

आयकर अपीलार्थ आधिकरण: राजकोट ँयायपीठ: राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL: RAJKOT BENCH:
RAJKOT**

श्री सी एम गगर्णयायक सदस्य एवं श्री ओपीमीना, लेखा सदस्य के समु
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND
SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आयकर अपीलसं. / ITA No.403/RJT/2011

जुधाणवष / Assessment Year: 2008-09

Shri Naranbhai Gordhanbhai Galani, **Vs.** Income Tax Officer,
Shed No.K-1/79/3, GIDC, Ward-1(3),
Shanker Tekri, Udyognagar, Jamnagar.

[PAN: AAPPG 9154L]

(अपीलाथ / Appellant)

(अस्यथ / Respondent)

जुधाएती क ओरसे / Assessee by

: Shri Vimal Desai, A.R

राजवक ओरसे / Revenue by

: Shri Praveen Verma, Sr. D.R

सुनवाई क तारख / Date of Hearing

: 19-11-2018

घोषणा क तारख / Date of Pronouncement

: 19-11-2018

आदेश / ORDER

PER C.M. GARG, JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order of Commissioner of Income Tax (Appeals), Jamnagar (CIT(A) for short) dated 19.08.2011 for the Assessment Year (A.Y) 2008-09.

2. The grounds raised by the Assessee read as follows:

"1. The order passed u/s. 143(3) by the Id. Assessing officer is bad in law.

2. *The Id. Assessing Officer has erred in law and on facts in determining total income of the appellant at Rs. 28,83,554/- which is imaginary. The Id. CIT(A) has erred in confirming it.*

3. *The Id. Assessing Officer has erred in law and on facts in making disallowance of Rs. 27,58,042/- u/s. 69A of the Income Tax Act, 1961 without considering the fact that the transactions do not belong to the appellant. The Id. CIT(A) has erred in confirming it.*

4. *The Id. Assessing Officer has erred in law and on facts in applying provisions of s. 69A inspite of the fact that the appellant is not the owner of alleged bank transactions. The Id. CIT(A) has erred in conferring it.*

5. *The Id. Assessing Officer has erred in law and on facts in not considering the fact that the cash deposits in the bank account are out of cash withdrawals from the same bank account and further erred in not granting credit thereof. The Id. CIT(A) has erred in confirming it.”*

3. We have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. The Id. AR submitted that the Id. Assessing Officer has erred in law and on facts in determining total income of the appellant at Rs. 28,83,554/- which is imaginary. The Id. CIT(A) has erred in confirming the said order passed by the AO u/s. 143(3) of the Income Tax Act, 1961 (in short ~~the Act~~). The Id. AR vehemently pointed out that the Id. Assessing Officer has erred in law and on facts in making disallowance of Rs. 27,58,042/- u/s. 69A of the Act without considering the fact that the transactions do not belong to the appellant and the same was confirmed by the Id. CIT(A) on unjustified and unsustainable reasons therefore, the same may kindly be dismissed.

4. The Id. AR also pointed out that the Id. Assessing Officer has erred in law and on facts in applying provisions of s. 69A inspite of the fact that the

appellant is not the owner of alleged bank transactions and the Id. Assessing Officer has also erred in law and on facts in not considering the fact that the cash deposits in the bank account are out of cash withdrawals from the same bank account and further erred in not granting credit thereof. The Id. CIT(A) was not correct and has erred in confirming the same therefore, impugned order may kindly be set aside by directing the AO to delete the entire addition.

5. Replying to the above, the Id. Departmental Representative (DR) strongly supported the assessment as well as first appellate order and contended that the assessee did not disclose bank account to which huge cash amount was deposited therefore, the authorities below were right in making addition/disallowance u/s. 69A of the Act.

6. On careful submission of above rival submissions, first of all, we may point out that from the facts, circumstances and documentary evidence placed on record, we note that the assessee failed to establish and discharge his onus regarding impugned deposits to his bank account and the explanation submitted by him that money deposited in the joint account with his wife standing in his name and in his wife's name belongs to his wife only as there was no proof on record like Form No.7/12 or Form No.8 or any detail or bill showing that the agriculture produce was sold by her father and he was having agriculture income out of which amount was given by him to his daughter i.e., wife of the assessee which was deposited in the joint account. It is also noted that the assessee and his wife also failed to explain the reasons for depositing the huge cash amount and subsequent withdrawals and purpose of deposits

and withdrawal to bank account, which was not disclosed to the Income Tax authorities. Therefore, the authorities were right in imposing liability of paying tax on the impugned amounts on the assessee and conclusion drawn by the AO as well as Id. CIT(A) is found to be correct and sustainable.

7. However, at the same time, despite the fact that the assessee did not disclose the said bank account in the return of income but in a situation when assessee is regularly depositing cash amount and also withdrawing amounts there from then, the entire amount of cash deposits cannot be treated as income in the hands of the assessee keeping aside the fact of withdrawals from the same account and in this situation, it has to be presumed that the amount deposited was withdrawn and again deposited to the account and this circulation of money cannot create any income in the hands of the assessee. At the same time, it is also a well accepted practice and procedure of tax jurisprudence that in the situation when assessee is regularly depositing amounts to the bank account and withdrawing the same and again depositing amount to the same account then, the peak amount of entire financial period should be treated as taxable income of the assessee. Admittedly and undisputedly, peak amount in the present case, in the impugned bank account, was Rs. 1,79,618/- as on 27.02.2008 and after considering entire facts and circumstances of the case and in view of the foregoing discussion, we direct the AO to treat the said peak amount as taxable income of the assessee for the relevant period pertaining to AY 2008-09. Accordingly, appeal of assessee is

partly allowed and AO is directed to recalculate the taxable income of the assessee as per directions given herein above.

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

Order pronounced in the open court on this day of November 19th , 2018

Sd/-

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्य के समक्ष /Accountant Member

Rajkot/राजकोट; दिनांक/Dated :November 19th , 2018/ EDN, Sr. P.S

Sd/-

(सी.एम.गग /C.M.GARG)

लेखासदस्य के समक्ष /judicial member

आदेश का प्रतिलिपि अर्पित/Copy of the Order is forwarded to :

1. अपीलार्थ/ The Appellant; 2. प्रत्यर्थ/ The Respondent; 3. आयकर आयुक्त(अपील)/The concerned CIT(A); 4. The concerned Prl. CIT; 5. क्षेत्रीय प्रमुख, आयकर अपील आधिकरण, / DR, ITAT, राजकोट/Rajkot; 6. गार्डफाइल / Guard file.

// true copy //