

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

सुश्री सुचित्राकम्बले, 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.1323/Ahd/2024  
निर्धारण वर्ष / Assessment Year : 2017-18

Income Tax Officer Ward-1(2)(3) Ahmedabad	<u>बनाम/</u> <u>v/s.</u>	K. Mart 38, Teliya Mill Compound O/s. Prem Darwaja Ahmedabad - 380 002
स्थायी लेखा सं./PAN: AAKFK 2520 R		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Mehul K. Patel, AR
Revenue by :	Shri Rignesh Das, Sr.DR

सुनवाई की तारीख/Date of Hearing : 26/03/2025  
घोषणा की तारीख /Date of Pronouncement: 01/04/2025

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] dated 27.05.2024 passed for Assessment Year (AY) 2017-18, whereby the CIT(A) deleted the addition of Rs.2,65,00,000/- made by the Assessing Officer [hereinafter referred to as "AO"] under section 69A of the Income-tax Act, 1961 [hereinafter referred to as "the Act"] vide order dated 24.03.2022 passed under section 147 r.w.s. 144 read with 144B of the Act.

**Facts of the Case:**

2. The assessee filed its original return of income on 27.11.2018 declaring income of Rs.2,21,200/-. The case was reopened u/s.147 of the Act based on information obtained during a survey u/s 133A of the Act conducted in the case of a third party, Shri Pravin S. Shah (Prop. Manibhadra), who was allegedly engaged in providing cash loans through hundis. The AO concluded that the assessee received cash loan of Rs.2,65,00,000/- during Financial Year (FY) 2016-17. After issuing notice u/s.148 of the Act and subsequent notices u/s.142(1) of the Act, the AO issued a show-cause notice dated 15.03.2022. The assessee replied on 19.03.2022, denying any such transaction, citing technical difficulties in e-filing return in response to notice u/s 148 of the Act, and reiterating that its original return may be treated as return filed in compliance. The AO, however, passed the assessment order *ex- parte* u/s.144 r.w.s. 147 and 144B of the Act, making the addition of Rs.2.65 crore u/s. 69A of the Act on the basis of information obtained from third-party survey proceedings.

3.. The assessee filed an appeal before the CIT(A), who allowed the appeal of the assessee. The assessee submitted that it had never received any such cash loan and the addition was arbitrary and solely based on unverified information. It was also pointed out that the AO did not furnish the statement of Shri Pravin S. Shah nor allowed the assessee an opportunity to cross-examine him. The reply also highlighted that the assessee had filed its return of income under section 44AD showing a total turnover of Rs.36.30 lakhs and a declared income of Rs.2,21,200/-. As per banking norms, working capital requirement would not exceed Rs.7.5 lakhs, and hence there was no commercial rationale to suggest that the assessee would need or receive a

cash loan of Rs.2.65 crores. The assessee further relied upon decisions of the Hon'ble Supreme Court in the case of *Common Cause v. Union of India* [(2017) 394 ITR 220 (SC)] and *CBI v. V.C. Shukla* [(1998) 3 SCC 410], to contend that documents found in possession of a third party are not admissible as evidence unless corroborated and unless opportunity of rebuttal or cross-examination is provided. In the appellate proceedings, the CIT(A) examined the submissions and the assessment order in detail. It was observed that although the AO issued a show-cause notice dated 15.03.2022, and the assessee duly responded on 19.03.2022 denying the alleged transaction and seeking cross-examination and documentary evidence, the AO neither discussed nor rebutted the submissions made. There was no reference to any specific document, date of transaction, copy of hundi, signature, or corroborative statement linking the assessee with the alleged cash loan. The entire addition was made on the basis of third-party information without conducting any verification or inquiry at the level of the assessee. The AO also failed to furnish the alleged documents or permit cross-examination, thereby violating the principles of natural justice. The CIT(A) held that for invoking section 69A of the Act, it is essential that the assessee must be found to be the owner of unexplained money. In the absence of evidence establishing ownership or possession, and in the face of categorical denial, the addition cannot be sustained. The appellate authority placed reliance on the ITAT Delhi Bench decision in the case of *DCIT v. Yograj Arora* (ITA No.2440/Del/2022) and Circular No. 20 dated 07.07.1964 issued by CBDT, clarifying the scope of section 69A of the Act. The CIT(A) emphasized that mere suspicion or uncorroborated information cannot substitute evidence, and that documents found from third parties cannot be used against an assessee unless corroborated and subjected to the test of cross-

examination. The CIT(A) concluded that there was no tangible material before the AO to establish that any transaction of cash loan had taken place between the assessee and Shri Pravin S. Shah. The assessment was made purely on assumptions, without meeting the legal requirements for invoking section 69A of the Act. Accordingly, the CIT(A) allowed the relevant grounds and directed deletion of the entire addition of Rs.2,65,00,000/-.

4. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us raising following grounds before us:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,65,00,000/- made u/s 69A of the Act in the order passed u/s 147 r.w.s. 144 of the Act, ex parte and without appreciating the facts of the case.*
2. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*
3. *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.*

4.1. The Revenue also filed following additional grounds of appeal:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,65,00,000/- made u/s 69A of the Act in the order passed u/s 147 r.w.s. 144 of the Act, ex parte and without appreciating the facts of the case.*
2. *Whether the Ld. CIT(A) has erred in not providing opportunity to the Assessing Officer as per Rule 46A of the IT Rules, as the assessee had filed its submission on 19.03.2022 at the fag end of the time barring date, which remained unverified, and the same is accepted as additional evidence without remanding the matter to the AO for adjudication?*

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 the Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.*

5. During the course of hearing before us, the Learned Departmental Representative (DR) submitted that the CIT(A) erred in deleting the addition of Rs.2.65 crore made under section 69A of the Act without giving an opportunity to the Assessing Officer to verify the assessee's reply dated 19.03.2022. The DR contended that this submission, filed close to the time barring date, was accepted without calling for a remand report, thereby violating Rule 46A of the Income Tax Rules, 1962. It was further submitted that the assessee had remained non-compliant during the assessment proceedings and the assessment was rightly completed ex parte u/s. 144 r.w.s. 147 and 144B of the Act. The addition was based on survey findings and impounded hundis in the case of a third party, Shri Pravin S. Shah, and the AO had valid reason to treat the cash loan as unexplained money. The DR, therefore, prayed for setting aside the CIT(A)'s order and restoring the matter to the AO for fresh verification and adjudication.

6. The Learned Authorized Representative (AR) for the assessee, on the other hand, strongly defended the order passed by the Learned CIT(A) and opposed the appeal filed by the Revenue. The AR submitted that the addition of Rs.2,65,00,000/- made by the AO under section 69A of the Act was wholly unjustified, arbitrary, and unsustainable in law. He pointed out that the reopening of the case was based solely on information received from a third-party case, namely, Shri Pravin S. Shah, Proprietor of Manibhadra, pursuant

to a survey conducted under section 133A of the Act. However, the AO failed to bring on record any direct or corroborative evidence to establish that the assessee had received any cash loan from the said party.

7. The AR submitted that the assessee had duly responded to the show cause notice dated 15.03.2022 by filing a reply on 19.03.2022, clearly denying any transaction with Shri Pravin S. Shah. The AR also submitted that, the assessee clarified, by way of reply to notice, that due to technical difficulties, it could not file a fresh return in response to notice under section 148 and had therefore requested that the original return filed earlier be treated as the return filed in compliance. The AR argued that the Revenue's contention regarding violation of Rule 46A was factually incorrect, since the reply was filed before completion of the assessment and formed part of the assessment records. Hence, it could not be treated as "additional evidence," and Rule 46A had no application.

7.1. It was further pointed out that despite repeated requests, the AO failed to furnish the assessee with copies of the alleged hundis, the statement of Shri Pravin S. Shah recorded under section 131 of the Act, or any other material relied upon. The assessee was also not granted an opportunity to cross-examine the said person. The AR contended that such failure to supply material and deny cross-examination amounted to a gross violation of the principles of natural justice, and therefore, the entire addition was vitiated. The AR further submitted that based on the turnover of Rs.36.30 lakhs declared by the assessee, the maximum working capital requirement, even under liberal banking norms, would not exceed Rs.7.5 lakhs. Therefore, the conclusion drawn by the AO that the assessee had taken a cash loan of

Rs.2.65 crores was not only unsubstantiated but also illogical. It was argued that the AO proceeded on the basis of suspicion and surmise alone, without any real-time inquiry or verification. The AR emphasized that it is a settled principle of law that suspicion, however strong, cannot take the place of evidence.

7.2. In support of the submissions, the AR relied upon the decision of the Co-ordinate Bench in the case of *Kirtikumar Champaklal Shah v. ITO* (ITA No. 1014/Ahd/2023), where the Tribunal had deleted the addition made solely on the basis of third-party information in excel sheet and without allowing cross-examination. He also placed reliance on the decision of the Hon'ble Gujarat High Court in the case of *Kaushik Nanubhai Majithia* (Tax Appeal No. 20 of 2024 dated 06.03.2024), which held that when third-party material is used against an assessee, opportunity of cross-examination must be provided and corroborative evidence must be brought on record to support the addition.

8. We have heard the rival submissions and carefully perused the orders of the lower authorities as well as the materials available on record. The core issue for consideration in the present appeal is the validity of the addition of Rs.2,65,00,000/- made by the Assessing Officer under section 69A of the Act, based on information received from a third-party survey conducted in the case of one Shri Pravin S. Shah, wherein it was alleged that the assessee had received unexplained cash loans through hundis during the relevant previous year.

8.1. The assessment was framed ex parte under section 144 r.w.s. 147 and 144B of the Act. It is an undisputed fact that the assessee responded to the show-cause notice dated 15.03.2022 and filed a detailed reply on 19.03.2022, categorically denying any transaction with the said third party. The assessee also submitted that it faced technical issues in filing the return electronically and had requested that the original return already on record be treated as return filed in response to notice under section 148 of the Act. The Assessing Officer, however, did not acknowledge or discuss the said reply and proceeded to make the impugned addition solely based on the third-party information, without bringing any independent corroborative material on record or allowing cross-examination of the said third party, despite specific request.

8.2. It is settled law that for invoking the provisions of section 69A of the Act, the Revenue must establish that the assessee is the owner or possessor of the alleged unexplained money and that such money has not been recorded in the books of account. In the present case, there is no material brought on record by the Assessing Officer to prove the existence of any actual transaction between the assessee and Shri Pravin S. Shah. No copy of the alleged hundi, no date-wise loan record, no signature of the assessee, and no statement of Shri Pravin S. Shah relied upon by the AO has been brought on record or confronted to the assessee. There is also no evidence to show that any money was found in possession of the assessee or routed through its books.

8.3. The entire addition is based on generalized information received from a third-party survey and lacks any evidentiary value in the absence of

corroboration. It is trite law that documents found in possession of a third party cannot be used against an assessee unless the material is confronted and opportunity of rebuttal, including cross-examination, is granted. This principle has been reaffirmed by the Hon'ble Gujarat High Court in the case of *Kaushik Nanubhai Majithia* (Tax Appeal No. 20 of 2024, dated 06.03.2024).

8.4. The Revenue's contention that the CIT(A) violated Rule 46Am of the Act is misplaced. The reply dated 19.03.2022 was filed in response to a show cause notice during the course of assessment proceedings and formed part of the assessment record. It was not a case of fresh evidence being filed for the first time before the CIT(A). Therefore, Rule 46A of the Act has no application. The CIT(A), in our considered view, rightly appreciated the facts and the legal position in deleting the addition.

8.5. We also note that the CIT(A) relied upon the CBDT Circular No. 20 dated 07.07.1964, which clarifies that for invoking section 69A of the Act, ownership must be clearly established, and the explanation of the assessee must be found unsatisfactory after due inquiry. None of these preconditions were satisfied by the AO in the present case. The addition was made in a mechanical and arbitrary manner without discharging the burden of proof which squarely lay upon the Revenue.

8.6. In view of the above legal and factual matrix, we find no infirmity in the order of the CIT(A) deleting the addition. The findings of the CIT(A) are reasoned, legally sound, and in accordance with binding judicial precedents.

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

**Order pronounced in the Open Court on 1<sup>st</sup> April, 2025 at Ahmedabad.**

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

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

अहमदाबाद/Ahmedabad, दिनांक/Dated 01/04/2025

*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//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad