

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

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.454/Ahd/2015
(Assessment Year : 2010-11)

ITO,
Ward – 7(1)(4),
Ahmedabad.

Vs. Ms. Neepa Amit Dalal,
401, Satyam Tower,
New Vikas Gruh Road,
Paldi, Ahmedabad.

[PAN No. AGFPD 8330 B]

(Appellant)

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(Respondent)

Appellant by : Shri S. K. Dev, Sr. D.R.
Respondent by : Shri Aseem L. Thakkar, A.R.

Date of Hearing 27.03.2019
Date of Pronouncement 17.05.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the revenue is directed against the order dated 31.12.2014 passed by the Commissioner of Income Tax (Appeals)-7, Ahmedabad under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) arising out of the order dated 29.03.2013 passed by the Income Tax Officer, Ward – 13(4), Ahmedabad for the Assessment Year 2010-11.

2. The assessee filed her return of income on 08.10.2010 through Electronic Media declaring total income at Rs.1,14,000/- which was processed u/s 143(1) of the Act. Under scrutiny, through CASS and notice u/s 143(2)

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dated 03.08.2012 was served upon the assessee followed by a fresh notice u/s 142(1) along with questionnaire dated 23.08.2012.

During the course of assessment proceeding, it was found that the assessee has deposited cash of Rs.1,28,08,400/- in her account lying with Ahmedabad Mercantile Co-op Bank Ltd. which found to be a joint account with her father namely Shri Amitbhai Sitapchand Dalal, whereupon a show cause dated 19.12.2012 was served upon the assessee asking her to reply as to why the amount of Rs.1,28,08,400/- should not be added to her income. In reply to that, the assessee submitted that such cash deposits appearing in the AMCO Bank account are the business transactions of her father in the proprietary business in the name of Alloy Steel Enterprises. It was further stated that the loan was taken from shroffs in cash and re-paid in cheque written one or two week's time. The assessee, however, could not bring her father due to his severe illness of cardiovascular problem and kidney failure. It was also pointed out that the said business was closed down from January, 2012 due to such severe illness of her father. However, the Learned AO finalized such assessment by making addition of the entire amount of Rs.1,28,08,400/- as unexplained cash deposit by observing that no documentary evidence or proof has been submitted by the assessee establishing such cash deposits made by her father. In appeal, such addition was restricted to the amount of Rs.5,38,084/- on peak balance. Hence, the instant appeal filed by the revenue is before us.

3. At the time of hearing of the instant appeal, the Learned Counsel appearing for the assessee submitted before us that the entire evidences relating

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to the deposits made by the assessee's father along with other relevant documents relating to her father's business was though submitted before the Learned AO, the same was not taken into consideration at all. On the appellate proceeding, upon going through the said documents submitted by the assessee, the Learned CIT(A) restricted such addition to the tune of Rs.5,38,084/- being the peak of balance of the bank account as on 12.03.2010.

Taking into consideration the substantial rotation of the money in the bank, there was no such justification in making addition by the Learned AO of the entire amount on assumption that the appellant is the illegal owner of the impugned cash deposits as submitted by the Learned AO. Further that, the AO failed to appreciate that the appellant had denied to make any such deposits and the same is evident from the sample of paying-in-slip for deposit of cash if examined. It would be found that the same were not in appellant's hand writing. Apart for that the appellant having disowned it from day one. Hence, the conditions from applying section 69/69A are not fulfilled in this case and thus the Learned AO's order is not sustainable in eye of law. The Learned CIT(A) took note of it and passed orders taking into consideration the peak of balance which is at the most could have been done while making addition. He, therefore prays for rejection of this dismissal of appeal preferred by the revenue. On the contrary the Learned DR relied upon the order passed by the Learned AO.

4. Heard the respective parties, perused the relevant materials available on record. It appears from the record that during the course of appellate proceeding the appellant further submitted before the Learned CIT(A) that the

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Learned AO has failed to appreciate that right from the early stage of the assessment proceedings and even in the statement recorded on oath u/s 131, the appellant had in no unclear terms pointed out that the transactions in the said bank account were made by her father Shri Amit S. Shah and the same did not belong to her. The initial burden cast upon the appellant to explain the cash deposit in the said bank account was fully discharged and therefore, the onus lies upon the AO to establish that the impugned cash deposits were made by the appellant and not by her father. Merely because the bank account was a joint one along with her father there cannot be any formation of opinion that the account was operated by her and all the transactions therein were made by her or belong to her in absence of conclusive evidence to that effect. Without prejudice to the above submission the appellant further stated that the AO ought not to have been made addition of the entire impugned cash deposits but restricted the same to the peak credit as held in case of July N Nahar in ITA No.829/Ahd/2013. The circulation of the cash borrowings in as much as the cash was received from the party on discounting the cheque issued to him and he was repaid by such discounting with another party shows there was substantial rotation of money of which fact ought to have been considered by the Learned AO. The working of peak credit along with the bank statement showing the peak balance of Rs.5,38,084/- as on 12.03.2010 was also submitted by the assessee in order to enable the Learned CIT(A) in passing order by restricting the addition to the peak balance.

It appears from the record that upon considering the submissions made by the appellant the Learned CIT(A) finalized the assessment order by restricting the addition to the peak balance with the following observation :

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“3.3 I have considered the assessment order and the submissions made by the appellant. On perusal of bank account No. 8704 in Ahmedabad Mercantile Co-Op, Bank, it is evident that the bank account has been opened in the joint name of the appellant and her father Shri Amit S. Dalal, introduced by M/s. Alloy Steel Enterprises, proprietary concern of Shri Amil S Dalal . The above account was being operated by appellant's father for the business r M/s. Alloy Steel Enterprises. The modus operandi was that post-dated cheques of various account holders including appellant were given by her father Shri Amit S. Dial to one Shroff ;n cash discounting. The cash, received from Shroff in exchange of post-dated cheque after deducting interest were deposited in bank account of M/s. Alloy Steel Enterprises. From the bank balance of (proprietary concern of Alloy Steel Enterprises, cheques were issued to parties for the purpose of raw-material. These purchase goods were sold and appellant received cash which was again deposited in the bank account of Alloy Steel Enterprises. The AO has treated the total cash deposited in the bank account as unexplained without considering the withdrawal from the bank account in the name of Shroff. The analysis of bank account showed that there is a rotation of cash. Therefore, the AO was not justified to treat the entire cash deposit as unexplained, without considering the withdrawal which has been after every deposit of cash. Considering the facts of the case, the fair view would be to consider the peak value of cash deposit for the purpose of unexplained cash deposit. The peak of balance of the bank account as on 12.3.2010 is Rs.5,38,084/-. In my opinion, the addition on account of unexplained bank deposit should be restricted to Rs.5,38,084/-. Reliance is placed on the decision of Jurisdictional Tribunal in the case of Jully N Nahar (ITA No. 829/Ahd/2013 dated 04.10.2013).”

We have carefully considered the entire aspect of the matter. We find that the Learned AO wrongly presumed that the appellant was the legal owner of impugned cash deposit without any cogent document. Further that, the statement of bank account depicts substantial rotation of money as pointed out by the appellant before the authorities below and of which fact the Learned CIT(A) took into consideration while passing orders impugned before us. It is a fact that the AO treated the entire cash deposited in the bank account as unexplained without considering the withdrawal from such account in the name of Shroff neither the rotation of cash has been discussed and therefore we

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find no justification to treat the entire cash deposit as unexplained as made by the Learned AO. Considering the entire aspect of the matter, we find no infirmity in the order passed by the Learned CIT(A) in restricting the addition to such peak balance of Rs.5,38,084/- as on 12.03.2010 in the said bank account so as to warrant interference. The question is accordingly answered in the affirmative, i.e. in favour of the assessee and against the revenue. Consequently, the appeal fails and is accordingly dismissed.

5. In the result, revenue's appeal is dismissed.

This Order pronounced in Open Court on	17/05/2019
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Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 17/05/2019
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)-7, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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