आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
'' C'' BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T R SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं**./ITA No.2287/AHD/2018**

निर्धारण वर्ष/Asstt. Year: 2015-2016

Hyfun Frozen Foods Pvt. Ltd., 1, C.J. Patel Market, APMC, Vasana, Ahmedabad-382007. **PAN: AACCH4594F**	Vs.	Income Tax Officer, Ward-2(1)(3), Ahmedabad.

(Applicant)		(Respondent)

Assessee by	:	Shri D K Parikh, A.R
Revenue by	:	Shri Ashok Kumar Suthar, Sr.D.R

सुनवाई की तारीख**/Date of Hearing : 18/01/2024**
घोषणा की तारीख **/Date of Pronouncement: 14/02/2024**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-2, Ahmedabad, arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-2016.

2. The assessee has raised following grounds of appeal:

1. The Id CIT(Appeals) erred both in law and on facts in confirming the addition of Rs. 95,47,000/- made by A.O. U/s 69 of the Income tax Act, 1961 without appreciating the factual and legal position that there was no evidence regarding any payment having been made in cash to the vendors as presumed by the Id AO. The addition being against the sanction of law ought to be deleted. It be deleted now.

2. The Id CIT(Appeals) erred in law and on facts in not appreciating that payment of cheques against the purchase of agriculture lands as per sale deeds which were outstanding for being encashed by the vendors were later cleared by exchange of fresh cheques issued as per evidences furnished hence there was no question of presuming that any payment in cash of such amount must have been made earlier. It be so held now and addition of Rs. 95,47,000/- u/s 69 of the Act purely on presumption without iota of evidence be deleted.

3. Both the lower authorities erred in law and on facts in not appreciating that the sellers also having affirmed regarding cheques issued as per deeds being not encashed and that no payments were made before issuing fresh cheques, the provisions of section 69 of the Act could not be invoked as per settled legal position .It be so held now and addition made be deleted.

4. The Id CIT(Appeals) has erred both in law and on facts in not considering the judgments on the point which were relevant to the issue before him and by simply stating that they were not relevant without commenting how they were not relevant with regard to the applicability of section 69 of the Act.

5. On the facts and in the circumstances of the case, the Id CIT(Appeals) ought to have deleted the addition of Rs.95,47,000/- made by the Ld.AO on totally irrelevant grounds and merely on assumption. The addition be deleted now.

6. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

3. The only effective issue raised by the assessee is that the learned CIT(A) erred in confirming the addition of Rs. 95,47,000/- under section 69 of the Act.

4. The assessee, a private company, is carrying out the business of wholesale trading of vegetables. The AO as per ITS Data found that the assessee during the year purchased 2 immovables properties for Rs. 95,47,000/- registered with sub-registrar office (hereinafter SRO) Kadi, Mehsana, but no such property was disclosed in the books of accounts. On enquiry by the AO under section 133(6) of the Act, the SRO kadi in response provided copies of sale deed bearing registration Nos. 3712/2014 and 3713/2014 through which assessee purchased the immovables properties. As per the sale deed Nos. 3712/2012 & 3713/2014 dated 14-07-2014, the assessee purchased agricultural lands at Moje/village-

Ganeshpura, Taluka- Kadi bearing survey Nos. 188 Part 1 & 2 from Shri Saini Satnamsingh Pritamsingh and Smt. Saini Surendrakour Satnamsingh for Rs. 48,02,000/- and Rs. 47,50,000/-. The purchase consideration was paid through cheques, the details of the same are available on page 3 of assessment order.

4.1 The assessee before the AO claimed that title of the property was defective therefore the cheques issued to the vendors were not cleared/debited in the bank account. Accordingly, the possession of the property was also not transferred. The negotiation for the title disputes is still on. Hence, the ownership of the property has not yet been transferred to it.

4.2 Thereafter, the AO made verification from the vendors by issuing notice under section 133(6) of the Act and deputed income tax inspector to carry out the spot verification of land property.

4.3 The vendor's vide letter dated 17-11-2017 confirmed that the sale of the property is yet to be materialized due to some technical issues regarding measurement and title deed. They also stated that the dispute has been resolved now and they will receive fresh cheques from the assessee by January 2018.

4.4 On the other hand, the inspector reported that the impugned property was situated in front of factory premises of M/s Hyfun Foods, an associate concern of the assessee company and used for the purpose of gardening/ volleyball playground by the assessee group. Accordingly, the AO held that the property is in the possession of the assessee group.

4.5 The AO, based on the above, observed that in the land or real estate deal, the seller/vendor receives purchase consideration on or before the execution of sale deed. However, in the present case, the sale deed has been executed by the vendor without encashing the cheque issued for payment of consideration and

possession of the property was also given to the assessee as reported by the inspector. There is no explanation that the why the vendor did not present cheques before the bank for clearance. It is very unlikely that a vendor will transfer the land property by executing the sale deed without receiving consideration and even without presenting the cheque before bank for realization. The assessee claimed that there was a defect in the title of the property, but it is not explained what the exact defect was and how the same has been rectified. Accordingly, the AO concluded that the circumstances suggest that the consideration was paid from unaccounted sources and so-called cheque issued by the assessee as mentioned in sale deed but never honored is nothing, but a camouflage and the story of title defect are cooked up. Hence, the AO made addition of Rs. 95,47,000/- on account of unaccounted income used for the purchase of such land property.

5. The aggrieved assessee preferred an appeal before the learned CIT(A). The assessee before the learned CIT(A) contended that the lands purchased by it through sale deed was not disclosed in the books as the consideration was not paid due to dispute. The AO made addition merely on the reasoning that the payment of consideration was not disclosed. The evidence of payment of purchase consideration was not furnished before the AO as there was no payment made till the date of finalization of assessment order but the same has been paid after assessment order as on 29th March 2018 through RTGS. The sale deed also got corrected by execution of correction deed and same has been registered with SRO Kadi. The assessee in support of contention furnishes the detail of payment made on 29th March 2018 and correction deed and requested to accept the same as additional evidence.

6. The AO in the remand report objected to the acceptance of additional evidence. The AO in the remand report submitted that the contention of the assessee that there was some dispute regarding title of the property due to which

payment of purchase consideration was not released has already been thoroughly discussed and rejected.

7. The assessee in rejoinder submitted that the addition was made under section 69 of the Act. However, there is no finding, or the fact brought on record that unaccounted investment was made by it, which is necessary for invoking the deeming provision of section 69 of the Act. On the contrary, firstly cheques as mentioned in the sale deed issued for payment consideration but same never been cleared and fresh payment through banking channel made on 29th March 2018 after dispute got resolved.

8. However, the learned CIT(A) after considering the facts in totality confirmed the addition made by the AO by observing as under:

> *2.6. Appellant has purchased land bearing survey No. 188 Part-II and 188 Part - I at Mouje Village by registered sale deed no.3712/2014 & 3713/2014 dated 14/7 / 2014 As per the sale deed, appellant has made payment of Rs.95.47,000/- vide four cheques dated 14/7 / 2014 and possession has been handed over. However, appellant has not shown the above transaction in the books of account. The AO has come to know about the purchase of land on the basis of ITS information and making necessary enquiry from the sub registrar office. AO has also got enquiry conducted from the Inspector and found that plot of land are in possession with the appellant group. The AO has noted that the sale consideration is generally paid by demand draft and if made by cheque, they are usually encashed before signing on the agreements. In the present case, as per the appellant, the land was purchased without making payment at the time of agreement and payment was made only on 29/3 / 2018 It is seen that the assessment order has been passed on 27/12 / 2017 and appellant in order to counter the department's argument has made the payment on 29/3 / 2018 on the pretext that the payment was not made as land was in dispute. The argument of appellant appears to be after thought after being caught by the department. I agree with the finding given by the AO that the registered sale deed in land matters is entered into by the party only after due diligence of title etc. and registered agreement are signed only after realisation of payment. Appellant has not reflected the land in the balance sheet as on 31/3 / 2015 though the lands have been transferred in the appellant's name and possession has been handed over. Appellant has relied upon various vase laws which are not relevant over the facts of the case. In view of the above, the addition made by the AO is found correct and the same is confirmed.*

9. Being aggrieved by the order of the learned CIT(A) the assessee is in appeal before us.

10. The learned AR before us submitted that the assessee company belong to Karamchandani family of Mehsana, Gujarat. Its flagship company is M/s Asandas and Sons Pvt Ltd. The family has been engaged in the business of agricultural products for the last 50 years. The land in dispute bearing survey No. 188 is adjacent to survey No. 189 held by assessee company which has been given to M/s Asandas and sons where its factory produces the products under the brand name "hyfun food".

10.1 The property in dispute belongs to Saini family of Mehsana which is in the hotel business under the name of Hotel Janpath and cold storage facility M/s Instafarm Products pvt ltd. There is a long business relationship between M/s Asandas and sons Pvt ltd and Hotal Janath & Instafarm Product which is evident from the ledger copy and invoices available at pages 2 to 41 of the paper book. Further, the Saini family, especially the vendor Shri Saini Satnamsingh Pritamsingh is a guarantor of the assessee in loan facility availed from syndicate bank (page 42 to 52). Hence, there is a personal and business relationship between the assessee group and Saini family. The property in question (survey 188) used by the employees of M/s Asandas factory for their entertainment purpose and never objected to by the Saini family due to personal and business relationship.

10.2 The property was purchased by assessee company vide sale deed as discussed above but no payment was made as the cheques mentioned in sale deed expired. Thus, the payment got delayed but finally made in March 2018 and the fact about the time for payment of consideration was conveyed during the assessment. Still, the AO made addition holding unaccounted investment. In view of the above, the learned AR before us submitted that the assessee has not acquired the impugned land out of undisclosed income and consequently no addition is warranted.

11. On the other hand, the learned DR before us reiterated the findings contained in the respective orders of the authorities below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. There is no dispute that the land in question was purchased by the assessee much earlier through the sale deed and payment for the same was made subsequently. Generally, such transactions are against the prevailing market forces/ practices. Under standard conditions, the buyer needs to make the payment to the vendor on or before the registration of the sale deed. However, there can always be exceptions to such kind of prevailing market practices but the same can be accepted if there is some reasonable justification. With this background, we note certain facts which have not been disputed by the revenue, as detailed below:

i. There is a business relationship between the assessee and the landowners right from the year 2012 till 2021-22 as evident from the copies of ledgers and other details placed on record/ in the written submission of the assessee.
ii. The payment for the land in dispute was finally made by the assessee through the banking channel dated 29 March 2018 which is evident from the details available on record.
iii. There was rectification in the sale deeds about the payments made by the assessee to the landowners.
iv. The landowner has also given a guarantee to the bank with respect to the loan availed by the assessee from the bank.
v. There was no iota of documentary evidence available with the revenue suggesting that the assessee has made payment in cash.

12.1 The Hon'ble High Court of Gujarat in the case of Commissioner of Income Tax versus Shri Babul Harivadan Parikh in tax appeal No. 132 of 2013, involving

identical facts and circumstances has upheld the finding of the Tribunal which is reproduced as under:

> *Apart from that even we have considered the reasoning given by the ITAT in order passed in quantum appeal and while deleting the addition of Rs. 30.93 lacs and considering the reasons given by the Tribunal in para 5, we are of the opinion that as such the Tribunal had not committed any error in deleting the addition of Rs. 30.93 lacs. Para 5 is reproduced hereunder:*
>
> > *"5. We have considered the rival submissions and do not find any justification to sustain the addition. The assessee filed copy of the agreement in question which was seized from M/s. Om Shivam Corporation during the course of search. According to the said agreement the assessee had soe development rights in the property belonging to the land owners and such development rights were ultimately purchased by M/s. Om Shivam Corporation subject to payment. The amount received by the assessee through this agreement and shown in the revised return is not in dispute surrendering his undisclosed income. The dispute is left with the amount of Rs. 30,93,000/- which relates to the recovery of two postdated cheques during the course of search which were in the name of the assessee. The learned Counsel for the assessee demonstrated from the agreement in question that both the two post-dated cheques referred to in the assessment order pertained to dated 31-12-2000 and 31-12-2001. The same were found in the possession of M/s. Om Shivam Corporation at the time of search carried out on 04-03-2005. Thus, till the date of search both the post-dated cheques were not encashed by the assessee. Accordingly to law dealing with negotiable instruments, the validity of both the cheques would have expired on the date of search, therefore, the same could not have been encashed by the assessee even in future. Since the dates of the cheques shows these were not valid on the date of the search in 2005, therefore, it would not be considered as cheques under the law which could be enforced for payments. The AO merely presumed on the basis of recovery of these post-dated cheques that the assessee received cash in lieu of return of these post-dated cheques to M/s. Om Shivam Corporation. However, the AO has not brought any evidence on record to support his presumption. Presumption cannot take place of legal proof. Further the balance amount was to be paid subject to realization of compensation from Municipal Corporation. The agreement also states that cheques in question were given for security deposit. Unless the terms of the agreement have been complied with and acted upon by the parties, the same cheques could not have been encashed. Nothing is brought on record if the terms of the agreement were subsequently complied with or acted upon by the parties. The AO has not brought any evidence on record that the assessee received cash for return of the cheques. The AO has also not recorded any statement of concerned person of M/s. Om Shivam Corporation that the said firm has paid the amount in question to the assessee. No statement either of the assessee or of M/s. Om Shivam Corporation in this regard has been brought on record. Considering the facts and circumstances of the case noted above, we are of the view that addition is made against the assessee merely on presumption or suspicion expressed by the AO regarding some facts which are not in existence. The law is settled that suspicion howsoever may be grave but it cannot take the place of legal proof. For making addition u/s 153C of the IT Act, the AO shall have to prove that the seized documents or the undisclosed income belongs to the assessee. In the absence of any cogent or reliable evidence available on record regarding alleged receipt of cash by the assessee, the authorities below were unjustified in making and confirming the addition. In the absence of any evidence incriminating in nature against the assessee, we do not justify the addition. We accordingly, set aside the orders of the authorities below and delete the addition*

of Rs. 30,93,000/-. In the result, Grounds No. 2 and 3 of the appeal of the assessee are allowed."

Considering the aforesaid facts and circumstances when the ITAT has confirmed the order passed by the CIT(A) in quashing and setting aside the penalty order passed under section 271(1)(c) of the IT Act, no error and/or illegality has been committed by the ITAT which calls for interference of this Court.

12.2 Moving further, we note that the Hon'ble High Court of Delhi in the case of CIT versus Lubtec India Ltd reported in 311 ITR 175 has observed that the provisions of section 69C of the Act are applicable with respect to the expenditures which have actually been incurred by the assessee and the assessee fails to offer any explanation about the source of such expenditure. From the judgement, it's transpired that actual expenditure, the source of which has not been explained, should have been incurred for attracting the deeming provisions provided under section 69 of the Act.

12.3 In the backdrop of the above stated discussion, we proceed to analyze facts of the case in hand and note that there were several justifiable factors for the delayed payment against the purchase of land. These justifiable factors have been elaborated in the preceding paragraph and the same has not been doubted by the revenue authorities. Thus, in such facts and circumstances, we are of the view that the addition cannot be made in the hands of the assessee merely on the reason that the assessee got the property transferred through registered sale without making the payment to the vendor.

12.4 Likewise, we note that there was no document brought on record by the Revenue suggesting that the assessee has incurred the expenses in connection with the purchase of land in cash so as to apply the provisions of section 69 of the Act. As such, the provisions of section 69 of the Act cannot be attracted in the light of the discussion held by the Hon'ble High Court of Delhi in the case of Lubtec India Limited. *(supra).*

12.5 Accordingly, we are not inclined to uphold the finding of the landed CIT-A and thus, direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

13. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the Court on 14/02/2024 at Ahmedabad.

Sd/-	**Sd/-**
(T R SENTHIL KUMAR)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 14/02/2024

Manish