,00,000/- is remitted back to the CIT(A) for fresh adjudication. The grounds are decided accordingly.

10. Ground No.4 of Revenue's appeal and Ground No.3 of assessee's appeal pertain to addition of Rs.1,13,500/- towards unaccounted commission expenses, which was restricted to Rs.13,000/- by the CIT(A). We have already upheld the deletion of Rs.2,01,00,000/- by CIT(A); hence, commission expenses of Rs.1,00,500/-, being consequential in nature, is also deleted. Regarding addition of Rs.26,00,000/-, the matter has been remitted back to the file of

CIT(A). Therefore, this issue is also remitted back to the file of CIT(A) for fresh adjudication. Ground raised by both the parties are partly allowed for statistical purposes.

11. In the result, both appeals are partly allowed for statistical purposes.

Order pronounced under provision to Rule 34 of ITAT Rules, 1963 on 24/03/2025 in the open court.

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 24/03/2025

Dkp Outsourcing Sr.P.S*

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त (अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत