

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘SMC’

[Conducted Through Virtual Court]

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

आयकर अपील सं./ ITA No. 3458/Ahd/2016

निर्धारण वर्ष/Assessment Year: 2004-05

M/s.Kruti Organisers P.Ltd. Kaycrest, Second Floor Parimal Garden Opp: Gujarat Gas Co Ltd Ahmedabad PAN : AABCK 9339 C	Vs	ITO, Ward-2(1)(2) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Tushar Hemani, AR
Revenue by :	Shri Lalit P.Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 22/05/2020

घोषणा की तारीख /Date of Pronouncement : 01/06/2020

ORDER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-2, Ahmedabad dated 7.11.2016 passed for the Asstt.Year 2004-05.

2. This is second round of litigation before the Tribunal. In the first round, in the appeal of the assessee, the ITAT in IT(SS)A.No.148/Ahd/2010 order dated 8.8.2014 has set aside the issues to the file of the AO for adjudication afresh.

3. The grounds of appeal filed by the assessee are not in consonance with the Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 -

they are descriptive and argumentative in nature. Therefore, the assessee has filed concise grounds of appeal, which read as under:

"1. The Ld. CIT(A) has erred in not appreciating that the notice dated 13.06.08 issued u/s 153C r.w.s. 153A is void-ab-initio and hence, all subsequent proceedings are nullity in the eye of law.

2. The Ld. CIT(A) has erred in confirming addition of Rs.17,54,784/- made under section 68 of the Act.

3. The Ld. CIT(A) has erred in confirming disallowance of Rs.5,16,872/- being expenses incurred by the assessee.

4. Alternatively, income of Rs.1,30,791/- ought to have been set off against the expenses of Rs.5,79,872/-

5. Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

6. The Ld. CIT(A) has erred in law and on facts of the case in confirming action of AO in levying interest u/s 234A/B/C of the Act.

7. The Ld. CIT(A) has erred in law and on facts of the case in confirming action of AO in initiating penalty proceedings u/s271(l)(c) of the Act."

4. The assessee has not pressed ground no.1 for adjudication. The same is accordingly dismissed. As far as other grounds are concerned, the brief facts leading to the present case reads as under:

5. As the facts emerge out from the record, a search action under section 132(1) of the Act was conducted at the premises of Navratna Group of cases on 10.5.2006 and various books, documents etc. were found and seized from their premises relating to the assessee. In response to the notice under section 153C, the assessee has filed return

of income on 19.8.2008 declaring total income at Rs.NIL. The assessment order under section 153C r.w.s. 143(3) of the Act was passed on 26.10.2008 by making addition on account of unexplained cash credit of Rs.17,54,784/- and disallowance of Rs.5,79,872/- as expenses claimed in P& L account. Total income accordingly was determined at Rs.18,85,175/-. This was confirmed upto the Id.First Appellate Authority. Assessee thereafter carried the matter in appeal before the Tribunal in IT(SS)A.no.148/Ahd/2010, and the Tribunal vide order dated 10.9.2014 set aside the issues back to the file of the AO for re-adjudication. In the set aside proceedings, the Id.AO vide his order dated 9.11.2015 under section 143(3) r.w.s. 254 of the Act repeated his finding, and made the very same additions, which were confirmed by the Id.first appellate authority vide order dated 7.11.2016. Against these orders of the Revenue authorities, assessee is again before the Tribunal by way of present appeal.

6. *Qua* addition of Rs.17,54,784/- made under section 68 of the Income tax Act, the Id.counsel for the assessee submitted that the assessee has received unsecured loan of Rs.17,54,784/- from Navratna Organizers & Developers P.Ltd. of Rs.13,25,325/-, and Navratna (Kaivanna) Association of Rs.4,29,459/-. To explain the same, the assessee has filed confirmations received from each of the party showing name of the party, nature of the transactions, signature of the party along with addresses and PANs of the parties. The assessee has also submitted copies of accounts of all the parties from whom unsecured loans have been taken including the above two transactions. The transactions had taken place through bank and therefore primary onus cast upon the assessee was discharged and therefore there is no

justification for invocation of section 68 in this behalf. It is further submitted that assessment orders under section 143(3) r.w.s. 153C were completed in the case of the above lenders, wherein all the transactions, bank accounts and final accounts of these parties and the loans/advances made to the assessee were verified by the AO of the above parties, and therefore, the observations of the AO that the assessee has failed to satisfactorily explain the cash credit is erroneous and not borne out of material evidences on the record. All three ingredients viz. identity, genuineness and credit worthiness, as stipulated under section 68 are proved by the assessee, and therefore, the impugned additions made by the Revenue authorities liable to be deleted. In support of his contentions, he relied upon following authorities:

- i) DCIT Vs. Rohibni Builders, 256 ITR 360 (Guj)
- ii) Murlidhar Lahorimal Vs.CI, 280 ITR 512 (Guj)
- iii) CIT Vs. Pragati Co-op Bank Ltd., 278 ITR 170 (Guj)
- iv) CIT Vs. Orissa Corproatio P.Ltd., 159 ITR 78 (SC)

7. As regards ground no.3 against confirmation of disallowance of Rs.5,16,872/- being expenses incurred by the assessee, it is argued by the ld.counsel for the assessee that the assessee was one of the co-owners of project named "Kaivana Building " construction of which was completed on 31.3.2002 and the units in the same building were allotted to the members. It has debited expenses of Rs.5,79,872/- in the P&L account. Being one of the owners of the building, the assessee has incurred various expenses towards maintenance of building. The assessee collected maintenance deposits from the members, and

deposited the same with the bank and earned interest income on such deposits. Assessee has earned interest income on FD of Rs.1,30,391/- against which the assessee has incurred administrative expenses towards electric expenses amounting to Rs.4,18,640/-, site expenses of Rs.14,170/- and staff salary of Rs.84,062/-, totaling to Rs.5,16,872/-. The AO has treated the interest income earned by the assessee of Rs.1,30,391/- as income from other sources, and disallowed expenses of Rs.5,16,872/- for want of business nexus. It is submitted that the expenses were accounted for, and audited by the auditors. Nature of the expenses reveals that the same were incurred wholly and exclusively for assessee's business, hence it is an allowable expenditure. Genuineness of the expenses has not been doubted by the AO. The observation of the AO regarding non-furnishing of the details and evidence are not correct and not borne out from the record. Each and every detail was placed on record and produced before the AO. The observation of the AO that there is no nexus between income and expenditure for the purpose of business is simply out of conjecture. The expenditure incurred by the assessee was accounted for in the books of account were also supported by the documentary evidences, and therefore, there is no question of disallowance. Alternatively, it is submitted that income of Rs.1,30,791/- be set off against the expenses of Rs.5,79,872/-.

8. On the other hand, the Id.DR supported the orders of the Revenue authorities. He further submitted that *qua* addition under section 68, the assessee has not given details of sources of the credits and have not complied with the requirement of provisions of section 68 of the Act. Regarding disallowance of Rs.5,16,872/- the assessee has not established nexus of expenditure and income with the operation of the assessee, and

therefore, the disallowance was rightly made by the Revenue authorities.

9. I have considered rival submissions and gone through the record carefully. Section 68 of the Income Tax Act contemplates that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof, or the explanation offered by the assessee is not, in the opinion of the AO satisfactory, then the sum so credited in the accounts may be treated as income of the assessee of that previous year. The question before me is, whether the assessee has satisfied conditions stipulated in section 68 of the Act or not in respect of cash credit availed from Navratna (Kaivanna) Owners Association of Rs.4,29,459/- and Rs.13,25,325/- from Navratna Organizers and Developers P.Ltd. Basically, the Id.Revenue authorities have denied the claim of the assessee on the ground that there were no sufficient evidences to prove the case of the assessee. It is the case of the assessee that all the details with regard to these loans were furnished before the lower authorities. The Id.counsel for the assessee took me to page no.25 of the PB wherein Balance sheet of assessee showing credit balance of the above two lenders has been shown at Rs.4,29,9459/- and Rs.13,25,325/- respectively. Details of accounts along with confirmation, addresses and PAN of the lenders have been furnished to the AO for verification. Even the assessee has furnished copy of assessment orders passed in the case of lender for the relevant year for verification. Apart from that, these funds have been received by the assessee through banking channel, and therefore, all the ingredients necessary for proving cash credit under section 68 has been satisfied by the assessee. In my view, looking to the

details provided to the Revenue authorities and copies also available in the paper book, I am satisfied that the assessee has discharged burden put upon it by virtue of section 68 of the Income Tax Act, 1961. Therefore, I allow this ground of appeal and delete addition.

10. So far as next issue regarding disallowance of expenditure of Rs.5,16,872/- is concerned, I deem it appropriate to take note of finding recorded by the Id.CIT(A) which reads as under:

“5.3. Decision:

I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The AO has made the disallowance of expenses of Rs.5,79,872/- debited in the profit and loss account. The same were disallowed for the reason that the appellant was not engaged in any business during the year under consideration. Further no business nexus between income earned and expenses incurred were shown by the assessee. The appellant was mainly transferring various expenses to the project accounts after set of the income earned. The appellant had the interest income on FOR of Rs. 1,30,391/- against which various expenses such as electric expenses of Rs.4,18,640/-, site expenses of Rs. 14,170/- and staff salary of Rs.84,062/- aggregating to Rs.5,16,872/- were claimed. The AO in para-7 of the assessment order has discussed that it did not file any details of the above expenses neither during the course of assessment proceedings nor in the set aside assessment proceedings. Since the appellant had the interest income on FD which is assessable under the head of income from other sources and the aforesaid expenditures were not having direct nexus with earning of such interest income, therefore cannot be allowed deduction thereof as per the provisions of Section 57(1)(iii) of the Act.

5.4. The appellant has made the submission in the present appellate proceedings that the expenses were incurred for maintenance of the building. Moreover, the interest has been generated on collection of the maintenance deposits. Thus incurring of the expenses from interest were part and partial of the business carried on by the appellant. As has been discussed that the appellant has made the self serving contention without giving any details and evidences of the collection of the maintenance of

the deposits and accrual of interest thereupon. Therefore, the submission is not verifiable. Moreover, the submission has been given first time before this office and not in the assessment proceedings to the AO. Therefore it was not made subjected to verification before the AO for the reasons known to the appellant. In view of the above discussion, there is no substance in the submission of the appellant as remained unsupported. The appellant's alternate claim of setting off of the interest income with the expenses is also not accepted for want of verification, due to absence of details and evidences in support. Thus, the disallowance of expenses made by the AO is found correct and justified and hence the same is confirmed.

Thus the grounds of appeal are dismissed."

11. A perusal of the above finding as well as submissions made by the assessee and reproduced by the Id.lower authorities would reveal that the stand of the assessee is that, it has received deposits from members who have purchased property in its projects Kaivana Building. Out of that it has incurred expenditure towards electricity as well as staff salary and other expenses. It is pertinent to observe that the assessee has not shown any income or rental income nor it has pleaded before the AO that it was in the business of maintenance of the building. Both Revenue authorities have concurrently recorded a finding that complete details were not submitted. This expenditure has no connection with earning of interest income from the deposits. I could appreciate the stand of the assessee, if it is being demonstrated that maintenance of the alleged building is one of its area of business operation and out of maintenance activity it would show income in future. There is nothing that sort of. The assessee was unable to point that any expenditure was claimed in subsequent year on this or any income for maintenance of building was ever shown by the assessee. After considering the finding of the Id.CIT(A), I do not find any merit in this ground of appeal. Also, I do not find any merit in the alternative submissions of the Id.counsel for the

assessee as interest income is altogether a separate income, and not linked with this expenditure. The Id.CIT(A) has considered this aspect in the finding extracted (supra), and I do not find any error in the finding of the Id.CIT(A). Hence, this ground of appeal is rejected.

12. In the result, appeal of the assessee is partly allowed.

Pronounced in the Open Court on 1st June, 2020.

**Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT**