

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND SHRI RAMLAL NEGI, JUDICIAL MEMBER

ITA No. 3422/MUM/2011((A.Y : 2007-08)

Shri Arvind G. Shah,
7, Kailash Dhara, 60, Feet Road,
Ghatkopar(E), Mumbai 400075
PAN:AAHPS 5117M

... Appellant

Vs.

The Income Tax Officer -22(1)1,
4th Floor, Tower No.6,
Vashi Railway Station Complex,
Vashi, Navi Mumbai

.... Respondent

ITA No. 4322/MUM/2011(A.Y. 2007-08)

The Income Tax Officer -22(1)1,
4th Floor, Tower No.6,
Vashi Railway Station Complex,
Vashi, Navi Mumbai

.... Appellant

Vs.

Shri Arvind G. Shah,
7, Kailash Dhara, 60, Feet Road,
Ghatkopar(E), Mumbai 400075
PAN:AAHPS 5117M

.... Respondent

ITA No. 3423/MUM/2011((A.Y : 2007-08)

Late Shri Nemchand Dahyalal Shah,
Through L/H, Arvindkumar Shah,
7, Kailash Dhara, 60, Feet Road,
Ghatkopar(E), Mumbai 400075
PAN:AAHPS 5108G

.... Appellant

Vs.
The Income Tax Officer -22(1)4,
Mumbai. Respondent

ITA No. 4300/MUM/2011((A.Y : 2007-08)

The Income Tax Officer -22(1)4,
Mumbai. Appellant

Vs.
Shri Nemchand Shah,
(Legal Heir) Arvind G. Shah,
7,Kailash Dhara, 60Ft. Road,
Ghatkopar (W), Mumbai.
PAN:AAHPS5108GRespondent

ITA No. 3424/MUM/2011((A.Y : 2007-08)

Champaklal Dahyalal Shah,
Flat No.7, Kailash Dhara CHS,
60 ft. Road, Ghatkopar (E),
Mumbai
PAN: AAHPS 5116L Appellant

Vs.
The Income Tax Officer -22(1)4,
Mumbai. Respondent

ITA No. 4299/MUM/2011((A.Y : 2007-08)

The Income Tax Officer -22(1)4,
Mumbai. Appellant

Vs.
Champaklal Dahyalal Shah,
Flat No.7, Kailash Dhara CHS,
60 ft. Road, Ghatkopar (E),
Mumbai
PAN: AAHPS 5116L Respondent

ITA No. 4316/MUM/2011((A.Y : 2007-08)

The Income Tax Officer -22(1)3,
Mumbai.

..... Appellant

Vs.

Kajal A. Shah,
Kailash Dhara CHS, Plot No.353/23,
Flat No.7, R.B.Mehta Mehta Marg,
Ghatkopar East, Mumbai 400 075
PAN:AAZPS 3092H

..... Respondent

C.O.116/MUM/2012

Arising out of ITA No. 4316/MUM/2011((A.Y : 2007-08)

Kajal A. Shah,
Kailash Dhara CHS, Plot No.353/23,
Flat No.7, R.B.Mehta Mehta Marg,
Ghatkopar East, Mumbai 400 075
PAN:AAZPS 3092H

.....Cross Objector

Vs.

The Income Tax Officer -22(1)3,
Mumbai.

..... Appellant in appeal

ITA No. 3949/MUM/2011((A.Y : 2007-08)

The Income Tax Officer -22(1)4,
Mumbai.

..... Appellant

Vs.

Ushaben Bhogilal Gandhi,
7, Kailash Dhara CHS, 60 Feet Road,
Ghatkopar East, Mumbai 400075
PAN: AIZPG 8291L

..... Respondent

C.O.74/MUM/2012
Arising out of ITA No. 3949/MUM/2011(A.Y : 2007-08)

Ushaben Bhogilal Gandhi,
Through POA Holder Minakshi A. Shah,
7, Kailash Dhara CHS, 60 Feet Road,
Ghatkopar East, Mumbai 400075
PAN: AIZPG 8291L

..... Cross Objector

Vs.

The Income Tax Officer -22(1)4,
Mumbai.

..... Appellant in Appeal

ITA No. 4317/MUM/2011(A.Y : 2007-08)

The Income Tax Officer -22(1)3,
Mumbai.

..... Appellant

Vs.

Minaxi A. Shah,
Kailash Dhara CHS, Plot No.353/23,
Flat No.7,R.B. Mehta Marg,
Ghatkopar East, Mumbai 400 075
PAN: ABDPS 4871P

..... Respondent

C.O.117/MUM/2012
Arising out of ITA No. 4317/MUM/2011(A.Y : 2007-08)

Minakshi A. Shah,
Kailash Dhara CHS, Plot No.353/23,
Flat No.7,R.B. Mehta Marg,
Ghatkopar East, Mumbai 400 075
PAN: ABDPS 4871P

..... Cross Objector

Vs.

The Income Tax Officer -22(1)3,
Mumbai.

..... Appellant in Appeal

ITA No. 3421/MUM/2011(A.Y : 2007-08)

(Late) Smt. Aruna M. Doshi,
L/H Shri Mahesh Ratilal Doshi,
7, Kailash Dhara, 60 ft. Road,
Ghatkopar (East), Mumbai 400075
PAN: AADPD 9165E

..... Appellant

Vs.

The Income Tax Officer -22(1)(1),
Mumbai.

..... Respondent

ITA No. 4321/MUM/2011(A.Y : 2007-08)

The Income Tax Officer -22(1)(1),
Mumbai.

..... Appellant

Vs.

(Late) Smt. Aruna M. Doshi,
L/H Shri Mahesh Ratilal Doshi,
7, Kailash Dhara, 60 ft. Road,
Ghatkopar (East), Mumbai 400075
PAN: AADPD 9165E

.... Respondent

ITA No. 3427/MUM/2011(A.Y : 2007-08)

Mahesh Ratilal Doshi,
7, Kailash Dhara, 60 ft. Road,
Ghatkopar (E), Mumbai 400075
PAN: AADPD 91790

.... .. Appellant

Vs.

The ITO -22(1)(3),
Mumbai.

.... Respondent

ITA No. 4319/MUM/2011(A.Y : 2007-08)

The ITO -22(1)(3),
Mumbai.

... Appellant

Vs.

Mahesh Ratilal Doshi,
7, Kailash Dhara, 60 ft. Road,
Ghatkopar (E), Mumbai 400075
PAN: AADPD 91790

... Respondent

ITA No. 3425/MUM/2011(A.Y : 2007-08)

Mansuklal Umedchand Shah,
7, Kailash Dhara,
60 ft. Road, Ghatkopar (E),
Mumbai 40075
PAN AAEPS 8483R

.... Appellant

Vs.

The ITO -22(1)(3),
Mumbai.

... Respondent

ITA No. 4320/MUM/2011(A.Y : 2007-08)

The ITO -22(1)(3),
Mumbai.

... Appellant

Vs

Mansuklal Umedchand Shah,
7, Kailash Dhara,
60 ft. Road, Ghatkopar (E),
Mumbai 40075
PAN AAEPS 8483R

.... Respondent

ITA No. 3426/MUM/2011(A.Y : 2007-08)

Kishore Mansuklal Shah,
7, Kailash Dhara,
60 ft. Road, Ghatkopar (E),
Mumbai 40075

PAN: AAJPS 4539D

.... Appellant

Vs.

The ITO -22(1)(3),
Mumbai.

... Respondent

ITA No. 4318/MUM/2011(A.Y : 2007-08)

The ITO -22(1)(3),
Mumbai.

... Appellant

Vs

Kishore Mansuklal Shah,
7, Kailash Dhara,
60 ft. Road, Ghatkopar (E),
Mumbai 40075

PAN :AAJPS4539D

.... Respondent

ITA No. 3428/MUM/2011(A.Y : 2007-08)

Meena C. Dhruva
7, Kailash Dhara,
60 ft. Road, Ghatkopar (E),
Mumbai 40075

PAN: ADXPD4036D

.... Appellant

Vs.

The ITO -22(1)(3),
Mumbai.

... Respondent

ITA No. 4315/MUM/2011(A.Y : 2007-08)

The ITO -22(1)(3),
Mumbai.

... Appellant

Vs

Meena C. Dhruva,
7, Kailash Dhara,
60 ft. Road, Ghatkopar (E),
Mumbai 40075
PAN: ADXPD4036D

.... Respondent

Assessee by : Ms. Ritika Agarwal
Revenue by : Shri Durg Dutt

Date of hearing : 05/10/2015
Date of pronouncement :/10/2015

ORDER

PER G.S. PANNU,AM:

The captioned are a total of 22 appeals relating to 11 different assessees belonging to one family group pertaining to a single assessment year of 2007-08.

2. Since the appeals involve a common issue, which has pertinently arisen from AIR information received by the Department with regard to the Bank accounts maintained by the family members, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. Before we proceed to deliberate on the specific issues raised, brief background is summarized as follows. The main person in the captioned family group is one Late Shri Arvind Shah, who was found to be involved in the activity of Short-term financial accommodation business, whereby income by way of accommodation

commission/interest was earned. The modus-operandi for carrying out such activity was canvassed to be through operation of 46 Bank accounts, which were claimed to be held in the name of the said Late Shri Arvind Shah and other family members. Out of such 46 Bank accounts, 32 Bank accounts were held by Late Shri Arvind Shah in his name either individually or as joint holder with other family members. The balance of the 14 Bank accounts, though not in the name of Late Shri Arvind Shah, but were held by other family members either singly or jointly. Be that as it may, the controversy surrounding the distinction between the aforesaid two sets of Bank accounts shall be addressed by us in detail later, but the pertinent point is that the Late Shri Arvind Shah and other captioned family members of the group have consistently canvassed before the lower authorities that all such Bank accounts were operated and managed by Late Shri Arvind Shah. The income on account of entries of deposits and withdrawals appearing in such Bank accounts in the previous year relevant to the assessment year under consideration is the subject matter of dispute before us.

4. Initially, in an assessment finalized by the AO under section 143(3) dated 14/12/2009, in the case of Late Shri Arvind Shah, an addition of Rs.4,42,28,631/- was made which was deposits found to have been made in the Bank accounts of eight family members only, based on the AIR information received. Simultaneously, individual additions were also made on substantive basis in the hands of the other family members. At this point, it would also be appropriate to notice that there are a total of 15 family members including Late Shri Arvind

Shah, in whose name such Bank accounts have been opened. Out of such 15 family members, 4 members of the family namely, Jignesh Shah, Late Gambhirdas Shah, Hansaben Shah and Champaklal Dhruva were not assessed by the Assessing Officer and thus, those individuals are not in appeal. At this stage it would also be pertinent to observe that all the 15 family members i.e. the captioned 11 and the aforesaid 4 family members, have filed their income tax returns for the assessment year under consideration i.e. assessment year 2007-08, wherein the only income declared was by way of interest earning.

5. Coming back to assessment of total income of Rs.4,44,66,965/- made in the hands of Late Shri Arvind Shah, which was inclusive of Rs.4,42,28,631/- u/s. 68 of the Act on account of the AIR information. On this aspect, before the CIT(A) the assessee i.e. Late Shri Arvind Shah made varied submissions. The pertinent issue raised and which has been the point of agitation before us, related to the income assessed on account of the debit/credit entries in the Bank accounts. It was canvassed before the CIT(A) that apart from the Bank accounts revealed in the AIR information, there was a total of 46 odd Bank accounts and it was submitted that after considering all such Bank accounts, a peak credit of Rs.37,79,815/- as on 25/5/2006 be considered for addition in the hands of assessee, Late Shri Arvind Shah. It was canvassed that Late Shri Arvind Shah was actually beneficiary of transactions in all the Bank accounts either held in his name or singly in the names of other family members or jointly among themselves or jointly with Late Shri Arvind Shah. The other family members were stated to be not the

beneficiaries and, therefore, it was canvassed that no additions should be made in the hands of other family members.

5.1 The CIT(A) considered the revised claim made by the assessee based on the total of 46 Bank accounts as against the action of the AO in confining himself to the Banks accounts notified in the AIR information. The CIT(A) also called for the comments of the AO on the revised plea raised by the assessee.

5.2 After considering the rival stands, the CIT(A) accepted the plea of the assessee in principle that what was liable to be added as income was the peak credit as unexplained income under section 69 of the Act, and not the entire amount of deposits appearing in the bank accounts. However, the CIT(A) did not consider the peak credit in relation to the all 46 Bank accounts as assessable in the hands of the assessee Late Shri Arvind Shah. Instead, the CIT(A) confined such addition in the hands of Late Shri Arvind Shah only in relation to Bank accounts, where the name of Late Shri Arvind Shah was appearing either in single capacity or jointly with other family members. In otherwords, in relation to such Bank accounts where the name of Shri Arvind Shah was not appearing either singly or in joint, the peak credit was considered in the hands of the respective individual family members. Accordingly, the CIT(A) excluded such Bank accounts, which totalled to 14 Bank accounts. In the balance 32 Bank accounts which was found to be in the name of Shri Arvind Shah either singly or jointly with other family members, the peak of the credit appearing was determined at Rs.29,85,359/-, which was assessed in the hands of Shri Arvind G. Shah under section 69A of the Act, and balance of the

addition with regard to the Bank accounts standing in the name of other family members was deleted. Simultaneously, additions were sustained by the CIT(A) in the hands of respective family members.

5.3 In this background, the Ld. Representative for the assessee has primarily contended that the 46 Bank accounts in question were inter-mingled and the same are liable to be considered in the hands of Late Shri Arvind Shah only. The Ld. Representative for the assessee vehemently pointed out that the CIT(A) has accepted the plea of the assessee that all the Bank accounts were inter-mingled. The modus-operandi carried out by the assessee for the financing business was explained by the Ld. Representative in detail in the course of the hearing. It was pointed out that, for instance, the funds obtained from the third party would be deposited in the account of Mr. "A" family member, who would either withdraw the cash and deposit in the account of one Mr. "B" or he would pay through cheque to Mr. "B". Then Mr. "B" would issue a loan to a third party and when this third party would re-pay the loan, the amount would have been deposited in any other account, say in the account of Mr. "C", who would again transfer it to another family member Mr."D" and similar round of transactions would be repeated. The Ld. Representative for the assessee pointed out that such modus-operandi has been noted by the CIT(A) in Pages 10 to 11 of the impugned order and is not in dispute. Therefore, it was pointed out that the balance 14 accounts also have to be considered on the same footing as the 32 Bank accounts considered by the CIT(A). Therefore, the additions have to be confined in the hands

of Shri Arvind G. Shah based on the peak credit working of 46 Bank accounts which came to Rs.37,79,815/-

6. On the other hand, Ld. Departmental Representative has opposed the plea of the assessee and contended that the CIT(A) erred in accepting the peak credit theory for determining the income assessable in the hands of the assessee for the instant assessment year. With regard to the specific plea of the Ld. Representative for the assessee that substantive addition on account of all 46 Bank accounts be made in the hands of Late Shri Arvind Shah, the Ld. Departmental Representative pointed out that the CIT(A) has fairly included the income only from such Bank accounts where the name of Shri Arvind Shah was appearing either singly or jointly with other family members. For the 14 Bank accounts, where the names of other family members were only appearing, the income therefrom be assessed in respective hands.

7. We have carefully considered the rival submissions. Firstly, in so far as the approach of the AO to assess the entire amount of deposits in the Bank accounts as income, is quite flawed in as much as it does not take into consideration the repeated withdrawals and deposits, which clearly stand out from a perusal of the Bank accounts. Therefore, the approach of the CIT(A) in this context of bringing to tax unexplained income corresponding to the peak credit appearing in the Bank accounts is prudent and is plausible, having regard to the facts and circumstances of the case before us.

8. The other controversy before us is to consider the Bank accounts in the hands of Late Shri Arvind Shah or not. In this context, in our view, the approach of the CIT(A) in principle deserves to be affirmed. The CIT(A) has proceeded on the basis that it was Late Shri Arvind Shah, who was king-pin of the rotation of money in all Bank accounts maintained by the family. The modus-operandi of the accommodation financing activity indulged by Shri Arvind Shah is not disputed from either side. The CIT(A) however, confined his approach to the Bank accounts which stood in the name of Shri Arvind G. Shah either singly or jointly with some other family members. Those of the Bank accounts, which were standing in the name of other family members were excluded by the CIT(A) on the ground that peak credit in such Bank accounts be taxed in the respective hands. In our considered opinion, when the CIT(A) accepted the plea that it was Shri Arvind Shah, who was the person behind the rotation of money in the Bank accounts, then unexplained income from such Bank accounts(all the 46 bank accounts instead of 32 bank accounts considered by CIT(A)) is liable to be considered in the hands of Shri Arvind Shah alone. It would also be pertinent to observe that even the individual family members canvassed that all Bank accounts were within the control and domain of Shri Arvind Shah and should be considered for taxing in the hands of Shri Arvind Shah alone.

8.1 At this stage we may also refer to an observation made by the CIT(A) in Para-7(i) of his order to the effect that Bank accounts are "undisclosed". On this aspect, the Ld. Representative for the assessee contended that all the 46 Bank accounts could not be considered as

undisclosed because the family members i.e. captioned assessee's and the other four members of the family being Jigna Shah, Late Gambhirdas Shah, Hansaben Shah and Champaklal Dhruv had duly offered income from such accounts in the respective returns of income. Notably, all the assesses had filed the returns of income for assessment year 2007-08, wherein interest income was declared. The question before us is with regard to the investment required to be made in the accommodation financing activity being carried out by Late Shri Arvind Shah on his own and through his family members, which is embedded in the transactions found in the 46 Bank accounts in question. Once the fact-situation of Late Shri Arvind Shah being the person behind the rotation of money in these Bank accounts is accepted then, the consequences have to be given full effect. In other words, the income on account of unexplained investment in the accommodation business, based on the peak credit of the respective Bank accounts, has to be assessed in the hands of Late Shri Arvind Shah alone. Therefore, on this aspect, we hereby affirm the stand of the assessee.

8.2 With regard to the quantification of such income, Ld. Representative for the assessee pointed out that peak calculation of 46 Bank accounts amounting to Rs.37,79,815/- was furnished to the CIT(A), copy of which has also been placed in the Paper Book from Pages 34 to 47. It has been pointed out that the CIT(A) had called for a remand report from the Assessing Officer, wherein such working of the peak credit has been examined. On this basis the Ld. Representative for the assessee submitted that the AO objected to the adoption of peak theory, yet in so far as the calculation of peak credit was concerned, no

error was pointed out by the AO. Therefore, it was contended that the addition on account of peak credit be made at Rs.37,79,815/- in the hands of Shri Arvind Shah and the corresponding additions made in the hands of the respective individual family members be deleted.

8.3 In our considered opinion, quantification of peak credit is a matter which requires factual appreciation and the same can be dealt with at the level of the Assessing Officer. Since we have accepted the plea of the assessee in principle, we deem it fit and proper to direct the Assessing Officer to sustain the addition in the hands of Shri Arvind Shah based on the peak credit calculation considering all 46 Bank accounts.

8.4 As a consequence of our aforesaid decision, the protective additions made in the hands of Late Shri Nemchand Shah, Champaklal Shah, Kajal Shah, Ushaben B. Gandhi and Meenakshi Shah are directed to be deleted. Similarly, substantive additions in the case of late Aruna Doshi, Mahesh Doshi, Mansukhlal Sha, Kishore Shah and Meena Dhruva are concerned, the same are also directed to be deleted once the addition is upheld in the case of Late Shri Arvind Shah.

8.5 Apart from the aforesaid, the only issue which remains is the addition of Rs.5,09,287/- and Rs.4,28,479/- made by the AO in the case of Shri Nemchand Shah and Shri Champaklal Shah respectively on account of interest income. In this context, the Ld. Representative for the assessee had explained that interest income has been offered by all the family members on net basis after reducing the amount of interest paid. It was also pointed out that credit for the TDS certificates was also availed by all the assesses in their respective returns of income.

The Ld. Representative pointed out that in all the cases except in the case of Late Shri Nemchand Shah and Shri Champak Shah, interest income was assessed by the AO in the manner declared in the return of income. Only in the aforesaid two cases, the interest was assessed on gross basis (i.e. without reducing interest paid) based on the TDS certificates issued by the payers of income. Ld. Representative for the assessee submitted that in view of the approach accepted by the Revenue in other cases of the group, in the cases of Shri Nemchand Shah and Shri Champak Shah also, the interest income has also be assessed accordingly.

8.6 Before us, Ld. Departmental Representative appearing for the Revenue has not controverted the factual matrix brought out by the Ld. Representative for the assessee. Therefore, we deem it fit and proper to direct Assessing officer to assess the interest income in the case of Shri Nemchand Shah and Shri Champaklal Shah also on the same basis as accepted in the case of other family members. Thus, on this aspect also, assessee succeeds.

8.7 In the end, we therefore, direct the Assessing Officer to recompute the final income of Shri Arvind Shah as well as other family members keeping in view our aforesaid directions. Needless to mention, the AO shall allow the assessee an appropriate opportunity before quantifying the income in the hands of each of the captioned assesses, in compliance with our aforesaid directions and as per law.

9. In the result, whereas the appeals of the assessee are allowed, those of the Revenue are dismissed.

Order pronounced in the open court on 30 /10/2015

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER
Mumbai, Dated 30 /10/2015

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

Vm, Sr. PS

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai