

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 19 of 2014**

=====

COMMISSIONER OF INCOME TAX I....Appellant(s)

Versus

DHARAMDEV FINANCE PVT LTD....Opponent(s)

=====

Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

MR SNEHAL K THAKKAR, ADVOCATE for the Opponent(s) No. 1

MR. MAULIK M SONI, ADVOCATE for the Opponent(s) No. 1

=====

CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MS JUSTICE SONIA GOKANI**Date : 10/02/2014****ORAL ORDER****(PER : HONOURABLE MS JUSTICE SONIA GOKANI)**

1. Following are the questions raised by the Revenue challenging the order of Income Tax Appellate Tribunal dated 29.2.2012 :

“(A) Whether the Appellate Tribunal has substantially erred in law and on facts in confirming the order passed by the CIT(Appeals) though the said office had admitted fresh evidence in breach of Rule 46A of the Income Tax Rules?

(B) Whether the Appellate Tribunal has substantially erred in law and on facts in confirming the order passed by the CIT(Appeals), deleting the addition of Rs.1,77,86,645/-? made on account of un-explained cash credits?

(C) Whether the Appellate Tribunal has substantially erred in law and on facts in confirming the order passed by the CIT(Appeals) deleting the addition of Rs.1,70,11,830/- made in respect of un-explained cash credit in the name of Shri Hari Builders without considering the findings of the Assessing Officer recorded in the assessment order as well as in para-3.1.1 of the remand report dated 22.05.2007?

(D) Whether the Appellate Tribunal has substantially erred in law and on facts in confirming the order passed by the CIT(Appeals) deleting the addition of Rs.1,44,56,390/- made on account of undisclosed income from 'sarafi' business found recorded on seized document at page-138 to 140 at Annexure-A20 without considering the contents of the seized document and finding of the Assessing Officer?

(E) Whether the Appellate Tribunal has substantially erred in law and on facts in deleting the above additions by observing that the transaction is between Rakeshbhai Thakkar individual and his proprietary concern M/s. Satya Developers without considering the fact that the seized document also contained the names of third parties such as Bharatbhai, Chandlodia, Rakeshbhai, Ratanpole, Jethibhai Gadhvi, Pulinbhai Sheth and Sushilaba?"

2. We have heard learned counsel Ms. Mauna Bhatt for the Revenue and with her assistance examined the material on record. From the following factual background, present appeal arises.
3. The return of the income was filed by the assessee on 18.12.2006 disclosing the total income of Rs.22170/-. In scrutiny assessment, such additions were made. When challenged before the CIT(Appeals), CIT(Appeals) partly

sustained the challenge of the assessee respondent. When further challenged before the Tribunal, the Tribunal had upheld the version of the assessee, therefore, the present appeal by the Revenue raising afore-mentioned questions of law.

4. The first question pertains to admission of fresh evidence in breach of rule 46A of the Income Tax Act. We notice that the Tribunal has held there was no violation of rule 46A as remand report was obtained by CIT(Appeals) from the Assessing Officer. We could also notice from the record that fullest opportunity was made available to both the sides. This question therefore, requires no further consideration.

5. Question (B) and (C) require consideration together. On account of certain cash credits, the Assessing Officer had made addition of Rs.3,54,70,163/-. Out of this total amount, aggregate amount of cash credit in respect of 10 persons of Rs.1,76,83,518/-, according to the Assessing Officer had remained unexplained. This amount included a sum of Rs.17,0,11,830/- from Hari builders, where one Shri Raju Vaghela was the proprietor of Hari builders. When this addition was made, challenge was taken to the CIT(Appeals) and CIT(Appeals) had called for a remand report and on receipt of the same it noticed that Hari builders had given the confirmation and his PAN number also came on record and his bank statement clearly reflected that person had capacity to lend the money. The CIT(Appeals) therefore, noted that if the return was not filed by Hari builders that itself cannot be ground to treat

this amount as unexplained in the hands of the respondent. With regard to sum of Rs.1,77,86,645/-, CIT(Appeals) satisfied itself noting that confirmation of depositors is received from the assessee.

6. The Tribunal chose to confirm such stand by holding thus :

“8. We have heard both the parties and perused the records. We have also gone through various decisions referred to by the learned counsel of the assessee. We find that the addition of Rs.3,54,70,163/- was made by the AO on account of cash credits in respect of deposits in the names of 52 different persons in the books of the assessee. We further find that the assessee has furnished copies of account of his personal books, bank accounts, etc. We further find that in the course of remand proceedings, the AO was provided copy of the accounts of these parties, their names, and addresses, and their confirmation of the accounts. The assessee also provided PAN numbers of these persons along with the copy of bank statements. The amounts were received by account payee cheques. The AO in his remand proceedings was of the view that amount of Rs.1,76,83,518/- were not satisfactory explained by the assessee. The amounts included the sum of Rs.1,70,11,830/-. The learned CIT(A) however was of the view that since in respect of this amount the creditor has given his PA Number, confirmation and his bank statement, the deposit cannot be treated as unexplained. We also feel that since this amount has come to the assessee's account through banking channels which is verifiable from the bank statement of the creditor (which is on record), the source of the credit and genuineness of the transaction is established. The identity of the person is already established as he is having PA Number. In rebuttal of this position, nothing has been brought on record by the Revenue. Therefore, we are not inclined to interfere with the order of learned CIT(A) and the same is hereby upheld.

Grounds nos.4 and 5 of the Revenue's appeal are dismissed."

7. As could be noticed from the orders of both the CIT(Appeals) and the Tribunal, in this entire addition of Rs.3.55 crores(rounded off), the names of 52 persons were reflected in the books of assessee respondent. The authorities having found the material on record, confirmed the names and addresses as well as the details of the accounts, as also in the most of the Cases PAN numbers, coupled with the fact that amounts were received by way of account payee cheque, chose not to question the said amount. Question essentially based on factual matrix presented before the authority and as they have rightly appreciated both these aspects, no question of law arises.
8. With respect to questions (D) and (E), addition of Rs. 1.45 crores (rounded off) on the basis of some newspapers found where the noting was that Dharamdev Finance Pvt. Ltd received total sum of Rs.1.44 crores and cash transaction as per this noting had taken place between the proprietary concern Satya Developers and the present respondents. The Assessing Officer when added the entire amount, CIT(Appeals) deleted the addition by noting this :

"8.2 I have considered the assessment order and the above submissions. From the submissions made before the A.O. and also before me it is found that the appellant has explained that the notings in these loose papers pertain to Satya Developers, the proprietry concern of Rakesh Thakkar and that transactions are recorded in the books of Satya Developers and Rakesh Thakkar individual, as the transactions are between those two entities. The assessing

officer has made the presumption that the loose paper was found from the office premises of Dharamdev Finance Pvt. Ltd and hence it was finance transactions of this concern. As against this the appellant has clearly shown that the transactions are between Rakesh Thakkar individual and his proprietary concern Satya Developers. Copies of account are also furnished. This fact is also explained by Rakesh Thakar in his individual case. The AO was, therefore, not justified in making the addition in the case of the appellant on the basis of these loose papers. The issues raised herein are discussed in the appellate order in the case of Rakesh Thakkar for AY 2005-06 where the AO had made additions of Rs.50 lakh on the basis of the same loose paper and I have deleted such addition in that case. As discussed in the said order, as the transactions are duly recorded in the books of Satya Developers and Rakesh Thakkar and that the books are audited under the provisions of section 44AB, the AO was not justified in charging the explanation of the appellant. Keeping in view the entire facts of the appellant's case, the addition made is accordingly deleted.”

9. The Tribunal also sustained the order of the CIT(Appeals) by holding that Rakesh Thakkar in his individual capacity had accepted that the said amounts and the same had been offered by way of tax since he was the proprietor of Satya Developers. Only on the ground that some loose papers were found from the office premises of this respondent i.e. Dharamdev Finance, the Assessing Officer in the instant case appear to have concluded that financial transaction concerned the assessee. In absence of any contrary material having been brought either before both the authorities or before this Court, neither CIT nor the Tribunal committed any error in appreciating the facts which were presented before both of them. As the amount

had already been owned by the proprietor of Satya Developers who had not only accepted such amount but had also offered the same for the purpose of tax which were duly recorded in the books of Satya developers the same cannot be taxed twice. Thus, no question of law arises.

10. Tax Appeal is therefore, dismissed.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

raghu