

**INCOM TAX APPELLATE TRIBUNAL -SURAT-BENCH-SURAT  
BEFORE C .M. GARG, JM & O. P. MEENA, AM**

**I.T.A No.736/Ahd/2015: निर्धारण वर्ष/Assessment Year: 2006-07**

Shri Balkrishna M. Goswami, A-403, Green Terrace, Opp. Atman Park, Adjan Surat PAN: AHFPG 9379N	V .	Income Tax Officer Ward 3(2)(1) Surat
Appellant		Respondent
Assessee by		Shri Sapnesh Sheth, CA
Revenue by		Smt. Smitha V. Nair, Sr. D.R.
Date of hearing		21.08.2018
Date of pronouncement		07.09.2018

**ORDER**

**PER O. P. MEENA, AM**

1. This appeal by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-3, Surat (in short “the CIT (A)”) dated 22.01.2015 pertaining to Assessment Year 2006-07.
2. Ground No. 1&2 : are not pressed before us, hence, these are treated as dismissed.
3. Ground No. 3: States that Ld. CIT (A) has erred in confirming the addition of Rs. 13,77,500 made on account of unexplained cash deposits.
4. Succinctly, facts as culled out from the orders of lower authorities are that the assessee is individual and filed return of income 13.03.2007 declaring total income of Rs. 2,14,823 which was processed under section 143(1) of the Act. Thereafter, an AIR information was received stating that

there is cash deposits of Rs. 13,77,500 in the bank account of the assessee which has not been disclosed in the return of income. Accordingly a notice u/s.148 was issued on 22.03.2013, but no return in response to said notice was filed. Since the assessee has neither filed any return of income, nor made any submissions or any documents, the AO therefore, made an assessment under section 144 of the Act by treating the unexplained cash deposits of Rs. 13,77,500 as undisclosed income of the assessee.

5. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). Wherein it was contended that the assessee is Insurance agent and used to deposit cash received from his clients in saving bank account and the used to purchase insurance policy in their name as per their instructions. Some of the clients were not interested in purchasing policy and in that case the amount was withdrawn from his account and returned to clients. However, the CIT (A) observed that the assessee has not disclosed this bank account in his return of income hence, cash deposits therein are not explained, hence, the addition so made by the AO was confirmed.

6. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned Authorized Representative (the Id. A.R.) submitted the assessee is Insurance Agent and used the saving bank account for cash deposits received from clients and in some cases deposited were remitted

back to clients as the clients were not interested in purchasing the insurance policy. Therefore, it was contended that cash deposits in bank account does not represent income of the assessee. It was submitted that the assessee is deriving commission from SBI Life Insurance Co. Ltd. and the commission of Rs. 2.81 is duly shown in the Profit & Loss Account filed with return of income. Further, the amount of Rs. 80,261 was receivable from SBI Life Insurance Co. Ltd. Since the Insurance office is being based at Baroda, the assessee used to take cash from clients and deposit the same in his bank account which later on remitted through DD or cheque to Insurance Company as payment towards premium on behalf of the clients. The ld. A.R. referred Paper Book Page No. 8 to 14 being bank statement and submitted that the withdrawal in bank account clearly indicate that these were withdrawn towards insurance premium paid to SBI Life Insurance Co. on behalf of the clients. The ld. A.R. also referred copy of computation of income showing the receipts and income from Insurance company (PB-17-18). The ld. A.R. also filed copy of Form No. 16 being TDS certificate issued by SBI Life Insurance Co. Ltd. for the relevant period (PB-20-21). Without prejudice to above, the ld. A.R. submitted that the addition can only be sustained to the extent of peak credit balance in view of the fact that the assessee has made payments to SBI through DDs/

Cheques on various dates as reflected in his bank account. In support of this contention that only peak credit can be added the ld. A.R. has placed reliance in the case of Manjulaben Champaklal v. ITO [I.T.A.No. 1155/Ahd/2011 dtd. 02.05.2014] , CIT v. Tirupati Construction [2015] 230 Taxman 198 (Gujarat) (PB-16) and CIT v. Shri Indrjeetsingg Zandusing Tomar [Tax Appeal No. 908 of 2015 dtd. 22.12.2015](PB-17). The ld. A.R. further submitted at most net profit rate @8% can be applied as per provision of section 44AD of the Act. The ld. A.R. supported this view by placing reliance in the case of CIT v. Gurubachan Singh J Juneja [2008] 302 ITR 63 (Gujarat).

7. We have heard the rival submissions and perused the relevant material on record. We find that the bank account with Axis Bank Ltd. was not disclosed in the books of accounts of the assessee nor in the return of income of the assessee. However, the action of the AO in adding the entire cash deposits being aggregate credit entries in the said bank account is not in accordance with settled position of law. The perusal of entries in bank account reveals that the debit entries are made towards payments made to SBI Life Insurance Co. Ltd.. Thus, it appears that the assessee is working as an agent of Insurance Company, therefore, cash deposits appearing in this bank account could be linked to cash received from clients. When the

assessee has made payments to SBI Life Insurance Company Ltd., that means that cash deposits appearing in this bank account are also in respect of person or clients from whom the assessee has made payment to SBI Life Insurance Co. Ltd. In such a situation, the entire cash deposits cannot be treated as income of the assessee. Therefore, either gross profit or peak credit can be estimated in such cases. Therefore, we are inclined to accept the second proposition of the ld. A.R. that only gross profit addition can be made as held in the case of CIT v. Gurubachan Singh J. Juneja (supra) Considering these facts and taking a holistic approach it would be reasonable to treat 8% of total cash deposits Rs.13,77,500 as undisclosed income of the assessee, which worked out to Rs. 1,10,200. Hence, addition of Rs. 1,10,200 is confirmed and balance addition of Rs. 12,67,300 is deleted. This ground of appeal is therefore, partly allowed.

8. In the result, the appeal of the assessee is partly allowed.

9. Order pronounced in the open court on 07-09-2018.

**Sd/-**  
**(C.M. GARG)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(O.P.MEENA)**  
**ACCOUNTANT MEMBER**

Surat: Dated: 7<sup>th</sup> September, 2018 / opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

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**Assistant Registrar, Surat**