IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD ñBò BENCH

Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 1696/Ahd/2014
Assessment Year 2010-11

Dipak Gunvantrai Patel (HUF), 54, Sardar Patel Nagar, B/h, Shambhu Coffee Bar, HL College Road, Elisbridge, Ahmedabad-380006 PAN: AABCA8332P (Appellant)	Vs	The ITO Ward-10(2), Ahmedabad (Respondent)

Revenue by: **Shri Mudit Nagpal, Sr. D.R.**
Assessee by: **Shri U.S. Bhati & Abhimanu Singh Bhati, A.R.**

Date of hearing : 20-11-2017
Date of pronouncement : 27-11-2017

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assesseeês appeal for A.Y. 2010-11, arises from order of the CIT(A)-XVI, Ahmedabad dated 28-03-2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short ñthe Actò

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

"1. On facts and in the circumstances of the case, the order passed by the Learned Commissioner of Income Tax(Appeals) is bad in law, illegal being in violation of principles of natured justice and fairness inasmuch as:-
(a) The Learned Commissioner of Income Tax (Appeals) has grossly erred in declining to admit additional evidences, on mere technicality that there is no written request by the appellate under Rule.46 A of the Act.
(b) The Learned Commissioner of Income Tax (Appeal) has grossly erred in adopting such a shortcut route, when there is no standard proforma (application) under Rule 46 A, he ought to have admitted evidences so produced through appellant's prayer in the form of letter dated 9/12/2013.
(c) Without prejudice, that inspite of the provisions of Rule 46A(1), the provisions of Sec. 250, enables the Commissioner of Income Tax (Appeals) to accept additional evidence in appropriate cases, which powers has been preserved by sub rule (4) of Rule 46 A also. Thus, the Commissioner of Income Tax (Appeals) was not justified in refusing to admit additional evidences at the appellate stage.
2. On facts and in the circumstances of the case, the Learned Commissioner of Income Tax (Appeal) has grossly erred in sustaining the impugned addition of Rs. 8,11,020/- on account of cash deposit in bank account without giving independent finding."

3. In this case, return of income declaring income of Rs. 3,89,067/- was filed on 8th December, 2010. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act. During the course of assessment proceedings, the assessing officer noticed that as per the information available on the record, the assessee has made cash deposit exceeding Rs. 10 lacs on various dates in the bank account maintained with Yes Bank at C.G. Road, Ahmedabad. Therefore, the assessee was show caused to explain the source cash deposit of Rs. 33,19,000/-. The details of aforesaid cash deposit appearing in the bank account is reproduced as under:-

Date on which cash deposited	*Amount deposited (Rs.)*
04/04/2009	*70,000/-*
16/05/2009	*3,00,000/-*
01/06/2009	*2,40,000/-*
29/09/2009	*4,00,000/-*
05/10/2009	*2,20,000/-*

16/10/2009	*3,50,000/-*
04/11/2009	*3,05,000/-*
05/11/2009	*6,35,000/-*
15/02/2010	*3,00,000/-*
Total	*33,19,000/-*

The explanation furnished by the assessee as reported in the assessment order is reproduced as under :-

Date on which Cash deposited	*Amount*	*Source of fund for deposit in Bank*
04/04/2009	*70000*	*From opening balance available and cash withdrawal from Bhuj Merc. Co-op. Bank Ltd. dated 03/04/2009 of Rs. 10,000/-*
16/05/2009	*300000*	*Cash withdrawal from Bhuj Merc. Co-op. Bank Ltd. dated 05/04/2009 of Rs.5,00,000/-*
01/06/2009	*240000*	*Cash withdrawal from Bhuj Merc. Co-op. Bank Ltd. dated 05/04/2009 of Rs.5,00,000/- and balance from opening balance*
29/09/2009	*400000*	*Cash withdrawal from YES Bank Ltd. dated 22/06/2009 of Rs.4,00,000/-*
05/10/2009	*220000*	*Cash withdrawal from Bhuj Merc. Co-op. Bank Ltd. dated 24/09/2009 of Rs.3.40 lakhs*
16/10/2009	*3,50,000*	*Cash withdrawal from Bhuj Merc. Co-op. Bank Ltd. dated 13/10/2009 of Rs.4.96 lakhs and loan return from Pushpaben Patel of Rs.65,000/-*
04/11/2009	*3,05,000*	
05/11/2009	*635000*	*Cash withdrawal from YES Bank dated 27/1 0/2009 of Rs.2 lakhs.* *Cash withdrawal from YES Bank dated 24/ 1 1 /2009 of Rs.2.50 lakhs.* *Loan return from Pushpa P. Patel of Rs.77,000/-* *Loan return from Ranchhodbhai Mafatbhai Patel of Rs. 1,04,000/- plus Rs.4000/- from opening balance.*

15/02/2010	*300000*	*Other income of Rs.30,000/- as per return income and loan from family members.*

The assessing officer stated that after examination of the statement of various persons recorded u/s. 131 of the act as well as documentary evidences, return of income for assessment year 2009-10, 2010-11, including statement of the assessee the source of deposit to the extent of Rs. 25,07,980/- out of the total deposit of Rs. 33,19,000/- was explained. Thereafter, the assessing officer held that assesse has failed to furnish cogent or concrete evidences in respect of cash deposit to the extent of Rs. 8,11,020/-. This amount was added to the total income of the assessee as unexplained investments.

4. Aggrieved assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has sustained the addition by observing as under:-

> *"2.3 I have carefully considered the facts of the case in the light of submissions made by the appellant, the arguments taken by the assessing officer & material available on records. It is the case of the appellant that the ld. A O has not appreciated the facts of the case correctly. It is submitted that A O has taken wrong figures of deposit in the bank account at Rs. 33,19,000/- as the same was Rs. 28,20,000/-. The appellant also attempted to file some evidences comprising photo copy of sale deed, confirmations etc. of two parties so as to justify the cash deposits. Accordingly, a remand report was called for from A O vide this office letter No CIT(A)-XVI/Remand Report/DGP/2012-13 dt 17-12-2013. The A O submitted his remand report vide letter No ITOAA/d.10(2)/Remand Report/DGP-HUF/2013-14 dt 27-12-2013. In the impugned remand report, the A O submitted that there is no controversy regarding the amount of deposit as the same stood at Rs. 33,19,000/-. (inclusive of amount of Rs. 4,99,000/- deposited on 4-11-2009). The A O submitted that the appellant was given sufficient opportunities to explain the sources of cash deposits and therefore the evidences now requested for admission cannot be admitted. In its counter, the appellant has again tried to find fault with the observations of the A O by raising certain technical issues. The additional evidences which are now requested for admission cannot be admitted as no written request has been made by the appellant under Rule 46A. It is a settled law that additional evidence can only be admitted by the CIT(A), subject to satisfaction of all accompanying conditions, provided a written request is made. In the instant case, no such request was made and therefore the impugned evidences cannot be admitted. Without prejudice to the above, it is also noted that the ld A O has pointed out in its remand report that even the impugned additional evidences suffer from serious discrepancies and deficiencies. Consequently, as the*

> *sources of cash deposit of Rs. 8,11,020/- remains unexplained the addition made by the ld A O is confirmed and the ground of appeal raised is dismissed."*

5. During the course of appellate proceedings before us, the assessee has filed revised grounds of appeal stating that the additional evidences under rule 46A of the IT rule, 1962 was not admitted by the ld. CIT(A) without any justification. He further contended that the ld. CIT(A) has ignored this fact that assessing officer had not allowed proper opportunity to explain the aforesaid addition. On the other hand, ld. departmental representative supported the order of the ld. CIT(A). During the course of appellate proceedings before us, ld. counsel has also furnished a paper book containing information on submission made before the assessing officer and ld. CIT(A), and copy of submission made for admitting additional evidences before the ld. CIT(A) etc.

6. We have heard both the sides and perused the material on record. It is contended by the Ld. Counsel that assessee was not asked to furnish evidences in respect of source of deposit claimed by the assessee from agriculturists and cash in hand. We have gone through the paper book filed by the assessee particularly page no. 8 to 152 regarding additional evidences filed before the ld. CIT(A).We observed that assessee has placed corresponding evidences pertaining to sources of cash of Rs. 8,11,020/- which remained to be examined by the assessing officer. The ld. CIT(A) has declined to admit the additional evidences under rule 46A stating that assessee has not made a written request. In this connection, we have noticed

from letter dated 9th December, 2013 addressed to ld. CIT(A) placed in the paper book regarding the additional evidences in respect of source of cash deposit of Rs. 8,11,020/- We have further noticed that assessing officer vide his letter dated 27.12.2013 addressed to Ld.CIT(A) has mentioned that the additional grounds made before the CIT(A) may not be considered. We observed that these facts demonstrate that assessee could not get proper opportunity to explain the remaining unexplained cash deposit. After considering the above facts and circumstances we are of the opinion that it will be appropriate to restore this case to the file of the assessing officer to decide it on merit because restoring it to CIT(A) will multiply the litigation work at the level of CITA) and further remand report work at the level of assessing officer. Therefore, we set aside the above issue to the file of the assessing officer to decide it de novo after taking in to consideration the additional evidences as elaborated above and after affording reasonable opportunity to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27-11-2017

Sd/-	**Sd/-**
(RAJPA L YADAV)	**(AMARJIT SINGH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad : Dated 27/11/2017

आदेश **क□□□त□ल□प** **अ□े□षत** / 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 अपील□य अ□धकरण,

अहमदाबाद