

No sec. 68 additions if assessee duly produced returns of firms showing his profit share

Summary – The High Court of Gujarat in a recent case of Alpeshkumar Dahyabhai Patel, (the Assessee) held that where AO made addition to assessee's income under sec. 68 on ground that it had received excess share of Profit from firm in which he was a partner, in view of fact that assessee had received amount in question from two separate firms and he had also produced returns of said two firms which showed matching figures, impugned addition was to be deleted

Facts

- The assessee was a partner of various firms which were engaged in the activity of development of real estate and construction. For the relevant assessment year, the assessee had filed the return declaring certain taxable income.
- The Assessing Officer passed the order of assessment under section 143(3). After expiry of four years from end of relevant year, the Assessing Officer sought to reopen the assessment mainly on ground that the assessee had shown profit from firm 'S' of Rs. 7.65 crores (rounded off). 'S' had declared profit of Rs. 32.00 crores and assessee's share being 20 per cent thereof, the figure would come to Rs. 6.40 crores (rounded off). As against this, since the assessee had claimed to have received Rs. 7.65 crores by way of share of his profit from the said firm, the excess of Rs. 1.25 crores (rounded off) was required to be added as the income of the assessee under section 68.
- The assessee in the objections had pointed out that the assessee had received a total of Rs. 7.65 crores by way of his share in two separate partnership firms *i.e.*, 'S' and 'SG'. The Assessing Officer however, did not accept this objection.
- On writ:

Held

- It was noted that the assessee has produced necessary matching documents to make good his contention. In the return that the assessee filed, he is shown to have received a total amount of Rs. 7.65 crores by way of share of the profit from firm 'S'. Thus, in this return, he had not given the break-up of the receipt from two different partnership firms. However, during the assessment proceedings, he had given the details in respect of the tax free income which was received from two separate firms.
- The assessee has also produced the returns of the said two firms. The returns of both these firms show matching figures. For example, in case of 'S', in return, the gross profit shown was Rs. 32 crores. Profit after depreciation was shown at Rs. 22.40 crores. This profit was distributed to the partners in the proportion of their share. The assessee having 20 per cent share, received Rs. 4.47 crores.

- Similarly, the return of income filed by 'SG', showed profit of Rs. 23 crores. Profit after depreciation came to Rs. 15.89 crores. The assessee having 20 per cent share in the partnership business, received 3.17 crores out of the same.
- Thus, the Assessing Officer's recording that the assessee had received sum of Rs. 7.65 crores by way of a share of profit from 'S' is not correct. In fact, his assumption that assessee should have received 6.40 crores being 20 per cent of the profit of Rs. 32 crores of Satyam Gokul Corporation itself was erroneous. All in all, the assessee correctly points out that he had received a total of Rs. 7.65 crores by way of share of profit from two separate partnership firms.
- Coming to the second reason, the Assessing Officer believed that the assessee had received Rs. 26 lakhs (rounded off) by way of his share of profit from Satva Associates. He had instead shown only a sum of Rs. 5.11 lakhs for the current year. Therefore, the difference *i.e.* Rs. 20.88 lakhs was required to be added. As against this, the assessee pointed out in the objections that the sum of Rs. 26.00 lakhs was not received by him during the current year but was received in the previous year. In the current year, the assessee had only received Rs. 5.11 lakhs which was shown in the return. In support of his contention, the assessee pointed out that the return of said Satva Associates was also scrutinized and after scrutiny, such distribution of the partner's profit for the assessment year 2009-10 has been accepted.
- From the record, it emerges that the Assessing Officer has committed an error in drawing a presumption that the assessee received Rs. 26 lakhs by way of share of profit from Satva Associates during the present year. The record suggests to the contrary. This reason is also therefore not valid.
- The third reason cited by the Assessing Officer is of disallowance of expenditure in relation to earning tax exempt income. According to him, the income of assessee of Rs. 7.65 crores was not taxable. The expenditure relatable to such income should be disallowed in terms of section 14A of the Act read with rule 8D. The Court is not concerned with the validity of this contention of the Assessing Officer. Present is a case where the reopening of assessment is sought to be made beyond the period of four years. There being no element of failure of the assessee, disclosing full facts, reopening would not be permissible on this ground also.
- In the result, impugned notice is set aside.