

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
& SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1220/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2006-07)

Shri Rajnikant V. Patel 15, Triveni Park, Opp. Manjitnagar No. 2, Near Tulsidham Char Rasta, Manjalpur, Vadodara- 390 009	बनाम/ Vs.	ITO, Ward-1(2)(2), Vadodara.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AKB PP4 260 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Mukund Bakshi, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Rajesh Meena, Sr. DR

सुनवाई की तारीख / Date of Hearing	14/03/2019
घोषणा की तारीख /Date of Pronouncement	27/03/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the CIT(A)-2, Vadodara ('CIT(A)' in short), dated 24.04.2017 arising in the assessment order dated 27.02.2015 passed by the Assessing Officer (AO) under s. 143(3) r.w.s 254 of the Income Tax Act, 1961 (the Act) concerning A.Y. 2006-07.

2. As per its grounds of appeal, the assessee has assailed the action of the CIT(A) in confirming addition of Rs. 13,20,000/- out of Rs. 16,55,000/- towards deposits of cash in the bank account as unexplained.

3. Briefly stated the assessee is an individual earning income as commission agent/brokerage of land and asset during the relevant period. The assessee filed return of income for A.Y. 2006-07 declaring total income of Rs. 1,49,122/-. The case of the assessee was selected for scrutiny through CASS for verification of source of cash amounting to Rs. 16,50,000/- deposited in savings bank account with HDFC Bank during F.Y. 2005-06. The AO did not find the explanation offered by the assessee towards source of cash deposits to be satisfactory. Accordingly the addition of Rs. 16.55 lakhs were made by the AO and the assessee income was determined at Rs. 18,04,120/- u/s. 143(3) r.w.s. 254 of the Act.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) after examination of the facts concerning the issue granted partial relief and confirm the addition to the extent of Rs. 13,20,000/-. The relevant operative para of the order of the CIT(A) is reproduced hereunder:

*“4.2. **Ground No. 2** pertains to the addition of Rs.16,55,000/- made on account of unexplained cash credit u/s. 68. During the course of present appellate proceedings, the Ld. Authorized Representative has argued that the benefit of withdrawal of cash from the bank account and re-depositing the same should be allowed. Accordingly, he has stated that the peak deposit in the bank account comes to Rs.3,75,739/- as on 19.04.2005. This argument of Ld. Authorized Representative is not acceptable primarily because the **addition was not made on account of unexplained cash deposits in the bank account, but on account of unexplained cash credit u/s. 68.** During the course of original assessment proceedings, appellate proceedings etc. the appellant has always claimed that **he had received cash loans of Rs.11,25,000/- from various persons for the purpose of cash depositing in the bank account.***

The identity, creditworthiness of the cash depositors as well as genuineness of the transaction was never established by the appellant within the meaning of section 68. Therefore, addition to this extent is confirmed.

*4.2.1. In respect of the balance amount of Rs.5,30,000/-, the appellant has not furnished any details and hence in my considered view, the same should be considered as unexplained cash deposit in the bank account. Since the appellant has withdrawn money on various dates from the same bank account out of unexplained cash credits added u/s. 68, more than Rs.5,30,000/-, the source to that extent may be looked into on the basis of argument of Ld, Authorized Representative. In this regard, it is worthwhile to mention that a sum of Rs.1,95,000/- (net) was deposited between 06.04.2005 to 12.04.2005 as is evident from the submission of Ld. Authorized Representative also. **Since there was no withdrawal prior to net deposit of Rs.1,95,000/-**, the appellant was found to be owner of unexplained money to that extent. Accordingly, addition to the tune of Rs.1,95,000/- is confirmed on account of unexplained money u/s. 69A. The balance amount of Rs. 3,35,000/- (Rs. 5,30,000/- - Rs. 1,95,000) was deposited in Bank account subsequent to the cash withdrawals and hence source to that extent is treated as explained. In view of the above addition to the extent of Rs. 13,20,000/- (Rs. 11,25,000 + 1,95,000) is sustained. The Assessing Officer is directed to allow consequential relief. Thus, appellant succeeds partly in respect of **Ground No. 2**.*

5. However further aggrieved, the assessee preferred appeal before the Tribunal.

6. The Ld. AR for the assessee referred to the bank statement as well as summary of cash transactions filed by way of paper book and submitted that doctrine of 'peak theory' should be applied and the addition could be made only on the amount net of deposits and withdrawals as the withdrawals have been recycled and deposited back from time to time.

7. The Ld. DR for the Revenue, on the other hand, submitted that the assessee has failed to explain the source of cash deposit and therefore the onus in this regard was not discharged at all. The Ld. DR relied upon the order of the CIT(A) and submitted that to avail

the benefit of peak credit, the assessee has to disclose all the facts within his knowledge. No proof of rotation of funds can be inferred by implication.

8. We have carefully considered the rival submissions and perused the order of the authorities below. The assessee seeks relief towards cash deposits on the grounds of doctrine of peak theory evolved by judicial precedents. A perusal of the cash summary filed in this regard itself shows negative balance of Rs 1,95,000/- even while asserting claim of deposits out of past withdrawals. The assessee has totally failed to substantiate that the cash deposits were out of business activities or explainable in some other manner. There does not appear to be any correlation between cash deposits and withdrawals. Needless to say, onus lies on the assessee to explain the source of deposits and its subsequent withdrawals if it wants to take advantage of its claim of recycling the same amount. The issue is essentially the question of fact. The assessee has totally failed to discharge its primary onus of disclosure in this regard. The CIT(A) in our view has rightly analyzed the facts and confirmed the cash deposit to be the unaccounted income of the assessee. We thus decline to interfere.

9. In the result appeal of the assessee is dismissed.

This Order pronounced in Open Court on 27/03/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad: Dated 27/03/2019

Tanmay

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आदेश की प्रतिलिपि अद्योषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee

3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।