

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. Nos. 676 to 678/SRT/2024
(Assessment Years: 2013-14 & 2014-15)

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| M/s. Shree Laxmi Developers, Shop No. 1, Sneh Sadan, Nr. St. Xavier School, Ratan Nagar, Borivali (E), Mumbai-400067 | Vs. | Income Tax Officer, Silvasa Ward, Silvasa |
| [PAN No.ABYFS5470M] | | |
| (Appellant) | .. | (Respondent) |

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| Appellant by : | Shri Subhash Bains, A.R. |
| Respondent by: | Shri Ravi Kant Gupta, CIT DR |

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|------------------------------|------------|
| Date of Hearing | 25.03.2025 |
| Date of Pronouncement | 08.04.2025 |

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

These appeals have been filed by the assessee against the quantum order for A.Ys. 2013-14 and 2014-15 and also against levy of penalty under Section 271(1)(c) of the Act for A.Y. 2013-14 passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide separate orders dated 30.04.2024 & 25.04.2024. Since common facts and issues for consideration are involved for both the years under consideration, all the appeals filed by the assessee are being taken up together.

We shall first deal with assessee's appeal relating to quantum addition for A.Y. 2013-14

2. The assessee raised the following grounds of appeal:

“1. The Ld. CIT(A) has erred in confirming the order passed by the A.O. by dismissing all the grounds taken in appeal without giving any cogent reasons.

2. The Ld. CIT(A) has erred in confirming the following additions made by the A.O. to the income of the appellant without judiciously taking into consideration the details filed during the appellate proceedings:

| | | |
|----|------------------------------|-----------------|
| a) | Unsecured loans | Rs. 99,66,000 |
| b) | Unexplained/advance receipts | Rs. 61,85,444 |
| c) | Sundry Creditors | Rs. 1,12,29,961 |
| d) | Stock difference | Rs. 2,20,720 |
| e) | Capital Contribution | Rs. 5,95,91,418 |
| f) | 205 Disallowance of expenses | Rs. 5,55,142 |

3. The order passed by the Ld. CIT(A) is in violation of principles of natural justice, without application of mind and bad in law.

4. The order passed by the A.O. is in violation of principles of natural justice bad in law and without jurisdiction.

5. The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.”

3. The brief facts of the case are that the original assessment year was passed by the Assessing Officer under Section 144 of the Act on ex-parte basis in absence of compliance by the assessee, in response to notices issued by the Assessing Officer. During the course of assessment, the Assessing Officer observed that the assessee failed to provide necessary documentation to establish the creditworthiness of certain loans and accordingly, unsecured loans amounting to Rs. 99,60,000/- for which no confirmations or details were provided, were treated as income under Section 68 of the Act. Further, the Assessing Officer noted that the

assessee did not provide details regarding advances received amounting to Rs. 61,85,444/- and therefore, these amounts were treated as unexplained credits and added under Section 68 of the Act. The Assessing Officer observed that the assessee failed to furnish details and confirmations from creditors indicating a cessation of liability. As a result, outstanding creditors balance of Rs. 1,12,29,961/- were added to the total income under Section 41(1) of the Act. The Assessing Officer noted that there were certain discrepancies regarding the capital introduced by one of the partners and since the assessee failed to establish the genuineness of the same, an addition of Rs. 5,95,91,418/- was made under Section 68 of the Act. In further appeal, Ld. CIT(A) dismissed the appeal vide order dated 30.03.2017. In appeal the ITAT set-aside the case of the assessee vide order dated 12.07.2019 to the file of Ld. CIT(A) for de-novo consideration. However, again before Ld. CIT(A), despite issuance of several notices of hearing, the assessee largely remained non-compliant and accordingly, in absence of adequate details / documentation Ld. CIT(A) vide order dated 30.04.2024 dismissed the appeal of the assessee, with the following observations:

“4.4 I have gone through the assessment order and record available. The appeal of the assessee was originally filed on 03.05.2016 against the order of the ITO ward, silvassa passed u/s 144 of the IT Act The than CIT(A) dismissed the appeal vide his order no. CIT(A)A/LS/282/18-17/59 dated 30.03.2017. The matter is being re-adjudicated being available in the list of set aside cases. The ITAT-set aside the case of the appellant vide order elated 12.07.2019. Despite many requests, the assessee did not provide confirmation letters or details regarding outstanding sundry creditors as of March 31, 2013. Due to the lack of evidence provided by the assessee, it is considered a cessation of liability, and the outstanding amount of Rs. 1,12,29,961 is confirmed to the total income under Section 41(1) of the Income Tax Act. There are discrepancies found by AO in the documentation regarding the capital introduced by one of the partners, Shri Chhatrasingh Chauhan. The assessee failed to establish the

genuineness of the transaction, leading to the addition of the capital amount under Section 68 of the Act. Expenses totaling Rs. 5,55,142/- debited in the profit and loss account were questioned. The assessee failed to provide supporting evidence for the expenses, leading to the disallowance of 20% of the total expenses, amounting to Rs. 27,75,711/- which is added to the income.

4.5 As regards. Unsecured Loans are concerned the assessee failed to provide sufficient evidence to the creditworthiness of the lenders and the genuineness of the transactions. Despite multiple opportunities, the necessary details were not furnished. The unsecured loans from certain lenders, as specified in the assessment order could not be verified. As regards, advances are concerned. The assessee could not provide complete details of the advances received, such as the names and addresses of the persons, details of units allotted, copies of agreements, etc., despite being asked. Further, despite requests, the assessee failed to provide confirmation letters from creditors, indicating a cessation of liability. The existence of outstanding liabilities was not adequately substantiated. As regards, capital introduction by the partners is concerned the assessee could not establish the genuineness and creditworthiness of the capital introduction by partners. Failure to establish the genuineness of the transaction indicate that unaccounted income was introduced as capital. Despite opportunities, relevant details were not provided. The assessee failed to produce confirmations from creditors, indicating a cessation of liability. Lack of evidence implies that the liabilities were not genuine. 20% of the total expenses, amounting to a specific sum, disallowed and added to the income. Lack of evidence and failure to substantiate the expenses debited in the profit and loss account suggests the possibility of excessive or non-business-related expenses. These additions were made due to the appellant's failure to provide necessary evidence despite multiple opportunities, as stated by the assessing officer and appeal proceedings.

The following list of documents required by AO as, mentioned in the order by the assessing officer (AO):

- 1. Confirmations from lenders*
- 2. Copies of returns of income with balance sheet, profit and loss account, capital account, and computation of total income filed by lenders*
- 3. Copies of bank statements of lenders*
- 4. Details of advances receipts, including:*
- 5. Names and addresses of persons from whom advances are received*
- 6. Details of units allotted*
- 7. Copies of agreements, if any, effected and present status of such transactions*
- 8. Confirmation letters from creditors*
- 9. Ledger copy of one of the partner M/S. Laxmi Developers*
- 10. Closing balance shown in the ledger account regarding Shri Chhatrasingh Chauhan*
- 11. Bank statement for verification of capital accounts*
- 12. Balance sheet of Shri Chhatrasingh Chauhan's account*

These documents were requested by the AO during the assessment proceedings but were not provided adequately by the appellant.

5. *As the appellant has failed to substantiate its claims and support grounds of appeal with the help of documents and evidences. All the grounds taken by the appellant are dismissed. As a result the appeal of the is dismissed.”*

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

5. Before us, the Counsel for the assessee submitted that substantial amount of additional evidence was sought to be filed by the assessee before Ld. CIT(A) under Rule 46A of the Income Tax Rules. The Counsel for the assessee drew our attention to application for additional evidence filed under Rule 46A before the Ld. CIT(A) (at pages 11-56 of the Paper Book). The Counsel for the assessee submitted that all the details in support of the case were filed before Ld. CIT(A). Further, the Counsel for the assessee drew our attention to Pages 57-59 of the Paper Book containing the details of various documentation filed by the assessee before Ld. CIT(A) for his consideration. The Counsel for the assessee submitted that while dismissing the appeal of the assessee, the Ld. CIT(A) made no mention of the application for additional evidence filed by the assessee under Rule 46A of the Income Tax Rules and the order passed by Ld. CIT(A), was without taking into consideration the detailed evidences filed by the assessee along with application for additional evidences under Rule 46A of the Income Tax Rules. However, it was submitted before us that Ld. CIT(A) did not take into consideration the application for additional evidences filed before him. Accordingly, the Counsel for the assessee submitted that in the interest of justice, the matter may be restored to the

file of Ld. CIT(A) for de-novo consideration, especially looking into the quantum of additions made in the hands of the assessee.

6. In response, Ld. D.R. placed reliance on the observations made by the Ld. CIT(A) in the appellate order.

7. On going through the facts of the instant case, we observe that it is an undisputed fact that the assessee has largely maintained a non-responsive and non-compliant attitude in response to various notices issued by the Income Tax Authorities. The matter had travelled to ITAT, which was then again set-aside to the file of Ld. CIT(A) for de-novo consideration. However, even during the course of set-aside proceedings before CIT(A), the assessee continue to remain largely non-cooperative. However, in the interest of justice and taking into consideration the fact that substantial additions have been made in the hands of the assessee and also the fact that the assessee sought to file certain additional evidences along with application under Rule 46A in the Income Tax Rules, the matter is hereby again set-aside to the file of Ld. CIT(A) for de-novo consideration. In the set-aside proceedings the assessee would be at liberty to file any additional details/supporting documents in support of it's case. However, in case the assessee still continues to remain non-compliant, Ld. CIT(A) would be at liberty to pass appropriate orders in the accordance with law, on the basis of material available on record. Further, in view of the fact that the assessee had largely remain non-cooperative and non-responsive to notices issued by the Tax Authorities at various stages of proceedings, a cost of Rs. 10,000/- for A.Y. 2013-14 is being imposed for

setting-aside the matter to the file of Ld. CIT(A), for de-novo consideration payable to the Prime Minister Relief Fund.

8. In the result, the appeal of the assessee for A.Y. 2013-14 is allowed for statistical purposes.

Now we come to Assessee's Appeal in ITA No. 677/Srt/2024 for A.Y. 2013-14 in 271(1)(c) proceedings

9. The assessee taken the following grounds of appeal:

“1. The Ld. CIT(A) has erred in confirming the penalty order passed by the A.O. levying penalty of Rs. 2,71,12,491/-.

2. The Ld. CIT(A) has erred in confirming the penalty levied without judiciously taking into consideration the details filed during the appellate proceedings which were available on record.

3. The order passed by the Ld. CIT(A) is in violation of principles of natural justice, without application of mind and bad in law.

4. The penalty order passed by the A.O. is in violation of principles of natural justice, bad in law and without jurisdiction.

5. The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.”

10. This is an appeal filed by the assessee against levy of penalty under Section 271(1)(c) of the Act in relation to various additions confirmed by Ld. CIT(A) to the income of the assessee in quantum proceedings. Since the quantum proceedings have been restored to the file of Ld. CIT(A) for de-novo consideration, the penalty proceedings are also accordingly set-aside to the file of Ld. CIT(A) for his consideration.

11. In the result, the appeal of the assessee in relation to upholding the levy of penalty under Section 271(1)(c) of the Act is allowed for statistical purposes.

Now we come to ITA No. 678/Srt/2024 for A.Y. 2014-15

12. The assessee has raised the following grounds of appeal:

“1. The Ld. CIT(A) has erred in confirming the order passed by the A.O. by dismissing all the grounds taken in appeal.

2. The Ld. CIT(A) has erred in confirming the following additions made by the A.O. to the income of the appellant without judiciously taking into consideration the details filed during the appellate proceedings;

| | |
|------------------------------------|------------------------|
| <i>a) Unsecured loans</i> | <i>Rs. 58,20,000</i> |
| <i>b) Unexplained advance</i> | <i>Rs. 1,97,51,758</i> |
| <i>c) Sundry Creditors</i> | <i>Rs. 1,35,02,025</i> |
| <i>d) Disallowance of expenses</i> | <i>Rs. 12,59,308</i> |

3. The order passed by the Ld. CIT(A) is in violation of principles of natural justice, without application of mind and bad in law.

4. The order passed by the A.O. is in violation of principles of natural justice bad in law and without jurisdiction.

5. The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.”

13. This is an appeal filed by the assessee against certain quantum additions made by the Assessing Officer during the course of assessment proceedings. We observe that since similar facts are involved for both the years under consideration, the matter is hereby restored to the file of Ld. CIT(A) for de-novo consideration. However, from the order passed by Ld. CIT(A), it is observed that Ld. CIT(A) had issued several notices of hearing, in response to which the assessee had largely remained

unresponsive (refer Page 10 of CIT(A)'s order). Accordingly, the cost of Rs. 10,000/- is being imposed for getting the matter restored to the file of Ld. CIT(A), payable to the Prime Minister Relief Fund for A.Y. 2014-15.

14. In the result, the appeal of the assessee is allowed for statistical purposes for A.Y. 2014-15.

15. In the combined result, the appeal of the assessee is allowed for statistical purposes for both the A.Ys. 2013-14 and 2014-15, subject to payment a cost of Rs. 10,000/- for each of the assessment years referred to above, to be deposited in the Prime Minister Relief Fund.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 08/04/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 08/04/2025

TANMAY, Sr. PS

TRUE COPY

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, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat