

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 154/Ahd/2021
Assessment Year 2012-13**

The ACIT, Central Circle-1(3), Ahmedabad (Appellant)	Vs	M/s Aaryavart Infrastructure Pvt. Ltd., 17-A, First Floor, Pariseema Complex, CG Road, Navrangpura, Ahmedabad-380009 PAN: AADCA4844Q (Respondent)
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**Assessee by: Shri Suresh Gandhi, A.R.
Revenue by: Shri Sudhendu Das, CIT-D.R.**

Date of hearing : 11-01-2024
Date of pronouncement : 07-02-2024

आदेश/ORDER

PER : WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax, CIT(A)-11, Ahmedabad, in the proceedings u/s 143(3) r.w.s. 147 of the Act vide order dated 18/03/2021 passed for the assessment year 2012-13.

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

"1. On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in quashing the assessment u/s 147 of the Act and deleting the addition made by the Assessing Officer

2. On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in holding that there was change of opinion as the assessee had already submitted the details of bank account No 10763 maintained with The Social Co. Op Bank Ltd, at the time of proceedings u/s 143(3) r.w.s 1530 without appreciating the fact that before Ld CIT(A) the assessee has categorically stated that (page No. 19 & 20) during the course of regular assessment u/s 143(3) and proceedings u/s 153C r.w.s. 143(3) on 18/12/2014 and 14/12/2018 respectively, the assessee had given details in respect of cash deposited in bank accounts only, which means that the details other than cash deposits had not been filed/given.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that that the Assessing Officer has failed to bring any material on record to prove the credit entries in Bank accounts as unexplained without appreciating the fact that primarily, the assessee itself failed to fulfill the primary onus cast upon it by not explaining the source of such credit entries/inter-bank transfer in the impugned bank account as required u/s 69A of the IT Act, 1961.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the AO

5. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent."

3. The first issue raised by the Revenue is that the Id. CIT(A) erred in quashing the assessment framed u/s 147 of the Act.

4. In the present case, the proceedings were initiated u/s 147 of the Act by the Assessing Officer on the reasoning that there were various debits and credits in the bank account namely the Social Co-operative Bank Ltd. of the assessee. There was the information received by the Assessing Officer with respect to the party namely Shri Prakash bhai Ishwar bhai Changela, proprietor of M/s Reliance Enterprises who was maintaining bank account among other banks in the Social Co-operative Bank Ltd. In the case of Shri Prakashbhai, the Assessing Officer was of the view that he has been engaged in providing accommodation entry. Accordingly, the Assessing Officer formed reasons to believe that the assessee

on hand must also be engaged in such activities and thus, the income of the assessee has escaped assessment to the tune of Rs. 16,25,47,481/- only. However, the Id. CIT(A) quashed the assessment order framed by the Assessing Officer by observing as follows:

"6. I have considered the facts of the case, the assessment order passed us. 143(3) rws 147 of the Act and AO's observations therein, submissions of the appellant company together with the supporting details and documents filed in the form of Paper Book etc.

6.1 The First Ground of Appeal is challenging the re opening of the case u/s 147 of the Act by issuing the Notice u/s. 143 of the Act dated 30/03/2019 and re-assessment pursuant to such notice based on the reasons recorded for re-opening of the case of the appellant company. From the assessment order, it is seen that after passing the order us 143(3) r.w.s. 153C of the Act dated 28/12/2018 for this AY 2012-13, the AQ received certain information from the office of the DDIT (Inv) Unit-2 Rajkot. As per the information there were some suspicious bank transactions in the case of one. Prakashbhai shwarbhaiChangela, Rajkot, Relevant part of the information received by the AO has been mentioned in the assessment order, which has been reproduced hereinabove. One of the bank accounts held by said PrakashbhaiChangela was with Social Co-Op. Bank Ltd, Ahmedabad having account no 10855. On the basis of such information, detailed scrutiny and investigation, the AO found that so many persons are indulged in unaccounted transaction in this bank ie. Social Co-Op. Bank Ltd. The appellant company is also having a bank account with this bank bearing A/c No. 130002011010763. The AO further observed that on verification of the said bank account of the appellant company, it was noticed that there was credit of Rs. 22,26,91,001/- and debit of Rs 22,56,64,890/- during F.Y. 2011-12 and credit of Rs 8, 18,34,045/- and debit of Rs 8,15,26,797/- during F.Y 2012-13. On the other hand, the turnover of the appellant company for the AY 2011-12 and 2012-13 is of Rs. 581,00,726 and Rs 2,33,74,705/ respectively. The AO observed that since the appellant company had failed to submit the details during the course of assessment proceedings u/s 143(3) r.w.s. 153C of the Act and in light of the fresh informative evidences received from the Income Tax Investigation Wing of Rajkot and after duly analysis of the same, it was observed that the appellant company failed to make full and true disclosure of all material facts in the return of income as well as during the course of assessment proceedings u/s 143(3) r.w.s. 153C of the Act Accordingly, the AD reopened the case u/s. 147 of the Act for AY 2012-13 after getting due approval of the Pr Commissioner of Income Tax (Central), Ahmedabad vide his letter No. Pr CIT(C)And/116/1T/147/2018-19/4482 dated 30 03 2019 and a notice u/s 143 of the Act dated 30/03/2019 has been issued.

On the other hand, the AR of the appellant company submitted that the reasons recorded are vague, invalid and unjustified for formation of necessary belief, the re opening has been done on the basis of suspicion and surmises and there is no failure on the part of the appellant company to disclose fully and truly all material facts before the AO and all the transactions are duly recorded in the regular books of account of the appellant company. In the reasons recorded by the AD for re-opening of the case u/s 147, entire discussion is in respect of one Shri Prakashbhai Ishwarbhai Changela, Rajkot It is submitted that the appellant company has nothing to do with said Shri Prakashbhai Ishwarbhai Changela and it has no business connection or any transaction with said Shri

Prakashbhai Ishwarbhai Changela The AR submitted that during the course of re-assessment proceedings also, this fact and contention has not been disproved or denied by the AO while bringing on record any cogent material. In respect of various questions and answers of said Shri Prakashbhai Ishwarbhai Changela reproduced in para no. 3.4 of the copy of reasons recorded, it is submitted that nothing is pertaining to the appellant company, Said Shri Prakashbhai Ishwarbhai Changela was supposed to explain the transactions with one company namely M/s. Archer Metal Ltd. It is submitted that the appellant company has nothing to do with the said company M/s. Archer Metal Ltd. During the course of re-assessment proceedings, this fact and contention has not been disproved or denied by the AO while bringing on record any cogent material It has been contended that the AO has drawn adverse inference in case of the appellant company on the basis of the unexplained actions in case of sad PrakashwaraChangela on record any to do so any nexus of the said person with the appellant company Merely because of the text that the appellant company has one bank account No. 10763 with the Social Co-Co Bank LM. Ahmedabad and the said person Shri Prakashathal Changela has also a bank account with the said bank (Social Co-op Bank (at) he averse inference drawn by the AD on the basis of the information is merely on surmises and without proper satisfaction and application of mind in view of the above facts, it is contended that in respect of the bank account no. 10855 with the Social Co-op Bank Lid in the name of said Shri PrakashbhaishaChangela observations of the AD in the reasons recorded that "On scrutiny of this account is bound that so marry persons are indulged in such kind of unaccounted transactions is unjustified with a suspicious mind, general in nature and in absence of any clinching evidences brought on record by the AO for such allegation. Even during the course of reassessment proceedings, the AD could not point out any defects in the details and evidences placed on record in respect of the transactions came out in the bank account with The Social Co-Op. Bank Ltd.

It has been submitted that the bank account no 10783 with the Social Co-Op. Bank Ltd, Ahmedabad is a regular bank account of the appellant company since t opening and the same is being duly accounted for in the regular books of account of the appellant company. It is not the case of the AO that the said bank account no. 10783 with the Social Co-Op. Bank Ltd. Ahmedabad is undisclosed / unaccounted bank account of the appellant company. The appellant filed the details of the bank account with Social Co-Op. Bank Ltd, Ahmedabad reflecting in the audited financial statements for FY 2010-11 to FY 2012-13. The details of opening balance, total debt and credit transactions during these years and closing balance has also been filed. It is submitted that during the course of original scrutiny assessment proceedings us. 143(3) as well as us. 143(3) r.w.s. 153C of the Act thereafter, the appellant company has furnished all the required details and documents before the then assessing officer Accordingly, t has been submitted that the original scrutiny assessment us. 143(3) as well as subsequent scrutiny assessment us. 143(3) r.w.s. 153C of the Act has been passed by the then AO after taking into consideration the details and documents filed before him as well as books of accounts produced before him and after due application of mind The relevant details submissions filed during the course of original scrutiny assessment proceedings u/s. 143(3) and thereafter during the course of assessment proceedings us 143(3) r.w.s. 153C of the Act have been filed. In respect of the observation of the AD that major chunk of credit / deposits in the bank account are from bogus group concerns and it has been established during search / survey proceedings / assessment proceedings that these entities / persons are indulged in providing accommodation entries, bogus billing and do not have any genuine transactions/business, it has been submitted that said observation of the AO is general in nature and no specific name / instances of alleged accommodation entries / bogus billing has been stated in the assessment order under

appeal. It has been contended that on the basis of the reasons recorded for re-opening of the case of the appellant company u/s 147 of the Act for the AY 2012-13, the AO has failed to bring on record any instance of alleged accommodation entries / bogus purchases for which the credit entries in the bank account no. 10763 with the Social Co-Op. Bank Ltd, Ahmedabad has been treated by him as unexplained. The AO has also not disputed the fact that the appellant company has no transactions of what so ever nature either with Prakashbhai Ishwarbhai Changela or with the company "Archer Metal Ltd." referred in the reasons recorded for re-opening of the case of the appellant company u/s. 147 of the Act.

The AR of the appellant further submitted that reopening of the case by the AO is without tangible material available with him for doubting the credit entries (other than cash deposits) in the bank account no. 10763 with the Social Co-Op. Bank Ltd., Ahmedabad during the FY 2011-12. There was no evidence before the AO at the time of recording the reasons, which could prove that some income had escape. It is further submitted that where the reasons recorded are insufficient to establish any belief of the AO, such reason cannot be said to be giving rise to the jurisdiction of the AD to reassess the income. In support, reliance has been placed on various case laws which are reproduced hereinabove. It has been submitted that it is merely a "change of opinion" by the AO in respect of the bank account no. 10763 with the Social Co-Op. Bank Ltd. Ahmedabad with respect to the credit entries (other than cash deposit entries) in the said bank account in support, reliance has been placed on various case Laws which are reproduced hereinabove. Accordingly, it has been submitted that the re opening of the case u/s 147 of the Act by issuing the Notice u/s 143 of the Act is invalid and unsustainable at law and therefore the re-assessment carried out by the AO is required to be quashed.

Considering the totality of the fact of the case, I have observed that the AO was having information from the investigation wing of Rajkot. This information has been received after passing of the assessment order u/s 143(3) rws 153C of the Act dated 28/12/2018 for AY 2012-13 On the basis of the said information, the AD recorded the reasons for re-opening of the case u/s 147 of the Act and obtained the necessary approval of the competent authority as required under the law. The Notice u/s 143 of the Act dated 30/03/2019 has been issued after obtaining such approval On perusal of the reasons recorded for re-opening of the case of the appellant, it is seen that majority of the discussion in the reasons recorded is in respect of one Shri Prakashbhai Ishwarbhai Changela of Rajkot. From the investigation done in that case, it has been stated that said Shri Prakashbhai Ishwarbhai Changela has failed to provide any details and explanation in respect of his bank transactions and accordingly, the same were treated as bogus and in the nature of accommodation entries only Said Shri Prakashbhai Ishwarbhai Changela was having one of the bank accounts with Social Co- Op. Bank Ltd., Rajkot. In respect of this bank account, it has been observed in the reasons recorded that on scrutiny of this account, it is found that so many persons are indulged in such kind of unaccounted transactions. The appellant company was also having bank account no. 10763 with the Social Co-Op. Bank Ltd. Ahmedabad. It has been opened in the month of February, 2011. The total Credit and Debit for the FY 2011- 12 in this bank account is of Rs. 22.26,91,001/- and Rs. 22.56.64.890/- respectively and the turnover for appellant company the FY 2011-12 has been stated at Rs. 5,81,00,726/-. Therefore, the AO verified the income profile of the appellant company on the ITBA system of the department and the same has been tabulated in the reason recorded for re-opening of the case. The table shows various details for AY 2011-12 to A.Y. 2016-17 Para no. 5, 5.1

and 6 of the reasons recorded for re-opening are concluding paras, which are reproduced hereunder:

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When the above observations of the AO in the reasons recorded for reopening of the case of the appellant for the AY 2012-13 are mad in conjunction with the other observations in the reasons recorded for re-opening of the case discussed by him, I found that there is no linking of the allegation made by the AO and the observations for the same. On the other hand, the appellant company has explained with supporting evidences that it has filed all the required details and explanations in respect of its bank account no. 10783 with the Social Co-Op. Bank Ltd, Ahmedabad during the course of original scrutiny assessment proceedings us. 143(3) as well as also during the course of subsequent scrutiny assessment proceedings us 153C r.w.s. 143(3) of the Act. This fact has not been disputed by the AO in the aor. It is not the case of the AO that the said bank account no. 10763 with the Social C-Op. Bank Ltd. Ahmedabad is an undisclosed bank account of the appellant company not accounted for in its regular books of account for the relevant previous years So when the details of the bank account no 10763 with the Social Co-Op. Bank Ltd Ahmedabad were already available on the record of the AO (department), it cannot be said that there is a failure on the part of the appellant company to disclose fully and truly all material facts Secondly, during the course of proceedings w/s 153C r.w.s 143(3) of the Act, the then AO has already made the addition in respect of the cash deposited in the said bank account no 10763 with the Social Co-Op Bank Ltd amounting to Rs 6,01,43,520/-and this fact has been categorically mentioned by the AO in the reasons recorded for re- opening of the case. Accordingly, the facts remains that the details of the said bank account no 0763 with the Social Co-Op Bank Ltd was already available on record during the course of proceedings us 153(3) r.w.s. 143(3) of the Act. In absence of the details, such observations and addition of cash deposited in the said bark account would have not been possible. Therefore, I am of the considered view that there was no new tangible material available with the AO which can lead to re-opening of the case u/s 147 of the Act.

Moreover there is change of opinion on the part of the AD for the reason that the entire bank account had already been examined by the AO during assessment proceedings u/s 153C rw.s.143(3) and that time the AO found fit to make the addition only for cash deposits in the said bank account and not for the other credits it means he was satisfied about the genuineness of the other credits made in the said bank account. Now by making reopening for the other credits in the bank account on the plea of unexplained is nothing but it is review of the decision of the earlier AD and also change of opinion. This is not as per law.

Various case laws relied upon by the appellant in its written submission as reproduced hereinabove support the same it appears a case of "change of opinion in respect of the credit entries (other than cash deposits) in the bank account no. 10763 with the Social Co-Op. Bank Ltd, which is not permissible under law as held in catena of judgments Accordingly. I hold that the re-opening of the case u/s. 147 of the Act is invalid and therefore the re-assessment carried out pursuant to the notice u/s 148 of the Act dated 30/03/2019 is also invalid and accordingly the same is quashed. This ground of appeal is allowed."

5. Being aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us. Both the Ld. DR and the Ld. AR before us vehemently supported the order of authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of Id. CIT(A)'s findings, there remains no doubt that the bank account in dispute has already been considered by the Assessing Officer during the assessment proceedings framed u/s 153C r.w.s. 143(3) of the Act. Therefore, there was no tangible material available with the Assessing Officer to form the reason to believe that the income of the assessee has escaped assessment. Likewise, we also note that the information from the investigation wing was received with respect to Shri Prakash bhai Ishwar bhai Changela who has no connection with the assessee. Accordingly, simply that Shri Prakash bhai Ishwar bhai Changela and the assessee are maintaining the bank account in the Social Co-operative cannot be a ground to draw a conclusion that the assessee is engaged in the accommodation entry and consequently form the reason to believe that the income of the assessee has escaped assessment. As such, we hold that there was no information received from the external agency suggesting that the income of the assessee has escaped assessment. Accordingly, we do not find any infirmity in the order of Id. CIT(A) requiring our interference. Hence, we uphold the same. Thus, the grounds of the appeal raised by the Revenue are hereby dismissed.

7. As regards the merit of the issue, since we have the quashed assessment holding that the appeal filed by the Revenue is not maintainable, the grounds raised by the Revenue on merit of the issue do not require separate adjudication. Accordingly, we dismiss the same as infructuous.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 07-02-2024

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad : Dated 07/02/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद