

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD

BEFORE S/SHRI SANJAY GARG, JUDICIAL MEMBER
AND
NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA No.170/Ahd/2024
Assessment Year : 2016-17

Naliniben Dipakbhai Patel 12A Narayan Nagar Dakor Road, Kapadwanj Kheda 387 620. PAN : AGOPP 2625 A	Vs	The ITO, Ward-4 Anand.
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(Applicant)	(Respondent)
Assessee by : Shri M.K. Patel, Advocate	Revenue by : Shri Kavan Limbasiya, Sr.DR

सुनवाई की तारीख / **Date of Hearing** : 27/03/2025
घोषणा की तारीख / **Date of Pronouncement**: 03/06/2025

आदेश/ORDER

Per Sanjay Garg, Judicial Member

The above appeal has been filed by the assessee against order passed by the Ld.Commissioner of Income-Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “ld.CIT(A)"] dated 15.01.2024 under section 250 of the Income Tax Act, 1961 ("the Act" for short) arising out of the order of passed by the Assessing Officer (hereinafter referred to as “AO”) under section 143(3) of the Act pertaining to Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal:

"1. The Learned Commissioner of Income Tax (Appeals) erred in remanding the matter to the Assessing Officer without informing the appellant.

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2. The Learned Commissioner of Income Tax (Appeals) erred in relying on the remand report without giving proper opportunity to the appellant.

3. The learned Commissioner of Income Tax (Appeals) erred in coming to the conclusion that the loans taken by Dipakbhai N Paid PAN No. AFMPPS064Q was not proved and hence the investment of Rs.2,18,19,600/- made by the appellant was unexplained,

4. The Learned Commissioner of Income Tax (Appeals) erred in not giving proper opportunity to your appellant to submit reply on remand report.

5. The Learned Commissioner of Income Tax (Appeals) erred in disregarding the submission and evidences filed during the course of assessment proceedings and further erred in relying merely on the remand report for which the appellant was not given proper time to rebut the same.

6. The Learned Commissioner of Income Tax (Appeals) erred in holding that the loans received by Husband of the appellant was unexplained and therefore the investment made by the appellant was unexplained u/s 69A of the Act.

7. The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.2,18,19,600/- u/s 69A of the Act,

8. The appellant craves the right to add to or niter, amend, substitute, delete or modify all or any of the above grounds of appeal,"

3. The brief facts of the case are that the assessee had e-filed his return of income on 18/10/2016 declaring total income at Rs.4,34,050/- for the year under consideration. The case of the assessee had been selected for scrutiny through CASS to verify the issue “whether investment and income relating to properties are duly disclosed.”

4. The AO noted that the assessee during the year had purchased two agriculture lands, as a joint-owner with her husband. During the assessment proceedings, the assessee explained to the AO that, in fact the husband of the assessee viz. Shri Dipakbhai Naranbhai Patel had purchased the said two agriculture properties, and that the said investment was shown in his income tax return (“ITR”); that the name of the assessee was introduced as joint-owner by her husband only for the sake of convenience. The assessee also furnished the copy of the ITR of her husband for Asst.Year 2016-17 along with details of

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long term unquoted investments, attached as Annexure-5. The AO, however, was not convinced with the above reply, and held that the assessee had failed to prove the source of investment. He, therefore, made impugned addition to the extent of 50% of the sale price in the aforesaid two properties, being the share of the assessee.

5. Aggrieved by the order of the AO, the assessee preferred appeal before the Id.CIT(A) and reiterated her submissions. The assessee also furnished requisite documents, to show that the investment in properties was, in fact, made by her husband, which was duly shown in his books of accounts and ITRs. The assessee also furnished the source of investments of her husband, out of which, loan of Rs.1,68,50,000/- from six parties was taken, including loan of Rs.12.50 lakhs from assessee herself. The Id.CIT(A) called for a remand report on the above evidence furnished by the assessee from the AO. In the remand report, the AO discussed the credit-worthiness of the creditors, and was of the view that the credit-worthiness of the creditors was not fully established. He has not satisfied about the credit-worthiness of the assessee to advance loan of Rs.12.50 lakhs to her husband. Considering the remand report of the AO, the Id.CIT(A) held that as per the AO, the assessee could not establish credit-worthiness of her husband and source of investment by him in the aforesaid two properties. He, therefore, confirmed the addition so made by the AO.

6. We have heard rival contentions and gone through the record. The case of the assessee was selected for limited scrutiny assessment on the point as to whether the investment and income relating to the properties were duly disclosed by the assessee ? During the assessment proceedings, as well as during the appellate proceedings,

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the assessee duly demonstrated that the assessee herself did not make any investment in the properties. Her husband had purchased the properties in the joint-name with the assessee for the purpose of convenience, etc. However, the entire investment was made by her husband viz. Shri Dipakbhai Naranbhai Patel. It was also submitted that the details of entire investment were duly reflected in the books of accounts and duly furnished along with return of income. Even, the assessee also furnished the source of investment. Under these circumstances, the investigation regarding the source of investment in the properties by her husband, Shri Dipakbhai Naranbhai Patel, could have been done while making the assessment proceedings relating to his income. Even though, the AO in his remand report was suspicious about the credit-worthiness of the creditors of Shri Dipakbhai Naranbhai Patel, however, he did not make any inquiries to verify the credit-worthiness of his creditors. He, himself, noted that since the case in question was not of Shri Dipakbhai Naranbhai Patel, hence, his office was not getting into the root of the case. The relevant part of the observation made by the AO in his remand report is as under:

“It is quite evident from the above table that, none of the creditors who had the credit worthiness to advance such an amount. Nevertheless since the case in question is not that of Dipak Patel, this office is not getting into the root of the case.”

7. Not only this, the AO also suspected about the credit-worthiness of the assessee for giving loans of Rs.12.50 lakhs to her husband. He, however, did not ask the assessee to prove her credit-worthiness. He just produced the details of the income of the assessee for Asst.Year 2015-16 and 2016-17 to hold that the assessee had no sufficient income to make advance of Rs.12.50 lakhs to her husband. However, the details produced by the AO, itself, showed that the assessee

earned bank interest of Rs.4.54 lakhs for Asst.Year 2015-16 and Rs.5.11 lakhs for Asst.Year 2016-17, besides other income, including income from house-property and agriculture income. This itself showed that the assessee was having sufficient capital with her. Nonetheless, the assessee has duly demonstrated before both the lower authorities that the investment in the properties in question was made by her husband. The source of investment of her husband was also furnished. The burden of prove on the part of the assessee was fully discharged.

8. Regarding credit-worthiness of her husband, that was to be examined in the assessment proceedings relating to her husband. Moreover, no inquiry from the creditors was made, even during the assessment proceedings or in the remand proceedings by the AO in the case of the assessee, and the AO himself noted that he was not going into this aspect, as it relates to the assessment of her husband.

In view of this, there is no question of making/confirming the impugned additions in the case of the assessee. The same are accordingly ordered to be deleted.

9. In the result, the appeal of the assessee stands allowed.

Order pronounced on 03.06.2025.

Sd/-
(Narendra Prasad Sinha)
Accountant Member

Sd/-
(Sanjay Garg)
Judicial Member

Ahmedabad,dated 03/06/2025

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