

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.1037/Ahd/2015
(Assessment Year : 2010-11)

Shri Ashokkumar Kapurchand Shah, H-301, Green Iris, Behind Sales India, Nr. H.P. Petrol Pump, KK Nagar, Ghatlodia, Ahmedbad – 61	Vs.	The ITO, S. K. Ward-2, Himmatnagar.
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[PAN No. ADRPS 3613 F]

(Appellant)

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(Respondent)

Appellant by :	Ms. Urvashi Sodhan, A.R.
Respondent by :	Shri Uma Shankar Prasad, Sr. D.R.

Date of Hearing	05/09/2018
Date of Pronouncement	30/11/2018

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal has been preferred before us by the assessee against the order dated 27.01.2015 passed by the Commissioner of Income Tax(Appeals)-2, Ahmedabad under section 143(3) of the Income Tax Act, 1961 arising out of the order dated 22.03.2013 passed by the Income Tax Officer, S. K. Ward - 2, Himmatnagar for the Assessment Year 2010-11 with the following grounds :

“Your appellant being aggrieved by the Order passed by the learned Commissioner of Income Tax (Appeals)-2, Ahmedabad presents this appeal against the same on the following amongst other grounds.

1. *The learned CIT(A) has erred in confirming an addition of Rs. 17,05,000/- as unexplained investment u/s 69 being amount deposited in the bank account. It is submitted that the same are not at all unaccounted, all the materials and details have been filed, thus the addition of Rs. 17,05,000/- being unjustified and unwarranted both on facts and on law deserves to be deleted. It is submitted that the same be done so now.*
2. *The learned CIT(A) has erred in confirming the addition of Rs.12,58,000/- being cash deposits in the bank account represents short term cash deposits received from various friends and relatives. It is submitted that complete details with regard to the intended sale of the Flat and confirmation and statement on oath of all depositors have been filed but were not taken in true perspective. Considering above factual and legal position the addition of Rs.12,58,000/- u/s 69 deserves to be deleted.*
3. *The learned CIT(A) has erred in confirming an addition of Rs. 1,97,000/- being deposit received from family members, inspite of submitting all the evidences, details and confirmation. The submissions/explanation furnished by your appellant were not considered in true perspective. It is prayed before your honor to kindly delete the addition of Rs. 197,000/- u/s 69 of the Act. It is submitted that the same be held so now.*
4. *The learned CIT(A) has erred in confirming an addition of Rs.2,50,000/- being repayment made by employees and friends, of the loan given in earlier period. Your appellant submits that it has submitted all the evidences and details in this regard. The Ld. AO has himself mentioned that only amount of Rs.1,05,000/- remains unexplained though addition has been made of Rs.2,50,000/- and confirmed by the Ld. CIT(A). It is prayed before your honor to kindly delete the addition of Rs. 2,50,000/- u/s 69 of the Act. It is submitted that the same be held so now.*
5. *The order passed by the learned CIT(A) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.*
6. *Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing.*

3. The assessee being an individual filed his return of income for A.Y. 2010-11 on 04.06.2010 declaring total income of Rs.4,05,920/-. The case was processed u/s 143(1) of the Act. Subsequently, upon scrutiny notice u/s 143(2) was issued on 30.08.2011 which was served upon him by RPAD followed by another notice dated 07.06.2012 upon change of incumbent. During the scrutiny assessment it was found that a total amount of

Rs.20,71,000/- was deposited by cash on various dates in the Vijaynagar Branch of State Bank of India bearing A/c No.10838326493. In order to verify the genuineness of such cash deposited in the said bank the sources whereof was directed to be furnished by the assessee with documentary evidences upon which only the list of such deposit was submitted with explanation that the same was deposited on account of sale consideration of his flat situated in Ahmedabad. Ultimately, after a considerable deliberation the Learned Assessing Officer added Rs.12,58,000/- as unexplained cash deposit. In appeal, the same was confirmed by the Learned CIT(A) hence appeal before us.

4. The Learned Representative of the assessee submitted before us at the time of hearing of appeal that the total amount of Rs.12,58,000/- received from the persons interested to open a coaching centre upon purchasing the flat belongs to the assessee deposited with SBI. Those persons were summoned u/s 131 of the Act whereupon they appeared before the Learned Assessing Officer and stated on oath of the fact of such transaction in the absence of the assessee. The reason behind such transaction made by those close friends of the assessee was to purchase the flat jointly to get the benefit of spurt in the immovable property market. Ultimately, the same could not materialize and an amount of Rs.10,58,000/- was returned. No sale deed, however, was executed as a result whereof no receipt was given by the assessee to those persons neither any receipt was received by the assessee upon returning the said amount to those persons.

Therefore according to the Learned AR there was sufficient reason for not explaining such deposits made by the assessee which ought to have been considered by the Assessing Officer. He, however, prayed for deletion of such addition made by Authorities below. On the contrary the Learned DR relied upon the order passed by the authorities below he further asserted that the genuineness of such transaction has been failed to be

proved by the assessee in the absence of any receipt of agreement for sale for such transaction.

5. We have heard the parties, perused the relevant materials available on record. It appear from the record that no receipt for such cash payment or repayment in cash was submitted by the assessee before the AO or before the First Appellate Authority neither any document for such sale of flat nor any document for cancellation of sale of such flat was made available by the assessee before the authorities below. Further that the person concern had no knowledge about the basic information of the flat not even the carpet area as deposed before the Learned Assessing Officer which is revealed from the order passed by the Learned Assessing officer. It was the assessee who himself has deposed and/or admitted that no receipt was issued against such cash received for the sale consideration as claimed by him. We do not find any reason as to why such deposit has been made by cash and not by cheque when the assessee was having 2 Bank Accounts at that material point of time. No explanation whatsoever has given by the assessee before the authorities below in respect of his claim or the genuineness of such transaction in the absence of which we find no infirmity in the order passed by the authorities below in adding such amount of Rs.12,58,000/- as unexplained cash deposit as appeared in the assessee's bank account u/s 68 of the Act. Hence this ground of assessee is dismissed.

6. The assessee has also questioned the addition of Rs.1,97,000/- u/s 69 of the Act being deposit received from family members. According to the assessee the submission and/or explanation given by the assessee has not been considered by the Authorities below in its proper prospective. Out of the total cash deposited of Rs.27,000/- and Rs.1,97,000/- has been received in cash from the family members as claimed by the assessee before the Learned Assessing officer details whereof were also submitted by him. Rs.1,00,000/- received from one Kapurchand Ratanji Shah having a retail business

income and the balance amount of Rs.97,000/- was received from Smt Nitaben Kapurchand Shah. However, it appears from the records that the assessee could not prove the said sources of transaction with documentary evidences. The same was ultimately added by the Learned AO, subsequently was confirmed by the First Appellate Authority in appeal preferred by the assessee.

7. At the time of hearing of the instant appeal, the Learned AR submitted before us that the father of the assessee namely Kapurchand Ratanji Shah expired on 15.09.2012. It was the case of the assessee that the said amount of Rs.1,97,000/- was inherited received from his father namely Kampurchand Ratanji Shah and mother Nitaben Kampurchand Shah. The assessee further submitted the confirmation letter obtained from his mother regarding such payment which though submitted before the Learned Assessing Officer but the same remained unconsidered. On this score the Learned AR prayed for deletion of such addition of Rs.1,97,000/-. The Learned DR submitted before us that the Assessee has not been able to explain the source of such cash deposit of Rs. 1.97 lacs in his Bank Account and thus the addition made by the Learned AO is just and proper.

8. Heard the Learned Counsel appearing for the parties, perused the relevant materials available on record, particularly the submissions made by the assessee in this regard being part of the record available in the paper book submitted before us. We find that those certain documents and/or explanation were given by the assessee before the Learned AO who in turn instead of cross verification of those documents by way of issuing summons against those two parties made an addition within 15 days from the issuance of first show-cause notice. This particular fact was also made known to the First Appellate Authority who in term though considered the same but rejected such plea of the assessee in the absence of any evidence submitted by the assessee during the course of assessment proceedings or before the appellate proceedings. According to the Learned

CIT(A) mere confirmation given by these persons is not sufficient to prove the transaction in the absence of any documentary evidence in support of such confirmation. The plea of the assessee that the assessee would like to treat the same as an application under Rule 46A for additional evidences was also negated by the Learned CIT(A) on the premise that had there been any such document to justify such transaction the same could have been placed by the assessee before the Learned AO itself. The said plea, according to the Learned CIT(A) is an afterthought and would not be reliable at all. We find justification in such consideration made by the Learned CIT(A) while confirming such addition of Rs 1.97 Lacs. It is true that had there been any real document and/or evidence lying with the assessee, the assessee would have placed the same before the Learned AO so as to justify against such addition. Therefore giving another chance by the Learned CIT(A) would be nothing but opening a flood gate the assessee to keep the proceedings unnecessarily lengthy. In that view of the order having no infirmity in the matter passed by the Learned CIT(A) we confirm the same. In the result, this ground of appeal preferred by the assessee is dismissed.

9. The next ground of appeal is against the order of addition of Rs.2.5 lacs made by the Learned AO, confirmed by the Learned CIT(A). During the assessment proceedings, the assessee was directed to explain as to why cash deposit of Rs.2,50,000/- should not be considered as unexplained investment u/s 69 of the Act which has claimed to have been deposited from earlier withdrawals from the Bank by the assessee. In reply to that show-cause notice the assessee duly submitted the details of deposits made in the said bank account. However, he was unable to file any documentary evidence which could show that such amount of Rs.2,50,000/- were from cash withdrawals. According to the Learned AO since the assessee failed to explain the entire cash deposit of Rs.2,50,000/- co-relating the same with the earlier withdrawals the entire amount was added to the total

income of the assessee u/s 68 of the Act which was upheld by the Learned CIT(A). Hence, the instant appeal before us.

10. At the time of hearing of appeal, the Learned Counsel appearing for the assessee submitted before us that the Learned AO while making the reconciliation accepted a sum of Rs.1,45,000/- as explained by the assessee but at the time of making addition the entire amount to the tune of Rs.2,50,000/- was deposited by the assessee was added. In appeal though said lacuna was pointed out to the Learned CIT(A), the Learned CIT(A) did not accept the same and confirmed such addition. He, therefore, prays before us to restrict our addition to the tune of Rs.1,05,000/-. On the contrary the Learned DR relied upon the order passed by the authorities below.

11. Heard the parties, perused the relevant materials available on record. The explanation towards depositing of cash from the earlier withdrawals has placed by the assessee before the Learned AO was duly considered by him in the following manner as it appear from the order passed by the Learned AO:

“On verification of Dena Bank Account, it is noticed that assessee had withdrawn cash of Rs.1,45,000/- (Rs.90,000/- on 09.09.2009, Rs.5,000/- on 26.09.2009 Rs.20,000 on 10.10.2009, Rs.10,000 on 09.11.2009 and Rs. 20,000/- on 04.12.2009) but on verification of the bank account, it is noticed that assessee had claimed to have given Rs.40,000/- on 11.12.2009 to Shri K. R. Patel, Rs.10,000/- claimed to have given to Shri D.T. Pateliya and Rs.1,50,000/- claimed to have given to N.N. Pandya on 11.12.2009. Therefore assessee’s reply of cash withdrawal of Rs.2,00,000/- (40,000 + 10,000 + 1,50,000) from bank after 05.12.2009 i.e. the date on which assessee deposited cash of Rs.25,0000/- is factually not correct and therefore not acceptable. In the circumstances, Rs.1,05,000/- (2,50,000 – 1,45,000) is still remained as unexplained for which the any explanation has been given by the assessee.”

12. Ultimately, we find that the Learned AO came to the conclusion the amount deposited in the Bank Account of the assessee to that extent of Rs.2,50,000/- by way of

alleged withdrawals from his Bank account were actually the own money of the assessee which were pumped into the said business. This is nothing but an income from undisclosed sources as held by the Learned AO. However, the same had not been considered by the Learned CIT(A) in appeal. Here we join issue. When amount of Rs.1,45,000/- has already been made explained by the assessee before the Learned Assessing Officer and positive consideration whereof was also made by the revenues authorities the question of making the addition of the same amount is nothing but a colorable exercises of power. We, therefore, find no merit in making such addition of the explained amount of Rs.1,45,000/- as made by the Learned AO particularly taking into consideration the such meager amount of the assessee so withdrawn and / or re-deposited by him. We, therefore, restricted the addition to the balance amount of Rs.1,05,000/- and pass order accordingly.

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

This Order pronounced in Open Court on

30/11/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 30/11/2018
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)-2, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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