

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘D’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1242/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2011-12

Late Shri Manoj M. Waghela (Legal Heir Manjulaben M. Waghela B-215, Pramukh Swami Nagar Warasia Ring Road Baroda 390 022 PAN : ADYPY 3946 R	Vs	ITO, Ward-5(4) Baroda.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Parin Shah, AR
Revenue by :	Shri Virendra Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 06/03/2019

घोषणा की तारीख /Date of Pronouncement : 8/03/2019

### ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-4, Vadodara dated 21.12.2015 passed for the Asstt.Year 2011-12.

2. Assessee has taken five grounds of appeal, however, his grievance revolves around a single issue viz. the Id.CIT(A) has erred in confirming addition of Rs.27,11,544/- made by the AO with aid of section 69A of the Income Tax Act on account of unexplained money deposited in the bank account.

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3. Brief facts of the case are that the assessee was working as a labour contractor. He has filed his return of income on 2.9.2011 declaring total income at Rs.1,59,620/-. On scrutiny of the accounts, it revealed to the AO that the assessee was maintaining a bank account with Dena Bank wherein he has deposited cash on various dates. By exercising power under section 133(6) of the Income Tax Act, the Id.AO has called for the details from the bank and confronted the assessee to show the source of such deposits. According to the AO, the assessee failed to produce any details and failed to explain source. Thus, he passed assessment order according to his best judgment under section 143(3) r.w.s. 144 of the Income Tax Act. He made addition of Rs.47,11,554/-. On appeal, the Id.CIT(A) has re-appreciated circumstances and deleted the addition by a sum of Rs.20 lakhs. The finding recorded by the Id.CIT(A) is worth to note. It reads as under:

*"3.3. I have considered the submissions of the learned Authorized Representative and the order of the Assessing Officer I am unable to accept the contention of the appellant that the case of the appellant is covered by any judicial decision. This is a unique case and there is no supporting evidence to prove the contentions of the Ld. Authorized Representative. Even if it is assumed that the cash was deposited for VISA purpose, the source of such deposit has to be explained by the assessee only. Who are the persons who advanced such huge sums to the assessee in cash. How and when this cash was returned to those persons. When and how the VISA was applied for ? Where are the papers ? All these questions make the case of the appellant unique and this cannot be compared with any other case. The appellant has failed to satisfactorily explain the source of deposit made on 27.07.2010 for Rs.20,00,000/- in his Dena Bank, Padra account. Out of the above deposits, appellant had withdrawn cash of Rs.20,00,000/- on very next day i.e. 28.07.2010 leaving balance of Rs.1,500/-. On 10.12.2010 appellant had deposited Rs.8,00,000/-, Rs.7,00,000/- and Rs.7,00,000/- totaling to Rs.22,00,000/-. Out of this, only a sum of Rs. 20 lakhs may be treated as deposited out of withdrawal of Rs.20 lakhs made on 28.07.2010. Though, there is a gap of more than 4 months which the appellant has not properly explained*

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but at the same time, Assessing Officer has also not brought on record any other user of the cash withdrawal on 27.07.2010. The Assessing Officer has given sufficient opportunities to the assessee to explain the source of these deposits but he never gave any plausible explanation. Things are not made any more clear even during the appeal proceedings where incomplete explanation has been filed by the appellant. In the case of P.K. Noorjahan (Supra), the Apex Court has held that it is against human probability that a young lady of 20 years will be able to earn substantial money and accepted her explanation that it was inherited from the step father. Authorized Representative has not filed the decision of other relied upon cases i.e., Gujarat High Court's decision in case of Pramod K Patel in Tax Appeal No. 1939 of 2010 dated 10.01.2012 but from his own submission, it appears that in this case, the assessee had duly explained the sources of each deposits with confirmation and other details which are missing in the present case. Under these circumstances, when assessee has miserably failed to explain source of any single cash deposit in his bank account, I am unable to accept the contention of the appellant that all cash deposits are explained and hold that appellant has failed to satisfactorily explain the source of deposit made on 27.07.2010 for Rs.20,00,000/- in his Dena Bank, Padra account. This addition is, therefore, confirmed. Out of the above deposits, appellant had withdrawn cash of Rs.20,00,000/- on very next day i.e. 28.07.2010 leaving balance of Rs.1,500/-. On 10.12.2010 appellant had deposited Rs.8,00,000/-, Rs.7,00,000/- and Rs.7,00,000/- totaling to Rs.22,00,000/-. Out of this, only a sum of Rs. 20 lakhs is treated as deposited out of withdrawal of Rs.20 lakhs made on 28.07.2010. Though, there is a gap of more than 4 months which the appellant has not properly explained but at the same time, Assessing Officer has also not brought on record any other user of the cash withdrawal on 27.07.2010. Hon'ble ITAT, Ahmedabad in the case of (TO Ward-7(l) Ahmedabad Vs. M/s Murlidhar Icecream & Sweet Parlour in ITA No.531/Ahd/2012 (A.Y. 2008-09) has held as under :-

"4.1. The finding of the Id.CIT(A) that there were transactions of cash deposit and withdrawal. This fact is not controverted by the Revenue by placing any contrary material on record. We are of the considered view where there are deposit and withdrawal entries into the bank account, it would be presumed that the amount withdrawn was available with assessee for depositing the same. Therefore, it cannot be concluded that the entire deposits were from unexplained source. We do not see any reason to interfere with the

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*finding of the Id.CIT(A), the same is hereby upheld. Thus, this ground of Revenue's appeal is rejected.*

*On the issue of gap between cash withdrawal and redeposit in the bank account, ITAT, Delhi in the case of Gordhan Vs (TO vide their order dated 19.10.2015 in ITA No, 811/Del/2015 (AY: 2011-12) has held that merely because cash is re deposited after a gap of 5 months from the date of withdrawal of cash, the Assessing Officer cannot make addition of same amount. Similarly, ITAT, Delhi in the case of ACIT Vs Baldev Raj Charla 121 TTJ 366 (Del.) has held as under:*

*"We have heard the rival submissions and perused the material available on record and have gone through the orders of the authorities below. We find that this explanation of the assessee was found correct that against these five deposits on dated 14th June, 1996, Rs. 31,000; 21st July, 1997, Rs. 1,27,000, 19th Sept, 1997, Rs. 22,000; 4th October, 1997, Rs. 26,000 and on 7 th November, 1997, Rs. 52,000/there were sufficient cash withdrawals from AWI and from SBL Mayapuri, but this addition has been confirmed by id. CIT(A) on the basis that there is time gap between the assessee's withdrawals from his own partnership M/s AWI or from his own bank. There is finding recorded by the id. AO or by the id. CIT(A) that apart from depositing these cash into bank as explained by the assessee, there was any other user by the assessee of these amounts and in the absence of that, simply because there was a time gap, the explanation of the assessee cannot be rejected and hence the addition confirmed by the Ld. CIT(A) is not correct. We, therefore, delete the same. This ground of the assessee is allowed."*

*In respect of cash deposited by the assessee in State Bank of India, Harni Road, Baroda, no relief can be granted to the assessee as it can be safely presumed that the entire cash withdrawals made by the assessee were exhausted for meeting day to day house hold expenses, addition for which is are not separately made. Therefore, considering the totality of the facts of the case, written submissions filed before me, discussion made in para above and judicial decisions cited supra, the addition made by the Assessing Officer amounting to Rs.27,11,544/- is confirmed and addition of Rs.20,00,000/- is deleted as discussed above. The sole ground of appeal is partly allowed."*

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4. The Id.counsel for the assessee filed an application for permission to submit additional evidence. In this application he has sought to place on record copy of visa obtained by his son, Amit Manojbhai Vaghela for education purpose. The Id.counsel for the assessee contended that this evidence be taken on record and the matter be remitted to the file of the AO for re-adjudication. On the other hand, the Id.DR relied upon the order of the Revenue authorities.

5. The Id.counsel for the assessee further put reliance upon the judgment of Hon'ble Supreme Court in the case of CIT Vs. Smt. P.K. Noorjahan, 237 ITR 570 (SC) as well as judgment of Hon'ble Gujarat High Court in Tax Appeal No.1939 of 2010 in the case of CIT Vs. Pramod K. Patel dated 10.1.2012. He has placed on record copies of these decisions.

6. We have duly considered rival contentions and gone through the record carefully. As far as the application of the assessee for permission to file additional evidence is concerned, we do not find any merit in this application, because this evidence is not very relevant evidence in whose absence it could be construed that the appeal cannot be decided justifiably. The case of the assessee is that in order to avail visa, money in the bank was to be mobilized. It was arranged by visa-agent. Since his son got the visa, therefore, it would goad to presumption that money was arranged by the visa agent. To our mind, this is just a bald statement. As per section 68, the assessee should fulfill three ingredients viz. (a) identity of the lender, (b) genuineness of the transaction, and (c) credit-worthiness of the lender. Similarly, section 69 contemplates, what is unexplained investment. Here the assessee made deposits in the bank

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account which is unexplained investment unless its nature and source is being explained by the assessee to the satisfaction of the AO. The question before the AO was that, what is the source of deposit in the bank account, *qua* that the assessee has not produced any material. The stand of the assessee is that visa agent on behalf of the assessee's son has arranged this amount is concerned, it can be a corroborative circumstances, but should be supported with evidence. He has to pin point from where money was obtained, how it was obtained, and then how it was deposited. No confirmation from the lender has been filed. Even name of lender has not been disclosed. As far as judgment in the case of Smt.P.K. Norrjahan (*supra*) and other decision of Hon'ble Gujarat High Court are concerned, they are not applicable in the present case. Smt.P.K. Norrjahan is a lady from whom it could not be assumed that she has any source of income, and in that background explanation was accepted. Here, the assessee is labour contractor, filing return showing income. It was not alleged that the assessee was not an able-bodied person who could not earn income. The Id.CIT(A) has considered judgment of the Hon'ble Supreme Court as well as other circumstances in the finding extracted (*supra*). We do not find any error in the order of the Id.CIT(A). Hence, this appeal is rejected.

7. In the result, appeal of the assessee is dismissed.

**Pronounced in the Open Court on 8<sup>th</sup> March, 2019.**

**Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**

Ahmedabad; Dated, 8/03/2019