

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 70 of 2014

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COMMISSIONER OF INCOME TAX AHMEDABAD III....Appellant(s)

Versus

KAMLABEN SURESHCHANDRA BHATTI....Opponent(s)

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Appearance:

Mr NITIN K MEHTA, ADVOCATE for the Appellant(s) No. 1

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CORAM: HONOURABLE Mr. JUSTICE AKIL KURESHI

and

HONOURABLE Ms. JUSTICE SONIA GOKANI17th February 2014ORAL ORDER (*PER : HONOURABLE MR.JUSTICE AKIL KURESHI*)

Revenue has challenged the judgment of the Income Tax Appellate Tribunal, Ahmedabad {"**Tribunal**" for short} dated 19th July 2013 raising following questions for our consideration :-

{A} "Whether the ITAT erred in law in holding that there is no violation of Rule 46A in the facts of the case without actually examining the facts and circumstances of the case, particularly when the CIT (A) did not pass specific order disposing of the petition for admission of additional evidence files by the assessee and the objection of the Assessing Officer, as held in *Dinesh D. Parikh v.*

CIT (A) [Cal.] 202 Taxman 110 and *ACIT v. Mohan Singh*
[ITAT jd.] DRT 497 ?”

{B} Whether in the facts and circumstances of the case, the *impugned* order of the ITAT is erroneous and perverse and bad in law and facts in so far as it accepts the CIT (A)'s order despite it being admitted position on record that neither the source of funds in the cash book have been examined and corroborated by any authority nor any reason or correlation being established between the repeated withdrawals and deposits and the deletion are made based on the uncorroborated explanation of assessee ?”

{C} “Whether the ITAT erred in not adjudicating the factual issue of non-reflection of certain properties in the Balance sheet of the assessee files before it which was raised by the DR and not setting aside the case where the case to Assessing Officer to examine all issues particularly in view of the specific facts of the case where the assessee has not filed all details before the Assessing Officer and incomplete examination of the case by the CIT {A} ?”

{D} “Whether the ITAT erred in not setting aside the case to the Assessing Officer for *de novo* examination of the source of funds particularly the cash deposits in Banks which came to light through information returns, cash

payment of Rs. 59,73,000/= to the seller of property in Satyagarah Chhavani, payment of Rs. 4,64,350/= and Rs. 10,90,417/= in cash for registration and the source of huge amounts paid by the assessee for purchase of properties during the year ?”

{E} “Whether the Appellate Tribunal is right in law in confirming the order of the CIT (A) deleting the addition of Rs. 2,39,55,700/= made by the A.O on account of undisclosed source of income u/s. 69 of the I.T Act ?”

{F} “Whether the Appellate Tribunal is right in law and on facts in ignoring the fact that the assessee failed to disclose the sale proceeds of two properties for Capital Gain purposes in the return of income filed by her and therefore, in absence of such disclosure, the alleged sale proceeds ought not to have been related with the properties in question ?”

Principally, there are three issues raised by the Revenue. First is with respect to additional evidence permitted by the CIT [A] in terms of Rule 46A of the Income Tax Rules, 1962 {“*Rules*” for short}. Second is with respect to deletion of Rs. 59.73 lakhs by the CIT [A] confirmed by the Tribunal and the third is deletion of Rs. 2.39 Crores [*rounded off*] made by the Assessing Officer under Section 69 of the Income-tax Act, 1961 {“*Act*” for short} which was not

approved by the CIT [A] and which order was confirmed by the Tribunal.

With respect to first issue of admission of additional evidence, we notice that the CIT [A] recorded that the notice of hearing issued by the Assessing Officer on 31st October 2011 was received by the assessee on the date of hearing itself. It was therefore that the assessee could not produce necessary evidence on such date. When subsequently, he attended the office of the Assessing Officer on 25th November 2011 with necessary evidence, he learnt that the order of assessment was already passed on 21st November 2011. It was on this ground that the CIT [A] permitted additional evidence to be produced before him. While doing so, he also called remand report from the Assessing Officer.

In our view, CIT [A] committed no error nor the admission of additional evidence can be stated to be in breach of the requirement of Rule 46A of the Rules. Particularly when the interest of the Revenue was safeguarded by calling for the remand report and permitting the Assessing Officer to comment on such additional evidence, we see no reason to interfere.

Regarding deletion of Rs. 59.73 lakhs, the Tribunal confirmed the order of CIT [A]. The order of CIT [A] being more elaborate, we may record the contents thereof -

“4.3 Decision :

I have carefully considered the assessment order and the submission filed by the appellant. The addition has been made on account of cash deposit of Rs. 1,04,05,460/= in Kalupur Commercial Bank Limited, Ahmedabad. The appellant has submitted that the cash deposit is duly accounted for in the personal books of account of the appellant. Further, the appellant has claimed that the cash deposited in Kalupur Commercial Bank Limited is only Rs. 21,80,480/= and the other deposit which is mentioned in the AIR is with HDFC Bank Limited which is amounting to Rs. 60,44,500/=. The appellant has explained the position of cash as per the AIR and as per the books as under :-

Sr No.	Name of Bank	Cash Deposited as per AIR	Cash Deposited as per Books	Difference
1	Kalupur Commercial Cooperative Bank Ltd	43,60,960/=	21,80,480/=	21,80,480/= [Excess in AIR]
2	HDFC Bank Limited	60,44,500/=	60,96,500/=	52,000/= [Less in AIR]
	Tax Filter Amount	1,04,05,460		

The appellant has submitted that the cash has been deposited in these bank accounts out of cash withdrawn on earlier occasions from her bank accounts. The appellant has made a cash book which shows the incoming and outgoing of cash on every day and the cash deposited in bank is duly shown therein.

After considering facts of the case, report submitted by the A.O on the additional evidence given by the appellant, details of AIR and the explanations given by the appellant, it is noted that she has made cash

deposits as mentioned in the preceding page. The claim of the appellant that the cash deposited in the bank is out of the cash book appears to be justified. Without commencing and examining the source of funds which are coming to the cash book, it is noted that the cash which has been deposited in the bank account and is appearing in the AIR can be reconciled by the entries shown as deposit of cash in the personal cash book maintained by the appellant. It is important to note that the cash book has been duly sent to the A.O for his comments while admitting the additional evidence under Rule 46A.

The appellant has been able to reconcile the cash deposit of Rs. 43,60,960/= shown in AIR as deposited in Kalupur Commercial Cooperative Bank Limited. In the AIR, the entries of cash deposits are appearing two times for a particular date and therefore, the amount as per AIR is exactly the double as against the actual cash deposited in the Bank. The reconciliation has been submitted by the appellant which is reproduced on preceding pages no. 46 to 49 as Exhibit-I. It is clear from the table that the claim of the appellant is correct and is, therefore, accepted.

The AIR also show another amount of cash of Rs. 60,44,500/= which is actually deposited in HDFC Bank but the A.O has considered the same as deposited in Kalupur Commercial Co.op Bank Limited. This is a factual error on the part of the A.O. The amount has been shown at Entry no. 49 in the transactions of cash deposited of more than Rs. 1 lac in the savings bank account. Since this is the only entry of cash deposited in HDFC Bank, and rest of the other entries which are 127 in number, the A.O must have mistaken it as cash deposited in Kalupur Commercial Co.op Bank Limited. However, the appellant has also satisfactorily

explained the cash deposit as out of the withdrawals shown in the cash book. The entries of cash deposited are duly reflected in the personal cash book which the appellant has submitted under Rule 46A. Therefore, without commenting on the source of funds, the entries are explained on the basis of cash book submitted by the appellant.

Now let us examine the source of various cash or funds which has been brought in the cash book and deposited in various bank accounts maintained by the appellant. The appellant has received funds from the following sources:-

Source of Funds	Amount
Opening Balance : as on 01.04.2008	
Cash in Hand 517414	
Kalupur Bank 1390	
HDFC Bank NIL	
Axis Bank 141953	
SBI 21120	
OBC <u>210783</u>	8,92,660/=
Agricultural Land Sold (assessee's share)	25,50,000/=
½ share of Agricultural Land sold of husband [Deposited in Bank account of assessee with HDFC Bank	25,50,000/=
Rent Income of assessee, her minor son and HUF	18,84,095/=
Rent Deposit for ITC [received during the year]	1,20,000/=
LIC Money Bank [Received during the year]	7,00,000/=
Agricultural Land sold situated at Survey No. 416/2/ Fathewadi, Ahmedabad	4,06,720/=

Cheques received from Shri Subhashchandra P Bhatti [PAN No. AIXPB 1539]	34,81,767/=
House Loan from GRUH Finance Limited	1,50,00,000/=
Crop Loan from HDFC Bank	50,00,000/=
Savings Bank Interest	15,269/=
TOTAL of Fund Collected	3,26,00,511/=

It is clear from the above position that the sources of fund which are received is mainly on account of House Loan from GRUH Finance Limited, Crop Loan from HDFC Bank Limited, Cheque funds received from Shri Subhash Bhatti, her husband and sale of agriculture land owned by the appellant.

The appellant has given documentary evidence relating to loans taken from Gruh Finance and HDFC Bank and therefore, the source of the same is not questionable. The appellant has received an amount of Rs. 34,81,767/= from her husband Shri Subhashchandra P. Bhatti who is also assessed to tax and has PAN. The A.O may pass this information to the A.O of her husband, but no addition in the case of the appellant can be made. Further, the agriculture land sold by the appellant is not disclosed in the return of income. The appellant has deposited total sale consideration including that of her husband in appellant account. The issue of income arising out of land sale has been dealt with subsequently while dealing with the ground of appeal related to the issue. Therefore, the sources of funds which are shown by the appellant are explained.

However, further examination of the cash book submitted by the appellant show that the appellant has shown a cash loan of Rs. 45,000/=

on 5.5.2008 from her husband. The loan has been returned on 18/07/2008 in cash. Further the appellant has also taken cash of Rs. 10,00,000/= from Shri Shankarlalji Parihar on 25/12/2008 which is shown as returned to him on 23/03/2009. The appellant has explained that the cash of Rs. 45,000/= received from her husband was out of his cash on hand and was taken as she required it. Similarly, in respect of the amount of Rs. 10,00,000/= received from Shri Shankarlalji Parihar, it has been submitted that the amount was given by Shri Parikhar who is her father as against the family settlement on account of her share of the property owned by her father. It has further been claimed by her that since did not want any money from her father, she returned it subsequently. The explanation given by the appellant is clearly an after thought. First of all, it is to be noted that all the entires in the cash book which has been submitted by the appellant for explaining the source of cash deposited in various bank accounts show withdrawal from the bank account and only the above instances are in cash. Closer examination of the cash book show that the amount of Rs. 45,000/= which is shown to have been received from her husband has been shown as the appellant was having shortage of cash on hand near that date. As per the cash book given by the appellant, there was a cash on hand of Rs. 3,15,714/= on 01/05/2008. However, cash totalling to Rs. 3,20,000/= has been deposited from 01/05/2008 to 06/05/2008. Therefore, to cover this shortage, the appellant had to show this cash as received from her husband. Similarly, the cash of Rs. 10,00,000/= which is claimed to have been received on account of her share of property from her father on 25/12/2008 is also shown in the cash book as received as the appellant has deposited huge cash in the bank accounts in the month of January 2009. The cash balance as on 01/01/2009 was Rs. 25,42,266/= whereas it has gone down to Rs. 2,40,416/= on 29/01/2009. Therefore, the cash of Rs. 10,00,000/= is also

shown as received from her father to cover the cash deposits in the bank. In view of these facts, the source of cash of Rs. 10,45,000/= is clearly unexplained and the appellant has tried to create a source to cover up the deficiency of the cash. Therefore, out of the cash deposits of Rs. 1,04,05,460/=, the source of Rs. 10,45,000/= is not explained. The addition made by the A.O is, therefore, restricted to Rs. 10,45,000/=.

The ground of appeal is **accordingly partly allowed.**"

It is this order of CIT [A] which the Tribunal confirmed. From the contents of the order passed by the CIT [A], it can be seen that the entire issue is based on appreciation of evidence on record. The CIT [A] having undertaken detailed exercise of reconciling the accounts and examined the source of different deposits in cash, limited the addition to Rs. 10,45,000/-. No question of law therefore, arises.

Regarding deletion of Rs. 2.39 Crores under section 69 of the Act, the CIT [A] made following observations :-

“5.3 Decision :-

I have carefully considered the assessment order and the submission filed by the appellant. The appellant has reconciled the investment shown in the AIR and that which has been actually made by her as under :-

Sr No.	Date	Amount as per AIR	Amount as per Books	Difference
1	30.01.2009	94,73,000/=	94,73,000/=	Nil
2	31.03.2010	1,44,82,700/=	1,85,00,000/=	40,17,300/= (Less in AIR)
	Tax Filter Amount	2,39,55,700/=		

The source of investment of Rs. 94,73,000/= for purchase of plot at Satyagrah Chhavani vide Sale Deed dated 29/01/2009 is out of the funds which have been received by her on account of sale of agriculture land and loan from bank. The fund flow of the appellant has been duly discussed in the preceding ground of appeal. The appellant has made payment by cheque amounting to Rs. 35,00,000/= and cash payment of Rs. 59,73,000/= to the seller and another Rs. 4,64,350/= has been spent in cash on stamp duty and related expenses. The source of cash is duly explained by the appellant with the help of cash book which is discussed in the preceding ground of appeal and sources of cash deposited in the cash book and in the bank account has been discussed therein. Therefore, the source of investment in this property is treated as explained.

The investment of Rs. 1,85,00,000/= which has been made by the appellant in purchasing a house property at Satyagrah Chhavani vide sale deed dated 31/03/2009 is made out of loan from Gruh Finance amounting to Rs. 1,50,00,000/=. The appellant has made cheque payment of Rs. 24,09,583/= on various dates and cash payment of Rs. 10,90,417/= for stamp duty and related expenses. The appellant has explained the sources of funds and the same has been discussed in the preceding ground of appeal and therefore, the source of investment in this property is also treated as explained.

The ground of appeal is accordingly **allowed.**”

Here also, CIT [A] has given cogent reasons and found no grounds for sustaining the addition made by the Assessing Officer. He held that the source of investment in the property stood explained. It is this order of CIT [A] which the Tribunal confirmed in further appeal. Here also, entire issue being based on facts and having examined by CIT [A] and the Tribunal and having come to a concurrent finding of fact, no question of law arises. Tax Appeal is, therefore, dismissed.

{Akil Kureshi, J.}

{Ms. Sonia Gokani, J.}

Prakash*