

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "बी" अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, AHMEDABAD

BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER AND  
SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1787/Ahd/2012

निर्धारण वर्ष/A.Y. 2008-09

Mavjibhai Becharbhai Patel, 5, Amikunj Society, Highway Road, Kalol, Dist: Mehsana PAN: AAVPP 8873 H	Vs	Income Tax Officer, Ward -3, Mehsana
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आयकर अपील सं./ ITA No. 2015/Ahd/2012

निर्धारण वर्ष/A.Y. 2008-09

Income Tax Officer, Ward -3, Mehsana	Vs	Mavjibhai Becharbhai Patel, 5, Amikunj Society, Highway Road, Kalol, Dist: Mehsana PAN: AAVPP 8873 H
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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By Assessee :	Shri Pritesh Shah, AR
By Revenue :	Shri James Kurian, Sr DR

सुनवाई की तारीख/Date of Hearing : 09/12/2016

घोषणा की तारीख/Date of Pronouncement: 22/12/2016

**आदेश/O R D E R**

**PER S.S. GODARA, JUDICIAL MEMBER**

The assessee and Revenue institute the instant cross appeals for assessment year 2008-09 against CIT(A), Gandhinagar's order dated 06.06.2012, passed in case No.CIT(A)/GNR/173/2010-11, in proceedings u/s 143(3) of the Income-tax Act, 1961 (in short the 'Act').

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2. We come to rival pleadings. The assessee's sole substantive ground challenges correctness of both the lower authorities action making section 68 unexplained cash credit addition of Rs.25,77,000/-. The assessee's further plea is that the CIT(A) particularly erred in not admitting additional evidence under Rule 46A of the Income-tax Rules. The Revenue's solitary ground on the other hand seeks to revive Section 68 unexplained/unsecured loan addition of Rs.10,00,000/- received from Shri Rakesh G. Patel; as added by the Assessing Officer in course of the impugned regular assessment.

3. Learned counsel representing assessee invites our attention to Revenue's sole substantive ground involving addition amounting to Rs.10,00,000/-. He thus submits that the net tax effect involved in Revenue's cross appeal is less than Rs.10,00,000/- as stipulated in CBDT Circular No.21 of 2015 dated 10.12.2015 applicable on pending cases as well. Learned Departmental Representative does not dispute this factual position. We thus dismiss the Revenue's appeal ITA No.2015/Ahd/2012 since involving lesser tax effect than prescribed.

4. This leaves us with assessee's appeal ITA No.1787/Ahd/2012. Learned counsel submits that his main grievance is confined to latter component of his pleadings that the CIT(A) has erred in not admitting assessee's additional evidence thereby confirming Section 68 addition of Rs.25.77 lakhs.

5. We come to relevant facts now. The assessee/individual derives salary income. He filed his return on 26.02.2009 stating

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income of Rs.1,23,410/-. The Assessing Officer took up scrutiny. He noticed the assessee to have obtained unsecured loan from Smt. Padmaben, Gitaben and Shri Kaushikbhai of Rs.98,000/- each, totaling to Rs.2,94,000/-, similar unsecured loans from 14 other persons aggregating to Rs.12.83 lakhs and from M/s. Kaiser Mills of Rs.10 lakhs; respectively. The Assessing Officer thereafter framed a regular assessment on 24.12.2010 qua the above three categories of unsecured loans. He observed qua first three parties that they had not responded to section 133(6) notices so as to prove identity and genuineness of the loan amounts followed by evidence of their agricultural land holdings. The Assessing Officer thereafter treated the second head of unsecured loans to be neither genuine nor creditworthy for the reason that only six parties out of fourteen had responded to his notices. He then proceeded to adopt the very course of action qua third unsecured loan of Rs.10 lakhs obtained from M/s. Kaiser Mills by observing that the assessee had himself deposited his unaccounted money in HDFC Bank thereby diverting amount received as to have been obtained from the said party. The Assessing Officer accordingly made consequential addition in assessee's income.

6. We now come to assessee's appeal preferred before the lower authorities. He filed a petition with additional evidence on 12.12.2011. Copy thereof is at page 134 of the paper-book. The assessee would enclose its creditors' voter IDs, PAN details and bank statements. He pleaded that the Assessing Officer had asked him to produce all evidences vide scrutiny notice dated 03.12.2010 which

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was received on 14.12.2010 just before two days of the last hearing being conducted on 16.12.2010. The CIT(A) admitted the above additional evidence as revealed from page 8 of lower appellate order. He sought a remand report. The Assessing Officer this time succeeded in serving notices to some of the parties. He submitted his remand report that he had not been able to verify assessee's additional evidence. The assessee again filed additional submissions. The CIT(A) rejects the same at page 20 para 5.34 of the lower appellate order so as to confirm the impugned section 68 addition on merits. This leaves the assessee aggrieved.

7. We have heard both the parties. Case file perused. Relevant facts narrated in preceding paragraphs are not repeated in order to avoid repetition. Suffice to say, it is evident that neither the Assessing Officer and the CIT(A) nor the assessee have performed their respective duties in the lower proceedings. We start with Assessing Officer. The case file has already indicated that six out of fourteen creditors had responded to his notices issued u/s 133(6) of the Act. It is however not clear from the assessment order as to how the same were dealt with. We come to lower appellate proceedings and notice that the CIT(A) first of all admitted the additional evidence and thereafter rejected assessee's identical submission giving details of his creditors. We further find that the assessee has also not fully co-operated with the lower authorities apart from filing the above details of his creditors. We deem it appropriate in these peculiar facts that the learned CIT(A) needs to re-adjudicate the entire issue as per law after affording three effective opportunities to

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the assessee. We thus remit both issues raised in assessee's appeal ITA No.1787/Ahd/2012 back to the CIT(A) for afresh adjudication. This appeal is accepted for statistical purposes.

8. The assessee's appeal ITA No.1787/Ahd/2012 is allowed for statistical purposes. Revenue's cross appeal ITA No.2015/Ahd/2012 is dismissed.

**Order pronounced in the Court on 22<sup>nd</sup> December, 2016 at Ahmedabad**

Sd/-

Sd/-

**(PRAMOD KUMAR)  
ACCOUNTANT MEMBER**

**(S.S. GODARA)  
JUDICIAL MEMBER**

Ahmedabad, Dated 22/12/2016

*Dr*

**आदेश की प्रतिलिपि अद्येषित/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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

TRUE COPY

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad