

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

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./ITA.No.202/Ahd/2015

(निर्धारणवर्ष/ Asstt Year :2010-11)

Shri Biren Dilipbhai Gandhi 10, Navyug Society, S.M. Road, Ambawadi, Ahmedabad PAN: ABEPG 4986 E (Appellant)	Vs.	The Income Tax Officer, Ward-2(4), Ahmedabad (Respondent)
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अपीलार्थीओरसे/ Appellant by:	Shri S. H. Talati, C.A.
प्रत्यर्थीकीओरसे/Respondent by:	Shri Prasoon Kabra, Sr. DR

सुनवाईकीतारीख / Date of Hearing	13/10/2017
घोषणाकीतारीख /Date of Pronouncement	31/10/2017

आदेश / ORDER

PER MAHAVIR PRASAD, JUDICIAL MEMBER

This is an appeal by the assessee against the order of Ld. CIT(A)-10, Ahmedabad, dated 11/12/2014 for the Assessment Year (AY) 2010-11, on the following Grounds:

- i. *The Ld. CIT(A) erred both in law and on facts in confirming addition of Rs.57,97,616/- u/s. 69 of Income Tax at on the ground that cash deposited in joint bank account was unexplained investment of the appellant. The Ld. CIT failed to appreciate that the source of cash belonging to the father of the appellant deposited in the bank account of father jointly held were fully and satisfactory explained. The addition of Rs.57,97,616/- is wholly unjustified and against the sanction of law. The same be deleted.*

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- ii. *The Ld. CIT(A) erred both in law and facts in concluding that explanation of the nature and source of deposit in the joint saving account was not satisfactory without examining the father of the appellant whose confirmation along with abundant evidences of the receipt of cash by him were furnished. The Ld. CIT(A) appeal miserable failed to adhere to the principles of natural justice and requirement of judicious of his duty before rejecting the explanation of the appellant on untenable grounds when the supporting documents and evidences were furnished to him. It be so held now and addition made by the Ld. CIT(A) be deleted now.*
- iii. *The ld. CIT Appeal erred in law and facts in rejecting the explanation regarding nature and source of deposit in joint bank account of incorrect and untenable ground. The rejection of true explanation is based merely on suspicion, irrelevant, factually incorrect and untenable grounds. It be so held now and addition of Rs.57,97,616/- made against the sanction of law be deleted.*
- iv. *The Ld. CIT(A) rejected the explanation recording source of deposits in the bank account merely for the sake of rejecting the same ignoring the legal purport of the documentary evidences and requirements of judicious exercise excepted of him before erroneously confirming of section 69. The provisions of section 69 being not applicable, the addition made be deleted.*
- v. *The Ld.CIT(A) also erred in law and on facts in confirming disallowance of Rs.40,154/- out of telephone expenses, car expenses and depreciation treating them to be incurred for personal purposes. The disallowance is based on surmises and is without any cogent material. The same be deleted.*

2. The relevant facts as culled out from the materials on record are as under:-

The return of income, declaring total income of Rs.4,94,614/-, was e-filed by the assessee on 31/08/2010. The same was processed u/s.143(1) of the Act as per the income declared by the assessee. The case was selected for scrutiny. Notice u/s.143(2) of the Act was issued on 28/09/2011 and served. Therefore notice u/s.142(1) was issued on

02.02.2012 and served. Thereafter, notice u/s.142(1) with detailed questionnaire was issued on 27.06.2012.

2.2. In response to the statutory notices issued U/s.143(2) and 142(1) of the Act, Shri Prakash Sheth, C.A. of the assessee attended from time to time and furnished the details. Copy of audited accounts and audit report in Form No. 3CB and 3CD furnished.

2.3 During course of assessment proceedings the following points emerges which having bearing on the total income of the assessee.

2.4 **Unexplained Investment:**

As per AIR information available in ITD system, the assessee has deposited cash on various dates in saving bank account held with Abhyudaya Co.op. Bank, Madhupura Branch, Ahmedabad. During the course of assessment proceeding certain details u/s.142(1) of the Act were called from the assessee including details of source of cash deposited in saving bank account held with Abhyudaya Co. op. Bank. The assessee has furnished the partly details after several reminders and notices. The assessee has not furnished the details of source of cash deposited in Saving Bank account held with Abhudaya Co. op. Bank, which was asked to the assessee by issuing notice u/s.142(1) dtd. 21.08.2012, 02.11.2012, 30.11.2012. The AR of the assessee has also asked to furnish the details of source of cash deposited in saving bank account during the course of hearing held on 20.11.2012. However, no such details were filed by the assessee.

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2.5 Therefore, the copy of the bank statement of the saving bank account held by assessee with Abhyudaya Co. Op. Bank was obtained by issuing letter u/s.133(6) of the Act. On verification of these bank statements, it is seen that the assessee has deposited cash of Rs.57,97,616/- in Abhyudaya Co. Op. Bank on various dates during the year under consideration.

2.6 Notice u/s. 142(1) along with letter dated 30.11.2012 issued to the assessee requesting to furnish details of source of cash deposited in saving bank account held with Abhyudaya Co. Op. Bank with supporting evidence and the hearing was fixed on 04.12.2012. However, no one has attended and filed the required details. Therefore, another notice u/s.142(1) along with letter dated 10.12.2012 issued to the assessee requesting to furnish the details of sources of cash deposit in saving bank account with supporting evidence and bring to the notice that, failing to furnish requisite details the cash deposited in Saving Bank Account shall be treated as unexplained investment and added to total income u/s.69 of the Act. The assessee has vide written submission dated 18.12.2012 submitted that he is held the Saving Bank account no.1215 in Abhyudaya , Madhupura, jointly held with his father Shri Dilipbhai Gandhi and his father was operating the Saving Bank account and deposited cash out of his books of accounts. The details of source of cash deposited in Saving Bank account furnished by the assessee with his reply. It was claimed that the assessee has not deposited any amount in Saving Bank account held in Abhyudaya Co. Op. Bank Ltd. In support of his claim, the assessee has furnished the confirmation letter of his father Shri Dilipbhai Gandhi. To verify the claim of the assessee,

letter u/s.133(6) of the Act was issued to the Bank and obtained copy of pay in slips for cash deposited in bank account and copy of cheques issued from Saving Bank account for withdrawal. The bank vide letter dated 21.09.2013 furnished the copies of pay in slips and cheques. On verification of such documents, it was seen that the assessee has deposited the cash on various dates in a Saving Bank account in his name during the year under consideration. The assessee has issued the cheques under his signature. Therefore, it is cleared that, the assessee himself has operated the bank account and the money deposited by cash in Saving Bank account no. 1205 belongs to the assessee.

2.7 In view of the above facts, a show cause notice date 20.06.2013 was issued to the assessee on 05.03.2013. The operative part of the show cause is reproduced as under:

"During the course of assessment proceedings it was noticed that you have deposited cash on various dates in saving bank account held in Abhyudaya Co-operative Bank. Therefore, you were asked to explain the source of such of cash deposited in Bank.

Vide written submission dtd.18/12/2012 it was submitted that saving bank account no.1215 in Abhyudaya Co-operative Bank, Madhupura Branch held in the joint name with your father and your father has operated such bank account and deposited cash out of his books of account. The details of source of deposit of cash in saving bank account is given as under:

<i>Date of deposit</i>	<i>Amount</i>	<i>Account No.</i>	<i>Source</i>
<i>05/11/2009</i>	<i>8,00,000</i>	<i>1215 (Saving)</i>	<i>Out of books of accounts of joint holder</i>
<i>31/12/2009</i>	<i>7,91,305</i>	<i>1215 (Saving)</i>	<i>Out of books of accounts of joint holder</i>
<i>04/01/2010</i>	<i>10,75,000</i>	<i>1215 (Saving)</i>	<i>Out of books of accounts of joint holder</i>
<i>08/02/2010</i>	<i>9,10,000</i>	<i>1215 (Saving)</i>	<i>Out of books of accounts of joint holder</i>

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09/02/2010	2,00,000	1215 (Saving)	Out of books of accounts of joint holder
23/03/2010	17,00,000	1215 (Saving)	Out of books of accounts of joint holder
29/03/2010	3,21,311	1215 (Saving)	Out of books of accounts of joint holder
	59,97,616		

It was claimed that you have not deposited any amount in saving bank account no. 1215 with Abhyudaya Co-operative Bank.

You have furnished the confirmation giving dates of source from which he has received the cash.

In view of the above explanation, this office has issued various notice to you seeking information to verify the explanation in respect of source of cash deposited in saving bank account.

You have vide letter dtd. 09/01/2013 and dtd. 11/01/2013 furnished the information called for.

The letter u/s.133(6) of the Act issued to the Abhyudaya Cooperative Bank, Madhupura Branch, Ahmedabad requesting to furnish copy of pay-n-slip for cash deposit and copy of cheque issued from the saving bank account for withdrawal of funds. The Bank has vide letter dtd. 29/01/2013 furnished copies of pay-in-slip and copies of cheque for withdrawal of fund. On verification of such documents it is seen that the assessee has deposited the cash on various dates in the saving bank account during the year. The assessee has issued the cheque under his signature. Majority of the cheque is given to his proprietorship concerns viz M/s. Vraj Trading Company and Vallabh Trading Co.in which he is a partner. Thus, it is proved that the saving bank account is operated by the assessee for the deposit of cash and withdrwal of funds by cheque during the year.

Therefore, your explanation for the source of cash aggregating to Rs.59,87,616/- deposited in saving bank account held in Abhyudaya Co-operative Bank on various dates during the F.Y. 2009-10 is not found to be satisfactory explained. You are therefore requested to show cause as to why the cash deposit of Rs. 59.97 lakhs deposited in saving bank account No.1215 is should not be treated as unexplained investment u/s.69 of the Act and added to your income."

2.8 In response to the above show cause notice, Shri Prakash Sheth, C.A. and AR of the assessee attended the hearing on 05.12.2013 and submitted the reply of the assessee vide letter dated 05.03.2013 alongwith confirmation letter dtd.05/03/13 from Shri Dilipbhai Gandhi. The operative part of the said reply of the assessee is reproduced as under:

"(1) I have already submitted that my saving bank account is jointly held with my father Shri Dilipbhai Gandhi. The said account can be operated by the signature of either any of the joint holder. My father has already given statement dated 16.12.2012 that he has deposited cash on various dates in the said account from his retail business as well as amount received at the time of Banakhat made to sale his property. My father has also produced with his letter dated 11.01.2013 before you all sales bill and purchase bills of his retail business and also you have kept on record few sales bill and purchase bills. Moreover, my father has also produced original Banakhat with regard to sale of his property and also you have kept on record Xerox copy of the said Banakhat. I have stated in my reply the said money is belonged to my father.

(2) Now you have observed that pay in slips for depositing cash on various dates in said account are filled up by me so the said money belongs to me. But to deposit cash in other's account does not change the ownership of money. If such pay in slips are filled up by any employee then can such money be considered of such employee? The said cash is deposited in the said account on the instruction of my father.

(3) With regard to signing of cheques, I would like to say that the said account is in the joint name so it can be either operated by me or by my father. I have signed the cheques only on the instruction of my father as due illness he was not regularly attending the shop. Moreover, the cheques which were deposited in the books of my proprietorship and in the books of the firm in which I am partner, are deposited against the repayment of unsecured loan which was taken by him in the past. The copies of accounts from both the firms are filed herewith. It also by conduct proves that money belongs to my father. Only Rs.10,74,104/- has been deposited in my capital account as it

was gift given by my father. My father has also confirmed this gift in his reply.

Moreover I have provided to you all the supporting evidences during the year assessment proceedings with regard to cash deposited on various dates which shows that the said cash has been deposited out of my father's source and it is not deposited out of my source. Looking to the above facts it cannot be considered that no explanation are given or explanations given are not satisfactory and it cannot be treated as unexplained investment u/s.69 of the I.T Act. I have also filed herewith the statement of my father which proves that all cash deposited belong to my father."

2.9 The explanation of the assessee is carefully examined. The explanation offered by the assessee is found to be not justifiable and acceptable due to following reasons:

- (i) The assessee has not furnished details of source of cash deposited in Saving Bank account held with Abhyudaya Co. Op. Bank which was asked to the assessee by issuing notice u/s.142(1) dated 27.06.2012, 21.08.2012, 02.11.2012, 30.11.2012 and also during the course of assessment proceedings held with his AR on 20.11.2012. The assessee has furnished the explanation vide letter dated 18.12.2012 only after issuing the final notice u/s.142(1) dated 10.12.2012 proposing addition on issue of cash deposits in Saving Bank account u/s.69 of the act being unexplained investment. This clearly shows that the assessee has not any justifiable and genuine explanation to the source of cash deposits in Saving Bank account.
- (ii) The assessee is a first holder of Bank account No. 1205 held in Abhudaya Co. Op. Bank Ltd. The Bank statement for the period from 10.04.2007 to 31.03.2012 obtained from the bank with copy of pay in slip and copy of cheques issued during the period from 01.04.2009 to 31.03.2010 shows that the cash on various dates during the period from 01.04.2009 to 31.03.2010 were deposited in the name of assessee in Bank account no. 1205 held in Abhyudaya Co. Op. Bank Ltd. If, the father of the assessee has deposited cash from his own sources then money should have deposited in his name. Not a single occasion, the money was deposited by cash in Saving Bank Account no. 1205 held in Abhyudaya Bank Ltd. in the name of Shri Dilipbhai Gandhi father of the assessee.

- (iii) The assessee in his reply has stated that to deposit cash in other account has not changed the ownership of money. If such pay in slips are filled by any employees then such money be considered of that employee? The said cash are deposited in Saving Bank Account on the instruction of his father Shri Dilipbhai Gandhi. The contention raised by the assessee is not believable and therefore not acceptable. If the employ deposited the cash in the account of shri Dilipbhai Gandhi father of the assessee then he should deposited the cash in the name of Shri Dilipbhai Gandhi, father of the assessee. If Shri Dilipbhai Gandhi father of the assessee himself deposited the cash then, he should have deposited money in his name in his account. If the assessee has deposited the money on instruction of his father he should have deposited money in the name of his father. However, in the instant case, the documents obtained from the Bank i.e. pay in slip clearly shows that, all cash deposited in the bank account no.1205 during the F.Y 2008-09 in the name of the assessee. Therefore, it is clearly established that all the money in cash deposited in Saving Bank A/c No.1205 belong to Shri Biren D Gandhi, assessee.
- (iv) Further all cheques issued by the assessee, Shri Biren D. Gandhi by which money withdrawn were either utilized in the proprietorship business of the assessee in the name M/s. Vraj Trading Co. and partnership business of the assessee in the name of M/s. Vallabh trading co. All cheques issued from Saving Bank account under the sign of the assessee, Shri Biren D. Gandhi and not a single cheque was issued by his father. In this regard, assessee has in his reply stated that he has sign the cheques only on the instruction of his father Shri Dilipbhai Gandhi and due to illness he was not attended the shop. The contention of the assessee is not acceptable because not a single cheque has been issued by his father Shri Dilipbhai Gandhi during the entire period from 01.04.2009 to 31.03.2010.

Further, all cheques issued by which fund withdrawn from the bank was utilized by assessee himself in his business of proprietorship concern and partnership concern. Some small amount withdrawan by cheque for personal expenses of the assessee such as fees of Elisbridge Gymkhana.

- (v) The bank statement of saving bank account no.1205 for the period from 01/04/2010 to 06/03/2012 obtained from the bank shows that the total deposit by cash in the Saving Bank account Rs. 23,000/- and small amount withdrawn for the personal expenses of the assess such as fees of Elisbridge Gymkhana and

Rajpath club ltd. If the father of the assessee has done Kirana business during the FY 2010-11 making Gross sales of Rs.19,79,820/- as explained by the father of the assessee vide letter dated 16/01/2013 in response to letter dated 11/01/2013 u/s.133(6) of the Act then cash being sale proceeds should be deposited in said saving bank account. However, it is noticed that no such cash were deposited in Saving Bank account no.1205 during the F.Y. 2010-11.

- (vi) On verification of old scrutiny assessment records of the assessee it is revealed that, the assessee has maintained the Saving Bank account since many year in the Abhyudaya Co. Op. Bank Ltd. which was known as Manek chowk Co. Op. Bank Ltd. previously. The verification of copy of Bank statement for the period from 01.04.2007 to 31.03.2010 obtained from the bank shows that, the assessee has deposited cash on various dates during the F.Y. 2007-08 aggregating to Rs.28,78,700/-. The Manekchowk Co. Op. Bank has been closed and Abhyudaya Co. has taken over the charge. All Saving Bank accounts/ current accounts maintained in the previously Manekchowk Co. Op. Bank Ltd. were continued in operation. The balance stands in the old bank account transferred to the new bank account which was open immediately on closure of bank account held in the previously known Manekchowk Co. Op. Bank Ltd. by fulfilling some basic formalities such as filing of bank account opening form along with submitting requisite documents.
- (vii) The AR of the assessee has during the course of assessment proceedings for A.Y.2008-09 explained that cash deposited in Saving Bank Account held in Manekchowk Co. Op. Bank belongs to assessee himself and the source of such cash deposited stated to be business income as per order sheet entry dated 16.11.2010. The case for A.Y. 2008-09 was selected for scrutiny on account of AIR information in the form of cash deposited in Saving Bank Account standing in the name of assessee in Manekchowk Co. Op. Bank Ltd. Therefore, the argument of the assessee that, the Saving Bank Account no. 1205 is being operated by his father and money was deposited by his father is baseless and far from the truth. The assessee has maintained the Saving Bank Account no. 1205 with this bank since 3 to 4 years.
- (viii) As regards claim of kirana business of his father Shri Dilipbhai Gandhi during the F.Y. 2008-09 and 2009-10 is concern, it is seen that the assessee, Shri Biren Dilipbhai Gandhi has during the course of assessment proceedings for A.Y.2008-09

submitted in his reply vide letter dated 18.10.2010 that no other business entity is operated from the business premises at 1478, Mahupura. Therefore, claim of the assessee that his father doing business from the business place at 1479, Madhupura from which assessee doing business is found to be incorrect.

- (ix) It was claimed that Shri Dilipbhai Gandhi father of the assessee was doing Kirana business and the cash received for the sales proceeds from the kirana business was deposited in Saving Bank Account no.1205. The claim of the assessee is not found To be believable and therefore not acceptable. Due to the fact that, Shri Dilipbhai Gandhi father of the assessee has not made any payments towards purchases made for his kirana business. During the course of assessment proceedings, letter u/s.133(6) of the Act was issued to Shri Dilipbhai Gandhi requesting him to furnish purchase/sales bills and other books of accounts. In reply Shri Dilipbhai Gandhi has stated that, no books of account was maintained for his kirana business. However, he has produced purchase/ sales bills in support of his claim of kirana business. On verification it is observed that, Shri Dilipbhai Gandhi has made purchases from the single parties named Rabiyaaben Ibrahimbai at kapadvanj during the period from 31.12.2010 to 08.02.2010 amounting to Rs.29,98,500/- against which sales of Rs.31,28,250/- claimed to be effected by cash. However, no payment towards purchases of Rs.29,98,500/- was made which is against the normal conduct of business.
- (x) Shri Dilipbhai Gandhi has not carried out the business during the F.Y.2008-09 and 2011-12 as per his reply dated 11.01.2013. During the F.Y. 2010-11 it is stated that he has made gross sales of 17,00,000/- However, the bank statement shows the deposit of Rs.23,0007- in cash only during such period and all the withdrawals made by assessee in his name for his personal expenses purpose. Further on one hand the assessee has claimed that his father Shri Dilipbhai was carrying out kirana business during the FY.09-10 at Shop No.1479, New Madhupura, Ahmedabad the place at which the assessee is also carrying out his business. Whereas on other hand the assessee has claimed vide his letter dated 05/03/2013 that due to illness his father is not attending the shop regularly so he has sign the cheque. Therefore the argument of the assessee is found to be in contradictory.
- (xi) As regards, the claim of assessee that cash deposited in the Saving Bank account no.1205 belongs to his father Shri Biren D Gandhi which was received by him on account of advance received from the party named Shri Kovi

Talaji Bijolbhai residing at 191, Parmar Vaas, Vithodar, Talk-Disa, Dist- Banaskantha and the person is doing agricultural activities and owned agricultural land as per copy of 7/12 form furnished by the assessee during the course of assessment proceedings. It shows that the party is having agricultural land and paid Rs.27,00,000/- towards purchase plot at GIDC, Naroda for establishing the industries/factory. The explanation of the assessee is not found to be realistic and therefore not believable. The person who is agriculturalist and interested to established the industry by purchasing the plot at GIDC, Naroda which market value is above Rs.1 crores and paid Rs.27,0000/- towards Banakhat for the purchase of such plot at GIDC, Naroda which is very far from his resident place are against the taste of human probability. The Banakhat so prepared was simply on stamp Paper of Rs.100. No registration of such Banakhat was made. The sale is not effected for such Banakhat dated 31/03/20102. Shri Dilipbhai Gandhi has not repaid the amount to Banakhat party. The sale deed is not executed due to non compliance of condition of Banakhat as stated by Shri Dilipbhai Gandhi in his letter dated 09.01.2013. No document of cancellation of Banakhta has been prepared. The plot at GIDC, Naroda has not sold out till date and it is still standing in the name of Shri Dilipbhai. No approval latter form GIDC authority at the time of the Banakhta has been obtained for the proposed sale of Plot. All these facts, leading to established that the claim of assessee that the money by cash received by father of assessee from the advance amount on proposed sale of plot at GIDC, Naroda is against the normal conducts and not stands in the taste of human probability.

- (xii) The Hon'ble Supreme court in the case of Commissioner of Income-tax, West-Bengal-II V/s. Shri Durgaprasad More (82 ITR 540) held that the taxing authorities are not required to put on blinkers while looking at the documents produced before the court. They were entitled to look in to the surrounding circumstances to find out the reality of the recitals made in those documents. The Hon'ble court further observed that the science has not yet invented any instrument to taste the reliability of the evidence placed before a Court or Tribunal. Therefore, the Court and Tribunal have to judge the evidence before them by applying the taste of human probabilities. The Hon'ble Supreme Court, in the case of Smt. Sumati Dayal V/s. CIT (214 ITR 801) laid down that the taxing authorities are entitled to look in to the surrounding circumstances to find out

the reality and the matter has to be considered by applying the taste of human probabilities.

- (xiii) Surrounding circumstances and taste of human probabilities suggest that the explanation of the assessee is not believable and justifiable.
- (xiv) The assessee has claimed that the withdrawal from Saving Bank account 1205 was made by Shri Dilipbhai Gandhi his father and cheque issued to M/s. Vallabh Trading Co. towards repayment of loan. The assessee has furnished copy of ledger account of Shri Dilipbhai Gandhi in the books of M/s. Vallabh Trading Co. In this regard, it is seen that the account of Shri Dilipbhai Gandhi is squared up at the end of the year and opening balance of Rs.23,64,635/- shown in ledger account which shows that M/s. Vallabh Trading Co. has given Loan / Advance to Shri Dilipbhai Gandhi amounting to Rs.23,64,635/- at the end of the year on 31.03.2009. However, on verification of return of income filed by the M/s. Vallabh Trading Co. is seen that balances shown towards loan/advances at **NIL** as on 31.03.2009. Therefore, it is clearly established that the assessee has furnished incorrect documents to give colour that the repayment made by Shri Dilipbhai Gandhi from Saving Bank account no. 1205 by issuing cheque. The withdrawal made by cheques from the Saving Bank account no. 1205, infact made by assessee himself under his signature on cheque (instruments) and credited in M/s. Vallabh Trading Co. in which he is a partner. It clearly shows that, the fund withdrawn from the saving bank account no.1205 was utilized in business run by assessee himself in partnership from name M/s. Vallabh Trading Co.

2.10 Considering the facts and surrounding circumstances as well as documentary evidences, it is concluded that explanation offered by the assessee with regards to nature and source of cash deposited in Saving Bank account no. 1205 held in Abhyudaya Co. Op. Bank Ltd. Madhupura Branch, Ahmedabad. is not found to be satisfactorily explained. In this regard, provision of section 69 of the I.T. Act 1961 is reproduced as under:

"Unexplained Investment:

Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, mentioned by him for any source of income, and the assessee offers no explanation about the nature and source of income and source of investments or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the value of the investment may be deemed to be the income of the assessee of such financial year."

2.11 In view of the above facts cash deposited in Saving Bank account No.1205 held in Abhyudaya Co. Op. Bank Ltd. aggregating to Rs.57,97,616/- is treated as unexplained investment u/s.69 of the Act and added to the total income of the assessee. The penalty proceedings u/s.271(1)(c) of the Act is separately initiated for concealment of particulars of income.

2.12 In P&L account, the assessee has debited following expenses:

(1)	Telephone expense	Rs.97,336/-
(2)	Car expense	Rs.77,771/-
(3)	Car Depreciation	Rs. 25,667/-
	Total	Rs.2,00,774/-

The involvement of expenses personal in nature in respect of above expenses cannot be ruled out and at the same time cannot be qualified exactly. Therefore, it is proposed to disallow 1/5th of the above expenses considering for personal use of motorcar and telephone. Accordingly, Rs.40,154/- is disallowed out of above expense and added to the total income.

3. Vide letter dated 20/10/2014, the appellant submitted as follow:

Further to the statement of facts and grounds of appeal, your appellant craves for your honour's leave to submit as under:

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1. Ground No: 1 to 7: Addition of Rs. 57,97,616/- under section 69 regarding deposit in the joint bank account:

Your appellant at the outset, most respectfully submits that the appellant is regularly filing his returns of income and is also assessed in the past based on such returns without any adverse view.

During the year under appeal, the appellant was asked to explain the source of various cash deposits in the Joint Bank account with Abhyudaya Co.Op. Bank jointly held with the aged father of appellant namely Shri Dilipbhai Gandhi. The fact regarding the said bank account being joint account with the appellant's father is not disputed and is established on record. A copy of said bank account is attached herewith **EXHIBIT-A Page No. 1 to 2.**

Before making the submissions on the erroneous and totally unjustified addition made by the AO out of suspicion and without any verification as required by law, your appellant draws your honour's kind attention to the statement of facts appended with appeal memo.

As the facts are not in dispute,

- i) The appellant is engaged in the business of trading in Kirana and spices items on consignment and on account.
- ii) The books of account of the appellant are duly audited and tax audit reports submitted to the AO as in the past.
- iii) The GP for the year under appeal has improved as compared to the earlier years which factor has an important bearing while examining the explanations sought for by the AO.
- iv) As regards the cash deposited in the joint bank account with Abhyudaya Co.op. Bank, not only the appellant but also the father of the appellant who is the joint holder made a categorical statement and stated that the said deposits were made by the father of the appellant namely Shri Dilipbhai Babubhai Gandhi and the sources of such deposits were also explained by the depositor namely Shri Dilipbhai B. Gandhi. This fact regarding confirmation by Shri Dilipbhai B. Gandhi along with necessary evidences regarding receipt of money by Shri Dilipbhai Gandhi has been noted by AO at Para 6 and Para 8 of his order while reproducing the reply of appellant dated 05.03.2013 and the same is not rebutted.

In the background of above facts, the appellant now respectfully submits on the grievance against the erroneous addition made by the AO as under:

- 1.1 It is submitted that right from beginning, the appellant had furnished explanation regarding various deposits in the joint bank account. A copy of letter dated 18/12/2012 is attached herewith EXHIBIT-B page no.3 to 4. As could be seen from the said letter, there were in all ten entries of deposits in the joint bank account. The appellant having made deposits regarding first three entries as narrated in said letter in the table, had furnished the extracts of the cash book and the same is accepted by the AO. As regards the remaining entries since the same were amounts deposited by the father (the other joint holder), the confirmation of father along with the sources from which he received the money were also furnished. Thus the explanation is accepted in part by the AO so far as the deposits made by the appellant himself is concerned. However, without any verification or examination of the father namely Shri Dilipbhai Gandhi or even the persons who had made payment to him against the banakhat of property, the Id AO for oversimplifying the issue made the addition by erroneously rejecting this part of the explanation ***merely on suspicion and on irrelevant grounds.***
- 1.2 The first reason given by the AO to hold that the money deposited in the joint bank account belongs to appellant and not to the father of appellant at Para 6 of page 2 and 3 of the assessment order is that in the bank slips, the name of account is mentioned that of appellant. Now it is very common that whenever bank pay in slip is prepared, the account number is mentioned which is clearly joint account and the name that is mentioned is the first name that appears in the bank ledger. Therefore merely because in the bank pay in slips, the first name is mentioned it does not lead to the conclusion that the deposit comprised in said slip belongs to the first holder only.
- 1.3 Again, on the query raised by the AO in his notice dated 20.06.2013 as stated in Para 7 of his order was duly replied again by the depositor namely Shri Dilipbhai Gandhi vide reply dated 05.03.2013 a copy of which is attached EXHIBIT-C **page No. 5 to 6.** As pointed out in the said reply, merely on the basis of filler of the bank pay in slip, the ownership of the

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amount filled in there in is never changed nor is assumed as one by the AO. Thus again, the father of the appellant reiterated his statement regarding (a) ownership of the amount deposited in joint bank account,

(b) he also furnished explanation regarding signing of cheques by the appellant due to his illness,

(c) The purpose of issuing cheques in the name of the concern and the firm ie against repayment of the unsecured loan taken by him in the past was given with substantiating documents in the form of copies of account from the firms.

(d) The fact regarding furnishing the sale bills of his retail business as also the copy of banakhat of agreement to sale the property as furnished in his letter dated 16.01.2013 (**EXHIBIT- D page No.7**) was reiterated by said Shri Dilipbhai Gandhi.

2. Despite the above confirmations and the supporting documents, the ld AO failed to discharge his onus and without even cross verification of the facts and the confirmation and banakhat of the identified intending purchaser, has brushed aside the same on flimsy grounds. The said banakhat and confirmation, the proof of land holding and the electricity bill along with voter identity card are attached EXHIBIT-E Page No.8 to 18.
3. The various grounds at Para 9 of the order ignore the realities of the life and the explanations furnished which stand un-rebutted. The various conclusions drawn in the said Para are also factually incorrect and are stated unilaterally without discharging the onus that lay on the AO when the joint bank account holder namely Shri Dilip Gandhi had repeatedly confirmed the ownership of the amounts deposited in the bank account and also furnished abundant documentary evidences and furnished plausible explanations, the rejection of the same by the AO without any further verification unilaterally and that too, holding that the said deposits were money belonging to the appellant is an erroneous and far fetched conclusion not tenable in law and is not sanctioned by law. It be so held now and the addition made by the AO be deleted.
4. The appellant further submits that the conclusion drawn by the AO in the case of the appellant on the basis of pay in slips and the cheques issued etc is unwarranted as held in the case of **ITO vs Pravinchandra Ramkrishana Uppalanwar (2004) 88 TTJ (Nag) 511**. A copy of said decision is attached **EXHIBIT- F page No. 19 to 26**. in which at Para 7 in the said decision the Hon'ble ITAT has

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held that there is no presumption regarding ownership in the joint bank account and any such inquiry if at all could be made was relevant to be made in the case of the holder confirming the deposits in the joint account. It is therefore submitted that without any such inquiry or examination of the evidences in the hands of the joint account holder who had categorically confirmed the ownership of the deposited amount, the huge addition made by the AO in the hands of the appellant is uncalled for, unjustified and deserves to be deleted. The same be deleted now.

4. Finally AO made an addition of Rs.63,35,384/-.
5. Against the said order assessee preferred first statutory appeal before the Id.CIT(A) who dismissed the appeal of the assessee.
6. Now appellant's appeal is before us.
7. We have heard both the parties and gone through the impugned order. So far Ground No.5 is concerned. Since personal use of car and telephone cannot be ruled out and the AO was very reasonable in making the disallowance of Rs.40,154/-. We do not find any merit in this case of the assessee. Therefore, this Ground is dismissed.
- 7.2 Ld.AR stated that assessee had submitted all the documents before the lower authorities but same were not duly considered and he has also filed voluminous paper book before us including agreement of sale from where this money has come and he stated that cash deposited in the bank belongs to his father. Since the bank account in the joint name with father, therefore, the deposits may belong to his father. Therefore, in the interest of the justice we set aside the order of the Id. CIT and remit this matter back to the file of the AO to decide this matter afresh. Assessee is also directed to co-operate with the department and

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will submit necessary documents and produce his father before the Ld. AO. Therefore, we partly allow the appeal of the assessee.

8. In the result, appeal filed by the assessee is partly allowed.

This Order pronounced in Open Court on 31/ 10/2017

Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 31/10/2017

Priti Yadav, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-X, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad