

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.50/Ahd/2022
(Assessment Year: 2012-13)

Tej Organisers Pvt. Ltd., 302, Krishna Apartments, Nr. NID Paldi, Ahmedabad-380007	Vs.	Income Tax Officer Ward-4(1)(1), Ahmedabad
[PAN No.AACCT5993Q]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Biren Shah & Shri Gulab Thakor, A.Rs.
Respondent by:	Shri Ashok Kumar Suthar, Sr. DR

Date of Hearing	25.06.2024
Date of Pronouncement	22.08.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 15.11.2021 for Assessment Year 2012-13.

2. The Assessee has taken the following grounds of appeal:-

- “1. In law and in the facts and circumstances of the appellant's case, the order passed by the ld. CIT(A) is bad in law and deserves to be cancelled.
2. In law and in the facts and circumstances of the case of the Appellant, the Ld. CIT(A) has erred in passing the order without providing opportunity of explanation through "video conferencing" as provided in faceless appeal scheme which makes entire appellate Order passed by CIT(A) as null and void.
3. In law and in the facts and circumstances of the case of the appellant, the ld. CIT(A) has erred in not providing the opportunity of being heard to the appellant.
4. In law and in the facts and circumstances of the case of the appellant the Ld. CIT(A) has erred in not considering the paper book attached by the appellant in its written submission uploaded on E-filing portal.

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5. *In law and in the facts and circumstances of the case of the appellant the Ld. CIT(A) has erred in holding Ground No 1 filed before him as "General in nature" when he ought to have held that reassessment order passed by AO is null and void.*

6. *In law and in the facts and circumstances of the case of the appellant, the Ld. CIT(A) has erred in upholding addition of Rs. 2,85,00,000/- in respect of advances given to Shri Kanaiyo Thakkar treating it as unexplained investments when such investments is already reflected in Audited Annual Accounts.*

7. *In law and in the facts and circumstances of the appellant's case, the reassessment order passed by the Id. AO is bad in law and deserves to be cancelled"*

3. In this case, the assessee filed its income return on 27.09.2012, declaring a total loss of Rs. (-) 6,19,488/-. This was processed under section 143(1) on 18.10.2013. The assessee company, involved in commercial construction, was selected for scrutiny, and assessment was finalized under section 143(3) on 12.01.2015, determining a total income of Rs. 1,33,190/- after an addition/disallowance of Rs. 7,52,678/-. The case was later reopened under section 147 based on information from ADIT (Inv.), Ahmedabad, regarding an advance made by assessee to Shri Kanaiyo M. Thakkar. A notice under section 148 was issued on 29.03.2019 and the assessee responded by filing a return for AY 2012-13 on 29.04.2019, declaring an income of Rs. 1,33,190/-. The assessee requested the reasons for reopening, which were provided to the assessee on 15.05.2019. The assessee filed objections to the reopening which were rejected by the Assessing Officer on 18.09.2019. Notices under sections 142(1) and 143(2) were issued, and the assessee submitted details through the ITBA platform. The Assessing Officer observed that the assessee had shown loans and advances of Rs. 3,61,06,692/- as on 31.03.2012, while information from ADIT showed a closing balance of Rs. 6,56,58,436/- in the name of Shri Kanaiyo Thakkar. An advance of Rs. 2,85,00,000/- made to Shri Kanaiyo M. Thakkar which was not reflected in the return of income. The assessee

was asked to explain this discrepancy, but failed to provide supporting documentary evidence. Due to the lack of evidence and explanation, a sum of Rs. 2,85,00,000/- was added to the total income as unexplained investment. Penalty proceedings under section 274 read with section 271(1)(c) were initiated separately for concealment of income.

4. In appeal, Ld. CIT(Appeals) observed that the AO noted a discrepancy between the closing balance of a loan advance to Shri Kanaiyo Mahendrakumar Thakkar, reported by the appellant as Rs. 3,61,06,692/- and information from the Investigation Wing, Ahmedabad, which indicated a closing balance of Rs. 6,56,58,436/-. The AO rejected the appellant's explanation due to the lack of supporting documentary evidence, resulting in the addition of Rs. 2,85,00,000/- to the appellant's income. Ld. CIT(Appeals) held that the opening balance of Rs. 4,43,58,436/- was not supported by a certified balance sheet as of 31.03.2011, showing the grouping and sub-grouping of the amount against Shri K.M. Thakkar. He further held that the closing balance of Rs. 6,56,58,436/- as of 31.03.2012 was not explained with supporting documents. The assessee did not produce a copy of the ledger account, or the bank account for the relevant period. The information provided in a table was not backed by relevant documentary evidence. The appellant did not submit copies of the ledger accounts of Shri K.M. Thakkar in either party's books for the relevant period.

5. The assessee submitted before Ld. CIT(Appeals) that it claimed to have given a fresh advance of Rs. 2.85 crores, with Rs. 72,00,000/- received back within the same year. They also received cheques amounting to Rs.

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4,00,25,000/- in March 2012, which were later canceled and replaced in the next financial year. The assessee provided a summary of transactions, arguing that advances to Shri K.M. Thakkar were duly accounted for in the books of accounts. The assessee contended that since Shri K.M. Thakkar recorded the loans and advances in his books, the transactions were not unaccounted. The assessee argued that non-deposited cheques amounting to Rs. 4,33,80,000/- should be considered along with the closing balance of Rs. 2,22,78,436/-, totaling Rs. 6,56,58,436/-. However, Ld. CIT(Appeals) held that the AO could not verify the details as the assessee did not submit the ledger account of Shri K.M. Thakkar. The AO found the appellant's claim about the cheques improbable and against accounting principles. The abstract of transactions provided by the appellant was deemed insufficient without supporting evidence. Accordingly, the addition of Rs. 2,85,00,000/- as unexplained investment was upheld, and the appeal of the assessee was dismissed.

6. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). Before us, the Ld. Counsel for the assessee submitted that the case was reopened based on information from ADIT (Inv), indicating that the assessee company, M/s. Tej Organisers Pvt. Ltd., gave advances to Shri Kanaiyo Manharkumar Thakkar. The Ld. Assessing Officer observed that as on 31.03.2012, the company showed Rs. 3,61,06,692/- as loans and advances in its balance sheet, but as per information available, the actual outstanding to Thakkar was Rs. 6,56,58,436/-. The company allegedly failed to disclose an advance of Rs. 2,85,00,000/- in its return, leading to potential escapement of income. The

Ld. Counsel for the assessee submitted that the transactions with Shri K.M. Thakkar were recorded in the books, including advances and repayments. The new advances of Rs. 2.85 crores were given, and a sum of Rs. 72 lakhs was received back in the same year. The cheques received but not deposited were recorded separately, ensuring accurate reflection in the accounts. The Ld. Counsel for the assessee submitted that the new loan was accurately reflected in the ledger and audited accounts. The assessee maintained separate ledger accounts for clarity, and the transactions were confirmed by Shri K.M. Thakkar.

7. We have heard the rival contentions and perused the material on record. On going through the facts of the instant case, the assessment of the assessee was reopened on the ground that as per information available with the Department a sum of Rs. 6,56,58,436/- was outstanding from Shri Kanaiyo Thakkar to the assessee, whereas as per schedule of “loans and advances” in the Balance Sheet of the assessee company, there was an outstanding balance of only Rs. 3,61,06,692/- as on 31.03.2012. Therefore, the assessee company has not shown complete details of advances to Shri Kanaiyo Thakkar in it’s return of income and hence there was escapement of income to the extent of Rs. 2,85,00,000/-. However, during the course of hearing, the Counsel for the assessee submitted that the assessee maintains two ledger accounts of Shri Kanaiyo Thakkar: one ledger for cheques received but not deposited and another ledger for cheques which have finally passed (Pages 43 & 42 of the Paper Book respectively). The Counsel for the assessee submitted that on perusal of break-up of total loans and advances during the year under consideration amounting to Rs.

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3,54,65,000/-, amount reflecting in the name of Kanaiyo Thakkar was Rs. 2,22,79,000/-, which is the precise net amount recoverable by the assessee from K. M. Thakkar being the difference between the ledger account reflecting loans and advances amounting to Rs. 6,56,58,436/- and ledger account reflecting cheques received but not deposited for Rs. 4,33,80,000/-. Thus, the net recoverable from Kanaiyo Thakkar is Rs. 2,22,78,436/- (6,56,58,436/- less Rs. 4,33,80,000/-). Accordingly, on perusal of the facts placed before us, we are of the considered view that advances given to Kanaiyo Thakkar have been duly recorded in the books of accounts of the assessee and there is no escapement of income. Further, we also observe that all advances / payments have been made / received through banking channels only. Accordingly, in the light of the above facts, we are of considered view that there is not escapement of income, as alleged.

8. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on	22/08/2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 22/08/2024

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/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.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad