

आयकर अपीलीय अधिकरण सूरत न्यायपीठ, सूरत
**IN THE INCOME TAX APPELLATE TRIBUNAL,
SURAT BENCH, SURAT**

श्री सी एम गर्ग, न्यायिक सदस्य एवं श्री ओ पी मीना, लेखा सदस्य के समक्ष
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER AND
SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA Nos.856, 857 & 858/Ahd/2013/SRT
निर्धारण वर्ष / Assessment Years: 2004-05, 2005-06 & 2009-10

आयकर अपील सं. / ITA Nos.2838 & 2839/Ahd/2014/SRT
निर्धारण वर्ष / Assessment Years: 2004-05 & 2005-06

Shri Stalin Chockkalingam Pillai,
Flat No. F-102, Rajmoti Complex,
Chharwada Road,
Vapi – 396 195.

[PAN: AIPPP 1728 F]

(अपीलार्थी/Appellant)

Vs. Income Tax Officer,
Vapi Ward-3,
Vapi.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: A.Gopalakrishnan, C.A

प्रत्यर्थी की ओर से /Revenue by

: Shri S.R. Meena, Sr. D.R

सुनवाई की तारीख/Date of Hearing

: 08-08-2018

घोषणा की तारीख /Date of

: 15-10-2018

Pronouncement

आदेश /ORDER

PER C.M.GARG, JUDICIAL MEMBER:

These five appeals have been filed by the Assessee against two separate orders of Commissioner of Income Tax (Appeals), Valsad ('CIT(A)' for short) dated 28.12.2012 & 20.08.2014 respectively for the Assessment Years (A.Ys) 2004-05, 2005-06 & 2009-10.

2. Both the parties submitted that facts and circumstances of ITA No.856 & 857/Ahd/2013/SRT for AY 2004-05 & 2005-06 are quite

identical and similar. In the beginning of hearing, the Id. Assessee's Representative (AR) submitted that the assessee does not want to press ground No.1 in both the appeals hence, the same is dismissed as not pressed. For the sake of convenience and brevity, we take appeal for AY 2004-05 as lead case and the remaining sole ground No.2 raised by the assessee ITA No.856/Ahd/2013/SRT reads as follows:

"On appreciation of the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) has erred in confirming the Learned Assessing Officer in making addition to the tune Rs. 70,000/- treating the same as unexplained cash credit u/s. 69A of the Act. The action of the Learned Commissioner of Income Tax (Appeals) is based on presumptions only, contrary to the facts of the case and law and deserves to be deleted."

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. CIT(A) has erred in confirming the Learned Assessing Officer in making addition to the tune Rs. 70,000/- treating the same as unexplained cash credit u/s. 69A of the Act. The action of the Id. CIT(A) is based on presumptions only, contrary to the facts of the case and law and deserves to be deleted. The Id. AR also submitted that the identical issue has been decided by ITAT, Ahmedabad 'A' bench order dated 26.10.2016 for AY 2008-09 in ITA No.2187/Ahd/2015, wherein para 10 the Tribunal allowed amount deposited by the assessee in the form of cheques and remaining amount of cash net cash deposit, opening balance in the bank account and amount of interest credited by

the Bank was taken for the purpose of taxation and addition has been restricted to this extent only.

4. The Id. AR submitted that the assessee has *suo moto* offered an amount of Rs. 70,000/- in the revised return of income filed in response to the notice u/s. 148 of the Act within prescribed time of six months from the date of receipt of notice declaring income of Rs. 2,18,690/- including an amount of Rs. 70,000/-. The Id. AR also submitted that for AY 2004-05 there was no opening balance but the account was opened by depositing RS. 10,000/- & Rs. 50,000/- were deposited in cash totaling to Rs. 60,000/- out of which Rs. 50,000/- were transferred to Autosweep for the purpose of business of the assessee. The Id. AR also submitted that when the assessee in the return, which was filed within prescribed time of six months from the date of receipt of notice u/s. 148 of the Act, has offered Rs. 70,000/- *suo moto* then, any further addition would amount to double addition and taxation therefore, impugned addition may kindly be deleted.

5. Replying to the above, the Id. Departmental Representative (DR) submitted that there was cash deposits of Rs. 50,000/- in AY 2004-05 and of Rs. 9,29,275/- in AY 2005-06 therefore, the AO was right in making addition and the same was rightly upheld by the Id. CIT(A). However, he, in all fairness, did not controvert the fact that the Tribunal

has granted relief to the assessee by order dated 26.10.2016 in paras 7-10, in assessee's own case for AY 2008-09 on the identical issue restricting the addition to the net amount of unexplained cash deposit, opening balance and amount of interest credited by the bank. However, he did not controvert the fact stated by the Id. AR that the assessee filed return in response to notice u/s. 148 of the Act within prescribed time limit.

6. On careful consideration of above rival submissions, we are of the view that from the copy of the factual position of six assessment years from AY 2004-05 to 2009-10 including AY 2008-09, wherein the Tribunal has decided the issue in favour of the assessee by holding that only net amount of cash deposit, opening balance of bank account and interest credited by the bank on the deposits has to be taken for addition and addition has been restricted to this extent only. In the present AY 2004-05, undisputedly the assessee opened account by way of depositing Rs. 10,000/- and thereafter entire period deposited cash amount of Rs. 50,000/- out of which Rs. 50,000/- were transferred to Autosweep. These facts have not been controverted by the AO and Id. DR during arguments before us. It is also not in dispute that the assessee in response to notice u/s. 148 of the Act filed revised return within prescribed time limit of six months from the date of receipt of notice and

suo moto declared Rs. 70,000/- for taxation which includes both the amounts i.e., amount of cash of Rs. 10,000/- deposited at the time of opening the bank account and subsequent deposit of Rs. 50,000/-. The Id. DR has not disputed the fact that the original return assessee declared income of Rs. 1,48,690/- and in the revised return by addition Rs. 70,000/-, the assessee declared amount of Rs. 2,18,690/-. Hence, keeping in view the order of Tribunal for AY 2008-09 dated 26.10.2016 and facts and circumstances of the case, we are of the considered opinion that no further addition is required to be made to the returned income of the assessee filed during the course of reassessment proceedings u/s. 147/148 of the Act hence, we directed the AO to delete the addition of Rs. 70,000/-. Accordingly, sole ground No.2 of the assessee is allowed.

ITA No. 857/Ahd/2013/SRT for AY 2005-06:

7. Since, both the parties have agreed that except the amounts of deposits, other facts of AY 2005-06 are identical to the facts and circumstances of other four AYs including AY 2004-05 & 2008-09. Therefore, both the parties reiterated their arguments advance during the hearing of appeal of AY 2004-05. The Id. AR also submitted that in AY 2005-06, the opening balance of bank account was Rs. 10,000/- which is covered in the amount of Rs. 70,000/- *suo moto* declared by the

assessee for AY 2004-05 therefore, opening bank balance/amount brought forward is self-explained. The Id. AR further submitted that undisputedly for AY 2005-06 amount of cash deposit was Rs. 9,29,275/- out of which cash withdrawals were Rs. 8,20,050/- and net cash deposit comes to Rs. 1,09,225/- and amount of bank interest credited to this account is Rs. 1,747/-. From para 7 to 10 of the Tribunal order dated 26.10.2016 for AY 2008-09, it is clearly discernable that the Tribunal has upheld the findings of Id. CIT(A) that the amount of cheques has been accepted by the AO then, the AO should have accepted the nature of the cash deposit and the Id. First appellate authority concluded that the amount explained by the assessee should be allowed and balance amount along with opening balance and interest credited to the bank account should be added to the income of the assessee.

8. The Id. DR reiterating the submissions and contentions submitted for AY 2004-05 contended that AO was right in making addition on account of cash deposits made by the assessee and the Id. CIT(A) without any basis granted relief to the assessee therefore, impugned order may kindly be set aside by restoring that of the AO. However, he did not controvert the fact stated by the Id. AR that the return in response to notice u/s. 148 of the Act was filed within prescribed time limit.

9. For AY 2005-06 undisputedly, the assessee filed return of income showing income of "Rs. 1,03,988/- and in the return, which was filed within prescribed time in response to notice u/s. 148 of the Act, the assessee also offered income of Rs. 1,76,000/- and filed return of Rs. 2,80,790/- but the AO made addition of Rs. 9,29,275/- i.e., entire amount of cash deposits. In view of Tribunal order for AY 2008-09, we are not convinced with the logic adopted by the AO while disallowing entire amount of cash deposits. In AY 2008-09, the Id. CIT(A) on the similar facts and circumstances allowed amount of cash withdrawal of Rs. 21,18,710/- and cheques paid to the branch office/vehicle owner of Rs. 92,554/- total Rs. 22,11,264/- and remaining amount of unexplained cash deposit of Rs. 6,70,788/- along with opening balance of bank account of Rs. 1,52,116/- and interest credited by the bank of Rs. 2,261/- was also added to this amount and the addition was restricted to Rs. 8,25,155/-. On being asked by the Bench, the Id. DR submitted that the to the best of knowledge there is no appeal against the order of Tribunal (supra) before the Hon'ble High Court hence, we safely presume that the Department has accepted tribunal order for AY 2008-09.

10. Applying the same ratio/proposition rendered in the Tribunal order for AY 2008-09 to present AY 2005-06, we observe that the total cash

deposits are of Rs. 9,29,275/- and cash withdrawals are of Rs. 8,20,050/-and net cash deposit remains Rs. 1,09,225/- plus amount of interest credited by the bank of Rs. 1,747/- and opening balance of bank account Rs. 10,000/-. As we have noted above that the opening balance is undisputedly amount brought forward from the AY 2004-05 and in this year the assessee has *suo moto* offered to tax Rs. 70,000/- in the return of income which includes amount deposited by the assessee while opening the bank account and the same is included in the amount of Rs. 70,000/- which cannot be taken as unexplained income of the assessee for taxation purposes. Therefore, total amount deserve to be added is Rs. 1,09,225/- and Rs. 1,747/-. The assessee has already shown additional income of Rs. 1,76,000/- for AY 2005-06 and has filed revised return showing income of Rs. 2,80,790/- therefore, no further addition is required to be made on account of cash deposits by the assessee.

11. In view of foregoing discussion, we reach to a logical conclusion that the AO was not correct and justified in making addition of entire amount of cash deposits during the period and the order of the Tribunal dated 26.10.2016 supports the case of the assessee that no further addition was required to be made in view of the revised return filed by the assessee in response to notice u/s. 148 of the Act declaring addition

income of Rs. 1,76,000/-. Therefore, sole ground No.2 of the assessee is allowed and AO is directed to delete the addition made for AY 2005-06.

Penalty appeal of the assessee ITA Nos.2838 & 2839/Ahd/2014/SRT:

12. These appeals have been filed by the assessee challenging the upholding of penalty by the Id. CIT(A) imposed by the AO u/s. 271(1)(c) of the Act, on the strength additions made by the AO on account of cash deposits made by the assessee to its bank accounts during the relevant periods. We have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal.

13. Since, by the earlier part of this order, we have deleted the quantum addition made by the assessee for both the AYs therefore, penalty imposed by the AO and upheld by the Id. CIT(A) u/s. 271(1)(c) of the Act cannot be held as sustainable and we direct the AO to delete the same for the AYs. Accordingly, sole ground of the assessee for AYs 2004-05 & 2005-06 is also allowed.

ITA No. 858/Ahd/2013/SRT for AY 2009-10:

14. We have heard the arguments of both sides and carefully perused the relevant material placed on the record of the Tribunal. The Id. AR as well as the Id. DR reiterated the arguments advance by them for AY 2004-05 and submitted that all the facts for AY 2009-10, except the fact

of initiation of reassessment proceedings u/s. 147 of the Act and notice u/s. 148 of the Act, other all facts and circumstances of the present AY under consideration are identical and similar to the earlier assessment years 2004-05 & 2005-06.

15. Elaborating the facts of AY 2009-10, the Id. AR submitted that total amount received from transporters was Rs. 23,58,157/- and amount of cash deposit included therein was Rs. 16,66,564/- and after making payment to the vehicle owners and bank charges of Rs. 2,557/- and after adding miscellaneous income of Rs. 527/- and bank interest credited by the bank of Rs. 1,968/- the remaining amount was Rs. 12,63,377/- and the assessee earned income of Rs. 10,97,245/- and in the revised return of income offered to tax additional amount of Rs. 13,51,089/- which was submitted on 31.03.2011 offering to tax total income of Rs. 16,46,876/- including amount of Rs. 2,95,775/- which was shown in the original return of income. The Id. AR vehemently submitted that when the assessee has shown and surrendered additional income of Rs. 13,51,039/- for AY 2009-10, whereas net of cash deposit comes to Rs. 12,63,377/- then, no further disallowance could have been made validly to the income of the assessee shown in the revised return. The Id. AR submitted that if any further addition is made then, that would

amount to double addition and double taxation which is also unjustified and unreasonable on the part of the assessee.

16. The Id. AR also submitted that as per Tribunal order dated 26.10.2016 for AY 2008-09 (supra) paras 7-10 out of total deposits of cash and cheques and by adding opening bank balance in the beginning of year and amount of interest credited by the bank total of these three amounts and after deducting the amount of cash withdrawals and amount of payment made to the vehicle owners/branch office for the purpose of business of the assessee. The remaining amount was to be added to the income of the assessee and for this year AY 2008-09, the assessee filed return of income showing income of Rs. 2,66,154/- and therefore, addition was restricted by the Tribunal to Rs. 8,25,155/- but in the present AY 2008-09 the assessee, in the revised return *suo moto* offered an amount of Rs. 13,51,102/- which is higher than the net amount of Rs. 12,63,377/- calculated as per directions of the Tribunal order (supra).

17. The Id. DR submitted that the AO was right in making addition on account of cash deposits to the bank account of the assessee. However, in all fairness, he accepted that on the identical facts and circumstances, the Tribunal has granted part relief to the assessee for AY 2008-09 by order dated 26.10.2016 (supra).

18. On careful consideration of above rival submissions, we are of the view that undisputedly, for AY 2009-10 the total amount of cash deposit was Rs. 16,66,564/- and amount of cheque deposit was Rs. 6,91,563/- in addition to these deposits the assessee also earned miscellaneous income of Rs. 527/- and Rs. 1,968/- was credited as interest to the bank account which comes to Rs. 23,60,622/- and after deducting an amount of Rs. 12,60,820/-, which includes cash withdrawal of Rs. 9,50,150/- and cheque/amount paid to the branch office/vehicle owners, and amount of bank charges of Rs. 2,557/- the net amount of cash deposits comes to Rs. 12,63,377/- and the assessee, in the revised return of income filed within prescribed time limit, as already offered additional income of Rs. 13,51,039/- then, further addition of Rs. 16,64,564/- i.e., entire amount of cash deposit is not justified and sustainable in view of the observations and findings of the Tribunal in the order dated 26.10.2016 (supra). These facts, apparent on the record, have not been controverted, in any manner, by the Id. DR. We also inclined to hold that as undisputedly, the assessee has already offered an amount of Rs. 13,51,039/- in the revised return as additional income then, further addition on the same issue of cash deposits would certainly amount to double addition and double taxation on the same cash deposits which is not permissible and justified in the light of order of coordinate bench of Tribunal for AY 2008-

ITA Nos.856, 857 &858/Ahd/2013/SRT (A.Ys: 2004-05, 2005-06 & 2009-10)
ITA Nos.2838 & 2839/Ahd/2014/SRT (A.Y: 2004-05 & 2005-06)
Shri Stalin Chockkalingam Pillai

09 dated 26.10.2016 (supra) and as per mandate of provisions of the Act. Therefore, addition made by the AO and upheld by the Id. CIT(A) u/s. 69A of the Act is not sustainable and we demolish the same. It is also pertinent to note that, the AO has made addition on the allegation of cash deposits u/s. 69A of the Act but in our humble understanding of provision of s. 69A of the Act the addition under this provision cannot be made on the allegation and factum of cash deposits to the bank account of transporter/assessee or any other business enterprise, who claim that the amount is pertaining to the receipts/sale proceeds having nexus with his business activities. Therefore, addition made by the AO and upheld by the Id. CIT(A) also fails on this count. Accordingly, in view of foregoing discussion and findings recorded in the earlier paragraphs of this order, the sole ground of the assessee is allowed and AO is directed to delete the addition.

19. In the result, all the five appeals of the assessee are allowed in the manner as indicted above.

Order pronounced in the open court on this day of 15th October, 2018.

Sd/-
 (ओ पी मीना)
(O.P.MEENA)

लेखा सदस्य/Accountant Member

सूरत / Surat; दिनांक Dated : 15th October, 2018 / EDN

आदेश की प्रतिलिपि प्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant; 2. प्रत्यर्थी / The Respondent; 3. आयकर आयुक्त(अपील) / The concerned CIT; 4. The concerned Prl. CIT; 5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat; 6. गार्ड फाईल / Guard file.

Sd/-
 (सी एम गर्ग)
(C.M.GARG)

न्यायिक सदस्य/Judicial Member

ITA Nos.856, 857 &858/Ahd/2013/SRT (A.Ys: 2004-05, 2005-06 & 2009-10)
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