

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1659/Ahd/2019
Assessment Year 2016-17**

Pavan Anil Bakeri Sanskrut, 1 st Floor, Old High Court Road, Navrangpura, Ahmedabad-380009 PAN No: AENPB5730M (Appellant)	Vs	The DCIT, Circle-1(1)(2), Ahmedabad (Respondent)
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**Appellant by : Shri Tej Shah, A.R.
& Shri Anil R. Parikh, Advocate**
Respondent by : Shri Dileep Kumar, Sr.D.R.

Date of hearing : 19-07-2022
Date of pronouncement : 26-08-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Assessee against the order dated 25.09.2019 passed by the Commissioner of Income Tax (Appeals)-1, Ahmedabad, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2016-17.

2. The brief facts of the case is that the assessee is an individual. For the Assessment Year 2016-17, the assessee filed its Return of Income on 03.08.2016 declaring total income of Rs. 4,15,67,950/-. The case was taken up for scrutiny assessment. The assessee paid donation of Rs. 52,00,000/- to Rashtriya Samajwadi Party (Secular). To verify the genuineness and utilization purpose of the donation, a notice u/s. 133(6) was issued on 05.10.2018 to Rashtriya Samajwadi Party (RSP). There was no representation from RSP. Therefore another opportunity was granted vide letter dated 16.10.2018. Again there was no response from RSP. Therefore a summon u/s. 131(1) of the Act was issued to Shri S.N. Chaturvedi, National President, RSP to attend the office on 19.11.2018 to produce the requisite the donation details. No one attended the office of the said date of hearing.

2.1. RSP is a political party registered with Election Commission of India. The Assessing Officer called for the bank details of RSP with Oriental Bank of Commerce, New Naroda Branch. From the perusal of the bank statement, it was observed there was a credit entry of Rs. 52,00,000/- on 07.10.2015 which is donation given by the assessee and there was two debit entries amounting to Rs. 27,00,000/- and Rs. 25,00,000/- respectively on the same day. On further enquiry from the Oriental Bank of Commerce the amount of Rs. 27,00,000/- credited to Sterlite Inc and Rs. 25,00,000/- credited to Shah And Co. on 07.10.2015.

2.2. On examination of the RSP bank statement, it was found that it is a general practice of crediting huge cash and subsequently transferring to another party on same day. Further analysis of the transaction particulars reveals that the cash was transferred to mainly four parties namely Guru Enterprise, Unique Trading, Mahavaisnavi and KKIndersriz. It was also observed that no cash withdrawal for expenses like rent, electricity, water, newspaper, fuel etc. of RSP and is not reflecting in the bank account. There is an Inspector of Income Tax was deputed to visit the premises of RSP at UG-8, Harekrishna Complex, C.T.M Char Rasta, Amraiwadi, Ahmedabad-380026 on 15.11.2018. The Inspector submitted his report that RSP office situated on 2nd Floor of 3 storey building which is a small shop and shutter of which was half closed on that day. Nearby peoples were inquired that RSP Office which is found to be closed in most of the times. Copy of the said RSP Office photographs is reproduced in the assessment order. Further perusal of the records of RSP, it is observed that during the assessment year 2016-17, RSP has received only donation amounting to Rs. 14,73,309/- whereas as per the bank account statement of the RSP in Oriental Bank of Commerce, total amount credited is Rs. 38,15,03,885/-. That apart from RSP is maintaining two other bank account one at Bank of India and another at Central Bank of India. Further enquiry of M/s. Sterlite Inc and Shah And Co. both the accounts were closed on 30.03.2016. An enquiry by the Bank both the proprietorship firms, where there is no stocks found and the office premises were being occupied by another person.

2.3. On further verification the donation amount of Rs. 52,00,000/- paid by the assessee to RSP was transferred to Waheguru Enterprise and Sapan Traders on 07.10.2015 of Rs. 25,00,000/- and Rs. 27,00,000/- respectively. This systematic pattern of transferring the funds credited by RSP clearly establishes the modus operandi of the account opening i.e. to route or transfer the funds of RSP back to the donator. Thus the assessee gave Rs. 52,00,000/- to RSP in the form of donation which was transferred to accounts of Shri Mukesh Mehta who claimed to be a businessman. Again the said amount was transferred to Sapan Traders and Waheguru Enterprise. Thus the donation claimed to be paid by the assessee is found to be bogus and the same is disallowed u/s. 80GGC of the Act and added back to the total income of the assessee and also initiated penalty proceedings u/s. 271(1)(c) of the Act for concealment of income. The assessing officer also made an addition of Rs. 16,17,478/- being the difference in market value and purchase consideration. Thus the assessing officer determined the assessed income of the assessee as Rs. 4,83,85,428/-.

3. Aggrieved against the same, the assessee filed an appeal before the Ld. CIT(A). Before the Ld. CIT(A) neither anyone attended on the appeal fixed up for hearing on 26.06.2019, 23.08.2019 and 12.09.2019 nor the assessee filed any written submission. Therefore the Ld. CIT(A) decided the case on merit based on the

material available on record. The Id. CIT(A) confirmed the addition of bogus donation of Rs. 52,00,000/- as follows:

3.2. I have carefully considered the facts of the case and assessment order. The appellant has paid donation of Rs.52,00,000/- to the Rashtriya Samaj'wadi Party (Secular) and has claimed deduction u/s. 80GGC on donation paid to Rashtriya Samaj'wadi Party (Secular). The AO has issued notice u/s. 133(6) and summon u/s. 131 to Rashtriya Samajwadi Party (Secular) which remains non-complied. The AO has also got enquiry conducted through inspector and found that the office of the Rashtriya Samaj'wadi Party (Secular) is situated in a small shop which remains closed most of the time. The AO has examined the bank statement (Oriental Bank of Commerce, New Naroda Branch) of Rashtriya Samajwadi Party (Secular) in which the donation of Rs.52,00,000/- was credited and found that there is immediate withdrawal on the same day of Rs.27,00,000/- in the name of M/s Sterlite Inc and Rs.25,00,000/- in the name of M/s. Shah and Co. The AO on further enquiry found that both the accounts of the above ' persons where opened by Shri Mukesh Mehta whose business was stated to be as a cloth merchant and commission agent. The AO on spot verification found that the premises of Shri Mukesh Mehta at 31 Kirti Society, Sabarmati was occupied by another person Mr. Shah who does job work in Torrent Power Ltd. The AO on further enquiry of the bank account found that Rs.52 lac withdrawn by Shri Mukesh Mehta has further transferred to Waheguru and Sapan Traders. The appellant despite given several opportunities has not availed the opportunity of being heard.

3.3. It is seen that appellant has paid Rs.52,00,000/- as donation to Rashtriya Samajwadi Party (Secular). The Assessing Officer has clearly brought out facts that bank accounts of above political party have been used by the accommodation entry provider where the donation received by cheques were layered through various bank accounts and ultimately cash was returned back. I, therefore, agree with the findings given by the AO that donation of Rs.52,00,000/- claimed u/s. 80GGC is merely accommodation entry. The Honorable ITAT, Ahmedabad in the case of Pavankumar M. Sanghvi Vs. ITO, Wd. 3(1)(2), Baroda [2017] 81 Taxmann.com 308 on the issue of accommodation entry has observed as under:-

"8. As I proceed to deal with genuineness aspect, it is important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-a-vis the ground realities. The facts of the case cannot be considered in isolation with the ground realities. It will, therefore, be useful to understand as to how the shell

entries, which the loan creditors are alleged to be, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions - to give it colour of a normal business entity used as a vehicle for various financial manoeuvres. A shell entity, by itself, it not an illegal entity but it is their act of abatement, of, and being part of, financial manoeuvring to legitimize illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business - its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets its apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these ground realities."

3.4. The Honorable High Court of Gujarat in Tax Appeal No. 1037 of 2017 has affirmed the above order holding as under:-

"3. Perusal of the orders on record and in particular, the above quoted portion of the order of the Tribunal would make it clear that the entire issue is based on appreciation of evidence on record and thus factual in nature. The Tribunal has given elaborate reasons to come to the conclusion that the entire transaction was not genuine. In absence of any perversity, we do not see any reason to interfere.

4. Learned counsel for the assessee however vehemently contended that the assessee had received loans through cheques from lenders who had confirmed the same. Their accounts are audited and filed before the Revenue authorities. Thus, the genuineness of the transactions, the capacity of the lender and the factum of lending all have been established. Addition under section 68 of the Act there could not have been made. However, as noted, the Tribunal has minutely examined the position of the lenders, the circumstances under which, the amounts were allegedly loaned to come to the conclusion that the transactions were not genuine."

3.5. *In view of the above, the donation of Rs.52,00,000/- claimed u/s. 80GGC is treated as accommodation entry and accordingly same is dismissed.*

3.1. Regarding the another addition of Rs. 16,17,478/- u/s. 56(2)(vii)(b) of the Act, the Ld. CIT(A) held as follows:

4.2. I have carefully considered the facts of the case and assessment order. The Assessing Officer has made the addition of Rs.16,17,478/- u/s. 56(2)(vii)(b) on the ground that appellant has purchased land for consideration less than the consideration as per stamp duty valuation. The appellant has purchased a land at survey no. 65 at Vejalpur for Rs.7,86,63,502/-. The value of the property as per stamp authority was Rs.8,53,06,122/-. As appellant has purchased property for less than value assessed by stamp value authority the AO has invoked section 56(2)(vii)(b) of the Act to make the addition of Rs.16,17,478/-. The appellant despite being given several opportunities has not made any submission against the addition made by AO. As the addition has been made according to section 56(2)(vii)(b) of the Act, the addition made by AO is upheld. The ground of appeal is accordingly dismissed

4. Aggrieved against the same, the assessee is before us raising the following Grounds of Appeal:

The Appellant being dissatisfied with the order passed by the Commissioner of Income Tax (Appeals) - I, Ahmedabad (learned CIT(A)), prefers an appeal against the same on the following amongst other grounds, which are without prejudice to each other.

1. *Order passed by CIT(A) without providing opportunity to appellant (Tax effect - Nil)*
 - a. *The order passed by the learned CIT(A) is erroneous and contrary to the provisions of law and facts of the case and therefore needs to be suitably modified. CIT(A) decided the appeal on ex-parte basis and did not provide a fair opportunity to the appellant to present its case. It is not the case of the CIT(A) that the assessee did not respond to his notices of hearing. On all the three occasions, the assessee filed applications seeking adjournment on account of non-availability of authorised representative of the appellant due to ill health of his father and personal reasons.*
2. *Disallowance of Rs. 52,00,000 under Section 80GGC of the Income-tax Act, 1961 (Tax effect - Rs. 17,99,616)*
 - a. *The CIT(A) has erred in disallowing the deduction of Rs. 52,00,000/- being donation made to political party under Section 80GGC of the Income-tax Act, 1961. The CIT(A) failed to appreciate that all the conditions laid down under the*

provisions of Section 80GGC of the Income-tax Act, 1961 have been satisfied by the appellant.

b. It is prayed that the honourable tribunal may be pleased to delete the addition of Rs. 52,00,000/- made u/s. 80GGC of the Income-tax Act, 1961 being bad in law and in facts.

3. Addition of Rs.16,17,478 under Section 56(2)(vii) of the Income-tax Act, 1961 (Tax effect - Rs. 5,59,777)

a. The CIT(A) erred in law in upholding the addition of Rs.16,17,478 being share of the appellant in difference between value adopted for stamp duty and purchase consideration for the land under Section 56(2)(vii)(b) of the Income-tax Act, 1961. The learned CIT(A) erred in not appreciating the relevant explanation and documents available on record which provide that the total consideration paid by the acquirers was Rs. 12,06,28,202/- as against the stamp value of the property of Rs. 8,53,06,122. Since, the total consideration discharged by the acquirers (including appellant) was more than the stamp duty value of the property, provisions of the section 56(2)(vii) of the Act would not be applicable.

b. it is prayed that the honourable tribunal may be pleased to delete the addition of Rs. 16,17,478/- made u/s. 56(2)(vii)(b) of the Income-tax Act, 1961 being bad in law and in facts.

5. We have heard rival parties and also perused the materials available on records. As regarding ground no. 1 though the assessee claimed that ld. CIT(A) has not provided opportunity to the assessee. The assessee claimed that adjournment applications on account of non-availability of Authorized Representative due to ill health of his father and personal reasons. However no such adjournment letter or medical certificate produced before us by the assessee. Therefore, this ground of the assessee is hereby rejected.

5.1. As regarding ground no. 2, donation of Rs. 52,00,000/- made u/s. 80GGC, the ground is general in nature. The assessee has not produced any additional evidence in support of its claim. In fact the assessee had stated that it had cordial relationship with Mr. Kamlendu Tripathi Secretary of RSP and no other criteria was

followed for making these donations. The Id. A.O. made a detailed enquiry of RSP and its Bank accounts and transfer of funds to one Shri Mukesh Mehta proprietor of two firms and he transferred it to Waheguru Enterprise and Sapan Traders, which is clearly a systematic financial maneuver to legitimate illicit moneys and evade taxes. It is appropriate to follow the Hon'ble Supreme Court judgment, wherein SLP filed by the assessee is dismissed confirming the Tribunal's decision to come to the conclusion that the entire loan transaction was not genuine, in the case of Pavankumar M. Sanghvi vs. ITO [2018] 97 taxmann.com 398 (SC) which held as follows:

Assessee received certain sum as loan from two companies - Assessing Officer having found that said lender companies were shell entities added loan amount to income of assessee under section 68 - Bank statement of lender companies revealed high transactions during day and a consistently minimal balance at end of working day -Further, day when assessee was given loan there were credit entries of almost similar amounts, and balance after these transactions was a small amount - Tribunal taking into account bank statements of lender companies and fact that assessee failed to produce these lenders for verification held that alleged loan transactions were not genuine - High Court by impugned order held that since Tribunal had given elaborate reasons to come to conclusion that entire loan transaction was not genuine, appeal filed before it was to be dismissed - Whether Special Leave Petition against impugned order was to be dismissed.

5.2. In the absence of any evidence from the assessee, the grounds raised by the assessee are untenable and therefore the same is rejected. The findings given by the lower authorities does not require any interference and the addition is sustained.

5.3. Ground no. 3 namely addition of Rs. 16,17,478/- made u/s. 56(2)(vii)(b) of the Act. The Id. A.R. could not produce before us the

assessee's share of 24.35% namely the proportionate amount of Rs. 16,17,478/- being the difference in market value and purchase consideration which is being treated as income of the assessee u/s. 56(2)(vii)(b) of the Act. In the absence of any further details, we have no other option of confirming the disallowance made by the Assessing Officer. Thus this ground raised by the assessee is also rejected.

6. In the result, the appeal filed by the assessee is hereby dismissed.

Order pronounced in the open court on 26-08-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 26/08/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद