

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 251 of 2021**

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PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), AHMEDABAD
Versus
GANESH PLANTATION LTD.

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Appearance:
M R BHATT & CO.(5953) for the Appellant(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 22/11/2021

ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. Aggrieved by the order dated 13.04.2021 passed by the Income Tax Appellate Tribunal, Ahmedabad ('ITAT' hereinafter) in ITA No. 2295/Ahd/2018 for the assessment year 2011-12, the present Tax Appeal is preferred raising the following questions of law for the determination of this Court:-

"Whether in the facts and circumstances of the case and in law, the Appellate Tribunal is right in deleting the addition of Rs. 4,00,00,000/- made on account of unexplained Credit under section 68 of the Act by ignoring the overwhelming and strong evidences discussed by the Assessing Officer in the assessment order relating to the unexplained transactions?"

2. The assessee had filed the return of income on 12.07.2012 declaring its total income of Rs. 6,54,22,430/-. Its

case was selected for scrutiny and income of Rs. 6,67,58,012/- was assessed on scrutiny assessment under Section 143(3) of the Income Tax Act (the 'IT Act' hereinafter).

2.1. The case was transferred to the DCIT, CC-1 under Section 127 of the IT Act and it was reopened under Section 147 of the IT Act after dully recording the reasons on getting the sanction of the CIT (Central), Ahmedabad under Section 151 of the Act.

2.2. A notice under Section 148 was issued on 27.03.2017. The information had been received from the office of the CIT in connection with the search and seizure action conducted in the Venus Group of Company which had led to seizure of various incriminating materials. According to the Revenue, unaccounted cash transactions of the Venus Group were recorded on cash vouchers and thereafter on the strength of the recording made on cash voucher, entries were recorded on the Day Cash Book. This had led to not only the reopening of the assessment but also addition of Rs. 4 Crores on account of unexplained cash credit under Section 68 of the Act.

2.3. It was alleged that an amount of Rs. 4 Crores has been received by the assessee from the Sunderdeep Builders of Venus Group through banking channel on 24.01.2011 against

the corresponding payment of unaccounted cash by the assessee to Sunderdeep Builders which was a concerned of Venus Group.

2.4. The Assessing Officer considered this as a sham transaction as also an accommodation entry against payment of unaccounted income. He relied on the statement of the accountant of the Venus Group where he deposed that the unaccounted cash books had been written by him as per the direction of Ashok Sunderdas Vaswani and the documents were linked by the Assessing Officer to the assessee. According to the assessing officer, the unaccounted daily cash books were found which had transactions since 01.01.2017. They were also maintained in a systematic manner on a daily basis and they were also supported by the vouchers. He also noted the coding of dates, amounts and other descriptions in the unaccounted day cash books. According to him, the vouchers kept in different colours indicated the receipt as well as expenses and they too were arranged in a systematic manner as per the nature of expense like land/person, etc. He was of the opinion that these transactions were related to the cash transactions and the bank transactions were exchange of cash with the RTGS/EC.

2.5. By a detailed order, under the head of co-relation against EC entries with bank account of the assessee, he had added the amount of Rs. 4 Crores as an addition on account of unexplained cash credit.

2.6. The assessee, being aggrieved by this huge addition, had preferred the appeal before the CIT Appeals which confirmed the reopening of the reassessment proceedings under Section 147 of the IT Act however, it deleted the additions made by the Assessing Officer predominantly on the ground that the documents were seized from the premise of the Venus Group and not from the premise of the assessee.

2.7. After considering the detailed factual submissions made by both the sides as also in extenso considering the legal submissions of the parties, it has chosen not to endorse the additions made by the Assessing Officer. In the detailed reasoning given by the CIT Appeals, it has held that if the jotting on the seized loose papers are assumed to be a material, the burden would be always on the Assessing Officer as an assessing authority to bring it on record independent clinching evidence. It is also of the opinion that under the law, the Assessing Officer will need to consider his duty to bring on record such material information which is available outside

the assessee's control which the assessee asserts is existing and it is within the power of the Assessing Officer to call for.

2.8. He has extensively also considered the allegations of the Assessing Officer of accommodation entry transaction to hold that the Assessing Officer in assessment order has not identified any of the statements of main persons of the Venus Group namely Shri Ashok Vaswani, Shri Deepak Vaswani and Shri Rajesh Vaswani, proprietors of the Sunderdeep Builders about their admission that the Venus Group has indulged into any accommodation entry transaction. Nothing has been brought on record against the company even from the submissions made by the Venus Group search case. No statement is recorded of Shri Ashok Vaswani, Shri Rajesh Vaswani and Shri Deepak Vaswani under Section 132(4) and 131 in respect of the scanned copies of the seized loose pages reproduced by the Assessing Officer in the assessment order.

2.9. The appellate authority also verified the ledger account of M/s. Sunderdeep Builders from the books of accounts of the appellant company to note that there was an opening debit balance of M/s. Sunderdeep Builders on 01.04.2008 for an amount of Rs. 1 Crore and thereafter on 26.05.2008 the company advanced Rs. 10 Crores to M/s. Sunderdeep Builders

in financial year 2008-09 and in the same financial year M/s.Sunderdeep Builders repaid back to the appellant company an amount of Rs. 7 Crores between the period 29.09.2008 to 20.10.2008.

2.10. It was the case of the appellant company that the outstanding payable of Rs. 4 Crores on 31.03.2009 by M/s. Sunderdeep Builders was repaid to the appellant company on 24.01.2011 by an account-payee-cheque duly reflected in the bank account of the appellant company and therefore, the CIT Appeals held that the allegation of any accommodation entry transaction and alleged cash payment by the appellant company to M/s. Sunderdeep Builders for recovering back the advance of Rs. 4 Crores from M/s. Sunderdeep Builders did not arise at all.

2.11. The Assessing Officer's stand in the assessment order of making an observation about the alleged cash of Rs. 4 Crores by the appellant company in lieu of the cheque payment and also of making an allegation of cash received against EC from Jayesh Kotak for Ganesh Plantations Ltd. was in detail considered by the CIT Appeals to hold that nothing had been noted except the word cash and there was no signature or name of the Director of the appellant company or any

employee of the company and the name written is of Jayesh Kotak and the Assessing Officer has not brought on record any evidence that this person is either a director of the appellant company or even the shareholder of the appellant company.

2.12. The Commissioner (Appeals) held that the case of the appellant company is squarely covered by the decision of the CBI vs. V.C.Shukla and Others [(1998) 3 SCC 410], where loose paper vouchers or pages found and seized from the third party were not considered as the evidence in the case of the appellant company. It further held that following the decision in case of Prarthna Construction Pvt. Ltd., the ITAT had decided the matter which had been upheld by this Court. Accordingly, addition by way of unexplained cash credit under Section 68 of the IT Act was not held justifiable.

3. This had been challenged by the Revenue before the ITAT which has upheld the findings and observations made by the CIT Appeals. It recognized that the challenge to the additions towards the unexplained cash credit under Section 68, on merit, has been dealt with by the CIT elaborately. It has also concurred with the CIT Appeals that the unaccounted cash transactions of the Venus Groups which were detected

from the premises of the searched person were stated to be first recorded by the searched person on a loose papers in encrypted form and then on the basis of the recording made on these cash vouchers, the entries were recorded on a Day Cash Book not forming part of the regular books of accounts maintained in ordinary course. They were the transactions in a continuous manner without any gap from January, 2007 to 07.03.2015.

3.1. It also considered the contention of the Revenue that the coding was done to alibi and camouflage the real value of unaccounted cash transactions and held that the allegation of alleged accommodation entry of receipt/payment of existing loans receivable by assessee from M/s. Sunderdeep Builders largely centered around the statement recorded under Section 131 of the Accountant Mr. Deepak Gajjar of the Venus Group. It is a testimony where he deposed of the unaccounted cash books written by him as per the direction of Mr. Ashok Sunderdas Vaswani and the same had been handed over to one Vasibhai at Crystal Archade as per the direction of Mr. Vaswani. The signature also was stated to be of Mr. Deepak Vaswani and of Mr. Ashok Vaswani of the Venus Group. They were linked by the Assessing Officer to the assessee with aid of statement of Mr. Gajjar and the additions were made.

3.2. The Tribunal noted significantly that the statement of Mr. Gajjar did not appear to say that he was privy to the source of cash recorded by him in cash book. He simply recorded the entries in the unaccounted cash books under the instructions of the Vaswani brothers. The person had no knowledge of the relevant facts towards receipt of cash from the assessee and hence, he would not be entitled to any weight and it cannot be also considered pertinent so far as the assessee is concerned.

3.3. There was no inquiry made by the Assessing Officer from either Vaswani brothers to elicit the credible information and in absence of any examination of the key persons, the contest according to the tribunal by way of cross examination was also stonewalled. It therefore held

“The unilateral entries made by Venus Group (an outside party) in their records and admittedly belonging to them cannot, in our view, has any rational basis to crucify a third party and fix tax liability on it. No live link/proximate nexus of alleged dubious transactions between searched person and the assessee has been brought on record. The inquiries made were directionless without quizzing the key persons who needed to be. Nothing of this sort has been done. No acquiescence of receipt of cash by searched person from assessee has been

successfully established. Naturally, propriety demanded the cross examination thereon in the event any culpable statement roping the assessee somewhere. The Assessing Officer has conveniently implicated the assessee without any cogent premise on the basis of some aimless examinations.

No doubt, the documents found possessed from the custody of a searched person may possibly operate as an estoppel against that searched person, if the circumstances so warrant, but it is unconceivable to bind a third party for such entries/diary without demonstrating cogent nexus. The whole action is in the realm of conjectures and surmises mainly on the basis of some scanty and sketchy statement yielded from the accountant of the searched person. The revenue has alleged underhand cash transactions. Hence, the primary onus in the instant case, squarely lied upon the Revenue and that to justify it with direct or circumstantial evidences. The onus rested upon the revenue has not been discharged at all and thus did not shift on to assessee. Consequently, in the absence of any credible proof of receipt of cash from assessee, the apparent has to be taken as real i.e. Sunderdeep Builders have repaid Rs. 4 Crore through banking channel in discharge of its existing outstanding liability as a matter of course."

4. Learned Senior Advocate Mr. Bhatt has extensively argued this matter and has also taken us through the statement recorded of Mr. Deepak Gajjar and the cross-

examination conducted of his by the respondent company. The same had been called for by this Court after examining the entire material on record. As could be also noticed from the statement given by this person that he has no personal knowledge of any source of the cash. All that he has done is at the instance of Mr. Ashok Vaswami. His nature of job was to note down and jot down as per the directions of Mr. Vaswami. The initials were done either by Mr. Ashok Vaswani or Mr. Deepak Vaswani of Venus Group. He also had taken the cash on some occasions and has stated that without any coercion or inducement, he has given his version. However, in the cross-examination he admitted that he has no idea as to what was the source. He had been categorically inquired with regard to the amount of Rs. 4 Crores that whether the said amount of cash had been received from the Ganesh Plantations or any of the directors to which he had denied. He also had been categorically questioned as to whether as a representative of Venus Group, he received this amount of Rs. 4 Crores in cash from the company or its directors, he had no knowledge of as to who was Mr. Jayesh Kotak. He did not receive this amount also from Mr. Jayesh Kotak. This man did not know any director of the Ganesh Plantations. He also had no clue where the respondent company existed.

5. Noticing the statement given by this person as well as his detailed cross examination, in no manner the Court needs to interfere and intervene in the detailed concurrent findings of both the CIT Appeals and the ITAT. The CIT Appeals and the Tribunal both have reached to the rightful conclusion by holding that the additions were made without any legally supported documents. Also it had noted from the material which had been placed before it that there was an opening receivable by the respondent from M/s. Sunderdeep Builders at Rs. 1 Crore given as a loan in advance by the respondent company to regular books of accounts. Another advance aggregating Rs. 10 Crores was given in the month of May, 2008 against which in the very year M/s. Sunderdeep Builders had repaid back the temporary loan in part to the respondent company to the tune of Rs. 7 Crores. The balance of Rs. 4 Crores which remained as outstanding was receivable by the respondent as on 31.03.2009. The Tribunal also has noted that the loan of Rs. 7 Crores was squared off by way of repayment in the financial year 2008-09.

6. Section 68 of the Income Tax Act was brought into picture for making addition of Rs. 4 Crores which deserves to be reproduced at this stage:-

“68. Cash credits:-

Where any sum is found credited in the books of an assessee maintained for any previous year, and assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the [1][Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

Provided that where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless —

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory :

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.”

6.1. Any sum which is found credited in the books of the assessee maintained for any previous years and he can for more explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, such sum can be charged to income tax as the income of the assessee of that previous year.

7. On the strength of the suspicion, the Assessing Officer

had added the sum and charged the amount to income tax as the income of the assessee. Both the authorities have rightly held that to be an addition which is devoid of any rational.

8. Resultantly, we find no merit in the appeal and since the question raised is already with extensive facts and reasonings answered above, the appeal deserves no entertainment.

(SONIA GOKANI, J)

(NISHA M. THAKORE, J)

Bhoomi

