

**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.327/SRT/2024

Assessment Year: (2017-18)

(Physical court hearing)

Income Tax Officer Ward-2(3)(1), Surat Room NO.614, Aayakar Bhawan, Majura Gate, Surat-395001	बनाम/ Vs.	Manidhara Realty LLP 501, International Business Centre, Dumas Road, Piplod, Surat-395 0017
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: ABCFM 2991 F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Rasesh Shah, CA
राजस्व की ओर से /Respondent by	Shri Mukesh Jain, Sr-DR
सुनवाई की तारीख/Date of Hearing	27/01/2025
उद्घोषणा की तारीख/Date of Pronouncement	03/04/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the Revenue emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 01.02.2024 by the National Faceless Appeal Centre, Delhi /Commissioner of Income-tax (Appeals) [in short 'Ld. CIT(A)'] for the Assessment Year (AY) 2017-18, which in turn arises out of assessment order passed by Assessing Officer u/s 143(3) of the Act dated 28.12.2019. Grounds of appeal raised by the Revenue are as under:

"i) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition made by the AO on account of unexplained cash credit u/s 68 amounting to Rs.1,16,65,000/- ignoring the facts that the assessee has failed to establish the genuineness and creditworthiness of the

transaction of capital introduction by the partners of firm fully during the assessment proceedings.

ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has not appreciated the fact that the assessee failed to discharge its onus casted upon by Section 68 of the Act on the assessee-firm to explain the sources and nature of credit along with evidences at the satisfaction of the AO.

iii) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred by not upholding the view of Assessing Officer regarding addition made by the O under the provisions of Section 68 of the Act that there existed surrounding circumstances and without applying the test of human probability as laid down in the case of Smt. Sumati Dayal vs. CIT (1995) 214 ITR 801 by the Hon'ble Supreme Court.

iv) On the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that the assessee had furnished all the details to substantiate its claim for introduction of capital in accounts of the partners without appreciating the fact that the assessee had only furnished documents partly which may explain the sources of funds introduced by the partners.”

2. Brief facts of the case are that the assessee, engaged in the business of construction and real estate development, filed its return of income declaring total income at NIL. The case was selected for scrutiny through CASS and accordingly, notices u/s 143(2) and 142(1) of the Act were issued. During the course of assessment proceedings, the AO observed that partners of the firm had introduced capital of Rs.14,67,13,419/- during the year. It was noticed that partners of the firm have taken unsecured loans from various persons and introduced the same as capital in the assessee-firm. The AO has prepared a table at para-5 of the assessment order and observed that Rs.1,16,65,000/- has been credited in the books of the assessee but assessee did not submit any details to explain the source of the amount credited in its book. He invoked

provisions of Section 68 and added Rs.1,16,65,000/-. Aggrieved by the addition made in the assessment order, assessee filed appeal before CIT(A).

3. The CIT(A), after examining the submissions and documentary evidence, observed that the partners had disclosed the source of capital introduction as unsecured loans, and their financial records corroborated the transactions. The partners were income tax assesseees and had filed their tax returns, which indicated that they had valid sources of fund. The transactions were conducted through proper banking channels, and necessary confirmations were provided by all parties involved. Relying on judicial precedents, including CIT vs. Pankaj Dyestuff (Tax Reference No.241 of 1993 of Hon'ble Gujarat High Court) and PCIT vs. Vaishnodevi Refoils and Solvex [89 taxmann.com 80 (Guj)], the CIT(A) held that capital introduced by partners cannot be taxed in the hands of the firm, if the source is explained. If the AO had any doubts regarding the unsecured loans availed by the partners, the proper course of action would have been to assess the partners directly instead of making an addition in the hands of the assessee-firm.

4. Aggrieved by order of CIT(A), the Revenue has filed this appeal before Tribunal. The learned Departmental Representative (DR) strongly supported the order of the AO and contended that the CIT(A) erred in deleting the addition. It was argued that the AO had duly examined the financial documents submitted by the assessee and had found discrepancies regarding the source of funds for the unsecured loans availed by the partners. The Ld. DR

pointed out that the lenders did not possess the financial capacity to extend such loans and that the assessee failed to provide credible documentary evidence to substantiate the genuineness of the transactions. The DR submitted that in the present case, the AO had rightly questioned the source of funds and had drawn logical conclusions based on available records. It was stressed that the onus was on the assessee to establish the creditworthiness of the lenders, and in the absence of satisfactory evidence, the addition u/s 68 was justified.

5. On the hand, the learned Authorized Representative (AR) for the assessee strongly opposed the addition made by the AO and contended that the CIT(A) has rightly deleted it. The AR submitted that the partners of the firm have fully disclosed their sources of funds and have submitted corroborative evidence such as income tax returns, bank statements, loan confirmations, and financial statements. It was emphasized that the transactions were carried out through proper banking channels and were duly reflected in the books of accounts. The AR relied on the decision of Hon'ble jurisdictional High Court in cases of Pankaj Dyestuff (supra) and Vaishnodevi Refoils and Solvex (supra) and the decision of co-ordinate Bench of this Tribunal in case of ITO vs. Shantai Developers in ITA No.376/SRT/2023 dated 19.03.2024, *wherein* it was held that capital introduced by partners should not be added in the hands of the firm, if the sources are explained. It was argued that the AO had ignored these judicial precedents and had made the addition. The Ld. AR also submitted that

the AO had not conducted any independent inquiry with the lenders or issued summons to verify the transactions. It was contended that once the identity of the lenders was established and banking transactions were documented, the burden shifted to the Revenue to disprove the genuineness of the transaction, which was not done in this case. Based on the above arguments, the AR requested that the order of the CIT(A) be upheld and the appeal of the Revenue be dismissed.

6. We have heard the rival submissions and perused the material on record. We have also deliberated on the decisions relied upon by the parties. The only effective issue before us is whether the addition of capital of Rs.1,16,65,000/-, introduced by the partners, u/s 68 of the Act is justified. The CIT(A) has deleted the addition after considering the details submitted by the appellant as well as by relying on the decisions of Hon'ble jurisdictional High Court and ITAT. The AO made the addition u/s 68 on the premise that the assessee failed to establish the creditworthiness and genuineness of the transactions. However, we find that the assessee had submitted various details, including ITRs, bank statements, and confirmations from the lenders, which were not rebutted by the AO. The CIT(A) rightly observed that the introduction of capital by partners cannot be taxed in the hands of the firm when the partners' sources of funds are explained. The Revenue has failed to demonstrate any tangible material to contradict the evidentiary value of the documents submitted. The ratio of the decisions in case of Pankaj Dyestuff

(supra), Vaishnodevi Refoils and Solvex (supra) and Shantai Developers (supra) are applicable to the facts of the instant appeal. In view of the facts discussed above and respectfully following the decisions cited supra, we uphold the order of CIT(A) and dismiss grounds No.1 and 2 of Revenue.

7. In ground No. 3, the Revenue contended that the CIT(A) failed to appreciate the principle of human probability, as enunciated in the case of Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC). While it is true that courts have held that mere documentation is not sufficient, but in the present case, the AO has not made any independent inquiry to disprove the documents furnished by the assessee. The loans were taken by the partners who, in turn, introduced the same as capital in the assessee-firm. We have already confirmed the order of CIT(A) which was based on appreciation of facts and application of law as pronounced by the Hon'ble jurisdictional High Court. Hence, the ratio of the decisions relied upon by Revenue is not applicable to the facts of the present case. Thus, we uphold the findings of the CIT(A) and dismiss this ground.

8. In ground No. 4, the Revenue argued that the CIT(A) ignored the AO's observations regarding incomplete documentation. However, the CIT(A) analyzed all the documents and found that they satisfactorily explained the transactions. If the AO had any concerns about the financial standing of the lenders, he could have made inquiries in accordance with law, which was not done. The CIT(A) has rightly deleted the addition after considering relevant

details/facts and binding decisions of the Hon'ble Gujarat High Court and, therefore, this ground is dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963
on 03/04/2025 in the open court.

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 03/04/2025
Dkp Outsourcing Sr.P.S*

Sd/
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

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 अधिकरण, सूरत/ DR, ITAT, SURAT**
- **गार्ड फाईल/ Guard File**

// True Copy //

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत